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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 170966. June 22, 2016]

REPUBLIC OF THE PHILIPPINES, Represented by the DEPARTMENT OF AGRICULTURE, *petitioner, vs.* **ALBERTO LOOYUKO, doing business under the name and style of NOAH'S ARK SUGAR HOLDINGS and WILSON T. GO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED.—** [I]n a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised by the parties and may be passed upon by us. x x x The Supreme Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial. It is not its function to analyze or weigh evidence all over again. The appreciation and resolution of factual issues are the functions of the lower courts, whose resulting findings are then received with respect and are binding on the Supreme Court, especially when such findings are affirmed by the CA, as in this case.

2. **CIVIL LAW; DAMAGES; ACTUAL DAMAGES; MUST BE ESTABLISHED WITH A REASONABLE DEGREE OF CERTAINTY.—** [A]ctual damages cannot be presumed. "The claimant must prove the actual amount of loss with a reasonable degree of certainty premised upon competent proof and on

the best evidence obtainable. Specific facts that could afford a basis for measuring whatever compensatory or actual damages are borne must be pointed out. **Actual damages cannot be anchored on mere surmises, speculations or conjectures.**"

3. ID.; ID.; TEMPERATE DAMAGES; MAY BE RECOVERED WHEN PECUNIARY LOSS HAS BEEN SUFFERED BUT THE AMOUNT CANNOT BE PROVEN WITH CERTAINTY; AMOUNT OF DAMAGES AWARDED TO RESPONDENT MAY BE OFFSET AGAINST THAT CLAIMED BY PETITIONER.— [U]nder Article 2224 of the New Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty. In such cases, the amount of the award is left to the discretion of the courts, according to the circumstances of each case, but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory. x x x The ruling of the trial court and the CA to offset the amount of damages awarded to respondent against that claimed by petitioner is supported by law pursuant to Article 1283 of the New Civil Code which states that: "If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ronald E. Javier for respondent Looyuko.

D E C I S I O N

PEREZ, *J.*:

The Case

Before this Court is a Petition for Review under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] dated

[1] *Rollo*, pp. 44-60; Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Josefina Guevara-Salonga and Sesinando E. Villon concurring.

23 December 2005, of the Court of Appeals (CA) in CA-G.R. CV No. 66052. In that case, the CA affirmed the Decision,[2] dated 26 November 1999, of the Regional Trial Court, Branch 57, Makati City, dismissing the complaint of petitioner for Recovery of Possession of Personal Property and Damages with Prayer for Replevin.

The Facts

The antecedent facts of this case, as found by the trial court and adopted by the CA, are as follows:

> Due to the sugar crisis in 1985, former President Fidel V. Ramos authorized the emergency importation of 100,000 metric tons of raw sugar from Thailand and Guatemala. National Sugar Refineries Corporation (NASUREFCO) was tasked by the government, thru [petitioner] Department of Agriculture (DA), to handle the importation. Three refineries were given allocations to process and refine raw sugar, namely:
>
> 1) Central Azucarera de Tarlac (CAT) — 8,300 metric tons
> 2) Central Azucarera de Don Pedro (CADP) — 8,300 metric tons
> 3) Noah's Ark — 5,400 metric tons
>
> NASUREFCO contracted the services of MARUBENI to source the raw sugar and handle the shipment and delivery thereof to each of the above-named refineries on a door-to-door arrangement with the stipulation that in case of non-delivery, short delivery or loss of the raw sugar, the latter would be held liable therefor. x x x
>
> On September 18, 1995, NASUREFCO and NOAH'S ARK HOLDING, represented by [respondent] Wilson T. Go, executed a **Refining Contrac**t x x x:[3]
>
> x x x x x x x x x
>
> On September 20,[4] 1995, the vessel MV "Evemeria", carrying a cargo of 21,500 metric tons of raw sugar arrived [at] Poro Point, La

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[2] Records, pp. 778-815.

[3] *Id.* at 796-797.

[4] *Id.* at 574; Should be 29 September 1995 based on the Certificate of Weight and Quality issued by OMIC.

Union. [After] MARUBENI completed the discharge of the raw sugar[,] [it] commenced the delivery thereof to the refineries, x x x.

The allocation of CAT was completely delivered in 16 days, from October 5 to 21, 1995, while the delivery of the allocation of CADP was completed in 13 days, from November 9 to 22, 1995.

Admittedly, the delivery of Noah's Ark's allocation of 5,400 metric tons [MT] of raw sugar was never completed.

The parties offer contrasting reason/reasons therefor.

On the one hand, [petitioner] blames the [respondents]. [Petitioner] adduced evidence to the effect that on October 28, 1995, Marubeni started the delivery of raw sugar to Noah's Ark. However, because of the 1.8 [% weight] discrepancy between the registered weight at Poro Point and at the weighing scale of Noah's Ark, Marubeni suspended the delivery of sugar x x x. NASUREFCO allegedly notified Noah's Ark immediately to recalibrate its weighing scale. It was only during the last week of December, 1995 that Noah's Ark's weighing scale was calibrated. Noah's Ark, however, questioned the accuracy of the December [re-]calibration. After another calibration was effected on January 5, 1996, Marubeni resumed its delivery of raw sugar to Noah's Ark x x x. After the discharge of the cargo on January 14, 1996, Marubeni immediately delivered the raw sugar to Noah's Ark Refinery in Mandaluyong City. But, [respondents] refused to accept [the same].

x x x. [Petitioner] demands delivery of the refined sugar withheld by [respondents] or payment of the peso value thereof plus damages.

[Respondents], upon the other hand x x x take exception to any blame for the delay in the calibration of the weighing scale. They contend [that] it took only one day to recalibrate the same and [petitioner] had no justification to delay the delivery of the raw sugar allocated to Noah's Ark. [Respondents] claim to have made repeated requests and follow-ups for a faster delivery to no avail until they threatened the [petitioner] with legal action. [Petitioner] resumed deliveries not only in a slow-pace but of inferior quality raw sugar x x x.

Noah's Ark rejected x x x three (3) truckloads of raw sugar from Marubeni for being of high color . . . . Some were dripping wet and could no longer be processed. Marubeni finally ended on February 14, 1996, or 4 months late, its delivery of 4,897.56 MT to Noah's

Ark, which is 503 MT short of the allocated 5,400 MT under the contract x x x.

[Respondents] accuse [petitioner] of undue diversion to CADP of its allocation and switching the deteriorated raw sugar stock of CADP with the good quality imported raw sugar allocated to Noah's Ark, which thus resulted in a much lesser volume yield of refined sugar. [Respondents] demanded payment of damages, [retention of] the processed refined sugar for unpaid fees due thereon and [offsetting of] the value [of the retained sugar] with [the] damages [respondents] sustained.[5]

The Ruling of the Trial Court

The trial court dismissed the complaint of petitioner and denied its prayer for the issuance of a writ of attachment. It found that:

1. Although the Refining Contract between petitioner and respondents did not provide for a period within which petitioner should deliver the raw sugar to respondents, the records categorically show that time was of the essence, as shown by the following circumstances:

First. The allocations of CAT and CADP were completely delivered in a fast pace x x x from the arrival thereof on September 2[0], 1995.

Second. [Petitioner] advised x x x Noah's Ark to prepare its refinery facilities and informed [respondents] of the expected date of arrival of the imported raw sugar.

Third. [Petitioner] **gave Noah's Ark a timetable or schedule of drawdown within which to withdraw the refined sugar** that would fall on the 5th week of selling schedule (1st week of December 1995) and end on the 11th week.

Fourth. **There was an acute shortage of refined sugar in the country** which compelled the government to import raw sugar and thus fastrack [sic] delivery to designated refineries and prompt distribution of refined sugar to outlets/consumers.[6] (Emphases supplied)

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[5] *Id.* at 801-803.

[6] *Id.* at 804.

Clearly, the parties actually intended a period in the implementation of their contract. Thus, there was undue delay in delivering the sugar allocation of respondents when it took petitioner four (4) months[7] to deliver the raw sugar to respondents, which delivery was, nonetheless, never completed.[8] Such delay is highlighted when one notes that the deliveries to Central Azucarera de Tarlac (CAT) of 8,964.375 metric tons — which is in excess by 600.375 metric tons of its 8,364 metric tons allocation — took only 16 days while that of Central Azucarera de Don Pedro (CADP) consisting of 8,900 metric tons, which is 536 metric tons in excess of its 8,360 metric tons allocation, took only 13 days. Petitioner's delivery to respondent Noah's Ark of a much lesser volume of 4,897.56 metric tons — which is even 502.46 metric tons short of its allocated 5,400 metric tons — took several months.[9]

The lower court expressed doubt on the reason proffered by Marubeni as to why it stopped delivery to Noah's Ark: the latter's alleged defective weighing scale. According to the trial court, "no explanation was given as to how the 1.8% discrepancy came about except the say-so of Marubeni, which say-so is not the proper basis for determining the weight of the raw sugar." Under paragraph 3 of the Refining Contract, all raw sugar deliveries shall be weighed at Noah's Ark's plant site truck scale and shall be final and conclusive on all parties;[10]

2. The raw sugar delivered to respondents had a polarity[11] rate of only 95 degrees and not 98 degrees, as claimed by petitioner. This finding was based on the result of the test conducted by respondents' laboratory technician at the refinery,

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[7] *Id.* at 803.

[8] *Id.* at 801.

[9] *Id.* at 811.

[10] *Id.* at 805.

[11] *Id.* at 56; Polarity refers to the direct sugar content of raw sugar. *Id.* at 29; The amount of refined sugar that can be derived from the raw sugar is based on the polarity of the raw sugar. *Id.* at 56; Low polarity means that the sugar content of raw sugar was of less value or quality.

which result was recorded in Noah's Ark's Raw Sugar Control Book. The trial court accepted and gave credence to the data recorded in respondents' Raw Sugar Control Book since they "appear to be part of a group of regular entries of other clients of" respondents and is thus considered an exception to the hearsay rule, being entries in the ordinary course of business;[12]

3. The total raw sugar actually delivered by petitioner to respondents was only 4,897 metric tons, instead of the 5,400 metric tons stipulated in the Refining Contract.[13] With a polarity rate of 95 degrees, only 77,830 bags of sugar were produced out of the 4,897 metric tons of raw sugar.[14] From this, petitioner was able to withdraw a total of 35,150 bags of refined sugar from respondents through various Authorities to Release Raw Sugars (ARSS) issued by respondents and as confirmed by Mr. Rolleo Ignacio (Mr. Ignacio), then Acting Administrator of the Sugar Regulatory Administration (SRA) and President of the NASUREFCO. The 25 April 1996 letter of Mr. Ignacio clearly and categorically showed that 35,150 bags were deducted from the total bags of refined sugar due petitioner;[15]

4. The storage of Noah's Ark's raw sugar allocation in the far away warehouse of CADP in Batangas while awaiting the recalibration of Noah's Ark's allegedly defective weighing scale is an unwarranted diversion, especially considering that Noah's Ark has its own warehouse at its plant site where the raw sugar could be stored. In fact, the storage of the sugar in the warehouse of Noah's Ark, and not elsewhere, appears to be obligatory because before the raw sugar arrived at Poro Point in La Union, or as early as 11 September 1995, then NASUREFCO President and SRA Administrator, Rodolfo A. Gamboa requested Noah's Ark to make available its warehouse space during the period of delivery. This was followed, on 17 October 1995, by another letter from petitioner's AVP for

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[12] Records, p. 808.

[13] *Id.* at 807.

[14] *Id.* at 809.

[15] *Id.* at 810.

Finance, Mr. Angelito Dizon, informing respondents of the arrival of the raw sugar. As a result, respondents made its facilities available to NASUREFCO. In addition, petitioner's delay of four months in the delivery of the raw sugar to Noah's Ark lends credence to respondents' accusation that Noah's Ark's imported raw sugar allocation was switched with deteriorated raw sugar from the warehouse of CADP.[16]

5. Respondents reserved and upgraded their facilities and rejected other sugar processing contracts while they waited for the completion of the delivery of their contracted raw sugar allocation, as a result of which, they suffered business opportunity losses. Respondents are, therefore, entitled to damages. There is a causal connection between the breach by petitioner of its contractual obligation through its delay, diversion and switching of the raw sugar allocation of respondents and the damages suffered by the latter. Further, respondents are entitled to offset, pursuant to Article 1283 of the New Civil Code, the amount of the damages they are entitled to against the 42,680 bags of refined sugar in their possession valued at approximately ₱38,412,000.00 or ₱900.00 per bag.

Petitioner appealed the foregoing adverse judgment to the CA.

The Ruling of the Court of Appeals

In affirming the ruling of the trial court, the CA held that:

> Jurisprudence teaches that an obligor incurs in delay even if the contract does not categorically state the period for its performance, if it can be inferred from its terms that time is of the essence. x x x
>
> x x x x x x x x x
>
> Records bear that the main purpose of the importation of raw sugar was to address the severe shortage in its domestic production. In a letter dated November 2, 1995, NASUREFCO came out with a schedule of drawdown wherein the release by [respondents] of the refined sugar shall start in the fifth week of the selling schedule

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[16] *Id.* at 806-807.

(first week of December 1995), until the eleventh week of the selling schedule (third week of January 1996). Unfortunately, the delivery to [respondents] by Marubeni Corporation, the supplier of raw sugar, was only completed sometime February 1996. [Respondents] even sent several letters demanding the immediate delivery of the raw sugar. [Petitioner's] failure to deliver the raw sugar to [respondents] despite the latter's demands is eloquent proof that it incurred in delay in the performance of its obligation x x x.

x x x x x x x x x

[The claim of petitioner] that the suspension of the delivery of the raw materials to [respondent] Noah's Ark was caused by a defective weighing scale x x x is readily controverted by the certification issued by GCH International Mercantile, Inc., an engineering firm accredited by [petitioner], stating that the discrepancy in the weighing scale is within the tolerable and acceptable fluctuation level. Also, Tsuyoshi Morita, former Manager of the Food Department of Marubeni Corporation, categorically testified that although they discovered during the first delivery that there was a defect in the weighing scale, they still [continued their delivery of] raw sugar x x x.

x x x x x x x x x

[Petitioner's] claim that the trial court erred in finding that there was diversion and substitution of the raw sugar by Marubeni Corporation, is unfounded.

Tsuyoshi Morita of Marubeni Corporation admitted [during the trial of the case] that the raw sugar intended for [respondent] Noah's Ark was kept at the warehouse of Central Azucarera de Don Pedro until January 1996, despite the availability of the warehouse of [respondents] and the perishable nature of the commodity. The only reason given by Tsuyoshi Morita for the use of the Central Azucarera de [Don Pedro] warehouse instead of the warehouse of Noah's Ark was the defective weighing scale. Tsuyoshi Morita also admitted having delivered to Central Azucarera de Tarlac and Central Azucarera de Don Pedro a bigger allocation of raw sugar than what was stipulated in their refining contracts, and a lesser amount of raw sugar to [respondent] Noah's Ark [than that] stipulated in its refining contract. Obviously, there was a diversion of deliveries of raw sugar, as the raw sugar intended for [respondent] Noah's Ark was delivered to the two other refineries.

Also, contrary to [petitioner's] claim, the trial court was correct in basing the polarity of the raw sugar on the Raw Sugar Control Book and not on the certification issued by the Overseas Merchandise Inspection, Co., Ltd. (OMIC) dated May 9, 1996. x x x The certification issued by OMIC provided for the polarity of the raw sugar when discharged from the vessels at Poro Point, La Union and PNOC, Batangas ports. However, since there was a delay in the delivery to [respondent] Noah's Ark, the raw sugar deteriorated, and hence the polarity decreased. The Raw Sugar Control Book recorded the polarity of the deteriorated raw sugar delivered to [respondents] four months after the arrival of the raw sugar at the abovementioned ports. Hence it reflected the correct polarity of the raw sugar. Moreover, with the low polarity level of the raw sugar and a lesser allocation of raw sugar than that stipulated in the refining contract, [respondents] cannot be expected to come up with the projected yield of 90,155 kg. bags of refined sugar.

[Petitioner's] 'claim that it was only able to withdraw 9,037 bags of refined sugar and not 35,150 bags, is readily negated by the letter of Rolleo L. Ignacio, Acting Administrator and President of NASUREFCO dated April 25, 1996 stating that 35,150 bags had been withdrawn through various "Authority to Release NASUREFCO Refined Sugar" (ARSS). [Petitioner] did not at all contest the genuineness and due execution of said letter during the formal offer of evidence. x x x

x x x x x x x x x

Verily, the delay incurred by [petitioner] in the delivery of the raw sugar to [respondents], the diversion of the raw sugar allocation intended for [respondent] Noah's Ark to the other refineries, and the failure to deliver fresh imported raw sugar to [respondent] Noah's Ark, entitle [respondents] to damages. However, as determined by the trial court, the damages may be offset by the undelivered bags of refined sugar in possession of [respondents]. x x x

x x x x x x x x x

Then again, settled is the rule that factual findings of the trial court are accorded great weight, even finality on appeal, except when it has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case. This exception does not obtain in the present case.

[Petitioner], however, should not be held liable for attorney's fees and costs of suit. NASUREFCO, an attached corporation of the Department of Agriculture, was performing governmental function when it imported raw sugar to meet the domestic needs of the country. Hence, it should be exempt from payment of attorney's fees and costs of suit.[17] x x x

On account of the above ruling, petitioner filed the instant petition before this Court.

The Issues

Petitioner presents the following assignment of errors:

I

THE COURT OF APPEALS ERRED IN AWARDING DAMAGES TO RESPONDENTS AND IN ALLOWING SAID DAMAGES TO BE OFFSET AGAINST THE VALUE OF THE BAGS OF SUGAR WHICH RESPONDENTS FAILED TO DELIVER TO PETITIONER.

II

THE FINDING THAT THERE WAS UNDUE DELAY IN THE DELIVERY OF RAW SUGAR TO NOAH'S ARK WAS NOT SUPPORTED BY EVIDENCE.

III

THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDING OF THE TRIAL COURT GIVING CREDENCE TO RESPONDENT NOAH'S ARK'S RAW SUGAR CONTROL BOOK TO DETERMINE THE POLARITY OF THE RAW SUGAR DELIVERED TO NOAH'S ARK.

IV

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT PETITIONER WAS ABLE TO WITHDRAW 35,150 LKG BAGS OF REFINED SUGAR INSTEAD OF ONLY 9,307 LKG BAGS.

Our Ruling

The petition is partly meritorious.

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[17] *Rollo*, pp. 52-59.

At the outset, however, it must be stated that, based on petitioner's assignment of errors, the issues herein are questions of fact, the resolution of which would require this Court to inquire into the evidence presented during the trial of this case in the lower court. They entail the determination, yet again, of the weight, credence, and probative value of the said evidence. This is not allowed in a petition for review on *certiorari* under Rule 45 of the Rules of Court where only questions of law may be raised by the parties and may be passed upon by us.[18] The Court, in the case of *Century Iron Works, Inc. v. Bañas*,[19] identified the distinction 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 question posed is one of fact.
>
> x x x [T]he 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.

Thus, whether or not respondents are entitled to damages under the circumstances of this case; whether or not there was delay on the part of petitioner in the fulfillment of its obligation towards respondents; whether the polarity of the raw sugar delivered to respondents should be based on the raw sugar control book of respondents or on the certification, dated 9 May 1996,

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[18] *Dueñas v. Guce-Africa*, 618 Phil. 10, 18-19 (2009).

[19] G.R. No. 184116, 19 June 2013, 699 SCRA 157, 166-167 citing *Leoncio, et al. v. De Vera, et al.*, 569 Phil. 512, 516 (2008) further citing *Binay v. Odeña*, 551 Phil. 681, 689 (2007).

issued by the Overseas Merchandise Inspection Company, Ltd. (OMIC); as well as how many bags of refined sugar were withdrawn by petitioners from respondents — all these involve questions of fact which cannot be taken cognizance of by this Court. The Supreme Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial.[20] It is not its function to analyze or weigh evidence all over again.[21] The appreciation and resolution of factual issues are the functions of the lower courts, whose resulting findings are then received with respect and are binding on the Supreme Court,[22] especially when such findings are affirmed by the CA, as in this case.

Although jurisprudence has recognized several exceptions to the rule that the findings of fact of the CA affirming those of the trial court are generally not subject to review by the Supreme Court, including: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when there is grave abuse of discretion; (3) when the judgment is based on a misapprehension of facts; (4) when the findings are contrary to those of the trial court; (5) when the findings of facts are conflicting; and (6) when the findings are conclusions without citation of specific evidence on which they are based,[23] none of these are present in this appeal. The findings of both the trial court and the CA are undeniably supported by the evidence on record.

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[20] *Maglana Rice and Corn Mill, Inc., et al. v. Sps. Tan*, 673 Phil. 532, 539 (2011).

[21] *Heirs of Margarito Pabaus v. Heirs of Amanda Yutiamco*, 670 Phil. 151, 162 (2011) citing *Heirs of Marcelino Cabal v. Sps. Cabal*, 529 Phil. 294, 304 (2006) further citing *Go v. CA*, 474 Phil. 404, 410 (2004); *Spouses Hanopol v. Shoemart, Incorporated*, 439 Phil. 266, 277 (2002).

[22] *Maglana Rice and Corn Mill, Inc. v. Sps. Tan, supra* note 20 citing *FNCB Finance v. Estavillo*, 270 Phil 630, 633 (2001).

[23] *Rep. of the Phils. v. De Guzman*, 667 Phil. 229, 244-245 (2011) citing *Go v. CA*, 403 Phil. 883, 890 (2001).

Hence, petitioner obviously incurred delay in the performance of its obligation under the Refining Contract when it failed to complete its delivery of raw sugar to respondents in time for the scheduled withdrawal by petitioner of the refined sugar. It must be emphasized that it was petitioner who gave respondents a timetable within which the processed sugar was to be withdrawn, which was to start around the first week of December 1995. Evidently, petitioner should have completed its delivery of raw sugar to respondents before this date. The records of this case clearly show, however, that the delivery of raw sugar to respondents ended on 14 February 1996 without petitioner having delivered the entire sugar allocation due respondents under the Refining Contract.

Likewise, the trial court and the CA fully explained and justified the pronouncement to base the polarity of the raw sugar delivered by petitioner on the raw sugar control book of respondents. According to the trial court:

> The Court wonders why [petitioner's] Exhibit "D" (page 535, Rollo) is only half a document and is offered merely to prove delivery of sugar to [respondents] (See page 524, Rollo). Exh. "D" is a "Certificate of Weight and Quality" dated May 9, 1996 issued by OMIC. It declares at the right lower end thereof "Continued . . ." but is not accompanied by the continuing or next page.
>
> x x x Why [petitioner] offered the **OMIC certification** to prove delivery instead of polarity is not clear. What is clear is that the OMIC Certificate does not show the polarity at Noah's Ark. Thus, the Court can not rely thereon as proof of the raw sugar polarity at **Noah's Ark**.[24]

The CA, on the other hand, rationalized that "since there was a delay in the delivery [of the raw sugar to Noah's Ark], the raw sugar deteriorated, and hence the polarity decreased. [Noah's Ark's] Raw Sugar Control Book recorded the polarity of the deteriorated raw sugar delivered to [respondents] four months after [its] arrival at the x x x ports. Hence it reflected the correct polarity of the raw sugar."[25]

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[24] Records, p. 809; RTC Decision.

[25] *Rollo*, pp. 56-57.

With respect to the number of bags of refined sugar which petitioner was able to withdraw from respondents, both the trial court and the CA concluded, based on the records, that 35,150 bags had been withdrawn pursuant to the letter[26] of Mr. Ignacio, then Acting Administrator of the Sugar Regulatory Administration and President of NASUREFCO. As pointed out by the CA: "[petitioner] did not at all contest the genuineness and due execution of said letter during the formal offer of evidence."[27]

The foregoing clearly demonstrate that contrary to the contention of petitioner, the findings and conclusions of the CA, affirming those of the trial court, were all supported by the evidence on record. There is thus no merit in petitioner's contention that the CA erred in affirming the judgment of the trial court.

Finally, on the issue of damages, there is no doubt that both the petitioner and the respondents are entitled to damages — the petitioner, for failure of respondents to deliver the bags of sugar it refined pursuant to the Refining Contract, and respondents, for the clear breach by petitioner of the Refining Contract.

Petitioner correctly claimed that, for actual or compensatory damages to be recovered, the best evidence obtainable by the injured party must be presented since actual damages cannot be presumed, but must be duly proved with a reasonable degree of certainty. Thus, both the trial court and the CA erred when they granted damages to both petitioner and respondents in the amount of ₱38,412,000.00 each. The trial court arrived at this amount after it determined that only 42,680 bags of refined sugar, valued at ₱900.00 per bag, remained with respondents. The latter figure, in turn, was based on the allegation of petitioner in its complaint before the trial court that 89,115 bags of refined sugar, "with an estimated market value of ₱80,203,500.00,"[28] were in the possession of respondent.

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[26] Records, p. 657, Exhibit "6" for the respondents.

[27] *Rollo*, p. 57.

[28] Records, p. 7.

Time and again, this Court has declared that actual damages cannot be presumed. "The claimant must prove the actual amount of loss with a reasonable degree of certainty premised upon competent proof and on the best evidence obtainable. Specific facts that could afford a basis for measuring whatever compensatory or actual damages are borne must be pointed out. **Actual damages cannot be anchored on mere surmises, speculations or conjectures**."[29]

In *Dueñas v. Guce-Africa*,[30] the Supreme Court held that:

> Article 2199 of the Civil Code provides that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." In *Ong v. Court of Appeals*, we held that "(a)ctual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement." To be recoverable, actual damages must not only be capable of proof, but must actually be proved with reasonable degree of certainty. We cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages. Thus, it was held that before actual damages can be awarded, there must be competent proof of the actual amount of loss, and credence can be given only to claims which are duly supported by receipts.

Respondents herein prayed in their Answer with Counterclaim that they be awarded the sum of ₱52,000,000.00 as damages for lost and unrealized income and business opportunities from other clients and customers which they did not accommodate on account of their Refining Contract with petitioner.[31] They, however, failed to present any proof — whether testimonial or documentary — of their alleged losses. In the same way, petitioner

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[29] *Marikina Auto Line Transit Corp. v. People*, 520 Phil. 809, 825 (2006). (Emphasis supplied)

[30] *Supra* note 18 at 20-21 citing *Sps. Ong v. CA*, 361 Phil. 338, 352-353 (1999).

[31] Records, p. 110.

merely gave an estimate of the value of the bags of refined sugar in the possession of respondents but likewise did not offer any testimonial or documentary evidence in support of the alleged value.

Both parties, therefore, failed to present any persuasive proof that they are entitled to the damages awarded by the trial court. Their claim for damages remained unsubstantiated and unproven. Well-settled it is that actual or compensatory damages must be duly proved with a reasonable degree of certainty. It is a fundamental principle of the law on damages that, while one injured by a breach of contract shall be awarded fair and just compensation commensurate with the loss sustained as a consequence of the defendant's acts or omission, a party is entitled only to such compensation for the pecuniary loss that he has duly proven. Actual damages cannot be presumed and cannot be based on flimsy, remote, speculative and non-substantial proof.[32] Neither petitioner nor respondent is thus entitled to actual or compensatory damages in this case. It is significant to note that the Refining Contract between petitioner and respondent did not state the amount of the contract which may be a basis for an award of actual damages.

Nevertheless, under Article 2224 of the New Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty. In such cases, the amount of the award is left to the discretion of the courts, according to the circumstances of each case, but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.[33]

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[32] *Spouses Sabio v. The International Corporate Bank, Inc.*, 416 Phil. 785, 826 (2001) citing *Lufthansa German Airlines v. CA*, 313 Phil. 503, 526 (1995) and *Ong v. CA*. 361 Phil. 338, 353 (1999); *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989, 1002 (1999).

[33] New Civil Code, Articles 2224 and 2216. See also *Dueñas v. Guce-Africa, supra* note 18 at 22 citing *College Assurance Plan v. Belfranlt Development, Inc.*, 563 Phil. 355, 367 (2007).

In the case of *Pacific Basin Securities Co., Inc. v. Oriental Petroleum and Minerals Corp.*,[34] the Supreme Court awarded temperate damages to petitioner in the amount of ₱1,000,000.00 for respondents' refusal to record the transfer of stocks in the stock and transfer book and to issue new certificates of stock in the name of petitioner Pacific Basin, which refusal prevented petitioner from re-selling its shares in the market. The Court held: "By this non-performance of a ministerial function, the Court is convinced that Pacific Basin suffered pecuniary loss, the amount of which cannot be proved with certainty."[35]

In *Newsounds Broadcasting Network, Inc., et al. v. Dy, et al.*,[36] petitioners were corporations authorized by law to operate radio stations in Cauayan City. Respondents, in their respective capacities as local elected officials, took actions that impeded the ability of petitioners to freely broadcast. These actions ranged from withholding permits to operate to the physical closure of the stations. According to the Supreme Court, "[t]he lost potential income during that one and a half year of closure can only be presumed as substantial enough" warranting the award of ₱4 Million as temperate damages.

Considering the incomes estimated to have been lost in the case at bar (₱80,000,000.00 for petitioner and ₱52,000,000.00 in the case of respondents), this Court deems the amount of ₱4,000,000.00 as temperate damages for each party reasonable under the circumstances.

The ruling of the trial court and the CA to offset the amount of damages awarded to respondent against that claimed by petitioner is supported by law pursuant to Article 1283 of the New Civil Code which states that: "If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof." This provision has been applied

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[34] 558 Phil. 425, 449 (2007).

[35] *Id.* at 447.

[36] 602 Phil. 255, 292 (2009).

in the cases of *Chung v. Ulanday Construction, Inc.*[37] and *Ortiz v. Kayanan*[38] where the Court allowed the amount due one party to be offset against that claimed by and due the other party.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals in CA-G.R. CV No. 66052 dated 23 December 2005 is hereby **AFFIRMED WITH THE MODIFICATION** that the amount of ₱38,412,000.00 as damages against each other is deleted and, in lieu thereof, petitioner and respondents are found liable unto each other in the amount of ₱4,000,000.00 each as temperate damages.

SO ORDERED.

Velasco, Jr. (Chairperson), Reyes, Jardeleza, and *Caguioa,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 181369. June 22, 2016]

TALA REALTY SERVICES CORP., INC., PEDRO B. AGUIRRE, REMEDIOS A. DUPASQUIER, DOLLY LIM, RUBENCITO M. DEL MUNDO AND ELIZABETH H. PALMA, *petitioners, vs.* **BANCO FILIPINO SAVINGS & MORTGAGE BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PRINCIPLE OF *STARE DECISIS ET NON QUIETA MOVERE;* APPLICATION IN CASE AT BAR;

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[37] 647 Phil. 1 (2010).

[38] 180 Phil. 579 (1979).

[*] Additional Member per Raffle dated 13 June 2016.

BANCO FILIPINO CANNOT RECOVER THE STA. CRUZ PROPERTY BASED ON THE SAME TRUST AGREEMENT WHICH WAS ALREADY DECLARED VOID IN G.R. NO. 137533.— In resolving this case, the sole determinative issue is whether Banco Filipino can recover Sta. Cruz property based on the same trust agreement which we declared void in G.R. No. 137533. The issue is not novel and has already been conclusively resolved in both G.R. No. 188302 and the consolidated cases of G.R. Nos. 130088, [etc.] The facts of the present case, save for the specific parcel of land being disputed, are identical to those obtaining in these two decisions. x x x In both cases, we applied the time-honored principle of *stare decisis et non quieta movere*, which literally means "to adhere to precedents, and not to unsettle things which are established," to settle the issue of whether Banco Filipino can recover the properties subject of the void trust agreement. The rule of *stare decisis* is a bar to any attempt to re-litigate the same issue where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court. Thus, the Court's ruling in G.R. No. 137533 regarding the nullity of the trust agreement – the very same agreement which Banco Filipino seeks to enforce in the proceedings *a quo* – applies with full force to the present case. Consequently, Banco Filipino's action for reconveyance of the Sta. Cruz property based on the void trust agreement cannot prosper and must be dismissed for lack of cause of action. It is the Court's duty to follow the precedents laid down in G.R. No. 137533, G.R. No. 188302 and [the consolidated cases of] G.R. Nos. 130088, [etc.] The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions.

2. ID.; DOCTRINE OF CONCLUSIVENESS OF JUDGMENT; APPLICATION IN CASE AT BAR; TRUST AGREEMENT ALREADY DECLARED VOID IS CONCLUSIVE IN THE ACTION FOR RECONVEYANCE BASED ON THE SAME VOID TRUST AGREEMENT.— [T]he doctrine of conclusiveness of judgment, otherwise known as "preclusion of issues" or "collateral estoppel," bars the re-litigation of Banco Filipino's claim based on the void trust agreement. This concept is embodied in the third paragraph of Rule 39, Section 47 of the Rules of Civil Procedure: x x x Conclusiveness of judgment is a species of *res judicata* and it applies where there is identity of

parties in the first and second cases, but there is no identity of causes of action. Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein, and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same. Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue. In this case, the rule on conclusiveness of judgment is squarely applicable because Banco Filipino's action for reconveyance is solely based on a trust agreement which, it cannot be overemphasized, has long been declared void in a previous action that involved both Tala Realty and Banco Filipino. x x x [C]onclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

APPEARANCES OF COUNSEL

Gancayco Balasbas & Associates Law Offices for petitioners.
Morales Rojas & Risos-Vidal for respondent.

D E C I S I O N

JARDELEZA, *J.*:

In G.R. No. 188302[1] (2012) and the consolidated cases of G.R. Nos. 130088, 131469, 155171, 155201 and 166608[2] (2009), we applied the rule of *stare decisis* to deny Banco Filipino's claims for reconveyance of various real properties based on a

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[1] *Ty v. Banco Filipino Savings and Mortgage Bank*, June 27, 2012, 675 SCRA 339.

[2] *Tala Realty Services Corporation v. Court of Appeals*, April 7, 2009, 584 SCRA 63.

trust agreement that we previously declared void in G.R. No. 137533[3] (2002). This case raises the question of whether Banco Filipino Savings & Mortgage Bank's (Banco Filipino) complaint for reconveyance in the proceedings below is likewise precluded by *stare decisis* and conclusiveness of judgment.

I

On September 5, 1995, Banco Filipino filed a complaint[4] with the Regional Trial Court (RTC) of Manila against Tala Realty Services Corporation, Inc. (Tala Realty) and the individual petitioners. This was one of the 17 reconveyance cases instituted by Banco Filipino against Tala Realty covering properties located in different parts of the Philippines.[5]

The complaint alleged that the properties were covered by a trust agreement between Banco Filipino, as trustor-beneficiary, and Tala Realty, as trustee. The trust agreement was essentially a sale and lease-back arrangement wherein Banco Filipino sold various properties to Tala Realty, including the one located in Sta. Cruz, Manila, while the latter concurrently leased to Banco Filipino the same property for a period of 20 years, renewable for another 20 at the option of Banco Filipino.[6] Banco Filipino admitted that the purpose of the trust agreement was to "allow more flexibility in the opening of branches and to enable the bank to acquire new branch [sites]," since at that time, Banco Filipino was concerned about keeping within the 50% capital asset threshold for banks under the General Banking Act.[7] However, sometime in August 1992, Tala Realty claimed the property for itself and threatened to eject Banco Filipino.[8]

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[3] *Tala Realty Services Corporation v. Banco Filipino Savings & Mortgage Bank*, November 22, 2002, 392 SCRA 506.

[4] *Rollo*, pp. 100-115.

[5] *Id.* at 20-22.

[6] *Id.* at 105-109.

[7] *Id.* at 104-105. See Republic Act No. 337, Sections 25 (a) and 34 (now Section 51 of R.A. No. 8791 or the General Banking Law of 2000).

[8] *Id.* at 109.

Petitioners moved to dismiss[9] the complaint based on the following grounds: forum shopping, lack of cause of action, and *pari delicto*. The RTC initially denied[10] the motion to dismiss but later reversed itself.[11] It ordered the dismissal of the complaint against herein petitioners except Tala Realty and ordered the suspension of the proceedings in view of our decision in G.R. No. 137533.[12] Banco Filipino moved for reconsideration which the RTC denied.[13]

Consequently, Banco Filipino elevated the case to the Court of Appeals (CA) via Rule 65. The CA granted the petition,[14] finding that the RTC should have hypothetically admitted the truth of the factual allegations in the complaint — including the validity of the trust agreement — when it ruled on the motion to dismiss.[15] The CA also said that the proceedings should not have been suspended because the matter resolved in G.R. No. 137533, which originated from an ejectment suit, is distinct and separate from the subject matter of the case for reconveyance.[16] The CA subsequently denied petitioners' motion for reconsideration.[17]

Hence, this appeal under Rule 45 where petitioners principally claim that Banco Filipino's action for reconveyance is already barred by *stare decisis* and conclusiveness of judgment considering the *en banc* decision in G.R. No. 137533, as reiterated in the April 7, 2009 consolidated decision in G.R. Nos. 130088, 131469,

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[9] *Id.* at 401-416.

[10] *Id.* at 417.

[11] *Id.* at 461-463.

[12] *Supra* note 3.

[13] *Rollo*, pp. 461-463.

[14] *Id.* at 72-83. Penned by *J.* Guevara-Salonga, with whom Roxas and Garcia, *JJ.* concurred.

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

[16] *Id.* at 82-83.

[17] *Id.* at 86-88.

155171, 155201, and 166608[18] and the June 27, 2012 decision in G.R. No. 188302.[19] They also argue that Banco Filipino availed of the wrong remedy when they filed a petition for *certiorari* with the CA instead of an ordinary appeal. In response,[20] Banco Filipino insists that it availed of the correct mode of review and counters that G.R. No. 137533 cannot apply because it involved an ejectment suit, which is distinct from its action for reconveyance. It cites the final rulings in G.R. Nos. 144700,[21] 130184,[22] 139166,[23] 167255[24] and 144705[25] — which commonly held that the elements of forum shopping, *litis pendentia* and *res judicata* were not present in Banco Filipino's various reconveyance cases — as the controlling precedents.

II

In resolving this case, the sole determinative issue is whether Banco Filipino can recover the Sta. Cruz property based on the same trust agreement which we declared void in G.R. No. 137533.[26] The issue, however, is not novel and has already been conclusively resolved in both G.R. No. 188302[27] and the

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[18] *Supra* note 2.

[19] *Supra* note 1.

[20] *Rollo*, pp. 567-601.

[21] *Tala Realty Services Corporation v. Banco Filipino Savings & Mortgage Bank*, Resolution, November 22, 2000, cited in *Ty v. Banco Filipino & Mortgage Bank*, Resolution, G.R. No. 144705, June 5, 2006.

[22] *Tala Realty Services Corporation v. Banco Filipino Savings & Mortgage Bank*, Resolution, November 19, 2001.

[23] *Ty v. Banco Filipino & Mortgage Bank*, Resolution, G.R. No. 144705, June 5, 2006.

[24] *Tala Realty Services Corporation v. Banco Filipino Savings & Mortgage Bank*, Resolution, June 8, 2005 cited in *Ty v. Banco Filipino Savings & Mortgage Bank, supra*.

[25] *Ty v. Banco Filipino Savings & Mortgage Bank*, November 15, 2005, 475 SCRA 65.

[26] *Supra* note 3.

[27] *Supra* note 1.

consolidated cases of G.R. Nos. 130088, 131469, 155171, 155201, and 166608.[28] The facts of the present case, save for the specific parcel of land being disputed, are identical to those obtaining in these two decisions. Therefore, the doctrines of *stare decisis* and conclusiveness of judgment warrant the granting of the petition.

A

In G.R. No. 188302[29] and G.R. Nos. 130088, 131469, 155171, 155201, and 166608,[30] we applied and extensively quoted the ruling in G.R. No. 137533[31] that the trust agreement between Banco Filipino and Tala Realty is void and cannot be enforced, thus:

> The Bank alleges that the sale and twenty-year lease of the disputed property were part of a larger implied trust "warehousing agreement." Concomitant with this Court's factual finding that the 20-year contract governs the relations between the parties, we find the Bank's allegation of circumstances surrounding its execution worthy of credence; the Bank and Tala entered into contracts of sale and lease back of the disputed property and created an implied trust "warehousing agreement" for the reconveyance of the property. **In the eyes of the law, however, this implied trust is inexistent and void for being contrary to law.**
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> x x x x x x x x x
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> **An implied trust could not have been formed between the Bank and Tala as this Court has held that "where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud."** x x x
>
> x x x [T]he Bank cannot use the defense of nor seek enforcement of its alleged implied trust with Tala since its purpose was contrary to law. As admitted by the Bank, it "warehoused" its branch site

[28] *Supra* note 2.

[29] *Supra* note 1.

[30] *Supra* note 2.

[31] *Supra* note 3.

holdings to Tala to enable it to pursue its expansion program and purchase new branch sites including its main branch in Makati, and at the same time avoid the real property holdings limit under Sections 25(a) and 34 of the General Banking Act which it had already reached. x x x

Clearly, the Bank was well aware of the limitations on its real estate holdings under the General Banking Act and that its "warehousing agreement" with Tala was a scheme to circumvent the limitation. Thus, the Bank opted not to put the agreement in writing and call a spade a spade, but instead phrased its right to reconveyance of the subject property at any time as a "first preference to buy" at the "same transfer price." **This arrangement which the Bank claims to be an implied trust is contrary to law. Thus, while we find the sale and lease of the subject property genuine and binding upon the parties, we cannot enforce the implied trust even assuming the parties intended to create it.** In the words of the Court in the *Ramos* case, "the courts will not assist the payor in achieving his improper purpose by enforcing a resultant trust for him in accordance with the 'clean hands' doctrine." **The Bank cannot thus demand reconveyance of the property based on its alleged implied trust relationship with Tala.**

x x x x x x x x x

The Bank and Tala are *in pari delicto*, thus, no affirmative relief should be given to one against the other. The Bank should not be allowed to dispute the sale of its lands to Tala nor should Tala be allowed to further collect rent from the Bank. The clean hands doctrine will not allow the creation or the use of a juridical relation such as a trust to subvert, directly or indirectly, the law. **Neither the Bank nor Tala came to court with clean hands; neither will obtain relief from the court as one who seeks equity and justice must come to court with clean hands.**[32] (Citations omitted; emphases supplied.)

In both cases, we applied the time-honored principle of *stare decisis et non quieta movere*, which literally means "to adhere to precedents, and not to unsettle things which are established," to settle the issue of whether Banco Filipino can recover the properties subject of the void trust agreement. The rule of *stare*

[32] *Supra* note 3 at 533-540.

decisis is a bar to any attempt to re-litigate the same issue where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court.[33] Thus, the Court's ruling in G.R. No. 137533[34] regarding the nullity of the trust agreement — the very same agreement which Banco Filipino seeks to enforce in the proceedings *a quo* — applies with full force to the present case. Consequently, Banco Filipino's action for reconveyance of the Sta. Cruz property based on the void trust agreement cannot prosper and must be dismissed for lack of cause of action.

It is the Court's duty to follow the precedents laid down in G.R. No. 137533,[35] G.R. No. 188302[36] and G.R. Nos. 130088, 131469, 155171, 155201 and 166608.[37] The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions. As well stated by Justice Cardozo in his book, *The Nature of the Judicial Process*:

> x x x It will not do to decide the same question one way between one set of litigants and the opposite way between another. "**If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles.** If a case was decided against me yesterday when I was defendant, I shall look for the same judgment today if I am plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights." x x x Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts.[38] (Emphasis supplied.)

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[33] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, G.R. No. 159422, March 28, 2008, 550 SCRA 180, 197-198; *Pepsi Cola Products (Phils.), Inc. v. Espiritu*, G.R. No. 150394, June 26, 2007, 525 SCRA 527, 534.

[34] *Supra* note 3.

[35] *Supra* note 3.

[36] *Supra* note 1.

[37] *Supra* note 2.

[38] Cardozo, B. N., *THE NATURE OF THE JUDICIAL PROCESS*, pp. 33-34.

B

In addition to the principle of *stare decisis*, the doctrine of conclusiveness of judgment, otherwise known as "preclusion of issues" or "collateral estoppel,"[39] bars the re-litigation of Banco Filipino's claim based on the void trust agreement. This concept is embodied in the third paragraph of Rule 39, Section 47 of the Rules of Civil Procedure:

> **Section 47.** *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> x x x x x x x x x
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which **appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto**. (Emphasis supplied.)

Conclusiveness of judgment is a species of *res judicata* and it applies where there is identity of parties in the first and second cases, but there is no identity of causes of action.[40] Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein, and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[41] Thus, if a particular point or question is in issue in the second action,

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[39] *Tan v. Court of Appeals*, G.R. No. 142401, August 20, 2001, 363 SCRA 444, 450.

[40] S*ocial Security Commission v. Rizal Poultry and Livestock Association, Inc.*, G.R. No. 167050, June 1, 2011, 650 SCRA 50, 57.

[41] *Layos v. Fil-Estate Golf and Development, Inc.*, G.R. No. 150470, August 6, 2008, 561 SCRA 75, 105-106 citing *Oropeza Marketing Corporation v. Allied Banking Corporation*, G.R. No. 129788, December 3, 2002, 393 SCRA 278, 287.

and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.[42]

In this case, the rule on conclusiveness of judgment is squarely applicable because Banco Filipino's action for reconveyance is solely based on a trust agreement which, it cannot be overemphasized, has long been declared void in a previous action that involved both Tala Realty and Banco Filipino, *i.e.*, G.R. No. 137533. In other words, the question on the validity of the trust agreement has been finally and conclusively settled. Hence, this question cannot be raised again even in a different proceeding involving the same parties. Although the action instituted in this case is one for reconveyance, which is technically different from the ejectment suit originally instituted by Tala Realty in G.R. No. 137533, "the concept of conclusiveness of judgment still applies because under this principle, the identity of causes of action is not required but merely identity of issues. Simply put, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action."[43]

Banco Filipino cannot rely on G.R. Nos. 144700,[44] 130184,[45] 139166,[46] 167255[47] and 144705.[48] In these cases, we ruled that Banco Filipino did not violate the rule against forum shopping

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[42] *Layos v. Fil-Estate Golf and Development, Inc.*, *supra* at 104 citing *Calalang v. Register of Deeds of Quezon City*, G.R. Nos. 76265 & 83280, March 11, 1994, 231 SCRA 88.

[43] *Tan v. Court of Appeals*, *supra*.

[44] *Supra* note 21.

[45] *Supra* note 22.

[46] *Supra* note 23.

[47] *Supra* note 24.

[48] *Supra* note 25.

when it filed separate cases for reconveyance in different trial courts. These rulings were based on the Court's finding that the elements of *litis pendentia* and *res judicata* were not present. However, the concept of *res judicata* referred to in these cases is the one commonly understood as "bar by prior judgment," which is enunciated in Rule 39, Section 47 (b).[49] Bar by prior judgment is the traditional formulation of *res judicata*, which requires the identity of parties, subject matter, and causes of action.[50] It is this concept which is used in determining whether *litis pendentia* or forum shopping exists. In contrast, and as previously discussed, *res judicata* as conclusiveness of judgment requires only identity of parties and of issues. These two kinds of *res judicata* are legally distinct.

Accordingly, under the doctrine of *res judicata* as bar by prior judgment, Banco Filipino could not be prevented from filing separate actions for reconveyance because each action involved a different subject matter, *i.e.*, a different parcel of land. Nonetheless, *res judicata* as conclusiveness of judgment would still apply to these different cases, as it does here, insofar as they involve material facts or questions which were in issue and which have been adjudicated in a former action.

WHEREFORE, the petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 89155 are **REVERSED** and **SET ASIDE**. Civil Case No. 95-75214 before Branch 47 of the Regional Trial Court of Manila is **DISMISSED**.

SO ORDERED.

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

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[49] In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been missed in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity.

[50] *Layos v. Fil-Estate Golf and Development, Inc., supra* at 105.

THIRD DIVISION

[G.R. No. 189851. June 22, 2016]

INTEC CEBU, INC., AKIHIKO KAMBAYASHI and WATARU SATO, *petitioners, vs.* **HON. COURT OF APPEALS, ROWENA REYES, ROWENA ODIONG, HYDEE AYUDA, TERESITA BERIDO, CRISTINA LABAPIZ, GEMMA JUMAO-AS, SIGMARINGA BAROLO, LIGAYA B. ANADON, DONALINE DELA TORRE, JOY P. LOMOD, JACQUELINE A. FLORES, SUSAN T. ALIÑO, ANALYN P. ABALLE, CAROLINE A. LABATOS, LENITH F. ROMANO, LEONILA B. FLORES, CECILIA G. PAPELLERO, AGNES C. CASIO, VIOLETA O. MATCHETE, CANDIDA I. CRUJIDO, CLAUDIA B. CUTAMORA, ROSALIE R. POLICIOS, GENELYN C. MUÑEZ, ALOME MIGUE, ELSIE ALCOS, LYDIALYN B. GODINEZ AND MYRNA S. LOGAOS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYMENT; MANAGEMENT PREROGATIVE; REDUCED WORK WEEK MUST BE VALID AND DONE IN GOOD FAITH.— The charge of constructive dismissal is predicated on the claim that the implementation of the reduced work week is illegal. The Court has held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place, and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor. Thus, it was incumbent upon Intec to prove that the implementation of the reduced working days is valid and done in good faith.

2. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; PRESENT AS THE REDUCTION OF WORK DAY SCHEME THAT GREATLY REDUCED EMPLOYEE'S SALARIES WAS DONE ARBITRARILY.— Intec committed illegal reduction of work hours. Constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee. Intec's unilateral and arbitrary reduction of the work day scheme had significantly greatly reduced respondents' salaries thereby rendering it liable for constructive dismissal.

3. ID.; ID.; ID.; ABANDONMENT OF WORK; NEGATED BY THE FILING OF COMPLAINT FOR ILLEGAL DISMISSAL.— To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment. Furthermore, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work. The filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; REQUISITES.— For *certiorari* to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Well-settled is the rule that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion

is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility. A writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party.

APPEARANCES OF COUNSEL

Celso V. Espinosa for petitioners.
Neumeran Jayma & Associates for respondents.

D E C I S I ON

PEREZ, *J.*:

For our resolution is this Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the Decision[1] dated 22 April 2009 and Resolution[2] dated 31 July 2009 of the Court of Appeals in CA-G.R. SP No. 03471. The challenged decision reversed the judgment[3] of the National Labor Relations Commission (NLRC) and reinstatement of the Decision[4] of the Labor Arbiter. The Labor Arbiter ruled that respondent employees were constructively dismissed.

As culled from the records of the case, the following antecedent facts appear:

Petitioner Intec Cebu, Inc. (Intec) is engaged in the manufacture and assembly of mechanical system and printed circuit board for cassette tape recorder, CD and CD ROM player while the following respondents were hired by Intec in 1997 and 1998, respectively, as production workers:

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[1] *Rollo*, pp. 35-45; Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Francisco P. Acosta and Rodil V. Zalameda concurring.

[2] *Id.* at 76.

[3] *Id.* at 45-49; Penned by Commissioner Oscar S. Uy with Commissioners Violeta O. Bantug and Aurelio D. Menzon concurring.

[4] *Id.* at 50-63; Presided by Labor Arbiter Jermelina Pasignajen-Ay-Ad.

1. Rowena Reyes
2. Rowena R. Odiong
3. Hydee P. Ayuda
4. Teresita C. Berido
5. Cristina S. Labapiz
6. Gemma T. Jumao-as
7. Sigmaringa B. Barolo
8. Ligaya B. Anadon
9. Donaline dela Torre
10. Joy P. Lomod
11. Jacqueline A. Flores
12. Susan T. Alino
13. Analyn P. Aballe
14. Caroline A. Labatos
15. Lenith F. Romano
16. Leonila B. Flores
17. Cecilia G. Papellero
18. Agnes C. Casio
19. Violeta O. Matchete
20. Candida I. Crujido
21. Claudia B. Cutamora
22. Rosalie R. Policios
23. Genelyn C. Muñez
24. Alome Migue
25. Elsie Alcos
26. Lydialyn B. Godinez
27. Myrna S. Logaos
28. Jenife Espinosa
29. Maria Fe Tomo
30. Jocelyn Casiban
31. Ailyn Bagyao
32. Josephine Casino
33. Pilar Batajoy
34. Juliet Teofilo
35. Cheryl Sugarol
36. Rechel Daitol
37. Janette Quidong[5]

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

Respondents alleged that in 2005, their working days were reduced from 6 to 2-4 days. Intec apparently explained that reduction in working days was due to lack of job orders. However, respondents discovered that Intec hired around 188 contractual employees tasked to perform tasks which respondents were regularly doing. On 17 May 2006, private respondents claimed that they were effectively terminated from employment as shown in the Establishment Termination Report[6] submitted to the Department of Labor and Employment (DOLE). Two (2) days later, respondents filed a complaint for illegal dismissal.

Intec, for its part, claimed that the company was established to supply the required materials of Kenwood Precision Corporation (Kenwood). When Kenwood stopped its operations in the Philippines, Intec's business operations were severely affected, prompting Intec to set up a new product line exclusively for Pentax Cebu Phils. Corporation (Pentax). In December 2005, Intec's job orders from Pentax declined. On 4 January 2006, a memorandum was issued informing the employees that the working days would be reduced to 3-4 days from the normal 6 day-work week. The reduced work week policy was extended from April to June 2006. A corresponding memorandum was issued and a copy thereof was submitted to the DOLE.

On 17 May 2007, Labor Arbiter Jermelina Pasignajen Ay-ad declared that respondents were illegally dismissed and adjudged Intec and its officials liable for payment of separation pay and backwages. Labor Arbiter Ay-ad found that Intec hired casual employees to replace respondents. As regards the other monetary claims of respondents, Labor Arbiter Ay-ad ruled that Intec was able to prove, by presenting copies of the payroll, that private respondents were properly paid. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, judgment is hereby rendered declaring complainants to have been illegally (constructively) dismissed from their employment. Consequently, the respondents **INTEC CEBU, INC., WATARU SATO AND AKIHIRO KAMBAYASHI**, are

[6] *Id.* at 116-129.

hereby directed to **PAY** jointly and severally the following complainants of the amounts indicated opposite their names as appearing in the attached Computation sheet consisting of two (2) pages, in concept of separation pay and backwages in the total amount of **SIX MILLION NINE HUNDRED SIXTY-SEVEN THOUSAND NINE HUNDRED TWENTY-FOUR PESOS (₱6,967,924.00)**, in cash or in check payable to NLRC-RAB VII, Cebu City, through the Cashier of this Arbitration Branch within ten (10) days from receipt of this Decision.

All other claims are **DISMISSED** for insufficiency of evidence and for lack of jurisdiction. The claims and the case against respondents Feliciana Tero and Cheryl Inso are **DISMISSED** for lack of merit.[7]

On 14 December 2007, the NLRC set aside the Decision of the Labor Arbiter and held that Intec suffered tremendous financial losses which justified the reduction of working days. The dispositive portion of the decision reads:

WHEREFORE, the assailed decision is SET ASIDE and a new one entered declaring that complainants were not dismissed either actually or constructively. Considering, however, all attendant factors as discussed, respondent Intec Cebu, Inc. is hereby directed to give all thirty-seven (37) complainants their respective separation pay based on one-half month salary per year of service, or the grand total amount of ONE MILLION ONE HUNDRED TWENTY-FIVE THOUSAND SEVEN HUNDRED THIRTY-FIVE PESOS (₱1,125,735.00) as earlier computed per assailed decision.

Complainants are NOT entitled to backwages.[8]

Intec elevated the matter to the Court of Appeals. In a Decision dated 22 April 2009, the Court of Appeals reversed the NLRC and reinstated the Decision of the Labor Arbiter with respect to respondents herein. As for Jenife Espinosa, Maria Fe Tomo, Jocelyn Casiban, Ailyn Bagyao, Josephine Casino, Pilar Batajoy, Juliet Teofilo, Cheryl Sugarol, Rechel Daitol and Janette Quidong,

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[7] *Id.* at 62.

[8] *Id.* at 48.

the case was dismissed for their failure to sign the verification of certification of non-forum shopping in their petition.

The instant petition is one for *certiorari* with Intec attributing grave abuse of discretion on the part of the Court of Appeals for the following acts:

FIRST: BY OVERTURNING ITS OWN RESOLUTION DISMISSING OUTRIGHT THE PRIVATE RESPONDENTS' PETITION FOR CERTIORARI, AND THEREBY GIVING DUE COURSE TO THEIR MOTION FOR RECONSIDERATION, WITH THE MANIFEST ADVANCE PRONOUNCEMENT THAT THE SAID MOTION WOULD EVENTUALLY BE GRANTED.

SECOND: BY DISREGARDING THE FACTUAL FINDINGS OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, 4TH DIVISION, CEBU CITY, THAT THE PRIVATE RESPONDENTS "WERE NOT DISMISSED EITHER ACTUALLY OR CONSTRUCTIVELY."

THIRD: BY CAPRICIOUSLY ASSERTING THAT THE FINANCIAL STATEMENTS OF THE PETITIONERS ARE SELF-SERVING AND OF DOUBTFUL VERACITY AS THEY WERE NOT PREPARED BY AN INDEPENDENT AUDITOR, WHICH ASSERTION IS IN EFFECT AN ASSAULT UPON THE INTEGRITY AND HONESTY OF THE AUDITOR.

FOURTH: BY CIRCUMVENTING THE DOCTRINE LAID DOWN BY THIS HONORABLE COURT IN THE CASE OF "JARDINE DAVIS, INC. vs. THE NLRC, ET AL.", G.R. 26272, JULY 28, 1999, THAT RESORT TO JUDICIAL REVIEW OF THE DECISION OF THE NLRC BY WAY OF SPECIAL CIVIL ACTION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT IS CONFINED ONLY TO ISSUES OF WANT OF JURISDICTION AND GRAVE ABUSE OF DISCRETION ON THE PART OF THE LABOR TRIBUNAL, **BARRING AN INQUIRY AS TO THE CORRECTNESS OF THE EVALUATION OF EVIDENCE WHICH HAS THE BASIS OF LABOR AGENCY IN REACHING A CONCLUSION**;

FIFTH: ASSUMING, WITHOUT HOWEVER ADMITTING, THAT THE PRIVATE RESPONDENTS ARE ENTITLED TO SEPARATION PAY AND BACKWAGES, AS DETERMINED BY THE LABOR ARBITER, THE COMPUTATION OF BENEFITS

RECEIVABLE — WHICH CONTAINS GLARING SERIOUS ERROR, IF REINSTATED, AS THE COURT OF APPEALS, 18TH DIVISION, WANTED IT TO BE.[9]

Intec claims that the reduction of the number of working days was undertaken to forestall business losses as proven by the audited financial statements of Intec for the years 2001-2006. Intec insists that the workers they employed from TESDA and Sisters of Mary were on-the-job trainees and they were already employed prior to the implementation of the reduced working days policy of the company. Moreover, Intec stresses that these workers were retained to enable the company to comply with the urgent off-and-on job orders of Pentax which could not be accomplished by the regular employees.

Intec reiterates that respondents voluntarily resigned or abandoned their work when they filed their application for leave following the issuance of the second memorandum extending the implementation of the reduced number of working days. According to Intec, respondents had categorically declared that they would no longer report for work.

Respondents urge this Court to affirm the findings of the Labor Arbiter and the Court of Appeals that they were constructively dismissed. Respondents refutes Intec's claim that it is suffering from business reverses when it just hired additional workers from TESDA and Sisters of Mary despite the fact that respondents were under reduced work days.

The charge of constructive dismissal is predicated on the claim that the implementation of the reduced work week is illegal.

The Court has held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place, and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and discipline, dismissal and recall of workers. The exercise of management

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[9] *Id.* at 14-15.

prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor.[10]

Thus, it was incumbent upon Intec to prove that that the implementation of the reduced working days is valid and done in good faith. Intec claims that it implemented a reduction of work days scheme to forestall its losses.

Two memoranda were allegedly sent to the affected employees informing them of the reduction of work days. The first memorandum was dated 4 January 2006 and submitted to the DOLE only on 9 January 2006. In 2006, there was no specific rule or guideline covering the reduction of workdays. It was only in January 2009 where the DOLE issued Department Advisory No. 2, Series of 2009 which requires the employer to notify DOLE of the reduction of work days prior to its implementation. If the reportorial requirement in retrenchment under Article 283 is to be followed, the DOLE should be notified at least one month prior to the intended date of retrenchment. Be that as it may, Intec submitted its report after the reduction of workdays was implemented. Moreover, there is nothing on the records which show that a second notice was sent to the employees informing them of the extension of the reduced work days to June 2006.

Intec presented its financial statements from the years 2001-2006 to prove that the company was suffering from financial losses owing to the decline of its job orders. The summary of Intec's net income/loss for the years 2001-2006 is illustrated below:

SUMMARY OF INTEC'S NET INCOME (LOSS) 31 APRIL 2001-2006

	Net Income	Net Loss	Totals
April 30, 2001		(9,708,820.00)	(9,708,820.00)
April 30, 2002		(5,928,636.00)	(5,928,636.00)
April 30, 2003	4,669,180.00		4,669,180.00

[10] *Royal Plant Workers Union v. Coca-Cola Bottlers Philippines. — Cebu Plant*, 709 Phil. 350, 364 (2013).

April 30, 2004	4,726,326.00		4,726,326.00
April 30, 2005		(9,240,929.00)	(9,240,929.00)
April 30, 2006	9,568,674.00		9,568,674.00
TOTAL	18,964,180.00	(24,878,385.00)	(5,914,205.00)[11]

An examination of Intec's financial statements for 2005-2006 shows that while Intec suffered a net loss of ₱9,240,929.00 in 2005, it earned a net income of ₱9,568,674.00 in 2006. The period covered in the financial statement of 2006 is from May 2005-April 2006. It was only on the 9th month of operation did Intec decide to carry out the reduced work day scheme. Note that the reduced work day scheme was implemented only in January 2006. Unless evidence is shown by the company that the income for 2006 was earned only between the months of January to April, it is safe to presume that at the time the reduced work day scheme was being implemented, the company was still benefiting from its gains as shown in the numbers for 2006.

Furthermore, the loss incurred in 2005 may be attributed to the acquisition of property and equipment amounting to ₱9,218,967.00[12] in 2005. There is also no indication in the financial statements, much less an observation made by the independent auditor, that a reduction in demand would necessitate a reduction in the employees' work days.

We cannot give weight to the evidence presented by Intec to prove the slump in demand. First, the two-page delivery data are lacking in specifics. The report did not indicate when it was prepared. Second, the report was prepared by Intec employees and approved by their President. Third, the report appeared to be mere projections because it was not supported by corresponding sales or delivery receipts. The actual sales may vary from the projected demand, thus, the report cannot be made as basis of a slump in demand or a slow-down.

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[11] *Rollo*, p. 77.

[12] *Id.* at 102.

In addition, the hiring of 188 workers, whether they be trainees or casual employees, necessarily incurred cost to the company. No proof was submitted that these newly-hired employees were performing work different from the regular workers.

In sum, there is no reason to implement a cost-cutting measure in the form of reducing the employees' working days.

Intec committed illegal reduction of work hours. Constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[13]

Intec's unilateral and arbitrary reduction of the work day scheme had significantly greatly reduced respondents' salaries thereby rendering it liable for constructive dismissal.

There is no merit to Intec's charge of abandonment against respondents. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment. Furthermore, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work. The filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[14]

We affirm the Court of Appeals' finding that there is no proof that respondents committed unauthorized absences or had otherwise refused to work. The complaint for constructive dismissal is the best evidence against abandonment because the filing of a complaint for illegal dismissal is incompatible to abandonment.

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[13] *Mcmer Corporation, Inc. v. National Labor Relations Commission*, G.R. No. 193421, 4 June 2014, 725 SCRA 1, 13.

[14] *MZR Industries v. Colambot*, 716 Phil. 617, 627-628 (2013).

Lastly, we note that Intec availed of the wrong mode of appeal. For *certiorari* to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[15]

Well-settled is the rule that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[16]

A writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party.[17] In this case, appeal under Rule 45 of the Rules of Court was clearly available to Intec.

Finding no grave abuse of discretion in this case, the *certiorari* petition should be dismissed.

WHEREFORE, the instant petition is **DISMISSED** and the Decision dated 22 April 2009 and Resolution dated 31 July 2009 of the Court of Appeals in CA-G.R. SP No. 03471 are **AFFIRMED**.

SO ORDERED.

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

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[15] *Spouses Dacudao v. Secretary Gonzales*, 701 Phil. 96, 107 (2013).

[16] *Tan v. Spouse Antazo*, 659 Phil. 400, 404 (2011).

[17] *Cathay Pacific Steel Corp. v. Court of Appeals*, 531 Phil. 620, 631 (2006).

SECOND DIVISION

[G.R. No. 201016. June 22, 2016]

LEONCIA A. YUMANG, *petitioner, vs.* **RADIO PHILIPPINES NETWORK, INC. (RPN 9), MIA A. CONCIO, LEONOR C. LINAO, IDA BARRAMEDA and LOURDES O. ANGELES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION; TECHNICAL RULES LIBERALLY APPLIED IN THEIR PROCEEDINGS.— We find no reversible error in the CA's affirmation of the NLRC's acceptance of the appeal despite its non-perfection as described by the petitioner. Article 227 (formerly Art. 221) of the Labor Code (renumbered by R.A. No. 10151, ***An Act Allowing the Employment of Night Workers***), provides that "*In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiter shall use every and all means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process x x x.*" Consistent with the law and, as aptly cited by the CA, "*Technicality should not stand in the way of equitably and completely resolving the rights and obligations of the parties for the ends of justice are reached not only through the speedy disposal of cases but, more importantly, through a meticulous and comprehensive evaluation of the merits of the case.*"

2. ID.; LABOR CODE IMPLEMENTING RULES AND REGULATIONS; DIRECT PETITION TO THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) TO RULE ON THE COMPLAINT AGAINST UNION OFFICERS; ALLOWED AS THE COMPLAINT, IF FILED WITH THE UNION DISPUTE SETTLEMENT

MACHINERY, WILL BE DECIDED BY THE SAME UNION OFFICERS.— In the light of the fact that the expelled members sought to hold all the union officers, including the members of the Board of Directors (BOD), accountable for mismanagement of the union, we believe the petitioner had enough reason to be gravely apprehensive of going through the RPN Employees Union (RPNEU) dispute settlement machinery. She feared she would not obtain a fair hearing from the union, considering that while the Grievance and Investigation Committee (GIC) investigates and hears intra-union disputes, the final decision lies with the BOD, which was headed by no less than the President. x x x The petitioner submits that under the circumstances, she is allowed by Section 6 (f), Rule XI, Book V of the Labor Code's Implementing Rules and Regulations to directly petition the DOLE to rule on the complaints she and the 14 others brought against the RPNEU officers. We understand the petitioner's position. As we see it, obtaining justice from the RPNEU grievance machinery would be illusory for her. In *Kapisanang Manggagawa sa MRR v. Hernandez,* the Court said*: "In the case at bar, noteworthy is the fact that the complaint was filed against the union and its incumbent officers, some of whom were members of the board of directors. The constitution and bylaws of the union provide that charges for any violations thereof shall be filed before the said board. But as explained by the lower court, if the complainants had done so the board of directors would in effect be acting as respondent investigator and judge at the same time. To follow the procedure indicated would be a farce under the circumstances; where exhaustion of administrative remedies within the union itself would practically amount to a denial of justice or would be illusory or vain, it will not be insisted upon x x x. So it must be with the petitioner's case.*

3. ID.; LABOR ORGANIZATIONS; MEMBERS HAVE RIGHT TO BE INFORMED HOW UNION AFFAIRS ARE ADMINISTERED.— [W]e find the petitioner well within her rights as a union member when she took the officers to task for their handling of the affairs of the union, especially with respect to matters relating to the union funds and the quality of the union leadership. The union President's integrity was itself put in serious doubt when he was seen using a vehicle registered in the name of the RPN9 General Manager after

> the conclusion of the July 1, 2004 to June 30, 2009 CBA. Under Article 250 of the Labor Code (formerly Article 241) cited by the petitioner and which lists down the *rights and conditions of membership in a labor organization*, it is her right to be informed of what is going on within the union, especially in the handling of union funds, the negotiation and conclusion of the CBA, in labor education, and in all the rights and obligations of union members under existing laws. x x x The petitioner therefore cannot be made answerable for "malicious attack" against the RPNEU and its officers as she was merely exercising her right, as a union member, to ventilate before the public authorities her perceived grievances against the union leadership. x x x In sum, **we find merit in the petition.** The petitioner was illegally dismissed as her expulsion from the union had no basis.

APPEARANCES OF COUNSEL

Jose P. Calinao for petitioner.
Gerodias Suchtanco Estrella Law Firm for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] assailing the decision[2] dated July 8, 2011, and the resolution[3] dated February 22, 2012, of the Court of Appeals in CA-G.R. CEB-SP No. 110266.

The Antecedents

On May 1, 1998, the **petitioner** Leoncia A. Yumang started her employment with the **respondent** Radio Philippines Network, Inc. (*RPN 9*). She was a member of the Radio Philippines Network

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[1] *Rollo*, pp. 9-63, filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 69-82; penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Edgardo L. Delos Santos and Victoria Isabel A. Paredes.

[3] *Id.* at 85-87.

Employees Union (*RPNEU*) which had a collective bargaining agreement (*CBA*)[4] with RPN 9 effective July 1, 2004 to June 30, 2009.

Allegedly, after the conclusion of the CBA, a new Toyota Revo driven by RPNEU President Reynato **Siozon**, Jr., was found to be registered in the name of the RPN 9 General Manager. The petitioner and 14 other union members filed complaints with the Department of Labor and Employment-National Capital Region (*DOLE-NCR*) against the RPNEU officers and members of the Board of Directors (*BOD*) for: impeachment, an audit of union funds, and the conduct of a snap election.

On August 17, 2005, Mediator-Arbiter Clarissa G. Beltran-Lerios (*Med-Arbiter Lerios*) ordered the conduct of a referendum to determine whether the incumbent RPNEU officers would be impeached. The union officers and the BOD appealed to the Bureau of Labor Relations. BLR Director Henry Parel granted the appeal and reversed Med-Arbiter Lerios' ruling.[5]

In the meantime or on June 1, 2005, two complaints were filed with the RPNEU Executive Board against several union members, followed by a third complaint filed with the Grievance and Investigation Committee (*GIC*) against the petitioner and the fourteen (14) other union members.

The complaints, which were consolidated and referred to the GIC for investigation, involved alleged violations of the RPNEU Constitution and Bylaws (*CBL*),[6] principally: (1) the commission of acts inimical to the interests of the union and the general membership; (2) the attempt to form another union; and (3) an appeal to the general membership urging them to commence legal action without exhausting remedies under the RPNEU CBL.

On September 29, 2005, Jeric Salinas, the GIC chairperson, asked the union members charged to attend the hearings;

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[4] *Id.* at 325-349.

[5] *Id.* at 632-639.

[6] *Id.* at 603-631.

otherwise, they would be considered to have waived their right to be heard. After attending the first three hearings, the petitioner and the others moved to dismiss the charges for alleged noncompliance with certain provisions of the CBL, the absence of substantial and procedural due process, and the non-appearance of their accusers. They no longer attended the subsequent hearings.

On November 9, 2005, the GIC submitted its report[7] to the RPNEU Board of Directors (*BOD*). It declared: "while respondents cannot be said to have violated Article IX, Section 2.2 or forming another union outside the freedom period, **they can be held guilty of malicious attack against the union or the officers under Section 1 (d) of Article XVIII."**[8] **They were found guilty "of violating Article IX, Section 2.5 of the CBL for urging or advocating to the members the filing of cases with the DOLE without availment (sic) or exhaustion of all remedies**."[9]

The GIC recommended the expulsion of the charged union members. On December 21, 2005, the BOD approved the GIC recommendation.[10] The members affected were then notified of their expulsion from RPNEU, to take effect on December 29, 2005.[11] They assailed the board's action for being *ultra vires*.

In a letter[12] dated January 24, 2006, the RPNEU officers and directors asked RPN 9 to terminate the employment of the expelled union members, pursuant to the CBA's Union Security Clause.[13] On January 30, 2006, the petitioner and the 14 others wrote RPN 9,[14] claiming that their expulsion had been reversed

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[7] *Id.* at 259-264; Memorandum dated November 9, 2005.

[8] *Id.* at 263, par. 1.

[9] *Id.* par. 2.

[10] *Id.* at 368-369; Board Resolution No. 018-2005.

[11] *Id.* at 367; RPNEU Memorandum dated December 27, 2005.

[12] *Id.* at 414-417.

[13] *Supra* note 4, Article II, Sections 1 and 2.

[14] *Rollo*, pp. 421-428.

by 118 union members or more than 30% of RPNEU's General Membership Assembly (*GMA*).[15] RPNEU would later on say that the GMA could not have validly convened since the petitioner and her group failed to appeal the BOD resolution expelling them from the union as required by the RPNEU CBL.[16]

RPN 9 deferred action on RPNEU's request. In a memorandum[17] dated February 1, 2006, of respondent Mia A. Concio (*Concio*) RPN 9 President and CEO, it announced that it will conduct an inquiry into the matter.

The inquiry commenced on February 6, 2006. At the proceedings[18] the following day, the petitioner and her colleagues sensed that the RPN panel was conducting the inquiry only to effect a reconciliation between them and the officers, not to determine the validity of their expulsion. Nonetheless, they expressed no objection to a reconciliation on condition that: (1) a referendum be held; (2) the union shoulder their attorney's fees; and (3) they be paid damages. Siozon wanted all the cases dropped. The next day, upon the advice of their lawyer, the expelled union members informed the panel that they would no longer answer any questions.

Allegedly for this reason, the panel concluded the inquiry on February 15, 2006. In a memorandum[19] to Concio on the same day, the panel recommended that the RPN 9 management comply with the CBA's union security clause. Consequently, or on February 17, 2006, RPN 9 notified[20] the petitioner and the 14 others of their separation from the service effective March 20, 2006.

Meantime, or on March 6, 2006, the petitioner filed a complaint for unpaid CBA benefits and applicable wage orders. On May

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[15] *Id.* at 424-438.

[16] *Supra* note 6, Article X, Section 5.

[17] *Rollo*, pp. 494-495.

[18] *Id.* at 720-722; Minutes of the Meeting, February 7, 2006.

[19] *Id.* at 496-498.

[20] *Id.* at 499; Memorandum dated February 17, 2006.

31, 2006, she filed a second complaint for illegal dismissal (consolidated with the first case) against RPN 9, Concio, General Manager Leonor Linao, Asst. General Manager for Finance Ida Barrameda, and HRD Manager Lourdes Angeles.[21]

The Compulsory Arbitration Rulings

In a decision[22] dated April 20, 2007, Labor Arbiter (*LA*) Manuel M. *Manansala* declared that the petitioner had been illegally dismissed, and ordered her reinstatement with backwages, payment of her accrued monetary benefits, plus attorney's fees.

LA Manansala held that although the petitioner's dismissal was in compliance with the CBA's union security clause, her expulsion from the union was without due process. However, he absolved the respondent RPN 9 officers from liability as they merely acted, he stressed, on the petitioner's dismissal in their official capacities.

On appeal by the respondents, the National Labor Relations Commission (*NLRC*), in its November 28, 2008 decision,[23] reversed LA Manansala's ruling and declared the petitioner's dismissal valid as it was in implementation of the CBA's union security clause. It also found that the petitioner had been afforded due process.

The petitioner moved for reconsideration, but the NLRC denied the motion.[24] She then sought relief from the CA through a petition for *certiorari*, charging the labor tribunal with grave abuse of discretion when it (1) entertained the respondents' appeal despite its non-perfection and (2) declared the termination of her employment valid.

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[21] *Id.* at 269-270.

[22] *Id.* at 108-125.

[23] *Rollo*, pp. 89-103; penned by Commissioner Aurelio D. Menzon and concurred in by Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Oscar S. Uy.

[24] *Id.* at 105-107; Resolution dated April 30, 2009.

The petitioner faulted the NLRC for disregarding its own rules of procedure when it admitted the respondents' appeal even in the absence of *a joint declaration under oath by the employer, his counsel and the bonding company attesting that the bond posted is genuine and shall be in effect until the final disposition of the case*.[25]

On the merits of the case, she argued that while her employment was terminated in compliance with the CBA's union security clause, she was not accorded due process before she was dismissed. She assailed the supposed RPN 9 inquiry into her expulsion from the union without the company investigating whether it was justified.

The inquiry, she claimed, was conducted for the sole purpose of reconciling the officers and the complaining union members, not of determining whether they were validly expelled from the union; instead, the RPN 9 inquiry panel merely questioned the resolution of at least 30% of the union membership reversing their expulsion, to the extent of calling some of the signatories to verify their "acquiescence" to the resolution.

The petitioner denied the RPNEU's charges against her. She defended her actions to be in accordance with her right to information as a union member under Article 241 of the Labor Code. This includes, she argued, the right to call for the investigation of any irregularity within the union; thus, a complaint filed regarding such an irregularity cannot be considered a misconduct or a disloyalty under the union CBL.

The CA Decision

In its decision of July 8, 2011, the CA-CEB denied the petition and affirmed the NLRC ruling. It brushed aside the petitioner's procedural question, holding that the NLRC committed no grave abuse of discretion in giving due course to the appeal, as it was done in the interest of substantial justice.

On the substantive aspect of the case, the CA held that it was well within the NLRC's jurisdiction to uphold the petitioner's

[25] 2005 NLRC Revised Rules of Procedure, Rule VI, Section 6 (a).

dismissal since the respondents satisfied the requisites for the observance of the CBA's union security clause.

On the due process issue, the CA pointed out that the petitioner and the other complainants were given several opportunities to defend themselves, but they responded with suspicion and animosity; thus, they were to blame if their right to due process had been curtailed.

The petitioner moved for reconsideration. She again raised the matter of the non-perfection of the respondents' appeal, and bewailed the CA's failure "to explain why it departed from the established facts as ruled by the other Divisions of this Honorable Court and affirmed by the Honorable Supreme Court in at least two identical cases."[26]

The two cases she referred to are the: (1) *Radio Philippines Network, Inc., (RPN) v. National Labor Relations Commission, Ruth F. Yap, et al.*, where the CA 4th Division dismissed RPN 9's petition for *certiorari* in CA-G.R. SP No. 104567[27] eventually affirmed by this Court in G.R. No. 188033,[28] for which an Entry of Judgment[29] was issued on November 23, 2009; and (2) *Radio Philippines Network v. National Labor Relations Commission and Ibarra Delantar*,[30] with the same results. The petitioner argued that the identical decisions in the two cases constitute the *law of the case* and must be applied in all pending cases involving the 15 dismissed RPNEU members.

The CA denied the motion, holding that the petitioner failed to raise new and substantial matters in her plea for reconsideration. It stressed in particular that the cases cited by the petitioner

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[26] *Rollo*, p. 1055; Motion for Reconsideration of CA Decision dated July 8, 2011.

[27] *Id.* at 812-828.

[28] *Id.* at 1000.

[29] *Id.* at 1002.

[30] *Id.* at 1006-1025, CA 9th Division Decision dated April 30, 2009 in CA-G.R. SP No. 103341; at 1026, SC 2nd Division Resolution dated December 14, 2009.

"are not entirely applicable here as those cases do not exactly share similar set of facts with the instant case."[31] It explained that in the cited cases, the labor arbiter and the NLRC affirmed the illegality of the dismissal of the complainants; whereas, in the present case, the labor arbiter found the petitioner's dismissal illegal, but on appeal, the NLRC declared the dismissal valid.

The Petition

The petitioner now asks the Court to nullify the CA rulings because they were rendered, she contends, with grave abuse of discretion and, for being contrary to existing law and jurisprudence.

She insists that the issue of whether she was illegally dismissed has been put to rest by this Court in the two cases she just cited and a third one, the *Radio Philippines Network, Inc. v. Melanie Marteja*, G.R. No. 192988.[32] These three cases, she points out, involved 7 of the 15 employees subject of the present dispute and, no Court decision contrary to the rulings in the three cases currently exists.

Procedurally, the petitioner insists that the respondents' appeal to the NLRC should not have been allowed since it had not been perfected under the NLRC rules. She argues that the appeal bond is not merely a procedural, but also a jurisdictional, requirement.

With regard to her dismissal, the petitioner asserts that RPN 9 terminated her employment without ascertaining the validity of her expulsion from the union. She considers the inquiry RPN 9 conducted on the union request for her dismissal grossly inadequate to satisfy the due process requirement.

She maintains that had RPN 9 really inquired into whether her expulsion from the union and that of the 14 other members was justified, it could have discovered the invalidity of the union action. She strongly disputes the NLRC and the CA conclusion that the charges against her and the others had been proven.

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[31] *Supra* note 3, p. 2, paragraph 3.

[32] G.R. No. 192988, July 4, 2011.

Thus, she denies that she joined in the formation of a union outside of the CBA's 60-day freedom period. The GIC investigation, she reasons out, failed to show that such was the case; rather, testimonies were given during the GIC proceedings that she and the others were simply initiating the installation of a new set of officers. In any event, she was not identified as one of those soliciting signatures for a new set of union officers.

On the charge of non-exhaustion of administrative remedies, the petitioner admits that she was among the union members who filed the complaints before the DOLE for the conduct of an audit of union funds and for the holding of a snap election of union officers. She explains that while an internal union dispute is investigated by the GIC under Art. XVII, Sec. 3 of the CBL, the final decision on the complaints lies with the President and the BOD, the very respondents called upon to render an accounting of union funds and who would be affected by a snap election. For this reason, she doubts the impartiality of the union grievance procedure that is in place to resolve her case.

The same thing is true with the expelled union members' move for the impeachment of the union officers. Under the CBL's Art. VIII, Sec. 2, the petitioner points out, the BOD shall convene an Ad Hoc Committee (*committee*) to hear the case. The committee is composed of the Chairman of the BOD who is also the RPNEU President, one board member, and two union members in good standing.

The problem, the petitioner bewails, is that if the President is the subject of the proceedings, then the Vice-President shall convene the committee, but since all the officers were respondents in the complaints before the DOLE-NCR, no other union officer could fill the vacancy in the committee. Assuming that union members could be appointed to the committee, the fact that they would be appointed by the respondent union officers would taint the objectivity of the committee proceedings.

The petitioner believes that while an administrative procedure is provided in the CBL for the resolution of internal union disputes, it was not "readily available" to her and to the 14 others who

were expelled from the union, in view of the nature of the complaints and the reality that it was no less than the union officers who were subject of the complaints. She argues that under the CBL procedure, they would not obtain an impartial resolution of the complaints; thus, their resort to the DOLE.

She cites, in support of her position, Book V, Rule XI, Section 6 (f) of the Labor Code's Implementing Rules and Regulations which allows non-exhaustion of administrative remedies within the union when such remedies are not readily available through no fault of the complaining union member or members, or compliance with such remedies does not apply to them. She posits that under the circumstances, she and the 14 other expelled union members had no choice but to go direct to the public authorities for redress of their grievances.

The Respondents' Position

On August 28, 2012, the respondents RPN 9 and its responsible officers filed their comment,[33] praying for the petition's dismissal on the grounds that the CA correctly upheld the NLRC ruling.

The respondents assail the petitioner's "mistaken belief"[34] that the inquiry RPN 9 conducted into her expulsion from the union was aimed merely at reconciling the differences between the expelled union members and the officers. They assert that the inquiry was in reality an investigation which "they spurned and thereafter bewailed that they were deprived due process allegedly because there was no inquiry management conducted separate from that of the union."[35]

The implementation of the union security clause in petitioner's case, the respondents submit, was warranted because the validity of her expulsion had been established at the RPNEU hearings.

Lastly, they maintain that the CA correctly ruled that the NLRC acted within its discretion in entertaining RPN's appeal in the interest of substantial justice.

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[33] *Rollo*, pp. 1135-1152.

[34] *Id.* at 1141; Comment, p. 7, par. 1.

[35] *Id.* at 1143; Comment, p. 9, par. 2.

The Court's Ruling

The procedural question

We find no reversible error in the CA's affirmation of the NLRC's acceptance of the appeal despite its non-perfection as described by the petitioner. Article 227 (formerly Art. 221) of the Labor Code (renumbered by R.A. No. 10151, ***An Act Allowing the Employment of Night Workers***),[36] provides that "*In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiter shall use every and all means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process x x x.*"

Consistent with the law and, as aptly cited by the CA, "*Technicality should not stand in the way of equitably and completely resolving the rights and obligations of the parties for the ends of justice are reached not only through the speedy disposal of cases but, more importantly, through a meticulous and comprehensive evaluation of the merits of the case*."[37]

The substantive aspect of the case

At the outset, we note that the present case is only one of several complaints for illegal dismissal filed against RPN 9, which arose from the termination of employment of the petitioner and 14 other union members, following their expulsion from the RPNEU.

Some of the complaints had already been resolved at the CA level, and at least three had reached this Court. In these three cases, the Court found no reversible error in the CA's affirmation

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[36] Signed into law by President Benigno S. Aquino III on March 14, 2013.

[37] *Remington Industrial Sales Corporation v. Castañeda*, G.R. Nos. 169295-96, November 20, 2006.

of the NLRC ruling that the expelled union members in the three cases were illegally dismissed.

Seven of the 15 expelled union members were the complainants in the aforementioned three cases, as follows: Ruth F. Yap, Ma. Fe Dayon, Minette Baptista, Bannie Edsael San Miguel and Marisa Lemina in G.R. No. 188033;[38] Ibarra A. Delantar in G.R. No. 189535;[39] and Melanie Marteja in G.R. 192988.[40] In another case which found its way into the CA Visayas Station in Cebu City, *Anna Liza M. Serrano v. NLRC, et al.*,[41] the CA 20th Division (the same Division which decided the present case) held that Serrano had been illegally dismissed by RPN 9.

The illegal dismissal finding in all the cited cases had been based on the failure of the respondents to conduct a separate inquiry into the validity of the expulsion from RPNEU of the petitioner and the 14 others similarly situated, contrary to existing jurisprudence. While the respondents insist that the inquiry conducted by the RPN 9 panel was in reality an investigation, the records prove otherwise.

In its memorandum[42] dated February 15, 2006, addressed to Concio, the inquiry panel headed by Atty. Marilyn Estaris of the Office of the Government Corporate Counsel, reported to the RPN 9 management that the *panel offered reconciliation/ amicable settlement and never once wavered to patch up the differences between the parties*."[43] This is consistent with the minutes[44] of the panel meeting on February 7, 2006, where Atty. Estaris "*informed the body that this meeting was called primarily for the reconciliation of both parties*."[45]

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[38] *Supra* note 29.

[39] *Supra* note 32.

[40] *Supra* note 34.

[41] CA-G.R. SP No. 111145.

[42] *Supra* note 19.

[43] *Id.* par. 2.

[44] *Rollo*, pp. 734-736.

[45] *Id.* at 734; Minutes, first highlight.

On the expulsion issue, the inquiry panel reported:

"In the issue of the expulsion case which is paramount in the mind of the management, we asked ourselves whether the so-called General Assembly resolution that they tout as having reversed the expulsion case actually occurred. When asked whether a General Assembly meeting was actually held to discuss the reversal of the expulsion case, no categorical answer was given by Ms. Ruth Yap, et al. In our search for truth, we called some members who signed and asked them if indeed a General Assembly was called and if any deliberation on the expulsion was discussed, the answer of the member-signatories that we called was negative. In fact they said that one of the 15 in the group of Ms. Yap approached them and appealed to them to sign lest they be expelled from the union." [46]

After its inquiry on whether the RPNEU GMA reversed the expulsion of the petitioner and the 14 others, the panel concluded its inquiry/investigation with the recommendation: "***Management has to comply with the Union Security clause***,"[47] without any finding on whether the expulsions were justified or not.

In the light of what the records reveal, we agree with the conclusions in *RPN v. Yap, et al.*, and *RPN v. Delantar* that the RPN management did not conduct an investigation of its own as to whether the expulsion of the petitioner from the RPNEU was justified.

Notably, the CA 20th Division in Cebu City reached a similar conclusion when it said in *Serrano v. NLRC, et al.*:[48] "*A perusal of the evidence of RPN-9 shows that it failed to conduct its own independent determination of whether or not there is sufficient evidence to support the decision of the RPNEU's Board of Directors to expel the petitioner from the union.*"[49]

We wonder why the same CA division found the facts in the cases cited by the petitioner and, by implication its ruling in

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[46] *Supra* note 46, p. 2, par. 2.

[47] *Id.* at 3, last paragraph.

[48] *Supra* note 45.

[49] *Id.* at 13, par. 2.

Serrano, different from the facts of the petitioner's case. The petitioner, Yap and five others in G.R. No. 188033, Delantar in G.R. No. 189535, and Serrano in CA-G.R. No. 111145, were all expelled from the RPNEU. They all went through the same GIC investigation and the same RPN 9 inquiry before they were dismissed. Needless to say, they were all "victims" of the absence of an independent investigation by RPN-9 on whether they were validly expelled from the union. This militates against the respondents' cause.

In *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*,[50] the Court said: "*While respondent company may validly dismiss the employees expelled by the union for disloyalty under the union security clause of the collective bargaining agreement upon recommendation of the union, this dismissal should not be done hastily and summarily thereby eroding the employees' right to due process, self-organization and security of tenure*."

Moreover, as the CA noted in *RPN v. Yap*, the respondents "*should have been on guard*,"[51] considering that the petitioner and her group sought to impeach the RPNEU officers and the BOD and to replace them with a new set of officers, as well as to make them account for the union funds. In short, given the charged atmosphere within the union, the respondents should not have merely relied on the outcome of the RPNEU investigation as basis of its decision to terminate the petitioner's employment. They should have exerted a genuine effort to find out whether the petitioner's expulsion was arrived at fairly and with due concern for the rights of the expelled member.

Is the petitioner guilty of non-exhaustion of administrative remedies?

In the light of the fact that the expelled members sought to hold all the union officers, including the members of the BOD,

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[50] 383 Phil. 329, 365 (2000), citing *Sanyo Philippines Workers Union-PSSLU v. Cañizares*, 211 SCRA 362.

[51] *Supra* note 29, at 11, par. 1.

accountable for mismanagement of the union, we believe the petitioner had enough reason to be gravely apprehensive of going through the RPNEU dispute settlement machinery. She feared she would not obtain a fair hearing from the union, considering that while the GIC investigates and hears intra-union disputes,[52] the final decision lies with the BOD,[53] which was headed by no less than the President.

Further, on the matter of the impeachment of the union officers under the CBL provides that the BOD shall convene and create an Ad Hoc Committee on Impeachment composed of the Chairman of the Executive Board (the President), the Chairman of the GIC, a board member and two union members.[54]

In case the President is under impeachment, the Vice-President shall convene the Committee;[55] but since all the officers, including the BOD, were all subject of the impeachment case, there would be no officers left to constitute the committee. Assuming that the officers could appoint union members (any officer under impeachment is disqualified to become a member of the committee) to constitute the committee, the petitioner feared that the arrangement would not ensure the impartiality of the proceedings.

The petitioner thus submits that under the circumstances, she is allowed by Section 6 (f), Rule XI, Book V of the Labor Code's Implementing Rules and Regulations to directly petition the DOLE to rule on the complaints she and the 14 others brought against the RPNEU officers.

We understand the petitioner's position. As we see it, obtaining justice from the RPNEU grievance machinery would be illusory for her. In *Kapisanang Manggagawa sa MRR v. Hernandez*,[56] the Court said: "*In the case at bar, noteworthy is the fact that*

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[52] *Supra* note 6, Article XI, Section 1 (D).

[53] *Id.* Article XVII, Sections 6 & 7.

[54] *Id.* Article XVIII, Section 2.

[55] *Id.* Section 3 (g).

[56] 20 SCRA 109.

the complaint was filed against the union and its incumbent officers, some of whom were members of the board of directors. The constitution and bylaws of the union provide that charges for any violations thereof shall be filed before the said board. But as explained by the lower court, if the complainants had done so the board of directors would in effect be acting as respondent investigator and judge at the same time. To follow the procedure indicated would be a farce under the circumstances; where exhaustion of administrative remedies within the union itself would practically amount to a denial of justice or would be illusory or vain, it will not be insisted upon x x x.[57] (underscoring supplied). So it must be with the petitioner's case.

Can the petitioner be held guilty of malicious attack against the union officers?

The records show that there was no categorical finding of the petitioner's guilt on this question.[58] But we find the petitioner well within her rights as a union member when she took the officers to task for their handling of the affairs of the union, especially with respect to matters relating to the union funds and the quality of the union leadership. The union President's integrity was itself put in serious doubt when he was seen using a vehicle registered in the name of the RPN9 General Manager after the conclusion of the July 1, 2004 to June 30, 2009 CBA.

Under Article 250 of the Labor Code (formerly Article 241) cited by the petitioner and which lists down the *rights and conditions of membership in a labor organization*, it is her right to be informed of what is going on within the union, especially in the handling of union funds, the negotiation and conclusion of the CBA, in labor education, and in all the rights and obligations of union members under existing laws.

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

[58] *Supra* note 9.

Apparently, the petitioner and the 14 other expelled union members were not informed about these matters, prompting them to seek an investigation on how the union affairs were being administered. The petitioner therefore cannot be made answerable for "malicious attack" against the RPNEU and its officers as she was merely exercising her right, as a union member, to ventilate before the public authorities her perceived grievances against the union leadership; as earlier discussed, she had no expectations that these would be fairly resolved within the union.

In sum, **we find merit in the petition**. The petitioner was illegally dismissed as her expulsion from the union had no basis.

WHEREFORE, premises considered, we **GRANT** the petition. The assailed decision and resolution of the Court of Appeals are **SET ASIDE**. LA Manansala's decision of April 20, 2007, is ordered **REINSTATED** with modification that in the event the reinstatement of the petitioner Leoncia A. Yumang is no longer tenable, she shall be paid backwages to be computed from the date her wages were withheld up to the finality of this Decision, and separation pay computed at one-month's pay for every year of service.

SO ORDERED.

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

Del Castillo, J., on leave.

SECOND DIVISION

[G.R. No. 202621. June 22, 2016]

ZAIDA R. INOCENTE, *petitioner, vs.* **ST. VINCENT FOUNDATION FOR CHILDREN AND AGING, INC./ VERONICA MENGUITO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; REVIEW OF A COURT OF APPEALS (CA) LABOR DECISION RENDERED UNDER RULE 65; THE QUESTION IS: DID THE CA CORRECTLY DETERMINE WHETHER THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN RULING ON THE CASE?.— In a **Rule 45 review** of a **CA Labor decision rendered under Rule 65** of the Rules of Court, what we review are the legal errors that the CA may have committed in arriving at the assailed decision, in contrast with the review for jurisdictional errors that underlie an original *certiorari* action. In determining this legal correctness, we examine the CA decision in the same context that it determined the presence or the absence of grave abuse of discretion in the NLRC decision that it reviewed, not on the basis of whether the NLRC decision was correct on the merits. In simple terms, we test the CA's decision within the same context that the Rule 65 petition was presented before it. Under this approach, the question that we ask is: *Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case? x x x* As defined, "grave abuse of discretion" refers to the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; THE EMPLOYER BEARS THE BURDEN OF PROVING JUST CAUSE AND OBSERVANCE OF THE DUE PROCESS REQUIREMENTS.— In every dismissal situation, the employer bears the burden of proving the existence

of just or authorized cause for the dismissal and the observance of due process requirements. This rule implements the security of tenure of the Constitution by imposing the burden of proof on employers in termination of employment situations. The failure on the part of the employer to discharge this burden renders the dismissal invalid. Articles 282, 283, and 284 (now Articles 296, 297 and 298) of the Labor Code enumerates the grounds that justifies the dismissal of an employee. These include: serious misconduct or willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime, and causes analogous to any of these, all under Article 282; closure of establishment and reduction of personnel, under Article 283; and disease, under Article 284. Article 277 (now Article 291) of the Labor Code, and Books V and VI of the Omnibus Rules Implementing the Labor Code lay down the procedural requirements of a valid dismissal. These are: (1) written notice specifying the ground or grounds for the dismissal; (2) ample opportunity for the employee to be heard and defend himself; and (3) written notice of termination stating that upon due consideration of all the circumstances, grounds have been established to justify his dismissal.

3. **ID.; ID.; GROUNDS FOR DISMISSAL; BREACH OF TRUST AND SERIOUS MISCONDUCT; MUST BE ESTABLISHED BY THE ACTS CONSTITUTING THE SAME.—** Willful breach of trust (or loss of confidence as interchangeably referred to in jurisprudence) and serious misconduct are just causes for the dismissal of an employee under Article 282 (a) and (c), respectively, (now Article 296) of the Labor Code. To justify the employee's dismissal on these grounds, the employer must show that the employee indeed committed act/s constituting breach of trust or serious misconduct, which acts the courts must gauge within the parameters defined by the law and jurisprudence.

4. **ID; ID.; IMMORALITY; JURISDICTION OF THE COURT EXTENDS ONLY TO PUBLIC AND SECULAR MORALITY; PRIVATE SEXUAL RELATIONS BETWEEN TWO UNMARRIED AND CONSENTING ADULTS IS NEITHER CRIMINAL NOR SO UNPRINCIPLED AS TO WARRANT A DISCIPLINARY ACTION.—**Immorality

pertains to a course of conduct that offends the morals of the community. It connotes conduct or acts that are willful, flagrant or shameless, and that shows indifference to the moral standards of the upright and respectable members of the community. Conducts described as immoral or disgraceful refer to those acts that plainly contradict accepted standards of right and wrong behavior; they are prohibited because they are detrimental to the conditions on which depend the existence and progress of human society. x x x In general, in determining whether the acts complained of constitute "disgraceful and immoral" behavior under our laws, the distinction between public and secular morality on the one hand, and religious morality, on the other hand, should be kept in mind. This distinction as expressed – *albeit* not exclusively – in the law, on the one hand, and religious morality, on the other, is important because the jurisdiction of the Court extends only to public and secular morality. x x x [M]ere private sexual relations between two unmarried and consenting adults, even if the relations result in pregnancy or miscarriage out of wedlock and without more, are not enough to warrant liability for illicit behavior. The voluntary intimacy between two unmarried adults, where both are not under any impediment to marry, where no deceit exists, and which was done in complete privacy, is neither criminal nor so unprincipled as to warrant disciplinary action.

5. ID.; ID.; SERIOUS MISCONDUCT; REQUISITES.— Misconduct has been defined as improper or wrong conduct. It is the transgression of some established or definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. To be serious, the misconduct must be of such grave or aggravated character and not merely trivial and unimportant; it must be connected with the employee's work to constitute just cause for separation. Thus, for an employee to be validly dismissed on the ground of serious misconduct, the employee must ***first,*** **have committed misconduct or an improper or wrong conduct. And *second*, the misconduct or improper behavior is: (1) serious; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.**

6. ID.; ID.; WILLFUL BREACH OF TRUST AND CONFIDENCE; IT IS THE EMPLOYEE'S BREACH OF THE TRUST THAT HIS/HER POSITION HOLDS WHICH RESULTS IN THE EMPLOYER'S LOSS OF CONFIDENCE; GUIDELINES FOR THE APPLICATION OF THE DOCTRINE OF LOSS OF CONFIDENCE.— Willful breach of trust, as just cause for the termination of employment, is founded on the fact that the employee concerned: (1) holds a position of trust and confidence, x x x or (2) is routinely charged with the care and custody of the employer's money or property, x x x In any of these situations, it is the employee's breach of the trust that his or her position holds which results in the employer's loss of confidence. x x x [T]he law requires that the breach of trust – which results in the loss of confidence – must be willful. The breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. We clarify, however, that it is the breach of the employer's trust, not the specific employee act/s which the employer claims caused the breach, which the law requires to be willful, knowingly and purposefully done by the employee to justify the dismissal on the ground of loss of trust and confidence. In *Vitarich Corp. v. NLRC*, we laid out the guidelines for the application of the doctrine of loss of confidence, namely: **(1) the loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it should not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith.** In short, there must be an actual breach of duty which must be established by substantial evidence.

APPEARANCES OF COUNSEL

Maria Cristina P. Yambot and *Florante M. Yambot* for petitioner.

Carag Zaballero and San Pablo Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

In this petition for review on *certiorari*,[1] we resolve the challenge to the February 27, 2012 decision[2] and the July 11, 2012 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. Sp No. 118576.

The CA's February 27, 2012 decision affirmed the October 28, 2010 decision[4] of the National Labor Relations Commission (*NLRC*) in NLRC LAC Case No. 05-001025-10 (NLRC NCR Case No. 07-10270-09) as it, in turn, affirmed the November 27, 2009 decision[5] of the Labor Arbiter (*LA*).

The LA's November 27, 2009 decision denied the complaint for illegal dismissal filed by petitioner ***Zaida*** R. Inocente for lack of merit.

The Factual Antecedents

Respondent St. Vincent Foundation for Children and Aging, Inc. (*St. Vincent*) is a non-stock, non-profit foundation engaged in providing assistance to children and aging people and conducting weekly social and educational activities among them. It is financially supported by the Kansas based Catholic Foundation for Children and Aging (*CFCA*), a Catholic foundation dedicated to promoting Christian values and uplifting the welfare of the children all over the world. Respondent Veronica ***Menguito*** is St. Vincent's President/Directress (collectively, they shall be referred to as respondents).

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[1] *Rollo*, pp. 8-40.

[2] Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Stephen C. Cruz and Edwin D. Sorongon, *id.* at 43-55.

[3] *Id.* at 57.

[4] Penned by Presiding Commissioner Herminio V. Suelo, *id.* at 189-198.

[5] Penned by Labor Arbiter Antonio R. Macam, *id.* at 144-155.

In 2000, St. Vincent hired Zaida as Program Assistant; it promoted her as Program Officer the following year. Zaida, then single, was known as Zaida Febrer Ranido. Zaida's duties as program officer included the following: monitoring and supervising the implementation of the programs of the foundation, providing training to the staff and sponsored members, formulating and developing program policies for the foundation, facilitating staff meetings, coordinating and establishing linkages with other resource agencies and persons, as well as preparing St. Vincent's annual program plan and budget, and year-end reports.

In 2001, Zaida met ***Marlon*** D. Inocente. Marlon was then assigned at St. Vincent's Bataan sub-project. In 2002, Marlon was transferred to St. Vincent's sub-project in Quezon City. Zaida and Marlon became close and soon became romantically involved with each other.

In September 2006, St. Vincent adopted the CFCA's Non-Fraternization Policy; it reads in full:

> CFCA Policy 4.2.2.3. Non-Fraternization Policy
>
> While CFCA **does not wish to interfere with the off-duty and personal conduct of its employees**, to prevent unwarranted sexual harassment claims, uncomfortable working relationships, morale problems among other employees, and even the appearance of impropriety, employees who direct and coordinate the work of others are *strongly discouraged* from engaging in consensual romantic or sexual relationships with any employee or volunteer of CFCA.[6] [emphasis supplied]

Despite St. Vincent's adoption of the Non-Fraternization Policy, Zaida and Marlon discretely continued their relationship; they kept their relationship private and unknown to St. Vincent even after Marlon resigned in July 2008.

On February 19, 2009, Zaida experienced severe abdominal pain requiring her to go to the hospital. The doctor later informed her that she had suffered a miscarriage. While confined at the

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[6] *Id.* at 11.

hospital, Zaida informed St. Vincent of her situation. Menguito verbally allowed Zaida to go on maternity leave until April 21, 2009. Zaida was released from the hospital two days after her confinement.

On March 31, 2009, Zaida was again confined at the hospital for ectopic pregnancy. Zaida, thereafter, underwent surgery[7] to have one of her fallopian tubes removed. She was discharged from the hospital on April 4, 2009.

On May 18, 2009, Zaida received from St. Vincent a letter[8] dated May 14, 2009 and signed by Menguito requiring her to explain in writing why no administrative action should be taken against her. St. Vincent charged her with violation of the CFCA Non-Fraternization Policy and of the St. Vincent's Code of Conduct provisions prohibiting: (1) acts against agency interest and policy by indulging in immoral and indecent act; (2) acts against persons by challenging superiors' authority, threatening and intimidating co-employees, and exerting undue influence on subordinates to gain personal benefit; and (3) violations within the terms of employment by doing an act offensive to the moral standard of the Foundation.

In her May 19, 2009 reply-letter, Zaida defended that: (1) her relationship with Marlon started long before St. Vincent's Non-Fraternization Policy took effect; (2) Marlon was no longer connected with St. Vincent since 2008; (3) her relationship with Marlon is not immoral as they were both of legal age and with no impediments to marry; (4) they kept their relationship private and were discreet in their actions; (5) Marlon stayed at her place only to take care of her while she was sick; and (6) they already planned to get married as soon as she recovers and their finances improve.

Zaida's explanation failed to convince St. Vincent. In the letter dated May 30, 2009,[9] St. Vincent terminated Zaida's

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[7] The procedure is known as "salpingectomy".

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

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

employment for immorality, gross misconduct and violation of St. Vincent's Code of Conduct.

Zaida and Marlon were subsequently married on June 23, 2009.[10]

On July 14, 2009, Zaida filed before the LA her complaint for illegal dismissal, with prayer for reinstatement, backwages, moral and exemplary damages and litigation expenses.

The Labor Tribunal's Rulings

In its decision[11] dated November 27, 2009, the labor arbiter (*LA*) dismissed Zaida's complaint for lack of basis. The LA found that, despite the implementation of the Non-Fraternization Policy in 2006, Zaida maintained and concealed from St. Vincent her relationship with Marlon. The LA pointed out that as a program officer, Zaida was under the obligation to observe this Policy and to inform her employer of her relationship. Her acts, therefore, could be characterized as an act of dishonesty constituting willful breach of trust and confidence justifying her dismissal.

The LA also found the dismissal compliant with the due process requirements of two notices, each of which properly apprised Zaida of the specific acts that formed the basis for her dismissal.

In its October 28, 2010 decision,[12] the NLRC agreed with the LA's findings. It additionally pointed out that Zaida's act of continuing her intimate relationship with Marlon despite the implementation of the Non-Fraternization Policy constituted not only immoral conduct; it also prejudiced the interest of St. Vincent as it set a bad example not only to her subordinates but also to the children-beneficiaries of St. Vincent. Her act, therefore, amounted to serious misconduct justifying her dismissal.

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[10] *Id.* at 223.

[11] *Supra* note 5.

[12] *Supra* note 4.

The NLRC denied Zaida's motion for reconsideration[13] in its January 11, 2011 resolution.[14] The denial prompted Zaida's *certiorari* petition[15] before the CA.

The CA's Ruling

The CA denied Zaida's *certiorari* petition for lack of merit.[16]

The CA agreed that Zaida's dismissal was valid, reiterating that Zaida's act of continuing her relationship with Marlon despite the implementation of the Non-Fraternization Policy, and without the benefit of marriage, went against the very policy of promoting Christian values that she was charged to uphold. Her subsequent marriage to Marlon did not help her situation as, under the circumstances, it appeared more of an afterthought intended to circumvent St. Vincent's rules and code of conduct.

Lastly, the CA declared that her dismissal was not due to her pregnancy and, therefore, did not violate Article 137 (2) of the Labor Code. Rather, her pregnancy was merely the operative act that led to the discovery of her immoral conduct.

Zaida filed the present petition after the CA denied her motion for reconsideration[17] in the CA's July 11, 2012 resolution.[18]

The Petition

Zaida considers St. Vincent's Non-Fraternization Policy to be an invalid exercise of its management prerogative. She argues that the Policy is unreasonable; it infringes on the constitutional rights of persons as it seeks to control even those conduct committed outside of the workplace and beyond office hours. She contends that her relationship with Marlon, who ceased to

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[13] *Rollo*, pp. 199-205. See also *rollo*, pp. 211-222 for her Supplement to Motion for Reconsideration.

[14] *Id.* at 234-235.

[15] *Id.* at 236-261.

[16] *Supra* note 2.

[17] *Rollo*, pp. 317-329.

[18] *Supra* note 3.

be connected with St. Vincent since 2008 and which relationship they had kept private, clearly goes beyond aspects of the employment and St. Vincent's legitimate business interests — matters which it could validly regulate under its management prerogative.

She also argues that the charge of loss of trust and confidence was without clear legal and factual basis as St. Vincent failed to meet the standards that would justify loss of trust and confidence. She points out that:

First, as Program Officer, she merely recommends, but does not formulate, program policies; the responsibility to formulate would have made her position as one of trust and confidence. Neither was she invested with confidence on delicate matters, nor charged with the custody or care of St. Vincent's assets and properties.

Second, St. Vincent dismissed her for immorality, gross misconduct and violation of the Code of Conduct. The labor tribunals' finding of willful breach of trust and confidence, therefore, smacks of bad faith as it deprived her of the opportunity to properly answer the charge.

Third, the acts of fraternization and pregnancy outside of marriage which the respondents used as grounds for her dismissal are not work related and do not render her unfit to continue working for St. Vincent.

Fourth, her relationship with Marlon started long before St. Vincent implemented its Non-Fraternization Policy; it should not retroactively apply to her.

And *fifth*, at the time of her dismissal, Marlon had long ceased to be St. Vincent's employee such that the respondents could not validly use their relationship and the Non-Fraternization Policy as grounds for her dismissal.

Further, Zaida argues that, as worded, St. Vincent's Non-Fraternization Policy does not altogether prohibit consensual romantic or sexual relationships between employees and/or volunteers of CFCA, but merely discourages such relationships.

The Policy, in fact, does not even require full disclosure (of such relationships) that could have otherwise justified the respondents in terminating her employment on the ground of dishonesty. Granting *arguendo* that her relationship with Marlon and her pregnancy outside of marriage could be considered immoral, the respondents failed to prove that these acts were prejudicial or detrimental to their interests.

Finally, Zaida argues that her dismissal constitutes discrimination against women. She points out that at the time the respondents dismissed her, allegedly for immorality, she was still recovering from her miscarriage. The respondents' act, therefore, clearly violated Article 137 (2) of the Labor Code, Republic Act No. 9710 (the Magna Carta of Women) and the Convention on the Elimination of All Forms of Discrimination Against Women (*CEDAW*).

The Case for the Respondents

The respondents counter[19] that Zaida's petition should be denied outright because it is procedurally flawed; it raises: (1) factual issues that are prohibited under Rule 45 of the Rules of Court; and (2) new issues that cannot be raised only on appeal. Findings of fact of the labor tribunals are conclusive and should no longer be disturbed, especially when, as in this case, they are affirmed by the CA.

In any case, the respondents submit that the Non-Fraternization Policy was issued in the valid exercise of management prerogative. It was intended to "prevent unwarranted sexual harassment claims, uncomfortable working relationships, morale problems among other employees, and even the appearance of impropriety."

Zaida's employment was terminated not because of her violation of its policy, and certainly not because of her pregnancy that could otherwise have contravened the laws prohibiting discrimination against women. Rather, her employment was terminated because of immorality constituting serious misconduct and willful breach of trust and confidence — grounds that the Labor Code provides as just causes for dismissal.

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[19] *Rollo*, pp. 344-356.

The Court's Ruling

We grant the petition.

I. Procedural issue: jurisdictional limitations of the Court's Rule 45 review of the CA's Rule 65 decision in labor cases

In a **Rule 45 review** of a **CA Labor decision rendered under Rule 65** of the Rules of Court, what we review are the legal errors that the CA may have committed in arriving at the assailed decision, in contrast with the review for jurisdictional errors that underlie an original *certiorari* action.

In determining this legal correctness, we examine the CA decision in the same context that it determined the presence or the absence of grave abuse of discretion in the NLRC decision that it reviewed, not on the basis of whether the NLRC decision was correct on the merits. In simple terms, we test the CA's decision within the same context that the Rule 65 petition was presented before it.

Under this approach, the question that we ask is: *Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case*?[20]

We point out as well that underlying this jurisdictional limitation of our Rule 45 review is the legal reality that in the review of the labor tribunals' rulings, the courts generally accord respect to their factual findings and the conclusions that they draw from them in view of the tribunals' expertise in their field. There is also the legal reality that the NLRC decision brought before the CA under the original *certiorari* action is already final and executory and can only be reversed on a finding of grave abuse of discretion.

In resolving the present Rule 45 petition, we are therefore, bound by the intrinsic limitations of a Rule 65 *certiorari* proceeding: it is an extraordinary remedy aimed solely at

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[20] *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343.

correcting errors of jurisdiction or acts committed without jurisdiction, or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction. It does not address mere errors of judgement, unless the error transcends the bounds of the tribunal's jurisdiction.

As defined, "grave abuse of discretion" refers to the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law.

To be sure, the rule that precludes an inquiry into the correctness of the labor tribunals' appreciation and assessment of the evidence, and the conclusions drawn from them, is not without exceptions. The Court, in the past, has recognized that certain exceptional situations require a review of the labor tribunals' factual findings and the evidence. When there is a showing that the NLRC's factual findings and conclusions were arrived at arbitrarily, as when its judgement was based on misapprehension or erroneous apprehension of facts or on the use of wrong or irrelevant considerations[21] — situations that are tainted with grave abuse of discretion — the Court may review these factual findings.

Finally, we should not forget that a Rule 45 review is an appeal from the ruling of the CA on pure questions of law. We do not admit and review questions of facts unless necessary to determine *whether the CA correctly affirmed the NLRC decision for lack of grave abuse of discretion*.

In the present case, the labor tribunals ruled that Zaida's intimate relationship with Marlon out of wedlock (resulting in her failed pregnancy) and her continuation and concealment of this relationship despite the implementation of the Non-Fraternization Policy, constituted immorality and dishonesty that, taken together, justified her dismissal on the ground of serious misconduct and willful breach of trust and confidence.

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[21] *Belongilot v. Cua, et al.*, 650 Phil. 392, 405 (2010).

The CA fully agreed with the labor tribunals' findings and conclusions.

Using the above analysis as guide, we are convinced that the CA grievously erred in upholding the NLRC's ruling. To our mind, the NLRC gravely abused its discretion when it declared that the acts imputed against Zaida were sufficient bases for her dismissal.

II. Substantive issue: validity of Zaida's dismissal

A. Burden of proof in dismissal situations

In every dismissal situation, the employer bears the burden of proving the existence of just or authorized cause for the dismissal and the observance of due process requirements. This rule implements the security of tenure of the Constitution by imposing the burden of proof on employers in termination of employment situations.[22] The failure on the part of the employer to discharge this burden renders the dismissal invalid.

Articles 282, 283, and 284 (now Articles 296, 297 and 298)[23] of the Labor Code enumerates the grounds that justifies the dismissal of an employee. These include: serious misconduct or willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime, and causes analogous to any of these, all under Article 282; closure of establishment and reduction of personnel, under Article 283; and disease, under Article 284.

Article 277 (now Article 291) of the Labor Code, and Books V and VI of the Omnibus Rules Implementing the Labor Code, on the other hand, lay down the procedural requirements of a valid dismissal. These are: (1) written notice specifying the ground or grounds for the dismissal; (2) ample opportunity for the employee to be heard and defend himself; and (3) written notice of termination stating that upon due consideration of all the

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[22] See Section 3, Article XIII of the Constitution.

[23] Per R.A. No. 10151 (June 21, 2011), the Labor Code Articles beginning with 130 have been renumbered.

circumstances, grounds have been established to justify his dismissal.

We recognize, in this respect, that of these two requisites for a valid dismissal, the presence or absence of just or authorized cause is the more crucial. The absence of a valid cause automatically renders any dismissal action invalid, regardless of the employer's observance of the procedural due process requirements.

B. Presence or Absence of Valid Cause for the dismissal

Based on the notice to explain and on the termination letter, we find that St. Vincent essentially dismissed Zaida for: (1) engaging in intimate out-of-wedlock relationship with Marlon which it considered immoral; (2) her failure to disclose the relationship to the management — an omission violating its Non-Fraternization Policy which it characterized as gross misconduct; and (3) violating its Code of Conduct, *i.e.*, committing acts against her superiors' authority and her co-employees, violating the terms of her employment, and engaging in immoral conduct that goes against its interest as a Christian institution.

In their respective decisions, the LA, the NLRC, and the CA found the dismissal valid on the ground of loss of trust and confidence and serious misconduct.

The LA, the NLRC, and the CA considered Zaida's act of maintaining her relationship with Marlon, despite the implementation of the Non-Fraternization Policy, immoral act that is prejudicial to St. Vincent's interests and which amounted to serious misconduct. They also considered her failure to disclose the relationship as an act of dishonesty that willfully breached St. Vincent's trust.

Willful breach of trust (or loss of confidence as interchangeably referred to in jurisprudence) and serious misconduct are just causes for the dismissal of an employee under Article 282 (a) and (c), respectively, (now Article 296)[24] of the Labor Code.

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[24] *Id.*

To justify the employee's dismissal on these grounds, the employer must show that the employee indeed committed act/s constituting breach of trust or serious misconduct, which acts the courts must gauge within the parameters defined by the law and jurisprudence.

To place our discussions in proper perspective, the determination of whether Zaida was validly dismissed on the ground of willful breach of trust and serious misconduct requires the prior determination of, *first*, whether Zaida's intimate relationship with Marlon was, under the circumstances, immoral; and, *second*, whether such relationship is absolutely prohibited by or is strictly required to be disclosed to the management under St. Vincent's Non-Fraternization Policy.

We shall separately address these grounds in the discussions below.

1. On the charge of immorality and engaging in conduct prejudicial to the interest of St. Vincent

We find the NLRC's findings of immorality or of committing acts prejudicial to the interest of St. Vincent to be baseless.

a. The totality of the attendant circumstances must be considered in determining whether an employee's conduct is immoral

Immorality pertains to a course of conduct that offends the morals of the community.[25] It connotes conduct or acts that are willful, flagrant or shameless, and that shows indifference to the moral standards of the upright and respectable members of the community.[26]

Conducts described as immoral or disgraceful refer to those acts that plainly contradict accepted standards of right and wrong

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[25] See *Santos v. NLRC*, 350 Phil. 560, 568 (1998).

[26] See *Abella v. Barrios, Jr.*, Adm. Case No. 7332, June 18, 2013, 698 SCRA 683, 695.

behavior; they are prohibited because they are detrimental to the conditions on which depend the existence and progress of human society.[27]

Notwithstanding this characterization, the term "immorality" still often escapes precise definition; the determination of whether it exists or has taken place depends on the attendant circumstances, prevailing norms of conduct, and applicable laws.[28]

In other words, it is the totality of the circumstances surrounding the conduct *per se* viewed in relation with the conduct generally accepted by society as respectable or moral, which determines whether the conduct is disgraceful or immoral.[29] The determination of whether a particular conduct is immoral involves: (1) a consideration of the totality of the circumstances surrounding the conduct; and (2) an assessment of these circumstances in the light of the prevailing norms of conduct, *i.e.*, what the society generally considers moral and respectable,[30] and of the applicable laws.

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[27] See *Estrada v. Escritor*, 455 Phil. 411, 589 (2003); and *Leus v. St. Scholasticas College*, G.R. No. 187226, January 28, 2015, citing *Estrada.*

[28] *Santos v. NLRC, supra* note 25, at 568. See also *Chua-Qua v. Clave*, G.R. No. L-49549, August 30, 1990, 189 SCRA 117, as cited in *Leus v. St. Scholastica's College, supra* note 27.

[29] See in *Leus v. St. Scholastica's College*, *supra* note 27.

[30] *Id.*, where the Court laid out in clear terms these two-step process in determining whether a conduct in question is immoral or disgraceful. The Court, applying this process, declared that while Leus was employed in "an educational institution where the teachings and doctrines of the Catholic Church, including that on pre-marital sexual relations, is strictly upheld and taught to the students," her conduct, which resulted in pregnancy out of wedlock, cannot be considered disgraceful or immoral when viewed against the prevailing norms of conduct.

While *Leus* is of fairly recent vintage, this two-step process laid out by the Court merely defined in clearer terms the criteria to be followed in the determination and echoes the policy which the Court has earlier enunciated in: *Santos v. NLRC*, *supra* note 25, at 568; *Estrada v. Escritor*, *supra* note 27; *Concerned Employee v. Mayor*, 486 Phil. 51 (2004); *Anonymous v. Radam*, 565 Phil. 321 (2007); and *Abanag v. Mabute*, 662 Phil. 354 (2011), to name a few.

b. In dismissal situations, the sufficiency of a conduct claimed to be immoral must be judged based on secular, not religious standards.

In general, in determining whether the acts complained of constitute "disgraceful and immoral" behavior under our laws, the distinction between public and secular morality on the one hand, and religious morality, on the other hand, should be kept in mind. This distinction as expressed — albeit not exclusively — in the law, on the one hand, and religious morality, on the other, is important because the jurisdiction of the Court extends only to public and secular morality.[31]

In this case, we note that both Zaida and Marlon at all times had no impediments to marry each other. They were adults who met at work, dated, fell in love and became sweethearts. The intimate sexual relations between them were consensual, borne by their love for one another and which they engaged in discreetly and in strict privacy. They continued their relationship even after Marlon left St. Vincent in 2008. They took their marriage vows soon after Zaida recovered from her miscarriage, thus validating their union in the eyes of both men and God.

All these circumstances show the sincerity and honesty of the relationship between Zaida and Marlon. They also show their genuine regard and love for one another — a natural human emotion that is neither shameless, callous, nor offensive to the opinion of the upright and respectable members of the secular community. While their actions might not have strictly conformed with the beliefs, ways, and mores of St. Vincent — which is governed largely by religious morality — or with the personal views of its officials, these actions are not prohibited under any law nor are they contrary to conduct generally accepted by society as respectable or moral.

Significantly, even the timeline of the events in this case supports our observation that their intimate relations was founded

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[31] See *Anonymous v. Radam*, *supra* note 30, at 326; citing *Estrada v. Escritor*, *supra* note 27, at 591.

on love, *viz.*: Zaida and Marlon met in 2002 and soon become sweethearts; St. Vincent adopted the Non-Fraternization policy in September 2006; Marlon resigned from St. Vincent in July 2008; in February 2009, Zaida had the miscarriage that disclosed to St. Vincent Zaida's relationship with Marlon; and St. Vincent terminated Zaida's employment in May 2009.

Clearly from this timeline, Zaida and Marlon have long been in their relationship (for about four years) by the time St. Vincent adopted the Policy; their relationship, by that time and given the turn out of the events, would have already been very serious. To be sure, no reasonable person could have expected them to sever the relationship simply because St. Vincent chose to adopt the Non-Fraternization Policy in 2006. As Zaida aptly argued, love is not a mechanical emotion that can easily be turned on and off. This is the lesson Shakespeare impressed on us in Romeo and Juliet — a play whose setting antedated those of Marlon and Zaida by about 405 hundred years.[32]

We thus reiterate that mere private sexual relations between two unmarried and consenting adults, even if the relations result in pregnancy or miscarriage out of wedlock and without more, are not enough to warrant liability for illicit behavior. The voluntary intimacy between two unmarried adults, where both are not under any impediment to marry, where no deceit exists, and which was done in complete privacy, is neither criminal nor so unprincipled as to warrant disciplinary action.[33]

To use an example more recent than Shakespeare's, if the Court did not consider the complained acts in *Escritor* immoral, more so should the Court in this case not consider Zaida's consensual intimate relationship with Marlon immoral.

c. *Zaida's relationship with Marlon was not an act per se prejudicial to the interest of St. Vincent.*

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[32] Romeo and Juliet written by William Shakespeare, was first published in an unauthorized quatro in 1597; the authorized quatro appeared in 1599. (See www.britannica.com/topic/Romeo-and-Juliet, last accessed May 23, 2016).

[33] See *Abanag v. Mabute*, *supra* note 30, at 359.

Since Zaida and Marlon's relationship was not *per se* immoral based on secular morality standards, St. Vincent carries the burden of showing that they were engaged in an act prejudicial to its interest and one that it has the right to protect against. We reiterate, in this respect, that Zaida and Marlon were very discrete in their relationship and kept this relationship strictly private. They did not flaunt their affections for each other at the workplace. No evidence to the contrary was ever presented. Zaida and Marlon's relationship, in short, was almost completely unknown to everyone in St. Vincent; the respondents in fact even admitted that they discovered the relationship only in 2009.

Significantly, St. Vincent has fully failed to expound on the interest that is within its own right to protect and uphold. The respondents did not specify in what manner and to what extent Zaida and Marlon's relationship prejudiced or would have prejudiced St. Vincent's interest. To be sure, the other employees and volunteers of St. Vincent know, by now, what had happened to Zaida and the circumstances surrounding her dismissal. But, the attention which the relationship had drawn could hardly be imputed to her; if at all, it was the respondents' actions and reactions which should be blamed for the undesired publicity.

Moreover, aside from the relationship that St. Vincent considered to be immoral, it did not specify, nor prove any other act or acts that Zaida might have committed to the prejudice of St. Vincent's interest. A mere allegation that Zaida committed act or acts prejudicial to St. Vincent's interest, without more, does not constitute sufficient basis for her dismissal.

2. On the charge of violation of the Non-Fraternization Policy

Neither can we agree with the NLRC's findings that Zaida's relationship with Marlon violated St. Vincent's Non-Fraternization Policy.

For reference, we reiterate below the Policy's provisions:

CFCA Policy 4.2.2.3. Non-Fraternization Policy

While CFCA **does not wish to interfere with the off-duty and personal conduct of its employees**, to prevent unwarranted sexual harassment claims, uncomfortable working relationships, morale problems among other employees, and even the appearance of impropriety, **employees who direct and coordinate the work of others are strongly discouraged from engaging in consensual romantic or sexual relationships with any employee or volunteer of CFCA**.[34] [Emphasis supplied]

A reading of the Policy's provisions shows that they profess to touch only on on-duty conduct of its employees. Contrary to the respondents' arguments, too, the CFCA employees who direct or coordinate the work of others are only "***strongly discouraged*** *from engaging in consensual romantic or sexual relationships with any employee or volunteer of CFCA.*" It does not prohibit them, (either absolutely or with qualifications) from engaging in consensual romantic or sexual relationships.

To discourage means "to deprive of courage or confidence: dishearten, deject; to attempt to dissuade from action: dampen or lessen the boldness or zeal of for some action."[35]

To prohibit, on the other hand, means "to forbid by authority or command: enjoin, interdict; to prevent from doing or accomplishing something: effectively stop; to make impossible: disbar, hinder, preclude."[36]

While "to discourage" and "to prohibit" are essentially similar in that both seek to achieve similar ends, *i.e.*, the non-happening or non-accomplishment of an event or act, they are still significantly different in degree and in terms of their effect and impact in the realm of labor relations laws.

The former — "to discourage" — may lead the actor *i.e.*, the employee, to disfavor, disapprobation, or some other unpleasant consequences, but the actor/employee may still

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[34] *Rollo*, p. 11.

[35] See *Webster's Third New International Dictionary*, Unabridged (1993), p. 646.

[36] *Webster's Third New International Dictionary*, Unabridged (1993), p. 1813.

nonetheless do or perform the "discouraged" act. If the actor/ employee does or performs the "discouraged" act, the employee may not be subjected to any punishment or disciplinary action as he or she does not violate any rule, policy, or law.

In contrast, "to prohibit" will certainly subject the actor/ employee to punishment or disciplinary action if the actor/ employee does or performs the prohibited act as he or she violates a rule, policy or law.

From this perspective, a St. Vincent employee who directs or coordinates the work of other St. Vincent employee or volunteer, and who engages in a consensual romantic or sexual relationship with a St. Vincent employee or volunteer will not violate the Non-Fraternization Policy unless circumstances are shown that the act goes beyond the usual norms of morality. For example, the employees' ascendancy or supervising authority, over another employee with whom he or she had a relationship, and the undue advantage taken because of this ascendancy or authority, if shown, would lead to a different conclusion. At most, the employee may be considered to have committed an act that is frowned upon; but certainly, the employee does not commit an act that would warrant his or her dismissal.

In addition, an examination of the Policy's provisions shows that it does not require St. Vincent's employees to disclose any such consensual romantic or sexual relationships to the management. In fact, nowhere in the records does it show that St. Vincent employees are under any obligation to make the disclosure, whose violation would subject the employee to disciplinary action.

Accordingly, the failure of a St. Vincent employee to disclose to the management his or her consensual romantic or sexual relationship with another employee or volunteer does not constitute a violation of the Non-Fraternization Policy.

Based on these considerations, we find that Zaida clearly did not violate the Non-Fraternization Policy when she continued her relationship with Marlon despite the Policy's adoption in 2006. As explicitly worded, the Policy "does not wish to interfere

with the off-duty and personal conduct of its employees," and only strongly discourages (thus still technically allows) consensual romantic or sexual relationships; it does **not** prohibit such relationships. No evidence furthermore has been shown indicating Zaida's abuse of her supervisory position, before or after the Policy was put in place. Her failure, therefore, to observe the Policy or to otherwise disclose the relationship, which continued even after the adoption of the Policy, did not constitute a violation of company policy to justify her dismissal.

3. On the charge of violation of the Code of Conduct provisions prohibiting acts against agency interest, acts against persons, and violations of the terms of employment

We also do not find sufficient basis for Zaida's dismissal for violation of the Code of Conduct provisions prohibiting: acts against agency interest by indulging in immoral and indecent act; acts against persons by challenging superiors' authority, threatening and intimidating co-employees and exerting undue influence on subordinates to gain personal benefit; and violations of the terms of employment by doing an act offensive to the moral standards of the foundation.

We point out in this respect that the charges of violating the Code of Conduct provisions prohibiting acts against agency interest and violations of the terms of employment are both premised on the alleged immoral and indecent acts committed by Zaida in engaging in consensual romantic or sexual relationship with Marlon. Since Zaida did not violate the Non-Fraternization Policy, these other charges were clearly unwarranted and baseless.

In the same vein, we likewise find no sufficient basis for Zaida's dismissal for allegedly violating the Code of Conduct provisions prohibiting acts against persons. While St. Vincent claimed, in the May 28, 2009 Notice of Termination, that Zaida "exerted undue influence on [her co-workers and subordinates] to favor [herself] and/or Mr. Inocente", it did not specify in what manner and to what extent she unduly influenced her co-workers and subordinates for hers and Marlon's benefit.

To justify a dismissal based on the act of "exert[ing] undue influence," the charge must be supported by a narration of the specific act/s she allegedly committed by which she unduly influenced her co-worker and subordinates, of the dates when these act/s were committed, and of the names of the co-workers and/or subordinates affected by her alleged actions. The respondents, however, miserably failed to establish these relevant facts. In other words, the charge of exerting undue influence is a conclusion that was not supported by any factual or evidentiary basis.

4. Dismissal on the ground of serious misconduct and willful breach of trust and confidence

Based on the above considerations, we find Zaida's dismissal illegal for lack of valid cause. St. Vincent failed to sufficiently prove its charges against Zaida to justify her dismissal for serious misconduct and loss of trust and confidence.

a. Serious misconduct

Misconduct has been defined as improper or wrong conduct. It is the transgression of some established or definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. To be serious, the misconduct must be of such grave or aggravated character and not merely trivial and unimportant; it must be connected with the employee's work to constitute just cause for separation.[37]

Thus, for an employee to be validly dismissed on the ground of serious misconduct, the employee must ***first,*** **have committed misconduct or an improper or wrong conduct. And *second,* the misconduct or improper behavior is: (1) serious; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.**[38]

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[37] *Samson v. National Labor Relations Commission*, 386 Phil. 669, 682 (2000).

[38] *Marival Trading, Inc. v. National Labor Relations Commission*, 552 Phil. 762, 779 (2007).

As we explained above, Zaida's relationship with Marlon is neither illegal nor immoral; it also did not violate the Non-Fraternization Policy. In other words, Zaida did not commit any misconduct, serious or otherwise, that would justify her dismissal based on serious misconduct.

Moreover, St. Vincent failed to show how Zaida's relationship with Marlon affected her performance of her duties as a Program Officer and that she has become unfit to continue working for it, whether for the same position or otherwise. Her dismissal based on this ground, therefore, is without any factual or legal basis.

b. Willful breach of trust and confidence

Willful breach of trust, as just cause for the termination of employment, is founded on the fact that the employee concerned: (1) holds a position of trust and confidence, *i.e.*, managerial personnel or those vested with powers and prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; or (2) is routinely charged with the care and custody of the employer's money or property, *i.e.*, cashiers, auditors, property custodians, or those who, in normal and routine exercise of their functions, regularly handle significant amounts of money or property.[39] In any of these situations, it is the employee's breach of the trust that his or her position holds which results in the employer's loss of confidence.

Significantly, loss of confidence is, by its nature, subjective and prone to abuse by the employer. Thus, the law requires that the breach of trust — which results in the loss of confidence — must be willful. The breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as

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[39] See *Mabeza v. NLRC*, 338 Phil. 386, 395-396 (1997) and *Bristol Myers Squibb (Phils.), Inc. v. Baban*, 594 Phil. 620, 628 (2008), as cited in *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, G.R. No. 185335, June 13, 2012, 672 SCRA 375, 385-387.

distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.[40]

We clarify, however, that it is the breach of the employer's trust, not the specific employee act/s which the employer claims caused the breach, which the law requires to be willful, knowingly and purposefully done by the employee to justify the dismissal on the ground of loss of trust and confidence.

In *Vitarich Corp. v. NLRC*,[41] we laid out the guidelines for the application of the doctrine of loss of confidence, namely: **(1) the loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it should not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith.**[42] In short, there must be an actual breach of duty which must be established by substantial evidence.[43]

We reiterated these guidelines in *Nokom v. National Labor Relations Commission*,[44] *Fujitsu Computer Products Corp. of the Phils. v. Court of Appeals*,[45] *Lopez v. Keppel Bank Philippines, Inc.*[46] citing *Nokom*, and *Lima Land, Inc., et al. v. Cuevas*.[47]

In the present case, we agree that Zaida indeed held a position of trust and confidence. Nonetheless, we cannot support the NLRC's findings that she committed act/s that breached St.

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[40] *Dela Cruz v. National Labor Relations Commission*, 335 Phil. 932, 942 (1997): *Lima Land, Inc., et al. v. Cuevas*, 635 Phil. 36, 50 (2010).

[41] 367 Phil. 1 (1999).

[42] *Id.* at 11-12.

[43] *Lima Land, Inc., et al. v. Cuevas*, *supra* note 42, at 50.

[44] 390 Phil. 1228, 1244 (2000).

[45] 494 Phil. 697, 718 (2005).

[46] G.R. No. 176800, September 5, 2011, 656 SCRA 718, 729.

[47] *Supra* note 42, at 50.

Vincent's trust. Zaida's relationship with Marlon, to reiterate, was not wrong, illegal, or immoral from the perspective of secular morality; it is also not prohibited by the Non-Fraternization Policy nor is it required, by the Policy, to be disclosed to St. Vincent's management or officials. In short, Zaida did not commit any act or misconduct that willfully, intentionally, or purposely breached St. Vincent's trust.

Notably, St. Vincent did not charge Zaida with, nor terminate her employment for, willful breach of trust. Rather, it charged her with violation of the Non-Fraternization Policy and of the Code of Conduct, and dismissed her for immorality, gross misconduct, and violation of the Code of Conduct — none of which implied or suggested willful breach of trust.

In this regard, we reiterate, with approval, Zaida's observations on this point: the labor tribunals' findings of willful breach of trust and confidence shows clear bad faith as it effectively deprived her of an opportunity to rebut any charge of willful breach of trust.

C. *Compliance with the Procedural Due Process Requirements*

All three tribunals agreed, in this case, that the due process requirements, as laid out under Article 277 of the Labor Code and its IRR, were sufficiently observed by St. Vincent in its dismissal action.

We disagree with the three tribunals.

As pointed out above, St. Vincent did not specify in what manner and to what extent Zaida unduly influenced her co-workers and subordinates for hers and Marlon's benefit with regard to the charge of committing acts against persons. For the charge of "exert[ing] undue influence" to have validly supported Zaida's dismissal, it should have been supported by a narration of the specific act/s she allegedly committed by which she unduly influenced her co-worker and subordinates, of the dates when these act/s were committed, and of the names of the co-workers and/or subordinates affected by her alleged actions.

The specification of these facts and matters is necessary in order to fully apprise her of **all** of the charges against her and enable her to present evidence in her defense. St. Vincent's failure to make this crucial specification in the notice to explain and in the termination letter clearly deprived Zaida of due process.

In light of these findings, we find the NLRC in grave abuse of its discretion in affirming the LA's ruling as it declared that St. Vincent complied with the due process requirements.

Specifically, the NLRC capriciously and whimsically exercised its judgment by using the wrong considerations and by failing to consider all relevant facts and evidence presented by the parties, as well as the totality of the surrounding circumstances, as it upheld Zaida's dismissal. Consequently, we find the CA in grave error as it affirmed the NLRC's ruling; the CA reversibly erred in failing to recognize the grave abuse of discretion which the NLRC committed in concluding that Zaida's dismissal was valid.

WHEREFORE, in light of these considerations, we hereby **GRANT** the petition. We **REVERSE** and **SET ASIDE** the decision dated February 27, 2012 and the resolution dated July 11, 2012 of the Court of Appeals in CA-G.R. SP No. 118576. We declare petitioner Zaida R. Inocente as illegally dismissed.

SO ORDERED.

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

Del Castillo, J., on leave.

SECOND DIVISION

[G.R. No. 208586. June 22, 2016]

HEIRS OF DATU MAMALINDING MAGAYOONG, represented by DR. MAIMONA MAGAYOONG-PANGARUNGAN with her spouse DATU SA MARAWI RASID PANGARUNGAN, and DR. ANISHA[*] MAGAYOONG-MACABATO with her spouse DATU KHALIQUZZAMAN MACABATO, *petitioners, vs.* **HEIRS OF CATAMANAN MAMA, represented by HASAN MAMA,** *respondents.*

SYLLABUS

CIVIL LAW; LAND TITLES; CASE OF OVERLAPPING OF BOUNDARIES; REAL PROPERTY SUBJECT OF THE PRESENT ACTION MUST BE IDENTIFIED WITH CERTAINTY; CASE REMANDED TO THE RTC FOR RELOCATION SURVEY.— Considering that the real property subject of the present action was never identified with certainty, we remand the present case to the RTC for the conduct of a relocation survey by a team of surveyors to determine the identity of the land claimed by petitioners and respondents. *Survey* is the process by which a parcel of land is measured and its boundaries and contents ascertained; also a map, plat or statement of the result of such survey, with the courses and distances and the quantity of the land. A case of overlapping of boundaries or encroachment depends on a reliable, if not accurate, verification survey. The Manual for Land Surveys in the Philippines (MLSP) provides for the following rules in conducting relocation surveys: Section 593 – The relocation of corners or re-establishment of boundary lines shall be made using the bearings, distances and areas approved by the Director of Lands or written in the lease or *Torrens title.* Section 594 – The data used in monumenting or relocating corners of approved surveys shall *be submitted to the Bureau of Lands for verification and approval*. New corner marks set on the ground shall be accurately described in the field notes and

[*] Also referred to in some parts of the records as Dr. Anisah Magayoong-Macabato.

indicated on the original plans on file in the Bureau of Lands. The team of surveyors shall be composed of a surveyor designated by the petitioners, a surveyor designated by the respondents, and a surveyor designated by the RTC. The survey shall be conducted in the presence of both parties and/or their authorized representatives. The cost of the survey shall be jointly shouldered by both parties.

APPEARANCES OF COUNSEL

Daud R. Calala for petitioners.
Public Attorney's Office for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 208586 is a petition for review[1] assailing the Decision[2] promulgated on 25 September 2012 as well as the Resolution[3] promulgated on 10 July 2013 by the Court of Appeals (CA) in CA-G.R. CV No. 01867-MIN. The CA reversed and set aside the Decision dated 25 March 2009[4] of Branch 9 of the Regional Trial Court of Lanao del Sur (RTC) in Civil Case No. 1073-93.

In its 25 March 2009 Decision, the RTC rendered judgment in favor of petitioners Heirs of Datu Mamalinding Magayoong (petitioners) and against respondents Heirs of Catamanan Mama (respondents). The RTC quieted petitioners' title over the land described in their complaint and ordered respondents to pay damages to petitioners.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 47-59. Penned by Associte Justice Edgardo A. Camello, with Associate Justices Marilyn B. Lagura-Yap and Renato C. Francisco concurring.

[3] *Id.* at 87-89. Penned by Associte Justice Edgardo A. Camello, with Associate Justices Renato C. Francisco and Oscar V. Badelles concurring.

[4] *Id.* at 269-290. Penned by Acting Presiding Judge Lacsamana M. Busran.

In its 25 September 2012 Decision, the CA granted respondents' appeal and set aside the RTC's decision. The CA dismissed petitioners' complaint for lack of cause of action.

The Facts

The CA recited the facts as follows:

> The disputed piece of land at Lilod-Madaya, Marawi City is —
>
> > A portion of Cadastral Lot No. 38 of the Dansalan Cadastre, at the southeast corner of said lot; bounded on the South, by Mamalampac Ander, measuring 17 meters, more or less; on the North, by City Road to Dilay, measuring 17 meters, more or less; on the East, by lot of Amai M[e]ring, measuring 30 meters, more or less; and on the West, by Road and Lot of Moslem Ayo [part of Lot No. 38] measuring 30 meters, more or less; [or a total area of 510 sq. meters, more or less;] assessed at ₱800.00; and covered by T.C.T. No. [T-]254; x x x.
>
> Sometime in 1963, Datu Muslim Ayo executed a "Deed of Absolute Sale" of the disputed property in favor of Datu Mamalinding Magayoong for the price of ₱800.00. Some three years later, the corresponding Original Certificate of Title [OCT] No. P-189 dated 18 November 1966 was issued in the name of Mamalinding Magayoong.
>
> On 4 September 1985, Datu Mamalinding Magayoong died intestate. Before he died, though, he declared that the disputed property must be preserved and reserved for his daughters, petitioners-appellees Maimona and Anisah.
>
> On 5 September 1985, Baih Dinganoman Magayoong filed with the Regional Trial Court [RTC], Branch IX of Lanao del Sur a Petition for Perpetuation of Testimony of Datu Mamalinding Magayoong regarding the property.
>
> Petitioners-appellees Maimona Magayoong, married to Rasid Pangarungan, and Anisah Magayoong, married to Khaliquzaman Macabato occupied the property, where they both built their homes. Sometime in 1980, Maimona and her husband started a clinic in that lot, the Mamalinding Memorial Specialist Clinic.
>
> On 17 September 1993, respondents-appellants, the heirs of Catamanan Mama sent a letter demanding that petitioners vacate

the property and to pay accrued rent. Attached to the letter was an Alias Writ of Execution dated 4 September 1979 in Civil Case No. 1953 for Partition of Real Property entitled *Maroki Asar Ayo Munder versus Muslim Ayo.*

On 24 September 1993, petitioners filed Civil Case No. 1073-93 before Branch IX of the Regional Trial Court of Marawi City against the heirs of Catamanan Mama for Quieting of Title over the property.

Petitioners aver that they are the actual possessors of the subject property since 1963. In fact, in 1981, they mortgaged it with the Calawi-Bacolod Rural Bank for the sum of ₱10,000.00 to develop the medical clinic built on the property.

In their Answer, respondents stated that the subject property was a portion of Lot 38 covered by OCT No. RO-918[N.A.] in the name of Muslim Ayo. They further stated that Mamalinding Magayoong purchased a residential property from Muslim Ayo which apparently was part of Lot 38 under Transfer Certificate of Title [TCT] No. [T-]254 and registered in the name of Daria [sic] Adiong. Mamalinding Magayoong obtained title to the property under OCT No. RO-918[N.A.].

A partition proceeding was instituted by Maroki Asar Ayo Munder before the Court of First Instance of Lanao del Sur, Branch 1 and docketed as Civil Case No. 1953. Lot 38 was partitioned between Muslim Ayo [Lot 38-A], Maroki Ayo [Lot 38-B], and Babai Asar Ayo [Lot 38-C]. The land in question is a portion of Lot 38-C. If at all, respondents aver, petitioners' possession of their portion of the property was by mere tolerance of their predecessors-in-interest.

On 25 November 1993, there being no stipulation of facts and no request for admissions, the trial court issued an order declaring the pre-trial terminated.

On 28 February 1994, in view of respondents' admission of the material facts in their answer, petitioners moved for judgment on the pleadings. The trial court rendered its 14 November 1994 decision granting petitioners' motion for judgment on the pleadings and upholding petitioners' position. Respondents moved for reconsideration but it was denied in an order dated 20 March 1995. Unperturbed, respondents filed their notice of appeal from the trial court's decision.

On 29 December 1999, the Court of Appeals, Manila rendered its decision, to wit:

> WHEREFORE, the decision appealed from is SET ASIDE and this case is REMANDED to the lower court for reception of the evidence of the parties.
>
> SO ORDERED.

Hence, trial ensued in the lower court. After the parties submitted their memoranda, the case was submitted for decision.[5]

The RTC's Ruling

The RTC issued the assailed decision dated 25 March 2009 and ruled in favor of petitioners. The RTC ruled that the evidence proved that petitioners are the owners of the subject land. The RTC stated:

> As copiously borne by the records, petitioners have preponderantly, if not overwhelmingly, shown that they are the absolute, lawful and true owner [sic] of the parcel of land described in their petition with an area of Five Hundred Ten (510) square meters and covered by OCT No. P-189 (Exhibits "C", "C-1" and "C-2") issued by the Register of Deeds of Marawi City in the name of the late Mamalinding F. Magayoong in 1966. Said property was acquired by the late Mamalinding Magayoong by purchase from its former owner, Muslim Ayo, as evidenced by a Deed of Absolute Sale of a Portion of a Residential Lot (Exhibits "A" and "A-1" to "A-9") which described with particularity its technical descriptions and boundaries, with its exact location and portion being clearly underscored and delineated in the sketch plan (Exhibit "A-9") drawn and/or found at the dorsal side of said deed of sale.[6]

The RTC further considered that the following facts and circumstances, taken together, prove that petitioners' predecessor-in-interest had exercised right of ownership over the subject property.

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[5] *Id.* at 47-50.

[6] *Id.* at 280.

"[I]n 1963, he immediately took possession thereof and occupied it openly, publicly, adversely and uninterruptedly by having it fenced with hollow blocks and had constructed a house thereon which has long been used up to the present to house the Mamalinding Specialists' Clinic established by him for his daughters Dra. Maimona Magayoong-Pangarungan and Dra. Anisah Magayoong-Macabato. He had it declared for taxation purposes as shown by the Tax Declarations marked as Exhibits "D", "D-1", "D-2" and "D-3"; and thereafter, he paid the corresponding realty taxes thereon as shown not only by the Official Receipts marked as Exhibits "E," "E-1," "E-2," "E-3," "E-4," "E-5," "E-6," "E-7," "E-8," "E-9," and "E-10," but also by the Tax Clearance marked as Exhibit "F." Moreover, he had it, at one time, mortgaged with the Calawi-Bacolod Rural Bank as a security for a ₱10,000.00 loan he obtained from said bank sometime in 1981 or 1982. As further indicia of possession and ownership over the property in question, the late Mamalinding Magayoong and Denganuman Magayoong (petitioners' parents and predecessors-in-interest) were even interred on the same parcel of land. Above all, their possession of said property was never disturbed for more than thirty (30) years by anybody, much less the respondents. All these facts and circumstances, taken together, deafeningly and eloquently speak of the stark truth that petitioners' predecessors-in-interest were the true and legitimate owners of the parcel of land in question.[7]

The RTC pointed out that the land referred to as covered by TCT No. T-254 in the deed of sale is not the same land referred to as TCT No. T-254 registered in the name of Diaria Adiong.

Respondents' protestation, however, cannot be taken hook, line, and sinker so to speak. Transfer Certificate of Title (TCT) No. T-254 (Exhibit "2") clearly shows on it [sic] face that it was issued only on October 12, 1967, or almost four (4) years after the aforesaid deed of sale (Exhibits "A" and "3") was executed on November 19, 1963, and it covers a parcel of land located at the Dansalan Townsite with an area of Three Hundred Eighteen (318) square meters. Clearly and undoubtedly, at the time of the execution of the aforesaid deed of sale dated November 19, 1963 by and between Muslim Ayo and the late Mamalinding Magayoong, TCT No. T-254 was not yet existing as it was not yet issued. Besides, the area of the land as reflected

[7] *Id*. at 281.

in TCT No. T-254 is only 318 square meters, whereas the area of the land sold under the aforesaid deed of sale dated November 19, 1963 was 510 square meters. Thus, no other logical conclusion can be drawn from the aforesaid discrepancies than the fact that Muslim Ayo and Mamalinding Magayoong did not have in mind TCT No. T-254 at the time they executed the aforesaid deed of sale dated November 19, 1963.[8]

The RTC considered respondents' attempt to cast doubt on the propriety of the deed of sale as an indirect attack on OCT No. P-189 issued to petitioners' predecessor-in-interest, Mamalinding Magayoong, by the Register of Deeds of Marawi City on 18 November 1966.

The RTC also dismissed respondents' presentation of an Alias Writ of Execution of a decision for the partition of Lot No. 38 in Civil Case No. 1953. The decision was rendered on 2 June 1971, and the Alias Writ of Execution was dated 4 September 1979. Respondents, however, did not register the writ of execution with the Register of Deeds and did not annotate it on OCT No. P-189. Moreover, respondents never filed an action for reconveyance within 10 years from the date of registration of the deed of sale, or the date of the issuance of the certificate of title over the subject property. The deed of sale was executed on 19 November 1963, and registered on 2 June 1964. OCT No. P-189 was issued to Mamalinding Magayoong on 18 November 1966.

Finally, the RTC ruled that petitioners proved by preponderance of evidence that they are entitled to moral and exemplary damages, as well as attorney's fees. The dispositive portion of the RTC's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioners and against the respondents, as follows:

1. Quieting petitioners' title over the parcel of land described in their petition dated September 22, 1993 and removing any cloud of doubt that may be cast upon it; and

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[8] *Id.* at 282.

2. Ordering the respondents, particularly Hassan Mama, to pay petitioners the sum of ₱100,000.00 by way of moral damages, ₱50,000.00 as attorney's fees and litigation expenses, and ₱20,000.00 by way of exemplary damages.

SO ORDERED.[9]

Respondents filed their appellants' brief dated 25 November 2009 through the Public Attorney's Office.

The CA's Ruling

The CA granted respondents' appeal and reversed the RTC's 25 March 2009 Decision. The CA rejected the RTC's ruling that petitioners' complaint qualified as one for quieting of title.

> At the outset, it must be stated that had the lower court thoroughly considered the complaint filed, it would have had no other course of action under the law but to dismiss it. Petitioners went no further than to allege in their complaint before the trial court that they received a letter with an attached Writ of Execution from the respondents demanding that they vacate and surrender the property and to pay accrued rentals. The allegation is vague and unconvincing. The trial court could not be reasonably expected to supply the missing details in their complaint. The complaint failed to allege that an "instrument, record, claim, encumbrance or proceeding" beclouded the petitioners' title over the property involved.
>
> They then proceeded to claim that the writ of execution could not be enforced as they were not made a party to the case and prayed, aside from removing clouds on their title, for damages and litigation costs. Hence, through their allegations, what petitioners imagined as clouds cast on their title to the property were respondents' alleged act of ejecting them from their purported property. Clearly, the acts alleged may be considered grounds for a petition for certiorari but definitely not one for quieting of title.[10]

The CA ruled that petitioners do not have the requisite title to avail themselves of the remedy of quieting of title. Petitioners claim ownership of the subject property through the deed of

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[9] *Id.* at 290.

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

sale between Muslim Ayo and Mamalinding Magayoong and through OCT No. P-189 registered in Mamalinding Magayoong's name. The CA emphasized that the RTC ignored an irregularity in the transaction involving the subject property. The property described in the deed of sale was allegedly covered by a TCT No. T-254, but Mamalinding Magayoong, the petitioners' predecessor-in-interest, registered the property as OCT No. P-189. The CA also found a disparity between the boundaries of the land described in the deed of sale and the boundaries of the land described in OCT No. P-189.

First, it must be remembered that petitioners staunchly claimed that their ownership to the disputed property can be traced to Mamalinding Magayoong who bought the property for ₱800.00 from Muslim Ayo as evidenced by the 19 November 1963 deed of sale. That instrument states that the subject land was a portion of Lot 38 and covered by TCT No. [T-]254. They allege private ownership, as evidenced by the deed of sale. It must also be emphasized that petitioners are asserting that subsequent to the sale, their predecessor was issued a title to the same property and this time covered by OCT No. P-185 [sic]. The records do not show, that it was ever an alienable land of the public domain. Clearly, the Original Transfer Certificate of Title [sic] must then be void because based on the deed of sale, Lot 38 is a private land covered by TCT No. [T-]254 which, therefore, can no longer be the subject of a free patent.

Second, the description of the disputed property as found in the deed of sale does not coincide with the technical description of the land covered by OCT No. P-185 [sic], to wit:

Deed of Sale:

> A portion of Cadastral Lot No. 38 of the Dansalan Cadastre, at the southeast corner of said lot; bounded on the South, by Mamalampac Ander, measuring 17 meters, more or less; on the North, by City Road to Dilay, measuring 17 meters, more or less; on the East, by Lot of Amai M[e]ring, measuring 30 meters, more or less; and on the West, by Road and Lot of M[o]slem Ayo [part of Lot No. 38] measuring 30 meters, more or less; [or a total area of 510 sq. meters, more or less;] assessed at ₱800.00; and covered by T.C.T. No. [T-]254; x x x.

OCT No. P-185 [sic]:

> Beginning at a point marked "1" of Lot No. 38-C, on Plan Csd-9914, being S.67-02A., 298.02 m. from B.L.L.M. #1, Dansalan Cadastre, Q-124, thence S.42-21E., 36 m. to point 2; S.57-06 W., 17 m. to point 3; N.42-20W., 29.99 m. to point 4; N.57-09E.; 17.01 m. to point 1, point of beginning.
>
> Containing an area of FIVE HUNDRED AND THREE [503] SQUARE METERS.
>
> All points referred to are indicated on the plan and are marked on the ground as follows: point 2, by Old B.L. Cyl. Conc. Mon.; and the rest by B.L. Cyl. Conc. Mons.
>
> Bounded on the NE., along line 1-2 by the Heirs of Datu Uralin Cunasala [Lot 39, Dansalan Cad., Q-124]; on the SE., along line 2-3 by Heirs of Datu Mamalampak [Lot 51 Dansalan Cad. . . ., along lines 3-4-1 by Asar Inai Musl[e]m [Lot 38-B, Csd-9914].
>
> Bearings true.
>
> This lot was surveyed in accordance with law and existing regulations promulgated thereunder by Gaudencio M. Camallere, Public Land Surveyor, on June 10, 1965, and approved on September 8, 1966.[11]

The CA further stated that petitioners' payment of real property taxes on the subject land for more than 30 years does not prove ownership. The CA reiterated that petitioners are not holders of any legal or equitable title of the subject property, and they failed to meet this requisite for an action to quiet title. The dispositive portion of the CA's decision reads:

> FOR THE REASONS STATED, the appeal is GRANTED. The decision of the Regional Trial Court of Lanao del [Sur], Branch 09 dated 25 March 2009 is REVERSED and SET ASIDE, and a new judgment will be entered in Civil Case No. 1073-93 dismissing the complaint for lack of cause of action.[12]

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[11] *Id*. at 54-46. The CA repeatedly referred to OCT No. P-189 as "OCT No. P-185."

[12] *Id*. at 58.

Petitioners filed a Motion for Reconsideration[13] dated 22 October 2012. The CA denied the motion in a Resolution[14] dated 10 July 2013.

The Issues

Petitioners enumerated the following grounds warranting allowance of their petition:

1. With all due respect, it is humbly submitted that the Honorable Court of Appeals has overlooked factors of substance and value which, if considered in their best lights, would affect the decision herein sought to be reconsidered.
2. With all due respect, it is also humbly submitted that the Honorable Court of Appeals has erred in finding that herein petitioners do not have the requisite title to pursue an action for quieting of title.
3. With all due respect, it is likewise humbly submitted that the Honorable Court of Appeals has erred in finding that herein petitioners failed to establish the identity of the land sought to be quieted.
4. With all due respect, it is also humbly submitted that the Honorable Court of Appeals has erred in not finding that herein petitioners are the absolute owners and possessors of the land in dispute.
5. With all due respect, it is likewise humbly submitted that the Honorable Court of Appeals has erred in reversing and setting aside the decision dated March 25, 2009 of the Regional Trial Court of Lanao del Sur, Branch 09 in Civil Case No. 1073-93, and in dismissing said complaint.[15]

The Court's Ruling

We remand the case to the RTC for the conduct of a relocation survey to identify the metes and bounds of the subject property,

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[13] *Id*. at 60-74.

[14] *Id.* at 87-89.

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

which is referred to by petitioners as the lot covered by TCT No. T-254 and previously registered as OCT No. P-189, and by respondents as a portion of Lot No. 38-C, or "a portion of Lot 38 covered by OCT No. RO-918 [N.A.]."

Petitioners have been occupying a particular piece of land since 1963, or for more than half a century. However, the evidence submitted by petitioners does not clearly identify the land being claimed.

The CA's finding of fact recites the technical description of the subject land. The deed of sale refers to the subject land as follows:

> A portion of Cadastral Lot No. 38 of the Dansalan Cadastre, at the southeast corner of said lot; bounded on the South, by Mamalampac Ander, measuring 17 meters, more or less; on the North, by City Road to Dilay, measuring 17 meters, more or less; on the East, by Lot of Amai Mering, measuring 30 meters, more or less; and on the West, by Road and lot of Moslem Ayo (part of Lot No. 38) measuring 30 meters, more or less; or a total area of 510 sq. meters, more or less; assessed at ₱800.00; and covered by T.C.T. No. [T-]254; the sketch of the portion sold is further made at the back of this instrument and forming part and parcel of this deed[.][16]

On the other hand, OCT No. P-189, covered by Free Patent No. 320224 and dated 18 November 1966, refers to the following land:

> Lot No. 38-C, Csd-9914
>
> Beginning at a point marked "1" of Lot No. 38-C, on Plan Csd-9914, being S.67-02A., 298.02 m. from B.L.L.M. #1, Dansalan Cadastre, Q-124, thence S.42-21 E., 36 m. to point 2; S.57-06 W., 17 m. to point 3; N.42-20 W., 29.99 m. to point 4; N.57-09 E; 17.01 m. to point 1, point of beginning.
>
> Containing an area of FIVE HUNDRED AND THREE (503) SQUARE METERS.
>
> All points referred to are indicated on the plan and are marked on the ground as follows: point 2, by Old B.L. Cyl. Conc. Mon.; and the rest by B.L. Cyl. Conc. Mons.

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[16] *Id.* at 176.

Bounded on the NE., along line 1-2 by the Heirs of Datu Uralin Cunasala (Lot 39, Dansalan Cad., Q-124); on the SE., along line 2-3 by Heirs of Datu Mamalampak (Lot 51, Dansalan Cad. x x x), along lines 3-4-1 by Asar Inai Muslem (Lot 38-B, Cad-9914).

Bearings true.

This lot was surveyed in accordance with law and existing regulations promulgated thereunder by Gaudencio M. Camallere, Public Land Surveyor, on June 10, 1965, and approved on September 8, 1966.

Note: Lot 38-C is identical to Lot 5005 Dansalan Cadastre, Q-124, and is covered by FPA-VII-5-1211.[17]

Conduct of a Relocation Survey

Considering that the real property subject of the present action was never identified with certainty, we remand the present case to the RTC for the conduct of a relocation survey by a team of surveyors to determine the identity of the land claimed by petitioners and respondents.

Survey is the process by which a parcel of land is measured and its boundaries and contents ascertained; also a map, plat or statement of the result of such survey, with the courses and distances and the quantity of the land. A case of overlapping of boundaries or encroachment depends on a reliable, if not accurate, verification survey. To settle the present dispute, the parties agreed to the conduct of a relocation survey. The Manual for Land Surveys in the Philippines (MLSP) provides for the following rules in conducting relocation surveys:

> Section 593 — The relocation of corners or re-establishment of boundary lines shall be made using the bearings, distances and areas approved by the Director of Lands or written in the lease or *Torrens title*.
>
> Section 594 — The data used in monumenting or relocating corners of approved surveys shall *be submitted to the Bureau of Lands for verification and approval.* New corner marks set on the ground shall be accurately described in the field notes

[17] *Id.* at 180.

and indicated on the original plans on file in the Bureau of Lands.[18] (Italicization in the original)

The team of surveyors shall be composed of a surveyor designated by the petitioners, a surveyor designated by the respondents, and a surveyor designated by the RTC. The survey shall be conducted in the presence of both parties and/or their authorized representatives. The cost of the survey shall be jointly shouldered by both parties.[19]

WHEREFORE, the Decision promulgated on 25 September 2012 and the Resolution promulgated on 10 July 2013 by the Court of Appeals in CA-G.R. CV No. 01867-MIN are **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court of Lanao del Sur, Branch 9, for the conduct of a relocation survey to determine the property subject of this case, and thereafter to decide the case accordingly.

SO ORDERED.

Brion, Mendoza, and *Leonen, JJ.,* concur.

Del Castillo, J., on official leave.

THIRD DIVISION

[G.R. No. 208759. June 22, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIONE BARBERAN AND DIONE DELOS SANTOS,** *accused-appellants.*

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[18] *Heirs of Margarito Pabaus v. Heirs of Amanda Yutiamco,* 670 Phil. 151, 164 (2011). Citations omitted.

[19] See *Sps. Leon Casimiro & Pilar Pascual v. Court of Appeals*, 445 Phil. 239 (2003).

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CATEGORICAL TESTIMONY OF YOUNG RAPE VICTIM IS SUFFICIENT FOR CONVICTION.—** It is settled rule that rape may be proven even by the lone uncorroborated testimony of the offended victim, as long as her testimony is clear, positive, and probable. xxx Time and again, this Court has held that when the offended party is young and an immature girl, as in this case, who has lived her whole life in a faraway island wherein almost all residents know everybody, courts are inclined to lend credence to her version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed, if the matter about which they testified were not true. No young girl would usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. Indeed in a rural setting the shame of rape is on the victim, not on the accused. And it will haunt the family of the victim for a long time.

2. **ID.; ID.; ID.; RAPE NOT NEGATED BY THE VICTIM'S FAILURE TO RESIST.—** In *People v. Velasco*, the Court reiterated that failure of the victim to shout for help does not negate rape and the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent. A victim should never be faulted for her lack of resistance to any forms of crime particularly as grievous as rape. Failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust. Besides, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused; it is not an essential element of rape. Rape victims react differently when confronted with sexual abuse. Thus, the law does not impose upon the private complainant the burden of proving resistance.

3. **ID.; ID.; ID.; EXPERT TESTIMONY IS MERELY CORROBORATIVE IN CHARACTER.—** Even granting that there was an inconsistency (as to the specific date of rape),

the positive testimony of AAA will still prevail over the testimony of the forensic expert. This is because medical examination and testimony are not indispensable elements in a prosecution for rape. An accused can be convicted of rape on the basis of the sole testimony of the victim. Expert testimony is merely corroborative in character and not essential to conviction.

4. ID.; ID.; ALIBI AND DENIAL; REQUIRES PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE AT THE TIME OF CRIME.— Alibi and denial are inherently weak defenses and "must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused." For a defense of alibi to prosper, the accused-appellants must prove not only that they were somewhere else when the crime was committed but they must also satisfactorily establish that it was physically impossible for them to be at the crime scene at the time of its commission. "Physical impossibility" refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. There must be demonstration that they were so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.

5. CRIMINAL LAW; RAPE; PENALTY OF DEATH REDUCED TO RECLUSION PERPETUA WITHOUT ELIGIBILITY FOR PAROLE; CIVIL DAMAGES.— According to Article 266-B of the Revised Penal Code, whenever rape is committed by two or more persons, the penalty shall be *reclusion perpetua* to death. With the attendance of the aggravating circumstances of dwelling and conspiracy as alleged in the two sets of information and proven during trial, the imposable penalty is death conformably with Article 63 of the Revised Penal Code. However, upon the enactment of R.A. No. 9346, the Court can only impose the penalty of *reclusion perpetua* without eligibility for parole, in lieu of the death penalty. As to the imposable damages, recent jurisprudence of *People v. Ireneo Jugueta*, is instructive. Where the penalty imposed is Death but reduced to *reclusion perpetua* because of R.A. 9346, the civil indemnity, moral damages and exemplary damages to be imposed will each be ₱100,000.00 for each count of rape.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

Before this Court is an Appeal[1] filed by accused-appellants Dione Barberan (Barberan) and Dione Delos Santos (Delos Santos) assailing the Decision[2] of the Court of Appeals dated 20 March 2013 in CA-G.R. CR-H.C. No. 05185.

The decision of the Court of Appeals is an affirmance of the decision of the Regional Trial Court (RTC) of Legazpi City in Criminal Case No. FC-06-0048 and No. FC-08-0293 finding the two (2) accused-appellants guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A and Article 266-B of the Revised Penal Code, committed against AAA.[3]

For Criminal Case No. FC-06-0048, Barberan and Delos Santos were charged as follows:

On or about the 22nd day of February, 2006 at more or less 10:00 o'clock in the evening at Barangay XXX, Municipality of XXX, Province of Albay, Philippines, and within the jurisdiction of this

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[1] CA *rollo*, pp. 135-136.

[2] *Id.* at 123-133.

[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto*, 533 Phil. 703 (2006), wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, conspired, connived, confederated and helped each other to attain a common purpose, wilfully, unlawfully and feloniously have carnal knowledge [of] AAA, 13 YEARS OLD, against to her damage and prejudice.[4]

For Criminal Case No. FC-08-0293, Barberan and Delos Santos were charged as follows:

On or about the 22nd day of February, 2006 at more or less 10 o'clock in the evening at Barangay XXX, Municipality of XXX, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, and by means of force, threat and intimidation, conspired, connived, confederated and helped each other to attain a common purpose, which was to wilfully, unlawfully and feloniously have carnal knowledge of AAA, a 13-year old minor, against her will and consent, with accused Dione [DELOS] Santos covering her mouth to prevent her from shouting and helping in quelling the resistance that she offered while co-accused Dione Barberan was having carnal knowledge of her, to her damage and prejudice.[5]

Upon arraignment, both Barberan and Delos Santos pleaded not guilty to the crimes charged.[6]

After trial on the merits ensued, the trial court held that the prosecution successfully discharged the burden of proof in two offenses of rape against AAA. The trial court relied on the credible and positive declaration of the victim as against the alibi and denial of Barberan and Delos Santos. Finding them guilty, the dispositive portion of the decision reads:

ALL THE FOREGOING CONSIDERED, the prosecution having proved the guilt of the accused beyond the peradventure of doubt, DIONE BARBERAN and DIONE DE LOS SANTOS are hereby found GUILTY of two counts of rape and accordingly each is sentenced to suffer in each count the penalty of *reclusion perpetua* without

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[4] Records, CR. FC-06-0048, p. 1.

[5] Records, CR. FC-08-0293, p. 1.

[6] Records, CR. FC-08-0293, p. 29 and CR. FC-06-0048, p. 58.

eligibility for parole and ordered separately to indemnify the private offended party, AAA, the amount of [₱]75,000.00 as moral damages, [₱]75,000.00 as civil indemnity and [₱]30,000.00 as exemplary damages.

SO ORDERED.[7]

Upon appeal, the appellate court affirmed the findings of the trial court. It put more weight on the sole testimony of the rape victim for being credible and worthy of belief than the version of the two accused. Further, it disregarded the lack of sufficient physical resistance of AAA since it is not an element of rape.

Before this Court, the arguments previously raised before the appellate court are reiterated to argue against the conviction of the accused. They alleged that the appellate court erred in sustaining conviction despite the prosecution's failure to prove the guilt of the accused beyond reasonable doubt. To support their appeal, they argued that no direct proof was presented to establish rape other than AAA's unbelievable story that the accused had carnal knowledge of her inside the room in her grandmother's house while her grandmother and two brothers were sleeping just outside the complainant's room. They also argued that neither physical resistance nor cry of help was employed raising doubt on her testimony. They also raised the inconsistency on AAA's statement that she was raped on 22 February 2008 and that of the Forensic Physician that laceration could have occurred five days before her examination on 15 March 2006. Lastly, the appellate court should have relied on the strength of the prosecution's argument and not on the weakness of the defense.[8]

The Court finds no reason to reverse conviction.

Credibility of the victim

To escape conviction, Barberan and Delos Santos argued on the lack of direct proof to establish rape other than AAA's

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[7] CA *rollo*, p. 23.

[8] *Id.* at 56-60.

unbelievable story that she was raped inside her room while her grandmother and two brothers were sleeping just outside the door.

The issue on conviction based on the testimony of the victim is not a novel one. It is settled rule that rape may be proven even by the lone uncorroborated testimony of the offended victim, as long as her testimony is clear, positive, and probable.[9] In this case, the victim was able to sufficiently narrate with clarity the circumstances attending the crime from the time she was awaken when Barberan and Delos Santos entered her room and physically restrained her to successfully consummate carnal knowledge. She even admitted that she was willing to bury her sad plight from the hands of the accused-appellants since she feared that they would kill her. However, in further aggravation of her fate, Barberan and Delos Santos even boasted about their carnal knowledge of her in their neighborhood and mocked her loss of virginity in their hands. Thus, the rumor prompted AAA's parents to confront the victim and it was then revealed that she was raped by the accused-appellants.[10]

The testimony of AAA was corroborated by her mother BBB. She narrated that she came to know of the crime when a rumor about AAA's loss of virginity was circulated in their *barangay*.[11] Upon confrontation, AAA admitted that she was raped by Barberan and Delos Santos on the night of 22 February 2006. Immediately after, she and AAA went to the office of the *barangay* and police station to report the crime. Thereafter, they proceeded to Camp Simeon Ola for medical examination.[12]

Time and again, this Court has held that when the offended party is young and an immature girl, as in this case, who has lived her whole life in a faraway island wherein almost all residents

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[9] *People v. Ogarte*, 664 Phil. 642, 661 (2011), citing *People v. Buenviaje*, 408 Phil. 342, 354 (2001).

[10] TSN of AAA, 5 February 2009, pp. 2-11.

[11] TSN of BBB, 12 November 2009, p. 8.

[12] *Id.* at 6.

know everybody, courts are inclined to lend credence to her version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed, if the matter about which they testified were not true. No young girl would usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her.[13] Indeed in a rural setting the shame of rape is on the victim, not on the accused. And it will haunt the family of the victim for a long time.

To further find fault in AAA's testimony, Barberan and Delos Santos raised the improbability of rape due to the proximity of location of the victim's grandmother and siblings, who could easily be awakened at any sign of commotion. We disagree.

In *People v. Diosdado Corial y Requiez*,[14] rapists are not deterred from committing the odious act of sexual abuse by the mere presence nearby of people or even family members; rape is committed not exclusively in seclusion. Several cases instruct us that lust is no respecter of time or place and rape defies constraints of time and space.[15]

In *People v. Pareja*,[16] the Court recognized that it was not improbable for the accused to have sexually abused the victim, even considering that their house was so small that they had to sleep beside each other with AAA sleeping beside her younger siblings. If rape can be committed inside a small room with

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[13] *People v. Armando Chingh y Parcia*, 661 Phil. 208, 218 (2011), citing *Flordeliz v. People*, 628 Phil. 124, 135 (2010) and *People v. Matunhay*, 628 Phil. 208, 217 (2010).

[14] 451 Phil. 703, 709-710 (2003).

[15] *People v. Pareja*, 724 Phil. 759, 777 (2014), citing *People v. Mangitngit*, 533 Phil. 837, 847 (2006).

[16] *People v. Pareja*, *id.*

occupants sleeping side by side, more so in a room where the victim is the only occupant. Thus, we reject the argument that rape is impossible under circumstances.

Absence of physical resistance and cry of help

The accused-appellants faulted AAA for neither offering physical resistance nor cry of help, thus, negating accusation of rape. We do not concur.

From the direct testimony of AAA, she explained that she was not able to resist or cry help from her relatives since Barberan held her hands and covered her mouth while De los Santos was raping her. After De los Santos, Barberan took his turn and raped her. She did not have sufficient energy to resist the physical restraint employed by two men as she was immobilized by fear and shock. Lack of physical resistance, to emphasize, is not an essential element of the crime of rape.

Again in *Pareja*, it was held that:

> A person accused of a serious crime such as rape will tend to escape liability by shifting the blame on the victim for failing to manifest resistance to sexual abuse. However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help do not negate rape. Even lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused x x x.[17]

In *People v. Velasco*,[18] the Court reiterated that failure of the victim to shout for help does not negate rape and the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent.[19]

A victim should never be faulted for her lack of resistance to any forms of crime particularly as grievous as rape. Failure

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[17] *People v. Pareja, supra* note 15, at 778.

[18] G.R. No. 190318, 27 November 2013, 710 SCRA 784.

[19] *Id.* at 796-797, citing *People v. Basallo*, 702 Phil. 548, 573 (2013).

to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust. Besides, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused; it is not an essential element of rape. Rape victims react differently when confronted with sexual abuse. Thus, the law does not impose upon the private complainant the burden of proving resistance.[20]

Testimony of forensic expert

In their attempt to raise inconsistency in the testimony of AAA, the accused-appellants averred that the testimony of the forensic expert with regard to the day of rape differs from the day testified to by AAA when she was raped. We disagree.

Upon review of the testimony of the forensic expert Dr. James Belgira, we see no inconsistency in his statement and that of AAA. In an answer to a question on his estimate of the number of days since the occurrence of the laceration, Dr. Belgira estimated that it could have happened five days prior to examination (15 March 2006). He admitted that only an estimation could be provided since it was hard to determine the specific date of occurrence. Clearly, what he provided for reference was only an estimation and not a categorical finding that the crime occurred five days ago.

Even granting that there was an inconsistency, the positive testimony of AAA will still prevail over the testimony of the forensic expert. This is because medical examination and testimony are not indispensable elements in a prosecution for rape. An accused can be convicted of rape on the basis of the sole testimony of the victim.[21] Expert testimony is merely corroborative in character and not essential to conviction.[22]

Prosecution's burden of proof

In their last attempt to overturn the guilty verdict, they both maintained alibi of lack of physical presence and denial to commit

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[20] *People v. Gilbert Penilla y Francia*, 707 Phil. 130, 146 (2013).

[21] *People v. Pareja*, *supra* note 15, at 780.

[22] *Id.*, citing *People v. Colorado*, 698 Phil. 833, 844-845 (2012).

rape against AAA. Barberan, on his part, maintained that it was physically impossible for him to rape AAA as he was in Legazpi City to attend a court hearing on the day the alleged crime happened. No mode of transportation was available in the city to transport him back to their town other than the boat scheduled to leave the next day. He even presented as documentary evidence the Order dated 22 February 2006 issued by Branch 10 of RTC Legazpi City to prove his attendance in court on that day. On the other hand, De los Santos, as corroborated by his stepfather Dionisio Bazar, averred that they were together in the farm to process copra and stayed there until the morning of 23 February 2006, thus, it was impossible for him to have raped AAA. Both deserved scant consideration.

Alibi and denial are inherently weak defenses and "must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused."[23] For a defense of alibi to prosper, the accused-appellants must prove not only that they were somewhere else when the crime was committed but they must also satisfactorily establish that it was physically impossible for them to be at the crime scene at the time of its commission.[24]

"Physical impossibility" refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. There must be demonstration that they were so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.[25] In this regard, Barberan and De los Santos failed to prove that there was physical impossibility for them to be in the crime scene when rape was committed.

As correctly found by the trial and appellate courts, Barberan's averment that he was in the Legazpi City cannot be sustained. Other than the testimony of a biased witness, no other evidence was presented to disprove his physical presence in the house of

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[23] *People v. Floro Manigo y Macalua*, 725 Phil. 324, 334-335 (2014), citing *People v. Torres*, 559 Phil. 408, 418 (2007).

[24] *Id.*

[25] *People v. Ramos, et al.*, 715 Phil. 193, 206 (2013).

AAA. The Order presented by Barberan could have proved that he was in Legazpi City in the afternoon of that day if it is shown that he personally signed it as an acknowledgement of receipt. However, records show that the Order was signed only by his mother. In the ordinary course of official business, orders and processes are usually signed by the party himself. In his absence, his representative may be allowed to sign on his behalf.

De los Santos also failed to disprove his presence on the night of the crime. Despite his allegation that he was in another place to harvest copra, the fact remains that he was just within the immediate vicinity of his residence which is located in the same *barangay* where AAA resides. Thus, his alibi must fail.

Penalty

According to Article 266-B of the Revised Penal Code, whenever rape is committed by two or more persons, the penalty shall be *reclusion perpetua* to death. With the attendance of the aggravating circumstances of dwelling and conspiracy as alleged in the two sets of information and proven during trial, the imposable penalty is death conformably with Article 63[26] of the Revised Penal Code. However, upon the enactment of R.A. No. 9346,[27] the Court can only impose the penalty of *reclusion perpetua* without eligibility for parole, in lieu of the death penalty.

As to the imposable damages, recent jurisprudence of *People v. Ireneo Jugueta*,[28] is instructive. Where the penalty imposed is Death but reduced to *reclusion perpetua* because of R.A. 9346, the civil indemnity, moral damages and exemplary damages to be imposed will each be ₱100,000.00 for each count of rape.

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[26] Article 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

[27] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[28] G.R. No. 202124, 5 April 2016.

WHEREFORE, the Decision of the Regional Trial Court in Criminal Case No. FC-06-0048 and No. FC-08-0293, dated 08 August 2011, as affirmed by the Court of Appeals in CA-G.R. CR-H.C. No. 05185, dated 20 March 2013, ordering D**IONE BARBERAN and DIONE DE LOS SANTOS** to suffer the penalty of *reclusion perpetua* and to pay the offended party, AAA, the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages, for each of the two (2) counts of rape is hereby **AFFIRMED with the MODIFICATION** that the civil indemnity, moral damages and exemplary damages be each increased to ₱100,000.00 pursuant to recent jurisprudence for each of the two (2) counts of rape. Further, all damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 214473. June 22, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EMETERIO MEDINA *Y* DAMO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS.— 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

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[*] As per raffle dated 13 June 2016.

is unnecessary. The absence of free consent is conclusively presumed when the victim is below the age of twelve (12). Sexual congress with a girl under twelve (12) years old is always rape. 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 should prove: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF RAPE CHILD VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT.—** Of primary importance in rape cases 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. 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.

3. **ID.; ID.; MEDICAL EXAMINATION IN RAPE CASES ARE MERELY CORROBORATIVE.—** The medical reports and the testimonies of the physicians confirm the truthfulness of the charge. It is of no moment that the primary physician Dr. Agatep was not able to take the witness stand to explain her findings. It is well to recall that medical examinations are merely corroborative in character and not an indispensable element for conviction in rape. Primordial is the clear, unequivocal and credible testimony of private complainant which we so find in the instant case.

4. **ID.; ID.; DENIAL AND ALIBI; CATEGORICAL TESTIMONIES PREVAIL AS AGAINST DENIAL.—** The Court rejects appellant's defenses of denial and alibi. The defense of denial being a negative defense, if not substantiated by clear and convincing evidence, would merit no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters. It has been ruled that between categorical testimonies that ring of truth on one hand and bare denial on the other, the former must prevail. Positive identification of the appellant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.

5. ID.; ID.; FLIGHT AS AN INDICATION OF GUILT; CASE AT BAR.— Mention-worthy is appellant's immediate flight from his home shortly after the incident and his evasion of arrest for more than six (6) years. Jurisprudence has repeatedly declared that flight is an indication of guilt. The flight of an accused in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established for a truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence. In the case at bar, appellant's flight incontestably evidenced guilt.

6. CRIMINAL LAW; ANTI-RAPE LAW OF 1997; STATUTORY RAPE OF A VICTIM BELOW SEVEN YEARS OLD; PROPER PENALTY IS DEATH REDUCED TO RECLUSION PERPETUA UNDER RA 9346, WITHOUT ELIGIBILITY FOR PAROLE.— Statutory rape, penalized under Article 266 A (1), paragraph (d) of the Revised Penal Code, as amended by Republic Act 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. In the instant case, as the victim, AAA, is below seven (7) years old, specifically four (4) years old at the time of the crime, the imposable penalty is death. The passage of Republic Act No. 9346 debars the imposition of the death penalty without declassifying the crime of qualified rape as heinous. Thus, the appellate court correctly reduced the penalty from death penalty to *reclusion perpetua*, without eligibility for parole.

7. ID.; ID.; ID.; CIVIL LIABILITIES.— We modify the appellate court's award of damages and increase it as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence. Further, the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 05906 dated 28 March 2014, which dismissed the appeal of appellant Emeterio Medina y Damo and affirmed with modification the Decision[2] dated 22 September 2011 of the Regional Trial Court (RTC) of Laoag City, Branch 11, in Criminal Case No. 9540, finding appellant guilty beyond reasonable doubt of the crime of Qualified Rape.

Following the Court's ruling in *People v. Cabalquinto*,[3] the real name and identity of the rape victim, as well as the members of her immediate family, including other identifying information, are not disclosed. The rape victim shall herein be referred to as AAA, and her mother as BBB.

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

> That on or about the 9th day of May, 2000, in the [C]ity of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused called to his house [AAA], a 4-year old girl and a neighbor of the accused in x x x, Laoag City and inside his house he took [AAA] into a room and did then and there willfully, unlawfully and feloniously remove her pants and then let her lie down on a bed (papag) and thereafter have a carnal knowledge of her without her consent.[4]

A warrant of arrest was issued against appellant on 24 August 2000 but appellant evaded arrest for six (6) years. The rape case was archived until appellant's eventual arrest in November

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[1] *Rollo*, pp. 2-22; Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Francisco P. Acosta and Myra V. Garcia-Fernandez concurring.

[2] Records, pp. 262-282; Presided by Presiding Judge Perla B. Querubin.

[3] 533 Phil. 703 (2006).

[4] Records, p. 1.

2007.[5] Upon arraignment, appellant pleaded not guilty to the crime charged. During pre-trial, the parties stipulated, among others, that: (1) AAA was only four (4) years old, four (4) months and nine (9) days old on 9 May 2000, the date of the alleged crime; (2) Appellant was in Laoag City on 9 May 2000; (3) AAA and appellant are neighbours; and (4) AAA's father is appellant's first-degree cousin.[6]

Trial ensued. The prosecution presented, as witnesses, AAA, BBB, Jewell C. Diaz, Administrative Aide III of the Medical Records Section of Mariano Marcos Memorial Hospital and Medical Center, Dr. Mona Liza Pastrana (Dr. Pastrana) and Dr. Maria Geraldine Andaya La Madrid (Dr. La Madrid).

The prosecution established that in the morning of 9 May 2000, AAA, who was only four (4) years old at the time of the commission of the crime, and twelve (12) years old when she took the witness stand, was on her way to the store to buy vinegar for her mother, BBB, when appellant, whom she called Uncle Teriong, pulled her into his house. Appellant led AAA into his room, made her lie on the bed, removed her undergarments, laid on top of her and had carnal knowledge of AAA. AAA felt pain and cried but could not shout for fear that appellant would make real his threat to hurt her. After the act, appellant put back on AAA's clothes. AAA returned home and narrated the incident to her mother. BBB did not believe AAA at first until AAA described the appellant's bodily fluid as milk-looking.[7] BBB thus had AAA physically examined.[8]

AAA was physically examined by Drs. Claribel Agatep (Agatep) and La Madrid. Dr. Pastrana, a physician and obstetrician of the Mariano Marcos Memorial Hospital and Medical Center, testified to interpret the findings of Dr. Agatep

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[5] *Id.* at 15-17, 19-20, 22, and 31.

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

[7] TSN, 24 January 2008, pp. 2-7; TSN, 26 June 2008, pp. 2-4.

[8] TSN, 26 June 2008, pp. 4-7.

who had left the country at the time of trial. Per the Medico-Legal Certificate[9] dated 15 May 2000 issued by Dr. Agatep:

> VAGINAL EXAMINATION:
>
> x x x x x x x x x
>
> -Hymen- fresh vertical laceration on the right lateral aspect of the hymen about 0.4 cm
>
> DIAGNOSIS: Alleged Sexual Abuse
> Fresh Laceration on the right lateral aspect of hymen 0.4 cm

During direct examination, Dr. Pastrana stated that "the hymeneal finding is a very rare finding for a child; a finding in a hymeneal area, it would be very impossible for a child to have an accident just for an accident to have that injury, x x x ."[10]

Dr. La Madrid, on the other hand, testified that she had received a request for examination of AAA's specimen. Dr. La Madrid found that there was a predominance of infectious organisms surrounding the cells in said specimen and there was presence of inflammation. This could have been caused by manipulation of the vagina of the patient or trauma through insertion of a blunt object or a male reproductive organ.[11] She together with Dr. Leonisa Flojo-Abon issued a Gynecologic Cytology Report embodying said findings.[12]

Appellant, as sole witness for the defense, interposed the defenses of denial and alibi. He admitted knowing AAA as she is the daughter of his cousin but denied the rape charge against him. He maintained that on the date and time of the incident, he was at his cousin's wedding. He claimed that the instant case arose from AAA's envy of the care packages he receives from his niece abroad.[13]

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[9] Records, p. 11.

[10] TSN, 19 February 2009, p. 27.

[11] TSN, 6 November 2008, pp. 14-17.

[12] Records, p. 12; Exhibits "E", "E-1", and "E-2."

[13] TSN, 23 September 2010, pp. 35-45.

After trial, the RTC on 22 September 2011 found appellant guilty beyond reasonable doubt of qualified rape. The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, judgment is hereby rendered finding accused **EMETERIO MEDINA y DAMO, GUILTY BEYOND REASONABLE DOUBT** of qualified rape. He is hereby sentenced to a penalty of **RECLUSION PERPETUA**. Further, he is hereby directed to pay the private complainant the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.[14]

On intermediate review, the Court of Appeals rendered the assailed decision affirming with modification the trial court's judgment, to wit:

> **WHEREFORE,** the trial court's Decision dated September 22, 2011 finding accused-appellant Emeterio Medina y Damo guilty beyond reasonable doubt of rape is affirmed, subject to the modification that the penalty of *reclusion perpetua* should be without eligibility for *parole*, and the award of exemplary damages is increased to ₱30,000.00.[15]

Now before us for final review, the Court affirms the appellant's conviction.

Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353[16] define and punish rape as follows:

> Article 266-A. *Rape; When and How committed.* — Rape is committed —
>
> 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a. Through force, threat or intimidation;
> b. When the offended party is deprived of reason or otherwise unconscious;
> c. By means of fraudulent machination or grave abuse of authority; and

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[14] Records, p. 282.

[15] *Rollo*, p. 21.

[16] Effective 22 October 1997.

d. When the woman is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Article 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

x x x x x x x x x

5) When the victim is a child below seven (7) years old;

x x x x x x x x x

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. The absence of free consent is conclusively presumed when the victim is below the age of twelve (12). Sexual congress with a girl under twelve (12) years old is always rape. 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 should prove: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.[17]

Of primary importance in rape cases 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.[18] 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

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[17] *People v. Mingming*, 594 Phil. 170, 185-186 (2008); See also *People v. Sabal*, G.R. No. 201861, 2 June 2014, 724 SCRA 407, 411.

[18] *People v. Pascua*, 462 Phil. 245, 252 (2003).

indeed committed. Youth and maturity are generally badges of truth and sincerity.[19]

The prosecution presented proof of the required elements of statutory rape. AAA's age, only four (4) years old at the time of the crime, was evidenced by her *Birth Certificate* and was stipulated upon by the parties; she was born on 31 May 1995, while the alleged rape was committed on 9 May 2000.[20] AAA positively identified in court appellant as the perpetrator of the crime.[21] AAA, in the painstaking and degrading public trial, also related the painful ordeal of her sexual abuse by appellant to its minute and revolting details. The trial court, which had the better position to evaluate and appreciate testimonial evidence, found AAA's testimony to be more credible than that of the defense. Even during cross-examination, AAA notably remained steadfast and consistent in her narration of the incident.[22]

The medical reports and the testimonies of the physicians confirm the truthfulness of the charge. It is of no moment that the primary physician Dr. Agatep was not able to take the witness stand to explain her findings. It is well to recall that medical examinations are merely corroborative in character and not an indispensable element for conviction in rape. Primordial is the clear, unequivocal and credible testimony of private complainant which we so find in the instant case.[23]

The Court rejects appellant's defenses of denial and alibi. The defense of denial being a negative defense, if not substantiated by clear and convincing evidence, would merit no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters. [24] It has been ruled that between categorical testimonies

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[19] *People v. Aguilar*, 643 Phil. 643, 654 (2010) citing *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

[20] Records, p. 48; TSN, 26 June 2008, p. 3.

[21] TSN, 24 January 2008, p. 3.

[22] Records, pp. 273-277.

[23] See *People v. Lerio*, 381 Phil. 80, 88 (2000).

[24] See *People v. Tagana*, 468 Phil. 784, 807 (2004).

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.[25]

Appellant's ascription of ill-motive on the part of AAA is likewise not to be believed. It is highly implausible that AAA and her family would go through the harrowing experience of filing rape charges and the corresponding medical examination of one's private parts for such comparatively trivial reason as envy AAA supposedly harbors for goods appellant receives from abroad.

Mention-worthy is appellant's immediate flight from his home shortly after the incident[26] and his evasion of arrest for more than six (6) years. Jurisprudence has repeatedly declared that flight is an indication of guilt. The flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established for a truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence.[27] In the case at bar, appellant's flight incontestably evidenced guilt.

All told, the prosecution was able to establish appellant's guilt of the crime charged beyond reasonable doubt.

Statutory rape, penalized under Article 266 A (1), paragraph (d) of the Revised Penal Code, as amended by Republic Act 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. In the instant case, as the victim, AAA, is below seven (7) years old, specifically four (4) years old at the time of the crime, the imposable penalty is death. The passage of Republic Act No. 9346 debars the imposition of the death penalty without declassifying the crime of qualified

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[25] *Id.* at 807-808.

[26] TSN dated 17 July 2008, p. 17.

[27] *People v. Del Mundo*, 418 Phil. 740, 753 (2001).

rape as heinous. Thus, the appellate court correctly reduced the penalty from death penalty to *reclusion perpetua*, without eligibility for parole.[28]

We, however, modify the appellate court's award of damages and increase it as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence.[29] Further, the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.[30]

WHEREFORE, premises considered, the Decision dated 28 March 2014 of the Court of Appeals of Manila, Ninth Division, in CA-G.R. CR-HC No. 05906, finding appellant Emeterio Medina y Damo guilty beyond reasonable doubt of the crime of qualified rape in Criminal Case No. 9540, is hereby **AFFIRMED with MODIFICATIONS**. Appellant is ordered to pay the private offended party as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and P100,000.00 as exemplary damages. He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Reyes, Perlas-Bernabe,[*] and *Leonen,*[**] *JJ.,* concur.

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[28] Pursuant to Section 3 of R.A. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) which states that:

SEC. 3. Persons convicted of offenses punished with *reclusion perpetua,* or whose sentences will be reduced to *reclusion perpetua,* by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[29] *People v. Gambao,* 718 Phil. 507 (2013).

[30] *People v. Vitero,* 708 Phil. 49, 65 (2013).

[*] Additional Member per Raffle dated 13 June 2016.

[**] Additional Member per Raffle dated 13 June 2016.

THIRD DIVISION

[G.R. No. 214503. June 22, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICO ENRIQUEZ *Y* CRUZ,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); BUY-BUST OPERATION; ILLEGAL SALE OF DANGEROUS DRUGS CONSUMMATED AT ONCE WHEN THE OFFER OF THE POLICE OFFICER AS BUYER WAS ACCEPTED BY THE ACCUSED, FOLLOWED BY DELIVERY OF THE DANGEROUS DRUGS TO THE FORMER.—** The presence of the following elements required for all prosecutions for illegal sale of dangerous drugs has been duly established in the instant case: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. Appellant was apprehended, indicted and convicted by way of a buy-bust operation, a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. The commission of the offense of illegal sale of dangerous drugs, like *shabu,* merely requires the consummation of the selling transaction which happens the moment the buyer receives the drug from the seller. The crime is consummated at once at the point when 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. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** 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. x x x When police

officers have no motive to testify falsely against the accused, courts are inclined to uphold the presumption of regularity in the performance of their duties. In this case, no evidence has been presented to suggest any improper motive on the part of the police enforcers in arresting appellant. We accord great respect to the findings of the trial court on the matter of credibility of the witnesses in the absence of any palpable error or arbitrariness in its findings.

3. ID.; ID.; DENIAL AND FRAME-UP FAILS AGAINST POSITIVE TESTIMONIES.— Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged and defense of frame-up, unsubstantiated by any credible and convincing evidence fail. These twin defenses of denial and frame-up have been viewed with disfavor due to the ease of their concoction and the fact that they have become common and standard defense ploys in prosecutions for illegal sale and possession of dangerous drugs.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); CHAIN OF CUSTODY; OF UTMOST IMPORTANCE IS THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS; PROCEDURAL REQUIREMENTS OF SECTION 21 NOT FAITHFULLY OBSERVED WILL NOT AFFECT THE GUILT OF APPELLANT.— Concerning 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. 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.

5. REMEDIAL LAW; APPEALS; AN ISSUE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Notably, appellant raised the buy-bust team's alleged non-compliance with Section 21, Article II of R.A. No. 9165 only on appeal. Failure to raise this issue during trial is fatal to the cause of

appellant. It has been ruled that when a party desires the court to reject the offered evidence, he must so state in objection form. Without such objection, he cannot raise the question for the first time on appeal.

6. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; PENALTY.— R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 prescribes life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00 as penalties for violations of Section 5, Article II thereof. The passage of Republic Act. No. 9346 proscribes the imposition of the death penalty, thus the appellate court correctly affirmed the penalty of life imprisonment and fine of ₱500,000.00 prescribed by the RTC.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

Before us for review is the Decision[1] of the Court of Appeals in C.A.-G.R. CR HC No. 05441 dated 14 February 2014, which denied the appeal of appellant Rico Enriquez Cruz and affirmed the Decision[2] dated 15 September 2010 of the Regional Trial Court (RTC) of the City of Makati, Branch 64 in Criminal Case Nos. 06-1802 and 06-2124, finding appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo*, pp. 2-17; Penned by Associate Justice Ramon R. Garcia with Associate Justices Rebecca De Guia-Salvador and Danton Q. Bueser concurring.

[2] Records, pp. 201-205; Penned by Presiding Judge Gina M. Bibat-Palamos.

Appellant was charged with violation of Sections 5 and 15 of Article II of R.A. No. 9165, to wit:

CRIMINAL CASE NO. 06-1802

That on or about the 13th day of September 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, give away, distribute, and deliver to another, a zero point zero three (0.03) gram of Methylamphetamine hydrochloride which is a dangerous drug in exchange of Five Hundred Pesos (Php500.00).[3]

CRIMINAL CASE NO. 06-2124

That on or about the 13th day of September 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously found positive after, a confirmatory test, of using a Methylamphetamine hydrochloride (shabu) which is a dangerous drug in violation of the above-cited law.[4]

At his arraignment, appellant pleaded not guilty to the offenses charged. Joint trial ensued.

The essential facts, based on the records, are summarized as follows:

On 13 September 2006, the Station Anti-Illegal Drugs Special Operations Task Force of the Makati Police Station received information that an alias Rico Enriquez was engaged in illegal drug activities. In their watchlist, this alias Rico had been recorded both as a user and pusher. Thus, Colonel Angel Sumulong (Col. Sumulong) immediately created a buy-bust team in coordination with the Philippine Drug Enforcement Agency (PDEA).[5] Police

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[3] Records (Crim. Case No. 06-1802), p. 1.

[4] Records (Crim. Case No. 06-2124), p. 2.

[5] Records (Crim. Case No. 06-1802), p. 161; By way of a Pre-Operational Report/Coordination Sheet dated 13 September 2006; Exhibit "E".

Officer 2 Estero Ruiz was appointed as team leader and gave five (5) One Hundred Peso (₱100.00) bills to Police Officer 2 Victoriano Cruz, Jr. (PO2 Cruz), the *poseur buyer*.[6]

Around 5:40 p.m. that day, the buy-bust team proceeded to the target area. The buy-bust team strategically positioned themselves while the informant and PO2 Cruz proceeded to the location at Pateros corner Hormiga Streets. The informant singled out *alias* Rico, appellant, who was in an alley conversing with his male companions, and approached him at which point these male companions left. Appellant and the informant went over to where PO2 Cruz remained standing. The informant introduced PO2 Cruz to appellant as a friend in need of *shabu*. Appellant asked how much he needed and PO2 Cruz replied, "*kasang kinyentos lang*" or ₱500.00. Appellant asked them to wait, withdrew into an alley, and returned shortly to hand PO2 Cruz a heat-sealed plastic sachet containing a white crystalline substance believed to be *shabu*. After giving appellant five (5) pieces of One Hundred Peso (₱100.00) bills in exchange for the item, PO2 Cruz lit a cigarette, the previously arranged signal for the buy-bust team to effect arrest upon consummation of the transaction. PO2 Cruz grabbed appellant's shirt, identified himself as a police operative and informed appellant of the nature of his arrest. [7] PO2 Cruz marked the plastic sachet with "COY," and prepared an inventory thereof together with the buy-bust money and other cash recovered from appellant. The inventory[8] was signed by PO2 Cruz along with another Makati drug operative Hermina Facundo, Police Senior Inspector Joefel Siason (PSI Siason) and *Barangay* Captain Vic del Prado as witnesses. Appellant, however, refused to sign the same. The seized items were likewise photographed. Thereafter, the police officers, along with the appellant, returned to the police station. PO2 Cruz turned over the seized items to PO1 Randy Santos, while PSI Siason prepared the necessary documentation to request the

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[6] TSN, 11 June 2008, pp. 4-9.

[7] TSN, 11 June 2008, pp. 10-12.

[8] Records (Crim. Case No. 06-1802), p. 165; Exhibit "J".

Philippine National Police (PNP) Crime Laboratory for analysis and examination of the contraband, and to conduct a drug test on appellant.[9] The custody of the seized sachet of shabu and of appellant was then turned over to PO2 Castillo who brought both to PO1 Cavia and eventually Forensic Chemical Officer Richard Allan Mangalip (Forensic Officer) of the PNP Crime Laboratory. After examination, Forensic Officer Mangalip found the specimen submitted positive for Methylamphetamine hydrochloride.[10] The examination of appellant's urine sample also yielded positive findings for the presence of the dangerous drug.[11]

Appellant and his wife, Marilyn Enriquez, testified for the defense.

Appellant denied the charges against him. He countered that on the date and time of the alleged entrapment operation, he was at his house having a snack with his family when four armed civilian clothes entered their house. Appellant was placed under arrest and handcuffed in his family's presence without being informed of the reasons therefor. He was then brought to the armed men's office in Makati City where he was allegedly mauled but had no bodily bruises as proof. He was taken to the laboratory to give out a urine sample for testing; and to the *Ospital ng Makati*, also for testing.[12]

Appellant's wife, Marilyn Enriquez, corroborated appellant's defenses of denial and frame-up. She averred that the men who entered their house, pointed a gun to her husband, handcuffed him and had allegedly told him that he was being invited to the police station for questioning. When she followed his husband and the men at the police station, she was informed that her husband had been arrested for selling illegal drugs.[13]

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[9] *Id.* at 169 and 171; Exhibits "M" and "O".

[10] *Id.* at 168; Per Physical Science Report No. D-626-06S; Exhibit "L".

[11] *Id.* at 170; Per physical Science Report DT-922-06S; Exhibit "N".

[12] TSN, 26 May 2010, pp. 2-21.

[13] TSN, 1 September 2010, pp. 2-13.

On 15 September 2010, finding that the prosecution established all the elements of the crime charged, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of illegal sale of drugs. The dispositive portion of the RTC Decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused RICO ENRIQUEZ y CRUZ, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and is sentenced to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00).
>
> Having been found positive for the use of methylamphetamine, accused is likewise directed to undergo rehabilitation for at least six (6) months in a Government Rehabilitation Center subject to the provisions of Article VIII of RA 9165.[14]

On 14 February 2014, the Court of Appeals affirmed the RTC decision. The Court of Appeals gave credence to the consistent testimonies of the prosecution to support the presumption that the police officers regularly performed the buy-bust operation. The Court of Appeals also noted that the appellant failed to substantiate his defenses.

Hence, this final review.

In our Resolution[15] dated 19 November 2014, we required the parties to file their respective supplemental briefs. Both parties manifested that they had already exhausted their arguments before the Court of Appeals and, thus, would no longer file any supplemental brief.[16]

We perused the arguments raised by the parties and find them the same as those that were before the appellate court. We reach the same conclusion. We sustain the judgment of conviction against appellant. We agree that the prosecution has proven beyond reasonable doubt that appellant was selling dangerous drugs without lawful authority, in violation of Section 5, Article II of R.A. No. 9165.

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[14] Records (Crim. Case No. 06-1802), p. 205.

[15] *Rollo*, pp. 24-25.

[16] *Id.* at 26, 28 and 32-33.

The presence of the following elements required for all prosecutions for illegal sale of dangerous drugs has been duly established in the instant case: (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.[17] Appellant was apprehended, indicted and convicted by way of a buy-bust operation, a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan.[18] The commission of the offense of illegal sale of dangerous drugs, like *shabu*, merely requires the consummation of the selling transaction which happens the moment the buyer receives the drug from the seller. The crime is consummated at once at the point when 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.[19]

Appellant was caught red-handed delivering one heat sealed plastic sachet containing white crystalline substance to PO2 Cruz, the *poseur buyer*, in exchange for ₱500.00. PO2 Cruz positively identified appellant in open court to be the same person who sold to him the item which upon examination was confirmed to be methylamphetamine hydrochloride or *shabu*. Upon presentation thereof in open court, PO2 Cruz duly identified it to be the same object sold to him by appellant.[20]

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. This Court's independent examination of the records shows no compelling reason to depart from this rule.[21]

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[17] *People v. Almeida*, 463 Phil. 637, 647 (2003).

[18] *Cruz v. People*, 597 Phil. 722, 728 (2009).

[19] *People v. Unisa*, 674 Phil. 89, 108 (2011).

[20] TSN, 11 June 2008, pp. 13-17.

[21] *People v. Alivio*, 664 Phil. 565, 574 (2011).

The Court finds that belief and acceptance were properly accorded to the testimonies of the prosecution witnesses, who are law enforcers. When police officers have no motive to testify falsely against the accused, courts are inclined to uphold the presumption of regularity in the performance of their duties. In this case, no evidence has been presented to suggest any improper motive on the part of the police enforcers in arresting appellant. We accord great respect to the findings of the trial court on the matter of credibility of the witnesses in the absence of any palpable error or arbitrariness in its findings.[22]

Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged and defense of frame-up, unsubstantiated by any credible and convincing evidence fail. These twin defenses of denial and frame-up have been viewed with disfavor due to the ease of their concoction and the fact that they have become common and standard defense ploys in prosecutions for illegal sale and possession of dangerous drugs.[23] Appellant also claims that he was mauled but curiously he has no evidence to prove the allegation. Interestingly, appellant has previously been charged but acquitted of the offense of selling dangerous drugs also in Makati City. The previous case in addition to the instant case reasonably support the prosecution's contention that he is not as innocent as he asserts himself to be and that he is in actual fact an active participant in the illegal sale of dangerous drugs.

Concerning 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.[24] 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.[25]

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[22] *People v. Buenaventura*, 677 Phil. 230, 240 (2011).

[23] *People v. Udtojan*, 669 Phil. 461, 475 (2011).

[24] See *People v. Daria*, 615 Phil. 744, 758 (2009).

[25] *People v. Amansec*, 678 Phil. 831, 856 (2011) citing *People vs. Campomanes*, 641 Phil. 610, 622, 623 (2010).

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.[26]

In addition to the inventory made of the seized items, the prosecution was able to prove an unbroken chain of custody of the illegal drug from its seizure and marking to its submission to the PNP Crime Laboratory for analysis, to the identification of the same during the trial of the case.[27] Indeed no photographs of the illegal drug were presented in court despite PO2 Cruz's assertion that they have been taken although he explained that they went missing. Yet we find that the integrity and the evidentiary value of the dangerous drug seized from appellant were duly proven by the prosecution to have been properly preserved. The identity, quantity and quality of the same were untarnished. As long as the chain of custody is unbroken, even though the procedural requirements of Section 21 of R.A. No. 9165 were not faithfully observed, the guilt of the appellant will not be affected.[28]

Notably, appellant raised the buy-bust team's alleged non-compliance with Section 21, Article II of R.A. No. 9165 only on appeal. Failure to raise this issue during trial is fatal to the cause of appellant.[29] It has been ruled that when a party desires the court to reject the offered evidence, he must so state in objection form. Without such objection, he cannot raise the question for the first time on appeal.[30]

R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 prescribes life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00 as penalties for violations of Section 5, Article II thereof. The passage of Republic Act No. 9346 proscribes the imposition of the death penalty,[31] thus

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[26] *People v. Dela Rosa*, 655 Phil. 630, 650 (2011).

[27] TSN, 14 June 2007, pp. 6-11.

[28] *People v. Manlangit*, 654 Phil. 427, 442 (2010).

[29] *People v. Torres*, 710 Phil. 398, 412 (2013).

[30] *People v. Sta. Maria*, 545 Phil. 520, 534 (2007).

[31] *People v. Concepcion*, 578 Phil. 957, 979-980 (2008).

the appellate court correctly affirmed the penalty of life imprisonment and fine of ₱500,000.00 prescribed by the RTC.

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The Decision dated 14 February 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05441 affirming the conviction of appellant Rico Enriquez *y* Cruz by the Regional Trial Court, Branch 64, of Makati City in Criminal Case No. 06-1802 for violation of Section 5, Article II of Republic Act No. 9165, sentencing him to suffer the penalty of life imprisonment and pay a fine of ₱500,000.00 is hereby **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 163157. June 27, 2016]

SPOUSES BERNABE MERCADER, JR. and LORNA JURADO-MERCADER, OLIVER MERCADER, GERALDINE MERCADER and ESRAMAY MERCADER, *petitioners, vs.* **SPOUSES JESUS BARDILAS and LETECIA GABUYA BARDILAS,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; EASEMENT; DISCUSSED.— Easement or servitude, according to *Valdez v. Tabisula*, is "a real right constituted on another's property, corporeal and

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[*] Additional Member per Raffle dated 13 June 2016.

immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person." "It exists only when the servient and dominant estates belong to two different owners. It gives the holder of the easement an incorporeal interest on the land but grants no title thereto. Therefore, an acknowledgment of the easement is an admission that the property belongs to another."

2. ID.; ID.; ID.; ROAD RIGHT OF WAY IS A DISCONTINUOUS APPARENT EASEMENT THAT MAY BE ACQUIRED ONLY BY VIRTUE OF TITLE; TITLE REFERS TO THE JURIDICAL ACT WHICH GIVES BIRTH TO THE EASEMENT.— It is settled that road right of way is a discontinuous apparent easement in the context of Article 622 of the *Civil Code*, which provides that continuous non-apparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of title. But the phrase *with existing Right of Way* in the TCT is not one of the modes of acquisition of the easement by virtue of a title. Acquisition *by virtue of title*, as used in Art. 622 of the *Civil Code*, refers to "the juridical act which gives birth to the easement, such as law, donation, contract, and will of the testator."

3. ID.; ID.; LAND TITLES; TORRENS SYSTEM OF LAND REGISTRATION; THE CERTIFICATE OF TITLE ATTESTS THAT THE PERSON NAMED THEREIN IS THE OWNER OF THE PROPERTY DESCRIBED, SUBJECT TO SUCH ENCUMBRANCES NOTED.— Under the Torrens system of land registration, the certificate of title attests "to the fact that the person named in the certificate is the owner of the property therein described, subject to such liens and encumbrances as thereon noted or what the law warrants or reserves. The objective is to obviate possible conflicts of title by giving the public the right to rely upon the face of the Torrens certificate and to dispense, as a rule, with the necessity of inquiring further. The Torrens system gives the registered owner complete peace of mind, in order that he will be secured in his ownership as long as he has not voluntarily disposed of any right over the covered land." The Torrens certificate of title is merely an evidence of ownership or title in the particular property described therein.

4. ID.; ID.; ID.; OWNER OF SERVIENT ESTATE RETAINS OWNERSHIP (WITH ALL THE ATTRIBUTES OF OWNERSHIP) OF THE PORTION ON WHICH THE EASEMENT IS ESTABLISHED FOR THE BENEFIT OF ANOTHER.— What really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits. x x x It is noteworthy that an encumbrance "subject to 3 meters wide right of way" was annotated on TCT No. 107915, which covers Lot No. 5808-F-2-B of the Spouses Bardilas. As the owners of the servient estate, the Spouses Bardilas retained ownership of the road right of way even assuming that said encumbrance was for the benefit of Lot No. 5808-F-2-A of the Spouses Mercader. The latter could not claim to own even a portion of the road right of way because Article 630 of the *Civil Code* expressly provides that "[t]he owner of the servient estate retains ownership of the portion on which the easement is established, and may use the same in such manner as not to affect the exercise of the easement." With the right of way rightfully belonging to them as the owners of the burdened property, the Spouses Bardilas remained entitled to avail themselves of all the attributes of ownership under the *Civil Code*, specifically: *jus utendi, jus fruendi, jus abutendi, jus disponendi* and *jus vindicandi*. Article 428 of the *Civil Code* recognizes that the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

5. ID.; DAMAGES; ATTORNEY'S FEES MUST BE JUSTIFIED.— The award of attorney's fees and expenses of litigation is governed by Article 2208 of the *Civil Code*. x x x In *Philippine National Construction Corporation v. APAC Marketing Corporation*, the Court opined that whenever attorney's fees are granted, the basis for the grant must be clearly expressed in the judgment of the court. x x x In awarding attorney's fees, the CA relied on Article 2208 (11) of the *Civil Code* (which provides: In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.) x x x Considering that the decision of the CA does not express any justification x x x [t]he award by the CA must be set aside; otherwise, attorney's fees would be turned into a premium on the right to litigate, which is

prohibited. Moreover, attorney's fees, being in the nature of actual damages, should be based on the facts on record and the Court must delineate the legal reason for such award.

APPEARANCES OF COUNSEL

Navarro & Associates for petitioners.
J. Neri and Associates Law Firm for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The owner of the servient estate retains ownership of the portion on which the easement is established, and may use the same in such manner as not to affect the exercise of the easement.[1]

The Case

This appeal seeks to undo and reverse the decision promulgated on March 18, 2003 "only insofar as Civil Case No. CEB-12783 is concerned," whereby the Court of Appeals (CA) partly affirmed the judgment rendered on October 10, 1995 by the Regional Trial Court (RTC) in Civil Case No. CEB-12783 and Civil Case No. CEB-13384. In so doing, the CA recognized the right of the respondents as the owners of the servient estate to the road right of way.

Antecedents

The issue concerns the right of way between the owners of three parcels of land denominated as Lot No. 5808-F-1, Lot No. 5808-F-2-A and Lot 5808-F-2-B. The lots were portions of Lot No. 5808-F, situated in Barangay Punta Princesa in Cebu City with an area of 2,530 square meters, and registered under Transfer Certificate of Title No. 78424 of the Registry of Deeds in Cebu City in the name of "Arsenia Fernandez, of legal age, married to Simeon Cortes, both Filipinos."[2] Another subdivision lot derived from Lot No. 5808-F was Lot No. 5808-F-3.

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[1] Article 630, *Civil Code.*

[2] Records, Civil Case No. CEB-13384, p. 33.

Lot No. 5808-F-1, which fronted a side street within the Clarita Village, contained 289 square meters, and was registered under TCT No. 88156 in the names "OLIVER, 14 yrs. old, GERALDINE, 12 yrs. old, ESRAMAY, 10 yrs. old, all surnamed MERCADER, Filipino, minors, and single."[3] Such registered owners were the children of petitioner Bernabe Mercader, Jr. by his first wife, Rebecca Gabuya Mercader, who had died in 1975.

Lot No. 5808-F-2-A, situated behind Lot No. 5808-F-1, had an area of 89 square meters. It was covered by TCT No. 107914 in the names of "spouses BERNABE MERCADER AND LORNA JURADO, of legal age, Filipinos,"[4] and was particularly described as follows:

A parcel of land (Lot 5808-F-2-A, Psd-07-018600, being a portion of Lot 5808-F-2, Psd-07-01-004579). Situated in the Barrio of Punta Princesa, City of Cebu, Province of Cebu, Island of Cebu. Bounded on the North and East along lines 1-2-3 by Lot 5808-F-2-B, **with existing Right of Way (3.00 meters wide)**; of the subdivision plan; on the South along line 3-4 by Lot 5726, Cebu Cadastre; and on the West, along line 4-1 by Lot 5808-F-1, Psd-07-01-004579. Beginning at a point marked "1" on plan being S. 50 deg. 59'W., 411.55 m. from BM No. 44, Cebu Cadastre; thence N. 60 deg. 34' E., 4.99 m. to point 2; thence S. 20 deg. 33' E., 17.95 m. to point 3; thence S. 60 deg. 34' W., 4.99 m. to point 4; thence N. 20 deg. 33' W., 17.94 m. to point of beginning; containing an area of EIGHTY NINE (89) SQUARE METERS, more or less. x x x (Emphasis Supplied)

Lot No. 5808-F-2-B, situated behind Lot No. 5808-F-2-A, contained 249 square meters, and was covered by TCT No. 107915 in the names of "spouses LETECIA GABUYA BARDILAS and JESUS BARDILAS, of legal age, Filipinos."[5] It was particularly described as follows:

A parcel of land (Lot 5808-F-2-B, Psd-07-018600, being a portion of Lot 5808-F-2, Psd-07-01-004579). Situated in the Barrio of Punta

[3] Records, Civil Case No. CEB-12783, p. 59.

[4] *Id.* at 61.

[5] *Id.* at 63.

Princesa, City of Cebu, Province of Cebu, Island of Cebu. Bounded on the SW., along line 1-2 by Lot 5808-F-1, Psd-07-01-004579; on the West along line 2-3 by Lot 5726, Cebu Cad.; on the North along line 3-4-5 by Lot 5725, Cebu Cadastre; on the East, along line 5-6 by Lot 5808-F-3, Psd-07-01-004579; on the South along line 6-7 by Lot 5726, Cebu Cad. and on the West, along line 7-8-1 by Lot 5808-F-2-A of the subdivision plan; **with a Road Right of Way (3.00 meters wide)**. Beginning at a point marked "1" on plan being S. 50 deg., 59'W., 411.55 m. from BM No. 44, Cebu Cadastre; thence S. 64 deg. 87'W., 16.02 m. to point 2; thence N. 22 deg. 23'W., 3.01 m. to point 3; thence N. 64 deg. 10'E., 16.12 m. to point 4; thence N. 64 deg. 10'E., 14.00 m. to point 5; thence S. 21 deg. 20'E., 20.01 m. to point 6; thence S. 60 deg. 34' W., 9.40 m. to point 7; thence N. 20 deg. 33'W., 17.95 m. to point 8; thence S. 60 deg. 34'W., 4.99 m. to the point of the beginning. Containing an area of TWO HUNDRED FORTY NINE (249) SQUARE METERS, more or less. x x x (Emphasis supplied)

The right of way mentioned in the TCT No. 107915 of the Spouses Bardilas (Lot No. 5808-F-2-B) exited into the Clarita Subdivision and was roughly 300 lineal meters from Buhisan Road, a national road.

Behind Lot No. 5808-F-2-B was Lot No. 5808-F-3, registered under TCT No. 88158 in the name of "LETECIA GABUYA BARDILAS, married to JESUS BARDILAS, both of legal age and Filipinos,"[6] particularly described as follows:

A parcel of land (Lot 5808-F-3, Psd-07-07-004579, bearing a portion of 5808-F, psd-07-07-003019); situated in the District of Punta Princesa, Ciky (sic) of Cebu, Island of Cebu. Bounded on the Ne. and NW. along lines 1-2-3- by lot 5808-F-4; on the NW., along line 3-4 by lot 5808-F-5; along line 4-5 by lot 5808-F-6, all of the subdivision plan; on the NW., along line 5-6 by Lot 5725, Cebu Cadastre; on the East and SE., along lines 7-8-9 by lot 5808-B; on the SE., along line 9-1 by lot 5808-C; along 10-11-12 bylot (sic) 5808-D; along line 12-13-14 by Lot 5808-E., all psd-0701003019; on the SE., along line 14-45 by lot 5726, Cebu Cadastre; on the SW., along line 15-16 by Lot 5808-F-2 of the subdivision plan; and on the NW, along line 16-1 by lot 5725, Cebu Cadastre. x x x

[6] Records, Civil Case No. CEB-13384, p. 35.

In relation to Lot No. 5808-F-3, there is another right of way about 40 lineal meters away from Buhisan Road.[7]

On May 11, 1992, the Clarita Village Association erected a concrete perimeter fence to close the exit point of the right of way of the Spouses Bardilas from Lot No. 5808-F-2-B to the existing road within Clarita Village. The closure forced the Spouses Bardilas to use the second exit to Buhisan Road, which is from their Lot No. 5808-F-3.

At the instance of the Clarita Village Association, and the Spouses Bardilas, Engr. Edgar T. Batiquin of the Office of the Building Official of Cebu City, conducted his verification/ investigation of the vicinity of the disputed right of way. Engr. Batiquin later on reported to the Building Official the following findings in his letter dated June 15, 1992,[8] to wit:

> Per verification/investigation conducted in connection with the above subject the findings are to wit:
>
> 1. That the fence constructed by the association should have the necessary permit;
>
> 2. Said fence encroached a small portion of the road right-of-way of Ms. Bardilas (please see attached sketch plan, color red);
>
> 3. That a fence and portion of the residential house owned by Mr. Bernabe Mercader have also encroached the road right-of-way (please see attached sketch plan, color green);
>
> 4. Total area encroached on the right-of-way is 14.00 square meters.

Subsequently, on July 1, 1992, Barangay Chairman Jose F. Navarro of Punta Princesa, Cebu City convened a meeting among the interested parties at the Chinese Temple inside the Clarita Village. In attendance were officers of the Clarita Village Association, including petitioner Bernabe Mercader, Jr., and barangay officials. The Clarita Village Association explained that its closure of the right of way had been for the purpose of

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[7] *Rollo*, p. 29.

[8] Records, Civil Case No. CEB-12783, p. 39.

preventing individuals of "questionable character" from using the right of way to enter the area to steal from the residents of the Clarita Village. The meeting resulted in the discussion and agreement of the following matters, to wit: [9]

1) The villagers/Clarita Village Association WILL HAVE NO OBJECTION for the spouses: Jesus and Letecia Bardilas (on their own expense) (sic) demolish a portion of the wall fence erected on a portion of Clarita Village side street blocking the said spouses' right of way; — and replace with IRON GATE so that they can use it anytime. Buying cost of the iron gate — as well as labor cost in replacing the knocked out portion of the said wall fence with iron gate will be shouldered by spouses: Jesus and Letecia Bardilas.

2) KEYS TO THE IRON GATE. — One (1) key will be given to the spouses MR. & MRS. BERNABE MERCADER so that at anytime they can open the gate in going thru their residence. ONE (1) key will be kept by spouses: Jesus and Letecia Bardilas for their usage in opening the iron gate anytime they may open it.

3) All parties present were in accord that the contents of items 1 to 3 STAND as their agreement in solving this instant case, and also in accord to implement the agreement as soon as possible. THEY ALSO AGREE THAT IN VIEW OF THIS AGREEMENT, — THEY ALL CONSIDER THIS CASE AMICABLY SETTLED.

By letter dated August 14, 1992,[10] the Spouses Bardilas, through Atty. Alfredo J. Sipalay, informed the Spouses Mercader of the encroachment by about 14 square meters of the latter's residential house and fence on the right of way. Hence, they wrote that they were giving the latter two alternatives, namely:

1. Pay THIRTY THOUSAND PESOS (₱30,000.00) for the 14 square meters which your house and wall fence have encroached (the amount represents ₱2,000.00 per square meter, which is the fair market value of the property plus

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[9] *Rollo*, p. 86.

[10] Records, Civil Case No. CEB-12783, p. 65.

₱2,000.00 for the expenses the Spouses Bardilas have incurred as a result of the encroachment of your property); or

2. Demolish the wall fence and the portion of your house which encroached my clients' property.

On August 19, 1992, the Spouses Mercader, through Atty. Rolindo A. Navarro, responded by insisting that as the owners of Lot No. 5808-F-2-A they were equally entitled to the right of way; and that they were proposing to buy the equivalent portion of the right of way to which they were entitled at a reasonable price, v*iz*.:[11]

Dear Compañero:

Your letter dated August 14, 1992 addressed to Mr. Bernabe Mercader has been referred to me for appropriate response.

In this connection, please be informed that my said client is equally entitled to the use of the road-right-of-way subject of your letter having bought Lot No. 5808-F-2-A which is one of the two dominant estates entitled thereto. The other estate is Lot No. 5808-F-2-B owned by your clients. Incidentally, this road-right-of-way has not been used for its purpose as the exit to Clarita Village has been closed. Attached herewith is copy of TCT No. 107914 for Lot No. 5808-F-2-A as Annex "A".

However, if your client is willing, my client proposes to buy the equivalent portion of the road-right-of-way to which they are entitled to at a reasonable price.

Please feel free to communicate with me on this matter.

In their reply of August 24, 1992,[12] the Spouses Bardilas rejected the claim of the Spouses Mercader that they were entitled to the use of the right of way, and reiterated their demand for ₱30,000.00 as the fair market value of the property, stating:

Dear Atty. Navarro:

This is in reply to your letter dated August 19, 1992 which our office received on August 20, 1992.

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[11] *Id.* at 66.

[12] *Id.* at 67.

My clients, Spouses Jesus and Letecia Bardilas, disagree with Mr. Bernabe Mercader's claim that he is entitled to the use of their road right of way. Attached as Annex "A" is a photocopy of my clients' TCT No. 107915 of the property in question which clearly states that my clients' property is subject to three (3) meters wide right of way. Mr. Mercader's TCT No. 107914, which was issued on the same day and time as my clients' TCT on March 30, 1989 at 10:10 a.m., don't (sic) have the same provision regarding the use of a right of way. This is because Mr. Mercader's property is fronting the street while my clients' property is situated at the back of Mr. Mercader's property; hence, the provision regarding the right of way on my clients' TCT.

It is true that my clients' road right of way has been closed since June, 1992 due to a wall constructed by the Clarita Village Association resulting in much inconvenience to my clients since they have to pass through a circuitous and muddy road. However, in a meeting with their Barangay Captain, the officers of the Clarita Village Association already agreed to let my clients pass through the wall provided they will put up a gate between the walls. My clients already have a three (3) meter wide gate ready to be put up only to discover that it won't fit because Mr. Mercader has encroached their road right of way. Hence, my letter to Mr. Mercader on August 14, 1992, informing him to pay ₱30,000.00 to my clients or to demolished (sic) his wall fence and portions of his house which encroached my clients' road right of way.

Since Mr. Mercader opts to pay my clients, we reiterate our demand for ₱30,000.00 which is the fair market value of my clients' property.

We hope we could settle this matter within this week.

Civil Case No. CEB-12783

Finding the demand for payment of ₱30,000.00 by the Spouses Bardilas to be unlawful, unwarranted and unfounded, the Spouses Mercader commenced on September 8, 1992 their action for declaratory relief, injunction and damages against the Spouses Bardilas in the RTC in Cebu City (Civil Case No. CEB-12783). The case was assigned to Branch 20.

The Spouses Mercader alleged that they were the lawful and registered owners of adjoining lots, to wit: Lot No. 5808-F-1

and Lot No. 5808-F-2-A where their residential house stood;[13] and that their Lot No. 5808-F-2-A and the Spouses Bardilas' Lot No. 5805-F-2-B were portions of Lot No. 5808-F-2 that had been subdivided and sold separately to each of them;[14] that Lot No. 5808-F-2-A was bounded on the North and the East by Lot No. 5808-F-2-B; that in 1989, they had used a negligible portion of the easement to build their fence and a portion of their residential house, without impairing the use for which it was established and without any objection, protest or complaint from the respondents; that they retained the ownership of the portion of the property on which the easement was established pursuant to Article 630 of the *Civil Code*; that the non-user of the easement had extinguished it pursuant to Article 631, paragraph 3, of the *Civil Code*; that the rights of the dominant and servient estates had merged in them; and that there was a need to declare their rights to that portion of their property on which the easement of right of way had been established vis-a-vis the unlawful demands of the Spouses Bardilas.

The Spouses Mercader prayed that they be declared as having retained the ownership of the 63.33 square meters where the easement of right of way had been established; that the merger of the rights of the servient estate owner and dominant estate owner be declared their favor;[15] and that the Spouses Bardilas be made to pay damages.

In their answer,[16] the Spouses Bardilas averred that Lot No. 5808-F-2-A and Lot No. 5808-F-2-B used to be parts of Lot No. 5808-F-2; that the right of way in question was a part of Lot No. 5808-F-2-B that they owned as borne out by the technical descriptions of Lot No. 5808-F-2-A[17] and Lot No. 5808-F-2-B[18]

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[13] *Id.* at 1.

[14] *Id.* at 2.

[15] *Id.* at 4.

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

[17] *Id.* at 37.

[18] *Id.* at 36.

as well as the subdivision plan of the properties;[19] that they learned of the encroachment on the portion of their property being used as right of way only from the survey conducted by Engr. Batiquin of the Office of the Building Official in June 1992;[20] and that they then referred the matter to their lawyer for appropriate action.

The Spouses Bardilas stated as affirmative defense that although the property of the Spouses Mercaders had a gate fronting the side street within the Clarita Village, they had allowed the latter to use the right of way only because Bernabe Mercader, Jr. was the husband of the elder sister of Letecia Gabuya Bardilas; that the Spouses Mercader abused the favor by using the right of way as their garage; that they requested the Spouses Mercader to move their vehicles out but they got angry and instigated the closure of the right of way by the Clarita Village Association, where he was a ranking officer at the start of the dispute; that the Spouses Mercader were wrongly claiming the extinguishment of the right of way; and that the Spouses Mercader had no cause of action against them, and should be held liable for damages in their favor.

During the pre-trial on September 29, 1993, the trial court required the Spouses Mercader to amend their petition to include the children of Bernabe Mercader, Jr. by his first wife, Rebecca Gabuya Mercader, due to their being the registered owners of Lot No. 5808-F-1. The amended petition, dated October 25, 1993, was filed on November 4, 1993.[21]

Civil Case No. CEB-13384

In view of the encroachment by the Spouses Mercader on a portion of the road right of way, the Spouses Bardilas could not fit their 3-meter wide iron gate. Another meeting with the officers of the Clarita Village Association was held on November 11, 1992.[22] When the efforts of the parties to amicably settle

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[19] *Id.* at 68.

[20] *Id.* at 24.

[21] *Id.* at 81.

[22] Records, Civil Case No. CEB-13384, p. 18.

the issue failed, the Spouses Bardilas brought on December 24, 1992 their own suit for specific performance with preliminary prohibitory or mandatory injunction against the Clarita Village Association and the Spouses Mercader (Civil Case No. CEB-13384) in the RTC in Cebu City. The case was raffled to Branch 10 of the RTC.

On October 5, 1993, the Spouses Bardilas moved for the consolidation of Civil Case No. CEB-13384 with Civil Case No. CEB-12783. The RTC (Branch 10) granted the motion for consolidation.[23]

Judgment of the RTC

On October 10, 1995, the RTC rendered its consolidated decision in Civil Case No. CEB 12783 and Civil Case No. CEB-13384, disposing:[24]

> WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered in favor of petitioner Mercader's (sic) as against spouses Bardilas in **Civil Case No. 12783**:
>
> (a) **DECLARING** the **EXTINGUISHMENT** of the easement of road right of way passing through the real properties of petitioners spouses Mercader's (sic) and Bernabe Mercader, Jr. and his children and the cancellation of the annotation of said easement from TCT No. 107914 and TCT No. 88156;
>
> (b) **DECLARING** petitioner Mercader's (sic) as owners of said extinguished easement of right of way;
>
> (c) **GRANTING** to petitioner Mercader's (sic) the right to use and occupy the extinguised easement which adjoins the Mercader's properties;
>
> (d) **ORDERING** respondents spouses, Jesus and Letecia Bardilas to pay petitioners the following amounts:
>
> a) The sum of ₱100,000.00 as moral damages;
>
> b) The sum of ₱35,000.00 as attorney's fees; and

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[23] *Id.* at 49.

[24] Records, Civil Case No. CEB-12783, pp. 190-191.

c) The sum of ₱20,000.00 as costs of suit;

and in **Civil Case No. 13384**:

(a) **DISMISSING** the amended complaint filed by plaintiffs spouses Bardilas;

(b) **DECLARING** the road network of the Clarita Village still as private properties and not public;

(c) **DECLARING** that the closure of OUTLET NO. 1 of said easement of right of way by the Clarita Village as lawful and valid;

SO ORDERED.

On October 19, 1995, the Spouses Bardilas moved for a new trial on the ground of newly discovered evidence,[25] representing that they had obtained the certification dated August 24, 1995 by Antonio V. Osmeña, the developer of the Clarita Village and the attorney-in-fact of Carmen and Elena Siguenza, the owners of the Clarita Village,[26] to the effect that the road network of the Clarita Village had been donated to Cebu City. They appended to the motion the *Deed of Donation of Road Lots*[27] and the certification dated July 5, 1995[28] by Antonio B. Sanchez, Department Head III of the Office of the City Engineer, Department of Engineering and Public Works of Cebu City, stating that the road network within the Clarita Village "has been used as part of the road network of the City of Cebu and as such was asphalted by the city thru F.T. Sanchez Construction in 1980." These documents, according to the Spouses Bardilas, were newly discovered evidence that they "could not, with reasonable diligence, have discovered and produced at the trial."[29]

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[25] *Id.* at 192-196.

[26] *Id.* at 198.

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

[28] *Id.* at 201.

[29] *Id.* at 192.

On November 13, 1995,[30] the RTC denied the motion for new trial because: (a) the *Deed of Donation of Road Lots* had been in the possession of the movants' counsel, and had been in fact shown to the court, but had neither been offered nor marked as evidence during the trial; (b) the certifications (Annexes A and C of the motion for new trial) had derived their existence from the *Deed of Donation of Road Lots*, and could not be considered as newly discovered evidence; (c) the *Deed of Donation of Road Lots* did not bear the signature of then Acting City Mayor Eulogio Borres as the representative of the donee; and (d) the *Deed of Donation of Road Lots* had not been notarized. It noted that the failure to comply with the legal requirements for donations under the *Civil Code* rendered the donation void and invalid, and could not alter the result of the litigation.

With the denial of their motion for new trial, the Spouses Bardilas appealed to the CA.[31]

Decision of the CA

In their appeals, the Spouses Bardilas insisted that the RTC committed reversible errors in declaring:[32]

I. That the Mercaders are the owners of the easement of right of way in question.

II. That the easement of right of way in question has been extinguished.

III. In granting the Mercaders the right to use and occupy the extinguished easement which adjoins the Mercaders' properties.

IV. In awarding moral damages, attorney's fees and costs of suit to the Mercaders in Civil Case No. CEB-12783.

V. In dismissing Civil Case No. CEB-13384 and in declaring the closure of the road right of way in question by Clarita Village as lawful and valid.

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[30] *Id.* at 204-206.

[31] *Id.* at 207-208.

[32] CA *rollo*, pp. 33-34.

On March 18, 2003, the CA promulgated the now assailed decision,[33] modifying the judgment of the RTC and disposing as follows:

> **WHEREFORE**, the instant appeal is **PARTIALLY GRANTED.** The assailed decision of the Regional Trial Court of Cebu City, Branch 20 in Civil Case Nos. CEB-12783 and CEB-13384 is hereby **MODIFIED** to read as follows:
>
> WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered in favor of respondents Spouses Jesus and Letecia Bardilas as against the petitioners Spouses Bernabe and Lorna Mercader, Oliver Mercader, Geraldine Mercader and Esramay Mercader in Civil Case No. 12783:
>
> 1) **DECLARING** respondents Jesus and Letecia Bardilas as owners of the three (3) square meter wide road in question;
>
> 2) **GRANTING** to respondents Jesus and Letecia Bardilas the right to use and occupy the said three (3) square meter wide road; and
>
> 3) **ORDERING** petitioners to pay the respondents the sum of ₱20,000.00 as and for attorney's fees;
>
> 4) **ORDERING** the petitioners to pay the costs of suit;
>
> and in Civil Case No. 13384:
>
> 1) **DISMISSING** the amended complaint filed by plaintiffs Spouses Jesus and Letecia Bardilas; and
>
> 2) **DECLARING** the road network of the Clarita Village still as private properties and not public.
>
> **SO ORDERED**.

On April 28, 2003, the Spouses Mercader sought the reconsideration of the decision, [34] stating that the CA had "erred in awarding the 3 meter road right of way to the [Spouses Bardilas]

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[33] *Id.* at 37-38; penned by Associate Justice Perlita J. Tirona (retired), and concurred in by Associate Justice Roberto A. Barrios (retired/deceased), and Associate Justice Edgardo F. Sundiam (retired/deceased).

[34] *Id.* at 41.

and in ordering the respondent Mercader spouses, et al. to pay attorney's fees."[35] They argued that because Lot No. 5808-F-2-A and Lot No. 5808-F-2-B used to be one lot denominated as Lot No. 5808-F-2 that had the same right of way leading to the Clarita Village, they "are also legally entitled to the other half of the right of way" as owners of one of the subdivided lots;[36] that, as shown in their Exhibit H,[37] Lot No. 5808-F-3 of the Spouses Bardilas "has another 3 meter road right of way towards another point of Buhisan Road which is only about 40 lineal meters"[38] from their property; and that the award of attorney's fees was "not proper there being no legal basis to grant the award."[39]

On March 16, 2004,[40] however, the CA denied Spouses Mercader's motion for reconsideration.

Hence, this appeal only insofar as Civil Case No. CEB-12783 was concerned.[41]

Issues

The Spouses Mercaders raise the same issues aired in their motion for reconsideration in the CA. They contend that the technical description of their property contained the phrase "with existing Right of Way (3.00 meters wide)," which signified that they were equally "entitled to the road-right-of-way being conferred upon them by TITLE pursuant to Article 622 of the New Civil Code." They submit that:

Hence, they too should equally share in its retention for uses other than the easement after its non-user brought about by the closure of the exit point by Clarita Village Association. As borne out by the

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[35] *Id.* at 43.

[36] *Id.* at 44.

[37] Records, Civil Case No. CEB-12783, p. 108.

[38] CA *rollo*, p. 43.

[39] *Id.* at 44.

[40] *Id.* at 46.

[41] *Id.* at 19.

evidence, the respective properties of petitioners Sps. Bernabe and Lorna Mercader, on one hand, and Sps. Jesus and Letecia Bardilas, on the other hand, used to be a whole Lot 5808-F-2 with an area of 338 square meters before the same was subdivided into Lot 5808-F-2-A with an area of 89 square meters for the petitioner spouses and Lot 5808-F-2-B with an area of 249 square meters for the respondents. Before the subdivision, there was already a 3-meter wide road right of way leading towards Clarita Village. Thus, after the subdivision, the subject easement was annotated in both certificates of title as earlier stated. Very clearly, petitioners Bernabe and Lorna Mercader, and respondents Jesus and Letecia Bardilas, should equally share in the area of the easement. Consequently, the petitioners cannot be ordered to return the portion of easement on which part of petitioners' house and fence stand.[42]

Ruling of the Court

We cannot sustain the petitioners' claim that they acquired their right to the road right of way by title.

Easement or servitude, according to *Valdez v. Tabisula*, [43] is "a real right constituted on another's property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person." "It exists only when the servient and dominant estates belong to two different owners. It gives the holder of the easement an incorporeal interest on the land but grants no title thereto. Therefore, an acknowledgment of the easement is an admission that the property belongs to another."[44]

It is settled that road right of way is a discontinuous apparent easement[45] in the context of Article 622 of the *Civil Code*, which

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[42] *Id.* at 20-21.

[43] G.R. No. 175510, July 28, 2008, 560 SCRA 332, 337-338.

[44] *Bogo-Medellin Milling Co., Inc. v. Court of Appeals*, G.R. No. 124699, July 31, 2003, 407 SCRA 518, 526.

[45] *Costabella Corporation v. Court of Appeals*, G.R. No. 80511, January 25, 1992, 193 SCRA 333, 339; *Ronquillo v. Roco*, 103 Phil. 84 (1958); *Cuaycong v. Benedicto*, 37 Phil. 781 (1919).

provides that continuous non-apparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of title. But the phrase *with existing Right of Way* in the TCT is not one of the modes of acquisition of the easement by virtue of a title. Acquisition *by virtue of title*, as used in Art. 622 of the Civil Code, refers to "the juridical act which gives birth to the easement, such as law, donation, contract, and will of the testator."[46]

A perusal of the technical description of Lot No. 5808-F-2-A indicates that the phrase *with existing Right of Way (3.00 meters wide)* referred to or described Lot No. 5808-F-2-B,[47] which was one of the boundaries defining Lot F-2-A. Moreover, under the Torrens system of land registration, the certificate of title attests "to the fact that the person named in the certificate is the owner of the property therein described, subject to such liens and encumbrances as thereon noted or what the law warrants or reserves. The objective is to obviate possible conflicts of title by giving the public the right to rely upon the face of the Torrens certificate and to dispense, as a rule, with the necessity of inquiring further. The Torrens system gives the registered owner complete peace of mind, in order that he will be secured in his ownership as long as he has not voluntarily disposed of any right over the covered land."[48] The Torrens certificate of title is merely an evidence of ownership or title in the particular property described therein.[49]

What really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits. [50] As shown in the

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[46] II Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 1992, p. 361.

[47] Exhibit "2" for respondents, RTC records for Civil Case No. CEB-12783, p. 37.

[48] *Casimiro Development Corporation v. Renato L. Mateo*, G.R. No. 175485, July 27, 2011, 654 SCRA 676, 685-686.

[49] *Id.*

[50] *Notarte v. Notarte*, G.R. No. 180614, August 29, 2012, 679 SCRA

subdivision plan of Lot No. 5808-F-2, [51] and based on the technical description of Lot No. 5808-F-2-B as appearing in TCT No. 107915, [52] the right of way in dispute, which is "(B)ounded on the SW., along line 1-2 by Lot 5808-F-1, Psd-07-01-004579; on the West along line 2-3 by Lot 5726, Cebu Cad.; on the North along line 3-4-5 by Lot 5725, Cebu Cadastre" was part of Lot No. 5808-F-2-B of the Spouses Bardilas.

It is noteworthy that an encumbrance "subject to 3 meters wide right of way" was annotated on TCT No. 107915, which covers Lot No. 5808-F-2-B of the Spouses Bardilas.[53] As the owners of the servient estate, the Spouses Bardilas retained ownership of the road right of way even assuming that said encumbrance was for the benefit of Lot No. 5808-F-2-A of the Spouses Mercader. The latter could not claim to own even a portion of the road right of way because Article 630 of the *Civil Code* expressly provides that "[t]he owner of the servient estate retains ownership of the portion on which the easement is established, and may use the same in such manner as not to affect the exercise of the easement."

With the right of way rightfully belonging to them as the owners of the burdened property, the Spouses Bardilas remained entitled to avail themselves of all the attributes of ownership under the Civil Code, specifically: *jus utendi, jus fruendi, jus abutendi*, *jus disponendi* and *jus vindicandi*. Article 428 of the *Civil Code* recognizes that the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.[54] In that regard, the CA cogently pointed out:[55]

378; *Heirs of Anastacio Fabela v. Court of Appeals*, G.R. No. 142546, August 9, 2001, 362 SCRA 531.

[51] Records, Civil Case No. CEB-12783, p. 38.

[52] *Id.* at 61.

[53] Exhibit "C" for Petitioners (Also Exhibit "14" for Respondents), RTC Records of Civil Case No. CEB-12783, p. 63.

[54] *Borbajo v. Hidden View Homeowners, Inc.*, G.R. No. 152440, January 31, 2005, 450 SCRA 315, 325.

[55] *Rollo*, p. 36

Moreover, as owners of the three (3) square meter wide road in dispute, the appellants (referring to the Bardilas spouses) may rightfully compel the petitioners-appellees to pay to them the value of the land upon which a portion of their (petitioners-appellees) house encroaches, and in case the petitioners-appellees fail to pay, the appellants may remove or demolish the encroaching portion of the petitioners-appellees' house. x x x

The second issue concerns the award of attorney's fees. Relying on *Bernardo v. Court of Appeals, (Special Sixth Division)*,[56] the petitioners argue that the CA erred "in awarding attorney's fees to the appellants after eliminating or refusing to award moral and exemplary damages;"[57] that the CA did not make any finding to the effect "that the appellants were compelled to litigate with third persons or to incur expenses to protect their interest;"[58] and that, consequently, the grant of attorneys' fees to the Spouses Bardillas lacked legal basis.

The award of attorney's fees and expenses of litigation is governed by Article 2208 of the *Civil Code*, to wit:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages is awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil case or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

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[56] G.R. No. 106153, July 14, 1997, 275 SCRA 413, 432.

[57] *Rollo*, p. 21.

[58] *Id.*

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

In *Philippine National Construction Corporation v. APAC Marketing Corporation*,[59] the Court opined that whenever attorney's fees are granted, the basis for the grant must be clearly expressed in the judgment of the court. It expounded on why this is so:

In *ABS-CBN Broadcasting Corp. v. CA*, this Court had the occasion to expound on the policy behind the grant of attorney's fees as actual or compensatory damages:

> (T)he law is clear the in the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstance provided for in Article 2208 of the Civil Code.
>
> The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no

[59] G.R. No. 190957, June 5, 2013, 697 SCRA 441, 449-450.

sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

In *Benedicto v. Villaflores*, we explained the reason behind the need for the courts to arrive upon an actual finding to serve as basis for a grant of attorney's fees, considering the dual concept of these fees as ordinary and extraordinary:

> It is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.

We can glean from the above ruling that attorney's fees are not awarded as a matter of course every time a party wins. We do not put a premium on the right to litigate. On occasions that those fees are awarded, the basis for the grant must be clearly expressed in the decision of the court.

In awarding attorney's fees, the CA relied on Article 2208 (11) of the *Civil Code*. The exercise of the discretion to allow attorney's fees must likewise be justified. In *Eastern Shipping Lines, Inc. v. Margarine-Verkaufs-Union*,[60] the Court said:

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[60] No. L-31087, September 27, 1979, 93 SCRA 257, 262; *The Congregation of the Religious of the Virgin Mary v. Court of Appeals,* G.R. No. 126363, June 26, 1998, 291 SCRA 385; *Refractories Corporation*

Insofar as the present case is concerned, the lower court made no finding that it falls within any of the exceptions that would justify the award of attorney's fees, such as gross and evident bad faith in refusing to satisfy a plainly valid, just and demandable claim. Even under the broad eleventh exception of the cited article which allows the imposition of attorney's fees "in any other case where the court deems it just and equitable that attorney's fees and expenses in litigation should be recovered," the Court stressed in *Buan, supra*, that "the conclusion must be borne out by findings of facts and law. What is just and equitable in a given case is not a mere matter of feeling but of demonstration. . . . Hence, the exercise of judicial discretion in the award of attorney's fees under Article 2208 (11) of the Civil Code demands a factual, legal or equitable justification upon the basis of which the court exercises its discretion. Without such justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture." The summary award of counsel's fees made in the appealed judgment must therefore be set aside.

Considering that the decision of the CA does not express any justification other than stating that attorney's fees were being awarded to the respondents "pursuant to paragraph 11 of Article 2208 of the *New Civil Code*," the award by the CA must be set aside; otherwise, attorney's fees would be turned into a premium on the right to litigate, which is prohibited. Moreover, attorney's fees, being in the nature of actual damages, should be based on the facts on record and the Court must delineate the legal reason for such award.[61]

WHEREFORE, the Court **AFFIRMS** the judgment promulgated on March 18, 2003 in C.A.-G.R. CV No. 53153 with respect to Civil Case No. CEB-12783 subject to the **MODIFICATION** that the portion "ordering petitioners to pay

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of the Philippines v. Intermediate Appellate Court, G.R. No. 70839, August 17, 1989, 176 SCRA 539.

[61] *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, January 23, 2006, 479 SCRA 404, 414.

the respondents the sum of ₱20,000.00 as and for attorney's fees" is **DELETED**; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 184666. June 27, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MEGA PACIFIC eSOLUTIONS, INC., WILLY U. YU, BONNIE S. YU, ENRIQUE T. TANSIPEK, ROSITA Y. TANSIPEK, PEDRO O. TAN, JOHNSON W. FONG, BERNARD I. FONG, and LAURIANO[*] A. BARRIOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; WRIT OF PRELIMINARY ATTACHMENT; DISCUSSED.— A writ of preliminary attachment is a provisional remedy issued upon the order of the court where an action is pending. Through the writ, the property or properties of the defendant may be levied upon and held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant. The provisional remedy of attachment is available in order that the defendant may not dispose of the property attached, and thus prevent the satisfaction of any judgment that may be secured by the plaintiff from the former. The purpose and function of an attachment or

[*] Laureano A. Barrios in some part of the records.

garnishment is twofold. First, it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation, thereby preventing the loss or dissipation of the property through fraud or other means. Second, it subjects the property of the debtor to the payment of a creditor's claim, in those cases in which personal service upon the debtor cannot be obtained. This remedy is meant to secure a contingent lien on the defendant's property until the plaintiff can, by appropriate proceedings, obtain a judgment and have the property applied to its satisfaction, or to make some provision for unsecured debts in cases in which the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.

2. ID.; ID.; ID.; GROUNDS; ATTACHMENT MAY ISSUE IN AN ACTION AGAINST A PARTY GUILTY OF FRAUD IN THE PERFORMANCE OF AN OBLIGATION; FACTUAL CIRCUMSTANCES OF THE ALLEGED FRAUD MUST BE SUFFICIENTLY SHOWN.— Petitioner relied upon Section 1 (d), Rule 57 of the Rules of Court as basis for its application for a writ of preliminary attachment. This provision states: Section 1. Grounds upon which attachment may issue. At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases: x x x x (d) In an action against a party who has been guilty of a **fraud in contracting the debt** or incurring the obligation upon which the action is brought, or in the **performance** thereof. For a writ of preliminary attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud. In *Metro, Inc. v. Lara's Gift and Decors, Inc*., We explained: x x x **The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given.** To constitute a ground for attachment in Section 1 (d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. x x x While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances. Fraud by its nature is not a thing susceptible of ocular observation or readily

demonstrable physically; it must of necessity be proved in many cases by inferences from circumstances shown to have been involved in the transaction in question.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESSENTIAL REQUISITES OF CONTRACTS; CONSENT; SILENCE OR CONCEALMENT CONSTITUTE FRAUD IF THERE IS A SPECIAL DUTY TO DISCLOSE CERTAIN FACTS.— Pursuant to Article 1339 of the Civil Code, silence or concealment does not, by itself, constitute fraud, unless there is a special duty to disclose certain facts, or unless the communication should be made according to good faith and the usages of commerce. Fraud has been defined to include an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, with intent to deceive, **conceals or omits to state material facts** and, by reason of such omission or concealment, the other party was induced to give consent that would not otherwise have been given. One form of inducement is covered within the scope of the crime of estafa under Article 315, paragraph 2, of the Revised Penal Code, in which, any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud is held criminally liable. x x x In the case of *People v. Menil, Jr.*, the Court has **defined fraud and deceit** in this wise: Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. **On the other hand, deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended**

to deceive another so that he shall act upon it to his legal injury.

4. POLITICAL LAW; PUBLIC BIDDING; THE THREE PRINCIPLES ARE OFFER TO THE PUBLIC, AN OPPORTUNITY FOR COMPETITION, AND A BASIS FOR AN EXACT COMPARISON OF BIDS.— The word "bidding" in its comprehensive sense means making an offer or an invitation to prospective contractors, whereby the government manifests its intention to make proposals for the purpose of securing supplies, materials, and equipment for official business or public use, or for public works or repair. Three principles involved in public bidding are as follows: (1) the offer to the public; (2) an opportunity for competition, and (3) a basis for an exact comparison of bids. A regulation of the matter, which excludes any of these factors, destroys the distinctive character of the system and thwarts the purpose of its adoption.

5. COMMERCIAL LAW; CORPORATIONS; PIERCING OF CORPORATE VEIL; IN FRAUD CASES, THE LEGAL FICTION OF SEPARATE JUDICIAL PERSONALITY MUST BE USED FOR FRAUDULENT ENDS; CASE AT BAR.— Veil-piercing in fraud cases requires that the legal fiction of separate juridical personality is used for fraudulent or wrongful ends. [Here,] We see red flags of fraudulent schemes in public procurement, all of which were established in the 2004 Decision, the totality of which strongly indicate that MPEI was a sham corporation formed *merely for the purpose of perpetrating a fraudulent scheme.* x x x The scheme was to put up a corporation that would participate in the bid and enter into a contract with the COMELEC, even if the former was not qualified or authorized to do so. Without the incorporation of MPEI, the defraudation of the government would not have been possible. The formation of MPEI paved the way for its participation in the bid, through its claim that it was an agent of a supposed joint venture, its misrepresentations to secure the automation contract, its misrepresentation at the time of the execution of the contract, its delivery of the defective ACMs, and ultimately its acceptance of the benefits under the automation contract.

6. ID.; ID.; ID.; THE MAIN EFFECT IS THAT STOCKHOLDERS WILL BE HELD PERSONALLY

LIABLE FOR THE ACTS AND CONTRACTS OF THE CORPORATION WHOSE EXISTENCE IS IGNORED.— A corporation's privilege of being treated as an entity distinct and separate from the stockholders is confined to legitimate uses, and is subject to equitable limitations to prevent its being exercised for fraudulent, unfair, or illegal purposes. x x x The main effect of disregarding the corporate fiction is that stockholders will be held personally liable for the acts and contracts of the corporation, whose existence, at least for the purpose of the particular situation involved, is ignored. We have consistently held that when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an *association of persons*. Thus, considering that We find it justified to pierce the corporate veil in the case before Us, MPEI must, perforce, be treated as a mere association of persons whose assets are unshielded by corporate fiction.

7. ID.; ID.; ID.; ID.; PARTICIPATION IN THE FRAUD ESTABLISHED BY SIGNING AND EXECUTING THE VOIDED CONTRACT.— That [respondent Willy's] signature appears on the automation contract means that he agreed and acceded to its terms. His participation in the fraud involves his signing and executing the voided contract. The execution of the automation contract with a non-eligible entity and the subsequent award of the contract despite the failure to meet the mandatory requirements were "badges of fraud" in the procurement process that should have been recognized by the CA to justify the issuance of the writ of preliminary attachment against the properties of respondent Willy. x x x It is clear to this Court that inequity would result if We do not attach personal liability to all the individual respondents. With a definite finding that MPEI was used to perpetrate the fraud against the government, it would be a great injustice if the remaining individual respondents would enjoy the benefits of incorporation despite a clear finding of abuse of the corporate vehicle. Indeed, to allow the corporate fiction to remain intact would not subserve, but instead subvert, the ends of justice.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; GRAVE ABUSE OF DISCRETION MUST BE PATENT AND GROSS.—Section 1, Rule 65 of the Rules of Court, clearly

sets forth the instances when a petition for certiorari can be used as a proper remedy: x x x The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered to have been committed with grave abuse of discretion when the act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike down an act for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.

9. ID.; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; BAR BY FORMER JUDGMENT AND CONCLUSIVENESS OF JUDGMENT.— This doctrine of *res judicata* which is set forth in Section 47 of Rule 39 of the Rules of Court lays down two main rules, namely: (1) the judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. The first general rule stated above and corresponding to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment."

10. ID.; ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT; PERTAIN EVEN TO THOSE MATTERS ESSENTIALLY CONNECTED WITH THE SUBJECT OF LITIGATION IN THE FIRST ACTION.— In *Calalang v. Register of Deeds of Quezon City*, We discussed the concept of conclusiveness of judgment as pertaining even to those matters *essentially connected* with the subject of litigation in the first action. This Court explained therein that the bar on re-litigation extends to those questions *necessarily implied* in the final judgment, although no specific finding may have been made in reference thereto, and although those matters were directly referred to in the pleadings and were not actually or formally presented. If the record of the former trial shows that the judgment could not have been rendered without deciding a particular matter, It will be considered as having settled that matter as to all future actions between the parties; and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself: **The second concept – conclusiveness of judgment – states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority.** It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. **If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit** Identity of cause of action is not required but merely identity of issue.

11. POLITICAL LAW; ESTOPPEL DOES NOT LIE AGAINST THE STATE WHEN IT ACTS TO RECTIFY THE MISTAKES, ERRORS OR ILLEGAL ACTS OF ITS

OFFICIALS AND AGENTS.— [E]stoppel generally finds no application against the State when it acts to rectify mistakes, errors, irregularities, or illegal acts of its officials and agents, irrespective of rank. This principle ensures the efficient conduct of the affairs of the State without any hindrance to the implementation of laws and regulations by the government. This holds true even if its agents' prior mistakes or illegal acts shackle government operations and allow others – some by malice – to profit from official error or misbehavior, and even if the rectification prejudices parties who have meanwhile received benefit. x x x The equitable doctrine of estoppel for the *prevention of injustice* and is for the protection of those who have been misled by that which on its face was fair and whose character, as represented, parties to the deception will not, in the interest of justice, be heard to deny. It cannot therefore be utilized to insulate from liability the very perpetrators of the injustice complained of.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Joven Siazon Lorenzo for respondent L. Barrios.

Lazaro Law Firm for respondents Mega Pacific eSolutions, Inc., *et al.*

Poblador Bautista & Reyes for respondents W. Yu, B. Yu, E. Tansipek & R. Tansipek.

D E C I S I O N

SERENO, *C.J.*:

The instant case is an offshoot of this Court's Decision dated 13 January 2004 (2004 Decision) in a related case entitled *Information Technology Foundation of the Philippines v. Commission on Elections*.[1]

In the 2004 case, We declared void the automation contract executed by respondent Mega Pacific eSolutions, Inc. (MPEI)

[1] G.R. No. 159139, 464 Phil. 173 (2004) [the 2004 case].

and the Commission on Elections (COMELEC) for the supply of automated counting machines (ACMs) for the 2004 national elections.

The present case involves the attempt of petitioner Republic of the Philippines to cause the attachment of the properties owned by respondent MPEI, as well as by its incorporators and stockholders (individual respondents in this case), in order to secure petitioner's interest and to ensure recovery of the payments it made to respondents for the invalidated automation contract.

At bench is a Rule 45 Petition assailing the Amended Decision dated 22 September 2008 (Amended Decision) issued by the Court of Appeals (CA) in CA-G.R. SP No. 95988.[2] In said Amended Decision, the CA directed the remand of the case to the Regional Trial Court of Makati City, Branch 59 (RTC Makati) for the reception of evidence in relation to petitioner's application for the issuance of a writ of preliminary attachment. The CA had reconsidered and set aside its previous Decision dated 31 January 2008 (First Decision) [3] entitling petitioner to the issuance of said writ.

Summarized below are the relevant facts of the case, some of which have already been discussed in this Court's 2004 Decision:

THE FACTS

Republic Act No. 8436 authorized the COMELEC to use an automated election system for the May 1998 elections. However, the automated system failed to materialize and votes were canvassed manually during the 1998 and the 2001 elections.

For the 2004 elections, the COMELEC again attempted to implement the automated election system. For this purpose, it invited bidders to apply for the procurement of supplies,

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[2] *Rollo*, pp. 31-36; In the case entitled *Republic of the Philippines v. Hon. Winlove M. Dumayas* written by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justices Mario L. Guariña III and Sixto C. Marella, Jr.

[3] *Id.* at 293-302.

equipment, and services. Respondent MPEI, as lead company, purportedly formed a joint venture — known as the Mega Pacific Consortium (MPC) — together with We Solv, SK C & C, ePLDT, Election.com and Oracle. Subsequently, MPEI, on behalf of MPC, submitted its bid proposal to COMELEC.

The COMELEC evaluated various bid offers and subsequently found MPC and another company eligible to participate in the next phase of the bidding process.[4] The two companies were referred to the Department of Science and Technology (DOST) for technical evaluation. After due assessment, the Bids and Awards Committee (BAC) recommended that the project be awarded to MPC. The COMELEC favorably acted on the recommendation and issued Resolution No. 6074, which awarded the automation project to **MPC**.

Despite the award to MPC, the COMELEC and **MPEI** executed on 2 June 2003 the Automated Counting and Canvassing Project Contract (automation contract) [5] for the aggregate amount of ₱1,248,949,088. MPEI agreed to supply and deliver 1,991 units of ACMs and such other equipment and materials necessary for the computerized electoral system in the 2004 elections. Pursuant to the automation contract, MPEI delivered 1,991 ACMs to the COMELEC. The latter, for its part, made partial payments to MPEI in the aggregate amount of ₱1.05 billion.

The full implementation of the automation contract was rendered impossible by the fact that, after a painstaking legal battle, this Court in its 2004 Decision declared the contract null and void. [6] We held that the COMELEC committed a clear

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[4] *Id.* at 82.

[5] *Id.* at 84-106.

[6] The dispositive portion of this Court's Decision in the 2004 case is stated as follows:

> Wherefore, the PETITION is GRANTED. The Court hereby declares NULL and VOID Comelec Resolution No. 6074 awarding the contract for Phase II of the CAES to Mega Pacific Consortium (MPC). Also declared null and void is the subject Contract executed between Comelec and Mega Pacific eSolutions (MPEI). Comelec is further ORDERED to refrain from implementing any other contract or agreement entered into with regard to this project.

violation of law and jurisprudence, as well as a reckless disregard of its own bidding rules and procedure. In addition, the COMELEC entered into the contract with inexplicable haste, and without adequately checking and observing mandatory financial, technical, and legal requirements. In a subsequent Resolution, We summarized the COMELEC's grave abuse of discretion as having consisted of the following:[7]

1. By a formal Resolution, it *awarded* the project to "Mega Pacific Consortium," an entity that had *not* participated in the bidding. Despite this grant, Comelec entered into the *actual* Contract with "Mega Pacific eSolutions, Inc." (MPEI), a company that joined the bidding process but did *not* meet the eligibility requirements.

2. Comelec accepted and irregularly paid for MPEI's ACMs that had *failed* the accuracy requirement of 99.9995 percent set up by the Comelec bidding rules. Acknowledging that this rating could have been too steep, the Court nonetheless noted that "the essence of public bidding is violated by the practice of requiring very high standards or unrealistic specifications that cannot be met, x x x only to water them down *after* the award is made. **Such scheme, which discourages the entry of *bona fide* bidders, is in fact a sure indication of fraud in the bidding, designed to eliminate fair competition."**

3. The software program of the counting machines likewise *failed* to detect previously downloaded precinct results and to prevent them from being reentered. This failure, which has not been corrected x x x, would have allowed unscrupulous persons to repeatedly feed into the computers the results

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Let a copy of this Decision be furnished the Office of the Ombudsman which shall determine the criminal liability, if any, of the public officials (and conspiring private individuals, if any) involved in the subject Resolution and Contract. Let the Office of the Solicitor General also take measures to protect the government and vindicate public interest from the ill effects of the illegal disbursements of public funds made by reason of the void Resolution and Contract.

[7] Resolution dated 22 August 2006; *Rollo* (G.R. No. 159139), Vol. V, pp. 4127-4137.

favorable to a particular candidate, an act that would have translated into massive election fraud by just a few key strokes.

4. Neither were the ACMs able to print audit trails without loss of data — a mandatory requirement under Section 7 of Republic Act No. 8436. Audit trails would enable the Comelec to document the identities of the ACM operators responsible for data entry and downloading, as well as the times when the various data were processed, in order to forestall fraud and to identify the perpetrators. The absence of audit trails would have posed a serious threat to free and credible elections.

5. Comelec failed to explain satisfactorily why it had ignored its own bidding rules and requirements. It admitted that the software program used to test the ACMs was merely a "demo" version, and that the final one to be actually used in the elections was still being developed. By awarding the Contract and irregularly paying for the supply of the ACMs without having seen — much less, evaluated — the final product being purchased, Comelec desecrated the law on public bidding. It would have allowed the winner to alter its bid substantially, without any public bidding.

All in all, Comelec subverted the essence of public bidding: to give the public an opportunity for fair competition and a clear basis for a precise comparison of bids.[8] (Emphasis supplied)

As a consequence of the nullification of the automation contract, We directed the Office of the Ombudsman to determine the possible criminal liability of persons responsible for the contract.[9] This Court likewise directed the Office of the Solicitor General to protect the government from the ill effects of the illegal disbursement of public funds in relation to the automation contract.[10]

After the declaration of nullity of the automation contract, the following incidents transpired:

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[8] *Id.*

[9] *Supra* note 6.

[10] *Id.*

1. Private respondents in the 2004 case moved for reconsideration of the 2004 Decision, but the motion was denied by this Court in a Resolution dated 17 February 2004 (2004 Resolution).[11]

2. The COMELEC filed a "Most Respectful Motion for Leave to Use the Automated Counting Machines in the Custody of the Commission on Elections for use in the 8 August 2005 Elections in the Autonomous Region for Muslim Mindanao" dated 9 December 2004 (Motion for Leave to Use ACMs), which was denied by this Court in its Resolution dated 15 June 2005 (2005 Resolution).

3. Atty. Romulo B. Macalintal (Macalintal) filed an "Omnibus Motion for Leave of Court (1) to Reopen the Case; and (2) to Intervene and Admit the Attached Petition in Intervention," which was denied by this Court in its Resolution dated 22 August 2006 (2006 Resolution); and

4. Respondent MPEI filed a Complaint for Damages[12] (Complaint) with the RTC Makati, from which the instant case arose.

The above-mentioned incidents are discussed in more detail below.

BACKGROUND PROCEEDINGS

Private respondents' Motion for Reconsideration

Private respondents in the 2004 case moved for reconsideration of the 2004 Decision. Aside from reiterating the procedural and substantive arguments they had raised, they also argued that the 2004 Decision had exposed them to possible criminal prosecution.[13]

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[11] *Rollo* (G.R. No. 159139), Vol. IV, pp. 3324-3339.

[12] *Rollo*, pp. 153-169; Pertaining to the case entitled *Mega Pacific eSolutions, Inc. v. Republic of the Philippines*, docketed as Civil Case No. 04-346.

[13] *Supra* note 11.

This Court denied the motion in its 2004 Resolution and ruled that no prejudgment had been made on private respondents' criminal liability. We further ruled that although the 2004 Decision stated that the Ombudsman shall "determine the criminal liability, if any, of the public officials (and conspiring private individuals, if any) involved in the subject Resolution and Contract," We did not make any premature conclusion on any wrongdoing, but precisely directed the Ombudsman to make that determination after conducting appropriate proceedings and observing due process.

Similarly, it appears from the record that several criminal and administrative Complaints had indeed been filed with the Ombudsman in relation to the declaration of nullity of the automation contract.[14] The Complaints were filed against several public officials and the individual respondents in this case.[15]

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[14] *Rollo*, pp. 822-825; The four (4) cases are as follows:

(1) "Kilosbayan Foundation and Bantay Katarungan Foundation, represented by Atty. Emilio C. Capulong, Jr. v. Benjamin Santos Abalos, Resurreccion Zante Borra, Florentino Aglipay Tuason, Rufino San Buenaventura Javier, Mehol Kiram Sadain, Luzviminda Gaba Tancangco, Pablo Ralph Cabatian Lantion, Willy U. Yu, Bonnie S. Yu, Enrique T. Tansipek, Pedro O. Tan, Johnson W. Fong and Laureano A. Barrios," docketed as OMB-L-C-04-0922-J, for violation of Sec. 3 (e) and (g) of R.A. 3019 and Sec. 2 of R.A. 7080;

(2) "Sen. Aquilino Q. Pimentel, Jr., Field Investigation Office (FIO) Office of the Ombudsman, represented by Atty. Maria Olivia Elena A. Roxas v. Benjamin Santos Abalos, Resurreccion Zante Borra, Florentino Aglipay Tuason, Rufino San Buenaventura Javier, Mehol Kiram Sadain, Luzviminda Gaba Tancangco, Pablo Ralph Cabatian Lantion, Eduardo Dulay Mejos, Gideon Gillego de Guzman, Jose Parel Balbuena, Lamberto Posadas Llamas, Bartolome Javillonar Sinocruz, Jr., Jose Marundan Tolentino, Jr., Jaime Zita Paz, Zita Buena-Castillon, Rolando T. Viloria, Willy U. Yu, Bonnie S. Yu, Enrique T. Tansipek, Pedro O. Tan, Johnson W. Fong and Laureano A. Barrios," docketed as OMB-L-C-04-0983-J, for violation of Sec. 3 (e) and (g) of R.A. 3019;

(3) "Sen. Aquilino Q. Pimentel, Jr. v. Luzviminda Gaba Tancangco, Pablo Ralph Cabatian Lantion," docketed as OMB-C-C-04-0011-A for violation of Sec. 3 (e) and (g) of R.A. 3019; and

(4) "Sen. Aquilino Q. Pimentel, Jr., Field Investigation Office (FIO) Office of the Ombudsman, represented by Atty. Maria Olivia Elena A. Roxas v. Eduardo Dulay Mejos, Gideon Gillego de Guzman, Jose Parel

In a Resolution issued on 28 June 2006,[16] the Ombudsman recommended the filing of informations before the Sandiganbayan against some of the public officials and the individual respondents[17] for violation of Section 3 (e) of Republic Act No. 3019 (the Anti-Graft and Corrupt Practices Act). However, on 27 September 2006,[18] upon reconsideration, the Ombudsman

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Balbuena, Lamberto Posadas Llamas, Bartolome Javillonar Sinocruz, Jr., Jose Marundan Tolentino, Jr., Jaime Zita Paz, Zita Buena-Castillon, Rolando T. Viloria," docketed as OMB-L-A-04-0706-J for dishonesty, grave misconduct and conduct prejudicial to the best interest of service.

[15] Except Rosita Y. Tansipek and Bernard I. Fong, who have not been impleaded.

[16] *Rollo* (G.R. No. 174777), Vol. I, pp. 88-122; The pertinent portions of the *fallo* are quoted below:

> WHEREFORE, premises considered, it is respectfully recommended that:
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> 1. An Information for Violation of Section 3 (e) of Republic Act No. 3019, be filed before the Sandiganbayan against respondents EDUARDO MEJOS, GIDEON G. DE GUZMAN, JOSE P. BALBUENA, LAMBERTO P. LLAMAS and BARTOLOME J. SINOCRUZ, JR. in conspiracy with private respondents WILLY U. YU, BONNIE YU, ENRIQUE TANSIPEK, ROSITA Y. TANSIPEK, PEDRO O. TAN, JOHNSON W. FONG, BERNARD L. FONG and LAUREANO BARRIOS:
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> x x x x x x x x x
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> 5. That further fact-finding investigation be conducted by this Office on the following matters:
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> a. Charges involving violation of Section 3 (g) of Republic Act 3019 and other pertinent laws;
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> b. On the criminal liability of all persons who may have conspired with public officials in the subject contract;
>
> c. On the culpability of other individuals who were not originally charged in the complaints, but may have participated and benefited in the awarding of the subject Contract; and
>
> d. the disbursement of public funds made on account of the void Resolution and Contract.

[17] Including Rosita Y. Tansipek and Bernard I. Fong.

[18] *Rollo*, pp. 825-826.

reversed its earlier ruling in a Supplemental Resolution (September Resolution), directing the dismissal of the criminal cases against the public officials, as well as the individual respondents, for lack of probable cause.[19]

With this development, a Petition for Certiorari was filed with this Court on 13 October 2006 and docketed as G.R. No. 174777.[20] In the Petition, several individuals[21] assailed the September Resolution of the Ombudsman finding no probable cause to hold respondents criminally liable. The case remains pending with this Court as of this date.

COMELEC's Motion for Leave to Use ACMs in the ARMM Elections

The COMELEC filed a motion with this Court requesting permission to use the 1,991 ACMs previously delivered by respondent MPEI, for the ARMM elections, then slated to be held on 8 August 2005. In its motion, the COMELEC claimed that automation of the ARMM elections was mandated by Republic Act No. 9333, and since the government had no available funds to finance the automation of those elections, the ACMs could be utilized for the 2005 elections.

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[19] *Id.* at 822-876; The dispositive portion states:

WHEREFORE, the Office recommends the following:

1. That the Resolution dated 28 June 2006 be REVERSED and SET ASIDE.
2. That the criminal complaints against public and private respondents be DISMISSED for lack of probable cause.
3. That the administrative complaint against public respondents be DISMISSED.
4. that the matter of the editorial article appearing in the July 2006 issue of *Kilosbayan* by Former Senator Jovito R. Salonga be REFERRED to the Internal Affairs Board for investigation.

[20] See *rollo* (G.R. No. 174777), Vol. I, p. 3; Entitled *Sen. Aquilino Q. Pimentel, Jr. v. Omb. Ma. Merceditas N. Gutierrez.*

[21] *Id.*; Including Sen. Aquilino Q. Pimentel, Jr., Sergio L. Osmeña III, Panfilo M. Lacson, Alfredo S. Lim, Jamby A.S. Madrigal, Luisa P. Ejercito-Estrada, Jinggoy E. Estrada, Rodolfo G. Biazon and Richard F. Gordon.

This Court denied the Motion in Our 2005 Resolution. We ruled that allowing the use of the ACMs would have the effect of illegally reversing and subverting a final decision We had promulgated. We further ruled that the COMELEC was asking for permission to do what it had precisely been prohibited from doing under the 2004 Decision. This Court also ruled that the grant of the motion would bar or jeopardize the recovery of government funds paid to respondents. Considering that the COMELEC did not present any evidence to prove that the defects had been addressed, We held that the use of the ACMs and the software would expose the ARMM elections to the same electoral ills pointed out in the 2004 Decision.

Atty. Macalintal's Omnibus Motion

Atty. Romulo Macalintal sought to reopen the 2004 case in order that he may be allowed to intervene as a taxpayer and citizen. His purpose for intervening was to seek another testing of the ACMs with the ultimate objective of allowing the COMELEC to use them, this time for the 2007 national elections.

This Court denied his motion in Our 2006 Resolution, ruling that Atty. Macalintal failed to demonstrate that certain supervening events and legal circumstances had transpired to justify the reliefs sought. We in fact found that, after Our determination that the ACMs had failed to pass legally mandated technical requirements in 2004, they were simply put in storage. The ACMs had remained idle and unused since the last evaluation, at which they failed to hurdle crucial tests. Consequently, We ruled that if the ACMs were not good enough for the 2004 national elections or the 2005 ARMM elections, then neither would they be good enough for the 2007 national elections, considering that nothing was done to correct the flaws that had been previously underscored in the 2004 Decision. We held that granting the motion would be tantamount to rendering the 2004 Decision totally ineffective and nugatory.

Moreover, because of our categorical ruling that the whole bidding process was void and *fraudulent,* the proposal to use the illegally procured, demonstratively defective, and fraud-prone ACMs was rendered nonsensical. Thus:

We stress once again that the Contract entered into by the Comelec for the supply of the ACMs was declared VOID by the Court in its Decision, because of clear violations of law and jurisprudence, as well as the reckless disregard by the Commission of its own bidding rules and procedure. In addition, the poll body entered into the Contract with inexplicable haste, without adequately checking and observing mandatory financial, technical and legal requirements. As explained in our Decision. Comelec's gravely abusive acts consisted of the following:

x x x x x x x x x

To muddle the issue, Comelec keeps on saying that the "winning" bidder presented a lower price than the only other bidder. It ignored the fact that the whole bidding process was VOID and FRAUDULENT. How then could there have been a "winning" bid?[22] (Emphasis supplied)

THE INSTANT CASE

Complaint for Damages filed by respondents with the RTC Makati and petitioner's Answer with Counterclaim, with an application for a writ of preliminary attachment, from which the instant case arose

Upon the finality of the declaration of nullity of the automation contract, respondent MPEI filed a Complaint for Damages before the RTC Makati, arguing that, notwithstanding the nullification of the automation contract, the COMELEC was still bound to pay the amount of ₱200,165,681.89. This amount represented the difference between the value of the ACMs and the support services delivered on one hand, and on the other, the payment previously made by the COMELEC. [23]

Petitioner filed its Answer with Counterclaim [24] and argued that respondent MPEI could no longer recover the unpaid balance

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[22] *Supra* note 7 at 4132-4134.

[23] *Rollo*, pp. 161-163.

[24] *Id.* at 170-195.

from the void automation contract, since the payments made were illegal disbursements of public funds. It contended that a null and void contract vests no rights and creates no obligations, and thus produces no legal effect at all. Petitioner further posited that respondent MPEI could not hinge its claim upon the principles of unjust enrichment and quasi-contract, because such presume that the acts by which the authors thereof become obligated to each other are lawful, which was not the case herein.[25]

By way of a counterclaim, petitioner demanded from respondents the return of the payments made pursuant to the automation contract.[26] It argued that individual respondents, being the incorporators of MPEI, likewise ought to be impleaded and held accountable for MPEI's liabilities. The creation of MPC was, after all, merely an ingenious scheme to feign eligibility to bid.[27]

Pursuant to Section 1 (d) of Rule 57 of the Rules of Court, petitioner prayed for the issuance of a writ of preliminary attachment against the properties of MPEI and individual respondents. The application was grounded upon the fraudulent misrepresentation of respondents as to their eligibility to participate in the bidding for the COMELEC automation project and the failure of the ACMs to comply with mandatory technical requirements.[28]

Subsequently, the trial court denied the prayer for the issuance of a writ of preliminary attachment,[29] ruling that there was an absence of factual allegations as to how the fraud was actually committed.

The allegations of petitioner were found to be unreliable, as the latter merely copied from the declarations of the Supreme Court in *Information Technology Foundation of the Phils. v.*

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[25] *Id.* at 185-187.

[26] *Id.* at 190-192.

[27] *Id.* at 191-192 & 196-200.

[28] *Id.* at 201-211.

[29] Order dated 28 March 2006; *id.* at 213-214.

COMELEC the factual allegations of MPEI's lack of qualification and noncompliance with bidding requirements. The trial court further ruled that the allegations of fraud on the part of MPEI were not supported by the COMELEC, the office in charge of conducting the bidding for the election automation contract. It was likewise held that there was no evidence that respondents harbored a preconceived plan not to comply with the obligation; neither was there any evidence that MPEI's corporate fiction was used to perpetrate fraud. Thus, it found no sufficient basis to pierce the veil of corporate fiction or to cause the attachment of the properties owned by individual respondents.

Petitioner moved to set aside the trial court's Order denying the writ of attachment,[30] but its motion was denied.[31]

Appeal before the CA and the First Decision

Aggrieved, petitioner filed an appeal with the CA, arguing that the trial court had acted with grave abuse of discretion in denying the application for a writ of attachment.

As mentioned earlier, the CA in its First Decision[32] reversed and set aside the trial court's Orders and ruled that there was sufficient basis for the issuance of a writ of attachment in favor of petitioner.

The appellate court explained that the averments of petitioner in support of the latter's application actually reflected pertinent conclusions reached by this Court in its 2004 Decision. It held that the trial court erred in disregarding the following findings of fact, which remained unaltered and unreversed: (1) COMELEC bidding rules provided that the eligibility and capacity of a bidder may be proved through financial documents including, among others, audited financial statements for the last three years; (2) MPEI was incorporated only on 27 February 2003, or 11 days prior to the bidding itself; (3) in an attempt to disguise its

[30] *Id.* at 215-226.

[31] *Id.* at 227.

[32] *Id.* at 293-302.

ineligibility, MPEI participated in the bidding as lead company of MPC, a putative consortium, and submitted the incorporation papers and financial statements of the members of the consortium; and (4) no proof of the joint venture agreement, consortium agreement, memorandum of agreement, or business plan executed among the members of the purported consortium was ever submitted to the COMELEC.[33]

According to the CA, the foregoing were glaring indicia or badges of fraud, which entitled petitioner to the issuance of the writ. It further ruled that there was sufficient reason to pierce the corporate veil of MPEI. Thus, the CA allowed the attachment of the properties belonging to both MPEI and individual respondents.[34] The CA likewise ruled that even if the COMELEC committed grave abuse of discretion in capriciously disregarding the rules on public bidding, this should not preclude or deter petitioner from pursuing its claim against respondents. After all, the State is not estopped by the mistake of its officers and employees.[35]

Respondents moved for reconsideration[36] of the First Decision of the CA.

Motion for Reconsideration before the CA and the Amended Decision

Upon review, the CA reconsidered its First Decision[37] and directed the remand of the case to the RTC Makati for the reception of evidence of allegations of fraud and to determine whether attachment should necessarily issue.[38]

The CA explained in its Amended Decision that respondents could not be considered to have fostered a fraudulent intent to

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[33] *Id.* at 299-300.

[34] *Id.* at 300.

[35] *Id.* at 301.

[36] *Id.* at 303-330 & 331-352.

[37] *Id.* at 31-36.

[38] *Id.* at 36.

dishonor their obligation, since they had delivered 1,991 units of ACMs.[39] It directed petitioner to present proof of respondents' intent to defraud COMELEC during the execution of the automation contract.[40] The CA likewise emphasized that the Joint Affidavit submitted in support of petitioner's application for the writ contained allegations that needed to be substantiated.[41] It added that proof must likewise be adduced to verify the requisite fraud that would justify the piercing of the corporate veil of respondent MPEI.[42]

The CA further clarified that the 2004 Decision did not make a definite finding as to the identities of the persons responsible for the illegal disbursement or of those who participated in the fraudulent dealings.[43] It instructed the trial court to consider, in its determination of whether the writ of attachment should issue, the illegal, imprudent and hasty acts in awarding the automation contract by the COMELEC. In particular, these acts consisted of: (1) awarding the automation contract to MPC, an entity that did not participate in the bidding; and (2) signing the actual automation contract with respondent MPEI, the company that joined the bidding without meeting the eligibility requirement.[44]

Rule 45 Petition before Us

Consequently, petitioner filed the instant Rule 45 Petition,[45] arguing that the CA erred in ordering the remand of the case to the trial court for the reception of evidence to determine the presence of fraud. Petitioner contends that this Court's 2004 Decision was sufficient proof of the fraud committed by

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[39] *Id.* at 32.

[40] *Id.* at 33.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.* at 34.

[45] *Id.* at 10-30.

respondents in the execution of the voided automation contract.[46] Respondents allegedly committed fraud by securing the automation contract, although MPEI was not qualified to bid in the first place.[47] Their claim that the members of MPC bound themselves to the automation contract was an indication of bad faith as the contract was executed by MPEI alone.[48] Neither could they deny that the software submitted during the bidding process was not the same one that would be used on election day.[49] They could not dissociate themselves from telltale signs such as purportedly supplying software that later turned out to be non-existent.[50]

In their respective Comments, respondents Willy Yu, Bonnie Yu, Enrique Tansipek, and Rosita Tansipek counter[51] that this Court never ruled that individual respondents were guilty of any fraud or bad faith in connection with the automation contract, and that it was incumbent upon petitioner to present evidence on the allegations of fraud to justify the issuance of the writ.[52] They likewise argue that the 2004 Decision cannot be invoked against them, since petitioner and MPEI were co-respondents in the 2004 case and not adverse parties therein.[53] Respondents further contend that the allegations of fraud are belied by their actual delivery of 1,991 units of ACMs to the COMELEC, which they claim is proof that they never had any intention to evade performance.[54]

They further allege that this Court, in its 2004 Decision, even recognized that it had not found any wrongdoing on their

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[46] *Id.* at 19.

[47] *Id.* at 22.

[48] *Id.* at 23.

[49] *Id.* at 24.

[50] *Id.*

[51] *Id.* at 793-821.

[52] *Id.* at 795-796.

[53] *Id.* at 801-803.

[54] *Id.* at 817-819.

part, and that the Ombudsman had already made a determination that no probable cause existed with respect to charges of violation of Anti-Graft and Corrupt Practices Act.[55]

Echoing the other respondents' arguments on the lack of particularity in the allegations of fraud,[56] respondents MPEI, Johnson Wong, Bernard Fong, Pedro Tan, and Lauriano Barrios likewise argue that they were not parties to the 2004 case; thus, the 2004 Decision thereon is not binding on them.[57] Individual respondents likewise argue that the findings of fact in the 2004 Decision were not conclusive,[58] considering that eight (8) of the fifteen (15) justices allegedly refused to go along with the factual findings as stated in the majority opinion. [59] Thereafter, petitioner filed its Reply to the Comments. [60]

Based on the submissions of both parties, the following issues are presented to this Court for resolution:

1. Whether petitioner has sufficiently established fraud on the part of respondents to justify the issuance of a writ of preliminary attachment in its favor; and
2. Whether a writ of preliminary attachment may be issued against the properties of individual respondents, considering that they were not parties to the 2004 case.

THE COURT'S RULING

The Petition is meritorious. A writ of preliminary attachment should issue in favor of petitioner over the properties of respondents MPEI, Willy Yu (Willy) and the remaining individual respondents, namely: Bonnie S. Yu (Bonnie), Enrique T. Tansipek (Enrique), Rosita Y. Tansipek (Rosita), Pedro O. Tan (Pedro),

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[55] *Id.* at 807-808.

[56] *Id.* at 884-886.

[57] *Id.* at 906-915.

[58] *Id.* at 897-903.

[59] *Id.* at 902.

[60] *Id.* at 924-934.

Johnson W. Fong (Johnson), Bernard I. Fong (Bernard), and Lauriano Barrios (Lauriano). The bases for the writ are the following:

1. Fraud on the part of respondent MPEI was sufficiently established by the factual findings of this Court in its 2004 Decision and subsequent pronouncements.
2. A writ of preliminary attachment may issue over the properties of the individual respondents using the doctrine of piercing the corporate veil.
3. The factual findings of this Court that have become final cannot be modified or altered, much less reversed, and are controlling in the instant case.
4. The delivery of 1,991 units of ACMs does not negate fraud on the part of respondents MPEI and Willy.
5. Estoppel does not lie against the state when it acts to rectify mistakes, errors or illegal acts of its officials and agents.
6. The findings of the Ombudsman are not controlling in the instant case.

DISCUSSION

I.

Fraud on the part of respondent MPEI was sufficiently established by the factual findings of this Court in the latter's 2004 Decision and subsequent pronouncements.

Petitioner argues that the findings of this Court in the 2004 Decision serve as sufficient basis to prove that, at the time of the execution of the automation contract, there was fraud on the part of respondents that justified the issuance of a writ of attachment. Respondents, however, argue the contrary. They claim that fraud had not been sufficiently established by petitioner.

We rule in favor of petitioner. Fraud on the part of respondents MPEI and Willy, as well as of the other individual respondents

— Bonnie, Enrique, Rosita, Pedro, Johnson, Bernard, and Lauriano — has been established.

A writ of preliminary attachment is a provisional remedy issued upon the order of the court where an action is pending. Through the writ, the property or properties of the defendant may be levied upon and held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant.[61] The provisional remedy of attachment is available in order that the defendant may not dispose of the property attached, and thus prevent the satisfaction of any judgment that may be secured by the plaintiff from the former.[62]

The purpose and function of an attachment or garnishment is twofold. First, it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation, thereby preventing the loss or dissipation of the property through fraud or other means. Second, it subjects the property of the debtor to the payment of a creditor's claim, in those cases in which personal service upon the debtor cannot be obtained.[63] This remedy is meant to secure a contingent lien on the defendant's property until the plaintiff can, by appropriate proceedings, obtain a judgment and have the property applied to its satisfaction, or to make some provision for unsecured debts in cases in which the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.[64]

Petitioner relied upon Section 1 (d), Rule 57 of the Rules of Court as basis for its application for a writ of preliminary attachment. This provision states:

Section 1. Grounds upon which attachment may issue. — At the commencement of the action or at any time before entry of judgment,

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[61] *Virata v. Aquino*, 152 Phil. 405 (1973).

[62] *Adlawan v. Tomol*, 262 Phil. 893 (1990).

[63] *Id.*

[64] *Id.*

a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

x x x x x x x x x

(d) In an action against a party who has been guilty of a **fraud in contracting the debt** or incurring the obligation upon which the action is brought, or in the **performance** thereof. (Emphasis supplied)

For a writ of preliminary attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud.[65] In *Metro, Inc. v. Lara's Gift and Decors, Inc.*,[66] We explained:

To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. **The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given.** To constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. x x x.

The applicant for a writ of preliminary attachment must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. (Emphasis supplied)

An amendment to the Rules of Court added the phrase "in the performance thereof" to include within the scope of the grounds for issuance of a writ of preliminary attachment those instances relating to fraud in the performance of the obligation.[67]

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[65] *Metro, Inc. v. Lara's Gift and Decors, Inc.*, 621 Phil. 162 (2009).

[66] *Id.*, citing *Liberty Insurance Corporation v. Court of Appeals*, G.R. No. 104405, 13 May 1993, 222 SCRA 37, 45.

[67] *Liberty Insurance Corporation v. Court of Appeals*, *supra*, citing old Sec. 1 (d), Rule 57 of the Rules of Court:

Fraud is a generic term that is used in various senses and assumes so many different degrees and forms that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat. For the same reason, the facts and circumstances peculiar to each case are allowed to bear heavily on the conscience and judgment of the court or jury in determining the presence or absence of fraud. In fact, the fertility of man's invention in devising new schemes of fraud is so great that courts have always declined to define it, thus, reserving for themselves the liberty to deal with it in whatever form it may present itself.[68]

Fraud may be characterized as the voluntary execution of a wrongful act or a wilful omission, while knowing and intending the effects that naturally and necessarily arise from that act or omission.[69] In its general sense, fraud is deemed to comprise anything calculated to deceive — including all acts and omission and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed — resulting in damage to or in undue advantage over another.[70] Fraud is also described as embracing all multifarious means that human ingenuity can device, and is resorted to for the purpose of securing an advantage over another by false suggestions or by suppression of truth; and it includes all surprise, trick, cunning, dissembling, and any other unfair way by which another is cheated.[71]

"In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, Section 1 (d) of Rule 57 authorizes the plaintiff or any proper party to have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered therein. Thus:

'Rule 57, Sec. 1. Grounds upon which attachment may issue. —

'(d): "In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought;"'

[68] 37 AM. JUR. 2D *Fraud and Deceit* § 1 (1968).

[69] *International Corporate Bank v. Gueco*, 404 Phil. 353 (2001).

[70] *Ortega v. People*, 595 Phil. 1103 (2008).

[71] *Republic v. Estate of Alfonso Lim, Sr.*, 611 Phil. 37 (2009).

While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances.[72] Fraud by its nature is not a thing susceptible of ocular observation or readily demonstrable physically; it must of necessity be proved in many cases by inferences from circumstances shown to have been involved in the transaction in question.[73]

In the case at bar, petitioner has sufficiently discharged the burden of demonstrating the commission of fraud by respondent MPEI in the execution of the automation contract in the two ways that were enumerated earlier and discussed below:

A. Respondent MPEI had perpetrated a scheme against petitioner to secure the automation contract by using MPC as supposed bidder and eventually succeeding in signing the automation contract as MPEI alone, an entity which was ineligible to bid in the first place.

To avoid any confusion relevant to the basis of fraud, We quote herein the pertinent portions of this Court's 2004 Decision with regard to the identity, existence, and eligibility of MPC as bidder:[74]

> On the question of the identity and the existence of the real bidder, respondents insist that, contrary to petitioners' allegations, the bidder was not Mega Pacific eSolutions, Inc. (MPEI), **which was incorporated only on February 27, 2003, or 11 days prior to the bidding itself.** Rather, the bidder was Mega Pacific Consortium (MPC), of which MPEI was but a part. As proof thereof, they point to the March 7, 2003 letter of intent to bid, signed by the president of MPEI allegedly for and on behalf of MPC. They also call attention to the official receipt issued to MPC, acknowledging payment for the bidding documents, as proof that it was the "consortium" that participated in the bidding process.

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[72] *Sps. Godinez v. Alano*, 362 Phil. 597 (1999).

[73] 37 AM. JUR. 2D *Fraud and Deceit* § 439 (1968).

[74] *Information Technology Foundation of the Philippines v. COMELEC*, 464 Phil. 173, 209-226 (2004).

We do not agree. The March 7, 2003 letter, signed by only one signatory — "Willy U. Yu, President, Mega Pacific eSolutions, Inc., (Lead Company/Proponent) For: Mega Pacific Consortium" — and without any further proof, does not by itself prove the existence of the consortium. It does not show that MPEI or its president have been duly pre-authorized by the other members of the putative consortium to represent them, to bid on their collective behalf and, more important, to commit them jointly and severally to the bid undertakings. The letter is purely self-serving and uncorroborated.

Neither does an official receipt issued to MPC, acknowledging payment for the bidding documents, constitute proof that it was the purported consortium that participated in the bidding. Such receipts are issued by cashiers without any legally sufficient inquiry as to the real identity or existence of the supposed payor.

To assure itself properly of the due existence (as well as eligibility and qualification) of the putative consortium, Comelec's BAC should have examined the bidding documents submitted on behalf of MPC. They would have easily discovered the following fatal flaws.

x x x x x x x x x

The Eligibility Envelope was to contain *legal documents* such as articles of incorporation, x x x to establish the bidder's financial capacity.

In the case of a consortium or joint venture desirous of participating in the bidding, it goes without saying that the Eligibility Envelope would necessarily have to include a copy of the joint venture agreement, the consortium agreement or memorandum of agreement — or a business plan or some other instrument of similar import — establishing the due existence, composition and scope of such aggrupation. *Otherwise, how would Comelec know who it was dealing with, and whether these parties are qualified and capable of delivering the products and services being offered for bidding?*

In the instant case, no such instrument was submitted to Comelec during the bidding process. x x x

x x x x x x x x x

However, there is no sign whatsoever of any joint venture agreement, consortium agreement, memorandum of agreement, or business plan executed among the members of the purported consortium.

The only logical conclusion is that no such agreement was ever submitted to the Comelec for its consideration, *as part of the bidding process.*

It thus follows that, prior the award of the Contract, there was no documentary or other basis for Comelec to conclude that a consortium had actually been formed amongst MPEI, SK C&C and WeSolv, along with Election.com and ePLDT. Neither was there anything to indicate the exact relationships between and among these firms; their diverse roles, undertakings and prestations, if any, relative to the prosecution of the project, the extent of their respective investments (if any) in the supposed consortium or in the project; and the precise nature and extent of their respective liabilities with respect to the contract being offered for bidding. And apart from the self-serving letter of March 7, 2003, there was not even any indication that MPEI was the lead company duly authorized to act on behalf of the others.

x x x x x x x x x

Hence, had the proponent MPEI been evaluated based solely on its own experience, financial and operational track record or lack thereof, it would surely not have qualified and would have been immediately considered ineligible to bid, as respondents readily admit.

x x x x x x x x x

At this juncture, one might ask: What, then, if there are four MOAs instead of one or none at all? Isn't it enough that there are these corporations coming together to carry out the automation project? Isn't it true, as respondent aver, that nowhere in the RFP issued by Comelec is it required that the members of the joint venture execute a single written agreement to prove the existence of a joint venture.
x x x

x x x x x x x x x

The problem is not that there are four agreements instead of only one. The problem is that *Comelec never bothered to check*. It never based its decision on documents or other proof that would concretely establish the existence of the claimed consortium or joint venture or agglomeration.

x x x x x x x x x

True, copies of financial statements and incorporation papers of the alleged "consortium" members were submitted. But these papers did not establish the existence of a consortium, as they could have been provided by the companies concerned for purposes other than to prove that they were part of a consortium or joint venture.

x x x x x x x x x

In brief, despite the *absence* of competent proof as to the existence and eligibility of the alleged consortium (MPC), its capacity to deliver on the Contract, and the members' joint and several liability therefor, Comelec nevertheless assumed that such consortium existed and was eligible. It then went ahead and considered the bid of MPC, to which the Contract was eventually awarded, in gross violation of the former's own bidding rules and procedures contained in its RFP. Therein lies Comelec's grave abuse of discretion.

Sufficiency of the Four Agreements

Instead of one multilateral agreement executed by, and effective and binding on, all the five "consortium members" — as earlier claimed by Commissioner Tuason in open court — it turns out that what was actually executed were four (4) *separate and distinct bilateral Agreements*. **Obviously, Comelec was furnished copies of these Agreements only *after* the bidding process had been terminated, as these were not included in the Eligibility Documents. x x x**

x x x x x x x x x

At this point, i**t must be stressed most vigorously that the submission of the four bilateral Agreements to Comelec *after the end of the bidding process* did nothing to eliminate the grave abuse of discretion it had *already committed* on April 15, 2003.**

Deficiencies Have Not Been "Cured"

In any event, it is also claimed that the automation Contract awarded by Comelec incorporates all documents executed by the "consortium" members, even if these documents are not referred to therein. x x x

x x x x x x x x x

Thus, it is argued that whatever perceived deficiencies there were in the supplementary contracts — those entered into by MPEI and the other members of the "consortium" as regards their joint and

several undertakings — have been cured. Better still, such deficiencies have supposedly been prevented from arising as a result of the above-quoted provisions, from which it can be immediately established that each of the members of MPC assumes the same joint and several liability as the other members.

The foregoing argument is unpersuasive. ***First,*** **the contract being referred to, entitled "The Automated Counting and Canvassing Project Contract," is between Comelec and MPEI, not the alleged consortium, MPC. To repeat, it is *MPEI* — not MPC — that is a party to the Contract. *Nowhere in that Contract is there any mention of a consortium or joint venture, of members thereof, much less of joint and several liability*. Supposedly executed sometime in May 2003, the Contract bears a notarization date of June 30, 2003, and contains the signature of Willy U. Yu signing as president of MPEI (not for and on behalf of MPC), along with that of the Comelec chair. It provides in Section 3.2 that MPEI (not MPC) is to supply the Equipment and perform the Services under the Contract, in accordance with the appendices thereof; nothing whatsoever is said about any consortium or joint venture or partnership.**

x x x x x x x x x

Eligibility of a Consortium Based on the Collective Qualifications of Its Members

Respondents declare that, for purposes of assessing the eligibility of the bidder, the members of MPC should be evaluated on a collective basis. **Therefore, they contend, the failure of MPEI to submit financial statements (on account of its recent incorporation) should not by itself disqualify MPC, since the other members of the "consortium" could meet the criteria set out in the RFP.**

x x x x x x x x x

Unfortunately, this argument seems to assume that the "collective" nature of the undertaking of the members of MPC, their contribution of assets and sharing of risks, and the "community" of their interest in the performance of the Contract entitle MPC to be treated as a joint venture or consortium; and to be evaluated accordingly on the basis of the members' collective qualifications when, in fact, the evidence before the Court suggest otherwise.

x x x x x x x x x

Going back to the instant case, it should be recalled that the automation Contract with Comelec was not executed by the "consortium" MPC — or by MPEI for and on behalf of MPC — but by MPEI, *period*. The said Contract contains *no mention whatsoever* of any consortium or members thereof. This fact alone seems to contradict all the suppositions about a joint undertaking that would normally apply to a joint venture or consortium: that it is a commercial enterprise involving a community of interest, a sharing of risks, profits and losses, and so on.

x x x x x x x x x

To the Court, this strange and beguiling arrangement of MPEI with the other companies does not qualify them to be treated as a consortium or joint venture, at least of the type that government agencies like the Comelec should be dealing with. With more reason is it unable to agree to the proposal to evaluate the members of MPC on a collective basis. (Emphases supplied)

These findings found their way into petitioner's application for a writ of preliminary attachment,[75] in which it claimed the following as bases for fraud: (1) respondents committed fraud by securing the election automation contract and, in order to perpetrate the fraud, by misrepresenting the actual bidder as MPC and MPEI as merely acting on MPC's behalf; (2) while knowing that MPEI was not qualified to bid for the automation contract, respondents still signed and executed the contract; and (3) respondents acted in bad faith when they claimed that they had bound themselves to the automation contract, because it was not executed by MPC — or by MPEI on MPC's behalf — but by MPEI alone.[76]

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[75] *Rollo,* pp. 201-211.

[76] *Id.* at 203-205, 211; Petitioner's allegations in its application for the issuance of a writ of preliminary attachment are as follows:

4. Indeed, plaintiff and defendants-in-counterclaim committed fraud by securing the election automation contract even if MPEI (plaintiff) was not qualified to bid for the said contract. To perpetrate the said fraud, plaintiff and defendants-in-counterclaim misrepresented that the actual bidder was Mega Pacific Consortium, and that MPEI (plaintiff) was only acting on behalf of MPC. x x x. Anent plaintiff's claim that the MPC members bound themselves under the election automation contract, suffice it to say

We agree with petitioner that respondent MPEI committed fraud by securing the election automation contract; and, in order to perpetrate the fraud, by misrepresenting that the actual bidder was MPC and not MPEI, which was only acting on behalf of MPC. We likewise rule that respondent MPEI has defrauded petitioner, since the former still executed the automation contract despite knowing that it was not qualified to bid for the same.

The established facts surrounding the eligibility, qualification and existence of MPC — and of MPEI for that matter — and the subsequent execution of the automation contract with the latter, when all taken together, constitute badges of fraud that We simply cannot ignore. MPC was considered an illegitimate entity, because its existence as a joint venture had not been established. Notably, the essential document/s that would have shown its eligibility as a joint venture/consortium were not presented to the COMELEC at the most opportune time, that is, during the qualification stage of the bidding process. The concealment by respondent MPEI of the essential documents showing its eligibility to bid as part a joint venture is too obvious

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that the Supreme Court held that "*the automation Contract with Comelec was not executed by the 'consortium' MPC — or by MPEI (plaintiff) for and in behalf of MPC — but by MPEI (plaintiff), period. The said Contract contains no mention whatsoever of any consortium or members thereof.*"

5. **Both plaintiff and defendants-in-counterclaim knew that plaintiff was not qualified to bid for the election automation contract.** In fact, the Supreme Court clearly declared that "*had the proponent MPEI (plaintiff) been evaluated based solely on its own experience, financial and operational track record or lack thereof, it would surely not have qualified and would have been immediately considered ineligible to bid, as respondents readily admit.* **This notwithstanding, plaintiff still bidded for the election automation contract; signed the same; and implemented, albeit partially, the provisions thereof.**

x x x x x x x x x

4. Plaintiff Mega Pacific eSolutions, Inc. and defendants-in-counterclaim Willy Yu, *et al*. **committed fraud in securing the automation contract even if the bid for the same was not awarded to them, but to an ineligible consortium Mega Pacific Consortium; and that said plaintiff, while it was the one which signed the voided automation contract, was ineligible to bid for the same.** (Emphases supplied)

to be missed. How could it not have known that the very document showing MPC as a joint venture should have been included in their eligibility envelope?

Likewise notable is the fact that these supposed agreements, allegedly among the supposed consortium members, were *belatedly* provided to the COMELEC *after* the bidding process had been terminated, these were not included in the Eligibility Documents earlier submitted by MPC. Similarly, as found by this Court, these documents did not prove any joint venture agreement among the parties in the first place, but were actually individual agreements executed by each member of the supposed consortium with respondent MPEI.

More startling to the dispassionate mind is the incongruence between the supposed actual bidder MPC, on one hand, and, on the other, respondent MPEI, which executed the automation contract. Significantly, respondent MPEI was not even eligible and qualified to bid in the first place; and yet, the automation contract itself was executed and signed *singly* by respondent MPEI, not on behalf of the purported bidder MPC, without any mention whatsoever of the members of the supposed consortium.

From these established facts, We can surmise that in order to secure the automation contract, respondent MPEI perpetrated a scheme against petitioner by using MPC as supposed bidder and eventually succeeding in signing the automation contract as MPEI alone. Worse, it was respondent MPEI alone, an entity that was ineligible to bid in the first place, that eventually executed the automation contract.

To a reasonable mind, the entire situation reeks of fraud, what with the misrepresentation of identity and misrepresentation as to creditworthiness. It is in these kinds of fraudulent instances, when the ability to abscond is greatest, to which a writ of attachment is precisely responsive.

Further, the failure to attach the eligibility documents is tantamount to failure on the part of respondent MPEI to disclose material facts. That omission constitutes fraud.

Pursuant to Article 1339 of the Civil Code,[77] silence or concealment does not, by itself, constitute fraud, unless there is a special duty to disclose certain facts, or unless the communication should be made according to good faith and the usages of commerce.[78]

Fraud has been defined to include an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, with intent to deceive, **conceals or omits to state material facts** and, by reason of such omission or concealment, the other party was induced to give consent that would not otherwise have been given.[79]

One form of inducement is covered within the scope of the crime of estafa under Article 315, paragraph 2, of the Revised Penal Code, in which, any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud is held criminally liable. In *Joson v. People*,[80] this Court explained the element of defraudation by means of deceit, by giving a definition of fraud and deceit, in this wise:

> What needs to be determined therefore is whether or not the element of defraudation by means of deceit has been established beyond reasonable doubt.
>
> In the case of *People v. Menil, Jr.*, the Court has **defined fraud and deceit** in this wise:
>
> > Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust,

[77] Art. 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. (NEW CIVIL CODE, Art. 1339)

[78] *Rural Bank of Sta. Maria, Pangasinan v. Court of Appeals*, 373 Phil. 27 (1999).

[79] *Cathay Pacific Airways Ltd. v. Spouses Vasquez*, 447 Phil. 306 (2003).

[80] 581 Phil. 612 (2008).

> or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. **On the other hand, deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.** (Emphases supplied)

For example, in *People v. Comila*,[81] both accused-appellants therein represented themselves to the complaining witnesses to have the capacity to send them to Italy for employment, even as they did not have the authority or license for the purpose. It was such misrepresentation that induced the complainants to part with their hard-earned money for placement and medical fees. Both accused-appellants were criminally held liable for estafa.

In American jurisprudence, fraud may be predicated on a false introduction or identification.[82] In *Union Co. v. Cobb*,[83] the defendant therein procured the merchandise by misrepresenting that she was Mrs. Taylor Ray and at another time she was Mrs. Ben W. Chiles, and she forged their name on charge slips as revealed by the exhibits of the plaintiff. The sale of the merchandise was induced by these representations, resulting in injury to the plaintiff.

In *Raser v. Moomaw*, [84] it was ruled that the essential elements necessary to constitute actionable fraud and deceit were present

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[81] 545 Phil. 755 (2007).

[82] 37 Am Jur 2d Fraud and Deceit § 50 citing *Union Co. v. Cobb*, 73 Ohio L. Abs. 155, 136 N.E. 2d 429 (Ct. App. 10th Dist. Franklin County 1955) and *Raser v. Moomaw*, 78 Wash. 653, 139 P. 622 (1914).

[83] 73 Ohio L. Abs. 155, 136 N.E. 2d 429 (Ct. App. 10th Dist. Franklin County 1955).

[84] 78 Wash. 653; 139 P. 622 (1914).

in the complaint. It was alleged that, to induce plaintiff to procure a loan, defendant introduced him to a woman who was falsely represented to be Annie L. Knowles of Seattle, Washington, the owner of the property, and that plaintiff had no means of ascertaining her true identity. On the other hand, defendant knew, or in the exercise of reasonable caution should have known, that she was an impostor, and that plaintiff relied on the representations, induced his client to make the loan, and had since been compelled to repay it. In the same case, the Court ruled that false representations as to the identity of a person are actionable, if made to induce another to act thereon, and such other does so act thereon to his prejudice.[85]

In this case, analogous to the fraud and deceit exhibited in the abovementioned circumstances, respondent MPEI had no excuse not to be forthright with the documents showing MPC's eligibility to bid as a joint venture. The Invitation to Bid, as quoted in our 2004 Decision, could not have been any clearer when it stated that only bids from qualified entities, such as a joint venture, would be entertained:

INVITATION TO APPLY FOR ELIGIBILITY AND TO BID

The Commission on Elections (COMELEC), pursuant to the mandate of Republic Act Nos. 8189 and 8436, invites interested offerors, vendors, suppliers or lessors to apply for eligibility and to bid for the procurement by purchase, lease, lease with option to purchase, or otherwise, supplies, equipment, materials and services needed for a comprehensive Automated Election System, consisting of three (3) phases: (a) registration/verification of voters, (b) automated counting and consolidation of votes, and (c) electronic transmission of election results, with an approved budget of TWO BILLION FIVE HUNDRED MILLION (Php2,500,000,000) Pesos.

Only bids from the following entities shall be entertained:

x x x x x x x x x

d. **Manufacturers, suppliers and/or distributors forming themselves into a joint venture, *i.e.*, a group of two (2) or more manufacturers, suppliers and/or distributors that intend to be**

[85] *Id.*

jointly and severally responsible or liable for a particular contract, provided that Filipino ownership thereof shall be at least sixty percent (60%); and

e. Cooperatives duly registered with the Cooperatives Development Authority.[86] (Emphases supplied)

No reasonable mind would argue that documents showing the very existence of a joint venture need not be included in the bidding envelope showing its existence, qualification, and eligibility to undertake the project, considering that the purpose of prequalification in any public bidding is to determine, at the earliest opportunity, the ability of the bidder to undertake the project.[87]

As found by this Court in its 2004 Decision, it appears that the documents that were submitted after the bidding, which respondents claimed would prove the existence of the relationship among the members of the consortium, were actually separate agreements individually executed by the supposed members with MPEI. We had ruled that these documents were highly irregular, considering that each of the four different and separate bilateral Agreements was valid and binding only between MPEI and the other contracting party, leaving the other "consortium" members total strangers thereto. Consequently, the other consortium members had nothing to do with one another, as each one dealt only with MPEI.[88]

Considering that they merely showed MPEI's individual agreements with the other supposed members, these agreements confirm to our mind the fraudulent intent on the part of respondent MPEI to deceive the relevant officials about MPC. The intent was to cure the deficiency of the winning bid, which intent miserably failed. Said this Court:[89]

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[86] *Information Technology Foundation of the Philippines v. COMELEC*, 464 Phil. 173, 193-194 (2004).

[87] *Agan, Jr. v. PIATCO, Inc.*, 450 Phil. 744 (2003).

[88] *Information Technology Foundation of the Philippines v. COMELEC, supra*, at 215-216.

[89] *Republic of the Philippines v. Judge Capulong*, 276 Phil. 136, 152-153 (1991).

We are unconvinced, PBAC was guided by the rules, regulations or guidelines existing before the bid proposals were opened on November 10, 1989. **The basic rule in public bidding is that bids should be evaluated based on the required documents submitted *before* and not after the opening of bids. Otherwise, the foundation of a fair and competitive public bidding would be defeated. Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding.**

In underscoring the Court's strict application of the pertinent rules, regulations and guidelines of the public bidding process, We have ruled in *C & C Commercial vs. Menor* (L-28360, January 27, 1983, 120 SCRA 112), that Nawasa properly rejected a bid of C & C Commercial to supply asbestos cement pressure which bid did not include a tax clearance certificate as required by Administrative Order No. 66 dated June 26, 1967. In *Caltex (Phil.), Inc., et al. vs. Delgado Brothers, Inc., et al., (96 Phil. 368, 375)*, We stressed that public biddings are held for the protection of the public and the public should be given the best possible advantages by means of open competition among the bidders.

x x x x x x x x x

INTER TECHNICAL's failure to comply with what is perceived to be an elementary and customary practice in a public bidding process, that is, to enclose the Form of Bid in the original and eight separate copies of the bidding documents submitted to the bidding committee is fatal to its cause. All the four pre-qualified bidders which include INTER TECHNICAL were subject to Rule IB 2.1 of the Implementing Rules and Regulations of P.D. 1594 in the preparation of bids, bid bonds, and pre-qualification statement and Rule IB 2.8 which states that the Form of Bid, among others, shall form part of the contract. INTER TECHNICAL's explanation that its bid form was inadvertently left in the office (p. 6, Memorandum for Private Respondent, p. 355, Rollo) will not excuse compliance with such a simple and basic requirement in the public bidding process involving a multi-million project of the Government. **There should be strict application of the pertinent public bidding rules, otherwise the essential requisites of fairness, good faith, and competitiveness in the public bidding process would be rendered meaningless.** (Emphases supplied)

All these circumstances, taken together, reveal a scheme on the part of respondent MPEI to perpetrate fraud against the government. The purpose of the scheme was to ensure that MPEI, an entity that was ineligible to bid in the first place, would eventually be awarded the contract. While respondent argues that it was merely a passive participant in the bidding process, We cannot ignore its cavalier disregard of its participation in the now voided automation contract.

B. Fraud on the part of respondent MPEI was further shown by the fact that despite the failure of its ACMs to pass the tests conducted by the DOST, respondent still acceded to being awarded the automation contract.

Another token of fraud is established by Our findings in relation to the failure of the ACMs to pass the tests of the DOST. We quote herein the pertinent portions of this Court's 2004 Decision in relation thereto:

> After respondent "consortium" and the other bidder, TIM, had submitted their respective bids on March 10, 2003, the Comelec's BAC — through its Technical Working Group (TWG) and the DOST — evaluated their technical proposals.
>
> x x x x x x x x x
>
> According to respondents, it was only after the TWG and the DOST had conducted their separate tests and submitted their respective reports that the BAC, on the basis of these reports formulated its comments/recommendations on the bids of the consortium and TIM.
>
> The BAC, in its Report dated April 21, 2003, recommended that the Phase II project involving the acquisition of automated counting machines be awarded to MPEI. x x x
>
> x x x x x x x x x
>
> **The BAC, however, also stated on page 4 of its Report: *"Based on the 14 April 2003 report (Table 6) of the DOST, it appears that both Mega-Pacific and TIM (Total Information Management Corporation) failed to meet some of the requirements.*** x x x

x x x x x x x x x

Failure to Meet the Required Accuracy Rating

The first of the key requirements was that the counting machines were to have an accuracy rating of at least 99.9995 percent. **The BAC Report indicates that both Mega Pacific and TIM failed to meet this standard.**

The key requirement of accuracy rating happens to be part and parcel of the Comelec's Request for Proposal (RFP). x x x

x x x x x x x x x

x x x *Whichever accuracy rating is the right standard — whether 99.995 or 99.9995 percent — the fact remains that the machines of the so-called "consortium" failed to even reach the lesser of the two.* On this basis alone, it ought to have been disqualified and its bid rejected outright.

At this point, the Court stresses that the essence of public bidding is violated by the practice of requiring very high standards or unrealistic specifications that cannot be met — like the 99.9995 percent accuracy rating in this case — only to water them down *after* the bid has been award. [sic] Such scheme, which discourages the entry of prospective *bona fide* bidders, is in fact a sure indication of fraud in the bidding, designed to eliminate fair competition. Certainly, if no bidder meets the mandatory requirements, standards or specifications, then no award should be made and a failed bidding declared.

x x x x x x x x x

Failure of Software to Detect Previously Downloaded Data

Furthermore, on page 6 of the BAC Report, it appears that the "consortium" as well as TIM failed to meet another key requirement — for the counting machine's software program to be *able to detect previously downloaded precinct results and to prevent these from being entered again into the counting machine.* This same deficiency on the part of both bidders reappears on page 7 of the BAC Report, as a result of the recurrence of their failure to meet the said key requirement.

That the ability to detect previously downloaded data at different canvassing or consolidation levels is deemed of utmost importance

can be seen from the fact that it is repeated three times in the RFP. x x x.

Once again, though, Comelec chose to ignore this crucial deficiency, which should have been a cause for the gravest concern. x x x.

x x x x x x x x x

Inability to Print the Audit Trail

But that grim prospect is not all. The BAC Report, on pages 6 and 7, indicate that the ACMs of both bidders were unable to print the audit trail without any loss of data. In the case of MPC, the audit trail system was "not yet incorporated" into its ACMs.

x x x x x x x x x

Thus, the RFP on page 27 states that the *ballot counting machines and ballot counting software* **must print an audit trail of all machine operations for documentation and verification purposes.** Furthermore, the audit trail must be stored on the internal storage device and be available on demand for future printing and verifying. On pages 30-31, the RFP also requires that the *city/municipal* canvassing system software **be able to print an audit trail of the canvassing operations**, including therein such data as the date and time the canvassing program was started, the log-in of the authorized users (the identity of the machine operators), the date and time the canvass data were downloaded into the canvassing system, and so on and so forth. On page 33 of the RFP, we find the same **audit trail requirement** with respect to the *provincial/district* canvassing system software; and again on pages 35-36 thereof, the same audit trail requirement with respect to the *national* canvassing system *software*.

x x x x x x x x x

The said provision which respondents have quoted several times, provides that ACMs are to possess certain features divided into two classes: those that the statute itself considers *mandatory* and other features or capabilities that the law deems optional. **Among those considered mandatory are "provisions for audit trails"!** x x x.

In brief, respondents cannot deny that the provision requiring audit trails is indeed mandatory, considering the wording of Section 7 of RA 8436. Neither can Respondent Comelec deny that it has relied on the BAC Report, which indicates that the machines

or the software was deficient in that respect. And yet, the Commission simply disregarded this shortcoming and awarded the Contract to private respondent, thereby violating the very law it was supposed to implement.[90] (Emphases supplied)

The above-mentioned findings were further echoed by this Court in its 2006 Resolution with a categorical conclusion that the bidding process was void and fraudulent.[91]

Again, these factual findings found their way into the application of petitioner for a writ of preliminary attachment,[92] as it claimed that respondents could not dissociate themselves from their telltale acts of supplying defective machines and nonexistent software.[93] The latter offered no defense in relation to these claims.

We see no reason to deviate from our finding of fraud on the part of respondent MPEI in the 2004 Decision and 2006 Resolution. Despite its failure to meet the mandatory requirements set forth in the bidding procedure, respondent still acceded to being awarded the contract. These circumstances reveal its ploy to gain undue advantage over the other bidders in general, even to the extent of cheating the government.

The word "bidding" in its comprehensive sense means making an offer or an invitation to prospective contractors, whereby the government manifests its intention to make proposals for

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[90] *Information Technology Foundation of the Philippines, Inc. v. COMELEC, supra* note 90 at 227, 232-238.

[91] We stress once again that the Contract entered into by the Comelec for the supply of the ACMs was declared VOID by the Court in its Decision because of clear violations of law and jurisprudence, as well as the reckless disregard by the Commission of its own bidding rules and procedure:

"To muddle the issue, Comelec keeps on saying that the 'winning' bidder presented a lower price than the only other bidder. It ignored the fact that the whole bidding process was VOID and FRAUDULENT. How then could there have been a "winning" bid? x x x" (*Supra* note 7 at 4132-4134.)

[92] *Rollo*, pp. 201-211.

[93] *Id.* at 208.

the purpose of securing supplies, materials, and equipment for official business or public use, or for public works or repair.[94] Three principles involved in public bidding are as follows: (1) the offer to the public; (2) an opportunity for competition, and (3) a basis for an exact comparison of bids. A regulation of the matter, which excludes any of these factors, destroys the distinctive character of the system and thwarts the purpose of its adoption.[95]

In the instant case, We infer from the circumstances that respondent MPEI welcomed and allowed the award of the automation contract, as it executed the contract despite the full knowledge that it had not met the mandatory requirements set forth in the RFP. Respondent acceded to and benefitted from the watering down of these mandatory requirements, resulting in undue advantage in its favor. The fact that there were numerous mandatory requirements that were simply set aside to pave the way for the award of the automation contract does not escape the attention of this Court. Respondent MPEI, through respondent Willy, signed and executed the automation contract with COMELEC. It is therefore preposterous for respondent argue that it was a "passive participant" in the whole bidding process.

We reject the CA's denial of petitioner's plea for the ancillary remedy of preliminary attachment, considering that the cumulative effect of the factual findings of this Court establishes a sufficient basis to conclude that fraud had attended the execution of the automation contract. Such fraud is deducible from the 2004 Decision and further upheld in the 2006 Resolution. It was incongruous, therefore, for the CA to have denied the application for a writ of preliminary attachment, when the evidence on record was the same that was used to demonstrate the propriety of the issuance of the writ of preliminary attachment. This was the same evidence that We had already considered and passed upon, and on which We based Our 2004 Decision to nullify the

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[94] *JG Summit Holdings, Inc. v. Court of Appeals*, 458 Phil. 581 (2003).

[95] *Malaga v. Penachos, Jr.*, G.R. No. 86695, 3 September 1992, 213 SCRA 516.

automation contract. It would not be right for this Court to ignore these illegal transactions, as to do so would be tantamount to abandoning its constitutional duty of safeguarding public interest.

II.

Application of the piercing doctrine justifies the issuance of a writ of preliminary attachment over the properties of the individual respondents.

Individual respondents argue that since they were not parties to the 2004 case, any factual findings or conclusions therein should not be binding upon them.[96] Since they were strangers to that case, they are not bound by the judgment rendered by this Court.[97] They claim that their fundamental right to due process would be violated if their properties were to be attached for a purported corporate debt on the basis of a court ruling in a case in which they were not given the right or opportunity to be heard.[98]

We cannot subscribe to this argument. In the first place, it could not be reasonably expected that individual respondents would be impleaded in the 2004 case. As admitted by respondents, the issues resolved in the 2004 Decision were limited to the following: (1) whether to declare Resolution No. 6074 of the COMELEC null and void; (2) whether to enjoin the implementation of any further contract that may have been entered into by COMELEC with MPC or MPEI; and (3) whether to compel COMELEC to conduct a rebidding of the project. To implead individual respondents then was improper, considering that the automation contract was entered into by respondent MPEI. This Court even acknowledged this fact by directing that the liabilities of persons responsible for the nullity of the contract be determined in another appropriate proceeding and by directing the OSG to undertake measures to protect the interests of the government.

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[96] *Id.* at 797-801 & 906-915.

[97] *Id.* at 798.

[98] *Id.* at 800.

At any rate, individual respondents have been fully afforded the right to due process by being impleaded and heard in the subsequent proceedings before the courts *a quo*. Finally, they cannot argue violation of due process, as respondent MPEI, of which they are incorporators/stockholders, remains vulnerable to the piercing of its corporate veil.

A. There are red flags indicating that MPEI was used to perpetrate the fraud against petitioner, thus allowing the piercing of its corporate veil.

Petitioner seeks the issuance of a writ of preliminary attachment over the personal assets of the individual respondents, notwithstanding the doctrine of separate juridical personality.[99] It invokes the use of the doctrine of piercing the corporate veil, to which the canon of separate juridical personality is vulnerable, as a way to reach the personal properties of the individual respondents. Petitioner paints a picture of a sham corporation set up by all the individual respondents for the purpose of securing the automation contract.

We agree with petitioner.

Veil-piercing in fraud cases requires that the legal fiction of separate juridical personality is used for fraudulent or wrongful ends.[100] For reasons discussed below, We see red flags of fraudulent schemes in public procurement, all of which were

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[99] The general rule is that a corporation has a separate juridical personality distinct from the persons composing it. *Remo, Jr. v. Intermediate Appellate Court,* 254 Phil. 409, 411 (1989). One implication of the doctrine is that corporate creditors may not reach the personal assets of the shareholders, who are liable only to the extent of their subscription under the related doctrine or limited liability. (*Philippine National Bank v. Hydro Resources Contractors Corp.*, G.R. Nos. 167530, 167561, 167603, 13 March 2013, 693 SCRA 294)

[100] See *Black's Law Dictionary*, 1147-1148 (6th ed. 2008). See also *Kukan International Corp. v. Reyes*, 646 Phil. 210 (2010) and Cesar Lapuz Villanueva and Teresa S. Villanueva-Tiansay, *Philippine Corporate Law*, p. 105 (2013).

established in the 2004 Decision, the totality of which strongly indicate that MPEI was a sham corporation formed *merely for the purpose of perpetrating a fraudulent scheme.*

The red flags are as follows: (1) overly narrow specifications; (2) unjustified recommendations and unjustified winning bidders; (3) failure to meet the terms of the contract; and (4) shell or fictitious company. We shall discuss each in detail.

Overly Narrow Specifications

The World Bank's *Fraud and Corruption Awareness Handbook: A Handbook for Civil Servants Involved in Public Procurement*, (Handbook) identifies an assortment of fraud and corruption indicators and relevant schemes in public procurement.[101] One of the schemes recognized by the Handbook is rigged specifications:

> **Scheme: Rigged specifications**. In a competitive market for goods and services, any specifications that seem to be drafted in a way **that favors a particular company deserve closer scrutiny.** For example, **specifications that are too narrow** can be used to exclude other qualified bidders or justify improper sole source awards. **Unduly vague or broad specifications** can allow an unqualified bidder to compete or justify fraudulent change orders after the contract is awarded. Sometimes, project officials will go so far as to allow the favored bidder to draft the specifications.[102]

In Our 2004 Decision, We identified a red flag of rigged bidding in the form of *overly narrow specifications*. As already discussed, the accuracy requirement of 99.9995 percent was set up by COMELEC bidding rules. This Court recognized that this rating was "**too high and was a sure indication of fraud**

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[101] International Bank for Reconstruction and Development/The World Bank, 2013, Fraud and Corruption Awareness Handbook: A Handbook for Civil Servants Involved in Public Procurement, I (last visited 15 November 2015) <http://www-wds.worldbank.org./external/default/WDSContentServer/WDSP/IB/2014/04/25/000456286_20140425150639/Rendered/PDF/877290PUB0Frau00Box382147B00PUBLIC0.pdf> (Fraud and Corruption Awareness Handbook).

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

in the bidding, designed to eliminate fair competition."[103] Indeed, "the essence of public bidding is violated by the practice of requiring very high standards or unrealistic specifications that cannot be met x x x only to water them down *after* the bid has been award(ed)."[104]

Unjustified Recommendations and Unjustified Winning Bidders

Questionable evaluation in a Bid Evaluation Report (BER) is an indicator of bid rigging. The Handbook expounds:

Questionable evaluation and unusual bid patterns may emerge in the BER. After the completion of the evaluation process, the Bid Evaluation Committee should present to the implementing agency its BER, which describes the results and the process by which the BEC has evaluated the bids received. The BER may include a number of indicators of bid rigging, e.g., questionable disqualifications, and unusual bid patterns.[105]

The Handbook lists unjustified recommendations and unjustified winning bidders as red flags of a rigged bidding.[106]

The red flags of questionable recommendation and unjustified awards are raised in this case. As earlier discussed, the project was awarded to MPC, which proved to be a nonentity. It was MPEI that actually participated in the bidding process, but it was not qualified to be a bidder in the first place. Moreover, its ACMs failed the accuracy requirement set by COMELEC. Yet, MPC — the nonentity — obtained a favorable recommendation from the BAC, and the automation contract was awarded to the former.

Failure to Meet Contract Terms

Failure to meet the terms of a contract is regarded as a fraud by the Handbook:

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[103] *Supra* note 7.

[104] *Supra* note 1.

[105] *Supra* note 101 at 30.

[106] *Id.*

Scheme: Failure to meet contract terms. Firms may deliberately fail to comply with contract requirements. The contractor will attempt to conceal such actions often by falsifying or forging supporting documentation and bill for the work as if it were done in accordance with specifications. In many cases, the contractors must bribe inspection or project personnel to accept the substandard goods or works, or supervision agents are coerced to approve substandard work. x x x[107]

As mentioned earlier, this Court already found the ACMs to be below the standards set by the COMELEC. We reiterated their noncompliant status in Our 2005 and 2006 Resolutions.

As early as 2005, when the COMELEC sought permission from this Court to utilize the ACMs in the then scheduled ARMM elections, We declared that the proposed use of the machines would expose the ARMM elections to the same dangers of massive electoral fraud that would have been inflicted by the projected automation of the 2004 national elections. We based this pronouncement on the fact that the **COMELEC failed to show that the deficiencies had been cured.**[108] Yet again, this Court

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[107] *Supra* note 101 at 39.

[108] This Court in its 2005 Resolution in 2004 case ruled as follows:

The Motion has not at all demonstrated that these technical requirements have been addressed from the time our Decision was issued up to now. In fact, Comelec is merely asking for leave to use the machines, without mentioning any specific manner in which the foregoing requirements have been satisfactorily met.

Equally important, we stressed in our Decision that "[n]othing was said or done about the software — the deficiencies as to detection and prevention of downloading and entering previously downloaded data, as well as the capability to print an audit trail. No matter how many times the machines were tested and retested, if nothing was done about the programming defects and deficiencies, the same danger of massive electoral fraud remains."

Other than vaguely claiming that its four so-called "experts" have "unanimously confirmed that the software development which the Comelec undertook, [was] in line with the internationally accepted standards (ISO/IEC 12207) [for] software life cycle processes," the present Motion has not shown that the alleged "software development" was indeed extant and capable of addressing the "programming defects and deficiencies" pointed out by this Court.

in 2006 blocked another attempt to use the ACMs, this time for the 2007 elections. We reiterated that because the ACMs had merely remained idle and unused since their last evaluation, in which they failed to hurdle the crucial tests, then their defects and deficiencies could not have been cured by then.[109]

Based on the foregoing, the ACMs delivered were plagued with defects that made them fail the requirements set for the automation project.

Shell or fictitious company

The Handbook regards a **shell or fictitious company** as a "serious red flag," a concept that it elaborates upon:

> Fictitious companies are by definition **fraudulent** and may also serve as fronts for government officials. The typical scheme involves corrupt government officials creating a fictitious company that will serve as a "vehicle" to secure contract awards. Often, the fictitious — or ghost — company will subcontract work to lower cost and sometimes unqualified firms. The fictitious company may also utilize designated losers as subcontractors to deliver the work, thus indicating collusion.

At bottom, the proposed use of the ACMs would subject the ARMM elections to the same dangers of massive electoral fraud that would have been inflicted by the projected automation of the 2004 national elections.

[109] This Court in its 2006 Resolution in 2004 case ruled thus:

> Like the earlier Comelec Motion, however, the present one of Atty. Macalintal utterly fails to demonstrate — nay, even slightly indicate — what "certain supervening and legal circumstances [have] transpired" to justify the reliefs it seeks. **In fact, after the Court had ruled, among others, that the ACMs had failed to pass legally mandated technical requirements, they have admittedly been simply stored.**
>
> **In other words, they have merely remained *idle and unused* since their last evaluation in which they failed to hurdle the crucial tests. Thus, again we say, the ACMs were not good enough for either the 2004 national elections or for the 2005 ARMM polls; why should they be good enough for the 2007 elections, considering that *nothing has been done to correct the legal, jurisprudential and technical flaws* underscored in our final and executory Decision?** Likewise, we repeat that no matter how many times the machines were retested, if nothing was done about the programming defects and deficiencies, the same danger of massive electoral fraud remains. (Emphases supplied)

Shell companies have no significant assets, staff or operational capacity. They pose a **serious red flag** as a bidder on public contracts, because they often hide the interests of project or government officials, concealing a conflict of interest and opportunities for money laundering. **Also, by definition, they have no experience.**[110]

MPEI qualifies as a shell or fictitious company. It was nonexistent at the time of the invitation to bid; to be precise, it was incorporated only 11 days before the bidding. It was a newly formed corporation and, as such, had no track record to speak of.

Further, MPEI misrepresented itself in the bidding process as "lead company" of the supposed joint venture. The misrepresentation appears to have been an attempt to justify its lack of experience. As a new company, it was not eligible to participate as a bidder. It could do so only by pretending that it was acting as an agent of the putative consortium.

The timing of the incorporation of MPEI is particularly noteworthy. Its close nexus to the date of the invitation to bid and the date of the bidding (11 days) provides a strong indicium of the intent to use the corporate vehicle for fraudulent purposes. This proximity unmistakably indicates that the automation contract served as motivation for the formation of MPEI: a corporation had to be organized so it could participate in the bidding by claiming to be an agent of a pretended joint venture.

The timing of the formation of MPEI did not escape the scrutiny of Justice Angelina Sandoval-Gutierrez, who made this observation in her Concurring Opinion in the 2004 Decision:

At this juncture, it bears stressing that MPEI was incorporated only on *February 27, 2003* as evidenced by its Certificate of Incorporation. This goes to show that from the time the COMELEC issued its Invitation to Bid (*January 28, 2003*) and Request for Proposal (*February 17, 2003*) up to the time it convened the Pre-bid Conference (*February 18, 2003*), MPEI was literally a non-existent entity. It came into being only on February 27, 2003 or eleven (11) days prior

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[110] Fraud and Corruption Awareness Handbook, p. 40.

to the submission of its bid, *i.e.*, *March 10, 2003*. **This poses a legal obstacle to its eligibility as a bidder.** The Request for Proposal requires the bidder to submit financial documents that will establish to the BAC's satisfaction its financial capability which include:

> (1) *audited financial statements of the Bidder's firm for the last three (3) calendar years, stamped "RECEIVED" by the appropriate government agency, to show its capacity to finance the manufacture and supply of Goods called for and a statement or record of volumes of sales*;
>
> (2) Balance Sheet;
>
> (3) Income Statement; and
>
> (4) Statement of Cash Flow.

As correctly pointed out by petitioners, how could MPEI comply with the above requirement of audited financial statements for the last three (3) calendar years if it came into existence only eleven (11) days prior to the bidding?

To do away with such complication, MPEI asserts that it was MP CONSORTIUM who submitted the bid on March 10, 2003. It pretends compliance with the requirements by invoking the financial capabilities and long time existence of the alleged members of the MP CONSORTIUM, namely, Election.Com, WeSolv, SK *CeC*, ePLDT and Oracle. It wants this Court to believe that it is MP CONSORTIUM who was actually dealing with the COMELEC and that its (MPEI) participation is merely that of a "lead company and proponent" of the joint venture. This is hardly convincing. For one, the contract for the supply and delivery of ACM was between COMELEC and MPEI, not MP CONSORTIUM. *As a matter of fact, there cannot be found in the contract any reference to the MP CONSORTIUM or any member thereof for that matter*. For another, the agreements among the alleged members of MP CONSORTIUM do not show the existence of a joint-venture agreement. Worse, MPEI cannot produce the agreement as to the "joint and several liability" of the alleged members of the MP CONSORTIUM as required by this Court in its Resolution dated October 7, 2003.[111]

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[111] *Supra* note 1 at 277-278.

Respondent MPEI was formed to perpetrate the fraud against petitioner.

The totality of the red flags found in this case leads Us to the inevitable conclusion that MPEI was nothing but a sham corporation formed for the purpose of defrauding petitioner. Its ultimate objective was to secure the ₱1,248,949,088 automation contract. The scheme was to put up a corporation that would participate in the bid and enter into a contract with the COMELEC, even if the former was not qualified or authorized to do so.

Without the incorporation of MPEI, the defraudation of the government would not have been possible. The formation of MPEI paved the way for its participation in the bid, through its claim that it was an agent of a supposed joint venture, its misrepresentations to secure the automation contract, its misrepresentation at the time of the execution of the contract, its delivery of the defective ACMs, and ultimately its acceptance of the benefits under the automation contract.

The foregoing considered, veil-piercing is justified in this case.

We shall next consider the question of whose assets shall be reached by the application of the piercing doctrine.

B. Because all the individual respondents actively participated in theperpetration of the fraud against petitioner, their personal assets may be subject to a writ of preliminary attachment by piercing the corporate veil.

A corporation's privilege of being treated as an entity distinct and separate from the stockholders is confined to legitimate uses, and is subject to equitable limitations to prevent its being exercised for fraudulent, unfair, or illegal purposes.[112] As early as the 19th century, it has been held that:

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[112] Jose C. Campos, Jr., and Maria Clara Lopez-Campos, *The Corporation Code*, Volume I, p. 149 (1990).

The general proposition that a corporation is to be regarded as a legal entity, existing separate and apart from the natural persons composing it, is not disputed; but that the statement is a mere fiction, existing only in idea, is well understood, and not controverted by any one who pretends to accurate knowledge on the subject. It has been introduced for the convenience of the company in making contracts, in acquiring property for corporate purposes, in suing and being sued, and to preserve the limited liability of the stockholder by distinguishing between the corporate debts and property of the company and of the stockholders in their capacity as individuals. **All fictions of law have been introduced for the purpose of convenience, and to subserve the ends of justice.** It is in this sense that the maxim *in fictione juris subsistit aequitas* is used, and the doctrine of fictions applied. **But when they are urged to an intent and purpose not within the reason and policy of the fiction, they have always been disregarded by the courts.** Broom's, Legal Maxims 130. "It is a certain rule," says Lord Mansfield, C.J., "that a fiction of law never be contradicted so as to defeat the end for which it was invented, but for every other purpose it may be contradicted." *Johnson v. Smith, 2 Burr., 962.*[113]

The main effect of disregarding the corporate fiction is that stockholders will be held personally liable for the acts and contracts of the corporation, whose existence, at least for the purpose of the particular situation involved, is ignored.[114]

We have consistently held that when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an *association of persons*.[115] Thus, considering that We find it justified to pierce the corporate veil in the case before Us, MPEI

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[113] *State ex rel. Attorney General v. Standard Oil Co.*, Supreme Court of Ohio, 49 Ohio St., 137, N.E. 279 (1892), cited in Campos, Note 112, at 154. (Emphases supplied)

[114] *Supra* Note 111.

[115] *Koppel Philippines, Inc. v. Yatco*, 77 Phil. 496 (1946); *Laguna Transportation Co., Inc. v. Social Security System*, 107 Phil. 833 (1960), *Francisco v. Mejia*, G.R. No. 141617 (14 August 2001); *Yao, Sr. v. People*, 552 Phil. 195 (2007).

must, perforce, be treated as a mere association of persons whose assets are unshielded by corporate fiction. Such persons' individual liability shall now be determined with respect to the matter at hand.

Contrary to respondent Willy's claims, his participation in the fraud is clearly established by his unequivocal agreement to the execution of the automation contract with the COMELEC, and his signature that appears on the voided contract. As far back as in the 2004 Decision, his participation as a signatory to the automation contract was already established:

> The foregoing argument is unpersuasive. *First*, the contract being referred to, entitled "The Automated Counting and Canvassing Project Contract," is between Comelec and MPEI, not the alleged consortium, MPC. To repeat, it is *MPEI* — not MPC — that is a party to the Contract. *Nowhere in that Contract is there any mention of a consortium or joint venture, of members thereof, much less of joint and several liability*. Supposedly executed sometime in May 2003, the Contract bears a notarization date of June 30, 2003, **and contains the signature of Willy U. Yu signing as president of MPEI (not for and on behalf of MPC), along with that of the Comelec chair.** It provides in Section 3.2 that MPEI (not MPC) is to supply the Equipment and perform the Services under the Contract, in accordance with the appendices thereof; nothing whatsoever is said about any consortium or joint venture or partnership. x x x (Emphasis supplied)

That his signature appears on the automation contract means that he agreed and acceded to its terms.[116] His participation in the fraud involves his signing and executing the voided contract.

The execution of the automation contract with a non-eligible entity and the subsequent award of the contract despite the failure to meet the mandatory requirements were "badges of fraud" in the procurement process that should have been recognized by the CA to justify the issuance of the writ of preliminary attachment against the properties of respondent Willy.

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[116] See *Traders Royal Bank v. Cuison Lumber Co., Inc.*, 606 Phil. 700 citing *People's Industrial and Commercial Corp. v. Court of Appeals*, 346 Phil. 189:

With respect to the other individual respondents, petitioner, in its Answer with Counterclaim, alleged:

30. Also, inasmuch as MPEI is in truth a mere shell corporation with no real assets in its name, incorporated merely to feign eligibility for the bidding of the automated contract when it in fact had none, to the great prejudice of the Republic, ***plaintiff's individual incorporators should likewise be made liable together with MPEI*** *for the automated contract amount paid to and received by the latter.* The following circumstances altogether manifest that the individual incorporators merely cloaked themselves with the veil of corporate fiction to perpetrate a fraud and to eschew liability therefor, thus:

x x x x x x x x x

f. From the time it was incorporated until today, MPEI has not complied with the reportorial requirements of the Securities and Exchange Commission;

g. **Individual incorporators, acting fraudulently through MPEI, and in violation of the bidding rules, then subcontracted the automation contract to four (4) other corporations,** namely: WeSolve Corporation, SK C&C, ePLDT and election.com, to comply with the capital requirements, requisite five (5)-year corporate standing and the technical qualifications of the Request for Proposal;

x x x x x x x x x[117]

In response to petitioner's allegations, respondents Willy and Bonnie stated in their Reply and Answer (Re: Answer with Counterclaim dated 28 June 2004):[118]

"The clear and neat principle is that the offer must be certain and definite with respect to the cause or consideration and object of the proposed contract, while the acceptance of this offer — express or implied — must be unmistakable, unqualified, and identical in all respects to the offer. **The required concurrence, however, may not always be immediately clear and may have to be read from the attendant circumstances; in fact, a binding contract may exist between the parties whose minds have met, although they did not affix their signatures to any written document."** (Emphasis supplied)

[117] *Rollo*, pp. 181-182.

[118] Records, Vol. 2, pp. 866-884.

3.3 As far as plaintiff MPEI **and defendants-in-counterclaim are concerned, they dealt with the COMELEC with full transparency and in utmost good faith.** All documents support its eligibility to bid for the supply of the ACMs and their peripheral services, were submitted to the COMELEC for its evaluation in full transparency. Pertinently, neither plaintiff MPEI nor any of its directors, stockholders, officers or employees had any participation in the evaluation of the bids and eventual choice of the winning bidder.[119]

Respondents Johnson's and Bernard's denials were made in paragraphs 2.17 and 3.3 of their Answer with Counterclaim to the Republic's Counterclaim, to wit:[120]

2.17 The erroneous conclusion of fact and law in paragraph 30 (f) and (g) of the Republic's answer is denied, having been pleaded in violation of the requirement, that only ultimate facts are to be stated in the pleadings and they are falsehoods. The truth of the matter is that there could not have been fraud, as these agreements were submitted to the COMELEC for its evaluation and assessment, as to the qualification of the Consortium as a bidder, a showing of transparency in plaintiff's dealings with the Republic.[121]

3.3 As far as plaintiff MPEI **and defendants-in-counterclaim are concerned, they dealt with the COMELEC with full transparency and in utmost good faith.** All documents support its eligibility to bid for the supply of the automated counting machines and its peripheral services, were submitted to the COMELEC for its evaluation in full transparency. Pertinently, the plaintiff or any of its directors, stockholders, officers or employees had no participation in the evaluation of the bids and eventual choice of the winning bidder.[122]

As regards Enrique and Rosita, the relevant paragraphs in the Answer with Counterclaim to the Republic's Counterclaim[123] are quoted below:

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[119] *Id.* at 877.

[120] *Id.* at 853-865.

[121] *Id.* at 889.

[122] *Id.* at 877.

[123] *Id.* at 885-897.

2.17. The erroneous conclusion of fact and law in paragraph 30 (F) and (G) of the Republic's answer is denied, having been pleaded in violation of the requirement, that only ultimate facts are to be stated in the pleadings and they are falsehoods. The truth of the matter is that there could not have been fraud, as these agreements were submitted to the COMELEC for its evaluation and assessment, as to the qualification of the Consortium as a bidder, a showing of transparency in plaintiff's dealings with the Republic.[124]

3.3. **As far as the plaintiff and herein answering defendants-in-counterclaim are concerned, they dealt with the Commission on Elections with full transparency and in utmost good faith.** All documents in support of its eligibility to bid for the supply of the automated counting machines and its peripheral services were submitted to the Commission on Elections for its evaluation in full transparency. Pertinently, the plaintiff or any of its directors, stockholders, officers or employees had no participation in the evaluation of the bids and eventual choice of the winning bidder.[125]

Pedro and Laureano offer a similar defense in paragraph 3.3 of their Reply and Answer with Counterclaim to the Republic's Counterclaim[126] dated 28 June 2004, which reads:

3.3. As far as plaintiff MPEI and defendants-in-counterclaim are concerned, **they dealt with the COMELEC with full transparency and in utmost good faith.** All documents support its eligibility to bid for the supply of the ACMs and their peripheral services, were submitted to the COMELEC for its evaluation in full transparency. Pertinently, neither plaintiff MPEI nor any of its directors, stockholders, officers or employees had any participation in the evaluation of the bids and eventual choice of the winning bidder.[127]

It can be seen from the above-quoted paragraphs that the individual respondents never denied their participation in the questioned transactions of MPEI, merely raising the defense of

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[124] *Id.* at 889.

[125] *Id.* at 892.

[126] *Id.* at 900-918.

[127] *Id.* at 911.

good faith and shifting the blame to the COMELEC. The individual respondents have, in effect, admitted that they had knowledge of and participation in the fraudulent subcontracting of the automation contract to the four corporations.

It bears stressing that the remaining individual respondents, together with respondent Willy, incorporated MPEI. As incorporators, they are expected to be involved in the management of the corporation and they are charged with the duty of care. This is one of the reasons for the requirement of ownership of at least one share of stock by an incorporator:

> The reason for this, as explained by the lawmakers, is to avoid the confusion and/or ambiguities arising in a situation under the old corporation law where there exists one set of incorporators **who are not even shareholders and another set of directors/ incorporators who must all be shareholders of the corporation.** The people who deal with said corporation at such an early stage are confused as to who are the persons or group really authorized to act in behalf of the corporation. (Proceedings of the Batasan Pambansa on the Proposed Corporation Code). **Another reason may be anchored on the presumption that when an incorporator has pecuniary interest in the corporation, no matter how minimal, he will be more involved in the management of corporate affairs and to a greater degree, be concerned with the welfare of the corporation.**[128]

As incorporators and businessmen about to embark on a new business venture involving a sizeable capital (₱300 million), the remaining individual respondents should have known of Willy's scheme to perpetrate the fraud against petitioner, especially because the objective was a billion peso automation contract. Still, they proceeded with the illicit business venture.

It is clear to this Court that inequity would result if We do not attach personal liability to all the individual respondents. With a definite finding that MPEI was used to perpetrate the fraud against the government, it would be a great injustice if

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[128] Lopez, Rosario N., *The Corporation Code of the Philippines* (Annotated), Volume I (1994), p. 170.

the remaining individual respondents would enjoy the benefits of incorporation despite a clear finding of abuse of the corporate vehicle. Indeed, to allow the corporate fiction to remain intact would not subserve, but instead subvert, the ends of justice.

III.
The factual findings of this Court that have become final cannot be modified or altered, much less reversed, and are controlling in the instant case.

Respondents argue that the 2004 Decision did not resolve and could not have resolved the factual issue of whether they had committed any fraud, as the Supreme Court is not a trier of facts; and the 2004 case, being a certiorari case, did not deal with questions of fact.[129]

Further, respondents argue that the findings of this Court ought to be confined only to those issues actually raised and resolved in the 2004 case, in accordance with the principle of conclusiveness of judgment.[130] They explain that the issues resolved in the 2004 Decision were only limited to the following: (1) whether to declare COMELEC Resolution No. 6074 null and void; (2) whether to enjoin the implementation of any further contract that may have been entered into by COMELEC with MPC or MPEI; and (3) whether to compel COMELEC to conduct a rebidding of the project.[131]

It is obvious that respondents are merely trying to escape the implications or effects of the nullity of the automation contract that they had executed. Section 1, Rule 65 of the Rules of Court, clearly sets forth the instances when a petition for certiorari can be used as a proper remedy:

> 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 jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal,

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[129] *Rollo*, pp. 892-897.

[130] *Id.* at 804.

[131] *Id.* at 803-804.

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 term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered to have been committed with grave abuse of discretion when the act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction."[132] The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[133] Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void."[134] From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike down an act for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.[135]

We had to ascertain from the evidence whether the COMELEC committed grave abuse of discretion, and in the process, were justified in making some factual findings. The conclusions derived from the factual findings are inextricably intertwined with this Court's determination of grave abuse of discretion. They have a direct bearing and are in fact necessary to illustrate that the award of the automation contract was done hastily and in direct

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[132] *Ganaden v. Court of Appeals*, 665 Phil. 261 (2011).

[133] Y*u v. Reyes-Carpio*, 667 Phil. 474 (2011), citing 2 JOSE Y. FERIA & MARIA CONCEPCION S. NOCHE, *CIVIL PROCEDURE ANNOTATED* 463 (2001).

[134] *J.L. Bernardo Construction v. Court of Appeals*, 381 Phil. 25 (2000).

[135] *Yu v. Reyes-Carpio, supra*.

violation of law. This Court has indeed made factual findings based on the evidence presented before it; in turn, these factual findings constitute the controlling legal rule between the parties that cannot be modified or amended by any of them. This Court is bound to consider the factual findings made in the 2004 Decision in order to declare that there is fraud for the purpose of issuing the writ of preliminary attachment.

Respondents appear to have misunderstood the implications of the principle of conclusiveness of judgment on their cause. Contrary to their claims, the factual findings are *conclusive* and have been established as the controlling legal rule in the instant case, on the basis of the principle of *res judicata* — more particularly, the principle of conclusiveness of judgment.

This doctrine of *res judicata* which is set forth in Section 47 of Rule 39 of the Rules of Court[136] lays down two main rules, namely: (1) the judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties

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[136] Sec. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows: x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which actually and necessarily included therein or necessary thereto.

and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same.[137]

These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence.[138] The first general rule stated above and corresponding to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment."[139]

In *Calalang v. Register of Deeds of Quezon City*,[140] We discussed the concept of conclusiveness of judgment as pertaining even to those matters *essentially connected* with the subject of litigation in the first action. This Court explained therein that the bar on re-litigation extends to those questions *necessarily implied* in the final judgment, although no specific finding may have been made in reference thereto, and although those matters were directly referred to in the pleadings and were not actually or formally presented. If the record of the former trial shows that the judgment could not have been rendered without deciding a particular matter, it will be considered as having settled that matter as to all future actions between the parties; and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself:

The second concept — conclusiveness of judgment — states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the

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[137] *Reforzado v. Sps. Lopez*, 627 Phil. 294 (2010).

[138] *Alamayri v. Pabale*, 576 Phil. 146 (2008).

[139] *Sps. Noceda v. Arbizo-Directo*, 639 Phil. 483 (2010).

[140] G.R. Nos. 76265 and 83280, 11 March 1994, 231 SCRA 88.

same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. **If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit** (*Nabus v. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issue.

Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. v. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez v. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

> **The general rule precluding the re-litigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.**[141] (Emphases supplied)

The foregoing disquisition finds application to the case at bar.

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

Undeniably, the present case is merely an adjunct of the 2004 case, in which the automation contract was declared to be a nullity. Needless to say, the 2004 Decision has since become final. As earlier explained, this Court arrived at several factual findings showing the illegality of the automation contract; in turn, these findings were used as basis to justify the declaration of nullity.

A closer scrutiny of the 2004 Decision would reveal that the judgment could not have been rendered without deciding particular factual matters in relation to the following: (1) identity, existence and eligibility of MPC as a bidder; (2) failure of the ACMs to pass DOST technical tests; and (3) remedial measures undertaken by the COMELEC after the award of the automation contract. Under the principle of conclusiveness of judgment, We are precluded from re-litigating these facts, as these were essential to the question of nullity. Otherwise stated, the judgment could not have been rendered without necessarily deciding on the above-enumerated factual matters.

Thus, under the principle of conclusiveness of judgment, those material facts became binding and conclusive on the parties, in this case MPEI and, ultimately, the persons that comprised it. When a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for that trial has been given, the judgment of the court — as long as it remains unreversed — **should be conclusive upon the parties and those in privity with them.**[142] Thus, the CA should not have required petitioner to present further evidence of fraud on the part of respondent Willy and MPEI, as it was already necessarily adjudged in the 2004 case.

To allow respondents to argue otherwise would be violative of the principle of immutability of judgment. When a final judgment becomes executory, it becomes immutable and unalterable and may no longer undergo any modification, much less any reversal. [143] *In Navarro v. Metropolitan Bank & Trust*

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[142] *Malayang Samahan ng Manggagawa sa Balanced Food v. Pinakamasarap Corporation*, 464 Phil. 998 (2004).

[143] *AGG Trucking v. Yuag*, 675 Phil. 108 (2011).

Company [144] this Court explained that the underlying reason behind this principle is to avoid delay in the administration of justice and to avoid allowing judicial controversies to drag on indefinitely, *viz.*:

No other procedural law principle is indeed more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment or reversal, except only for correction of clerical errors, or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment itself is void. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As the Court declared in *Yau v. Silverio*,

> Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be, not through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.

Indeed, just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment. Any attempt to thwart this rigid rule and deny the prevailing litigant his right to savor the fruit of his victory must immediately be struck down. x x x. (Emphasis supplied)[145]

In the instant case, adherence to respondents' position would mean a complete disregard of the factual findings We made in the 2004 Decision, and would certainly be tantamount to reversing the same. This would invariably cause further delay in the efforts

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[144] 612 Phil. 462, 471 (2009).

[145] *Id.* at 471.

to recover the amounts of government money illegally disbursed to respondents back in 2004.

Next, respondents argue that the findings of fact in the 2004 Decision are not conclusive[146] considering that eight (8) of the fifteen (15) justices of this Court refused to go along with the factual findings as stated in the majority opinion.[147] This argument fails to convince.

Fourteen (14) Justices participated in the promulgation of the 2004 Decision. Out of the fourteen (14) Justices, three (3) Justices registered their dissent,[148] and two (2) Justices wrote their Separate Opinions, each recommending the dismissal of the Petition.[149] Of the nine (9) Justices who voted to grant the Petition, four (4) joined the *ponente* in his disposition of the case,[150] and two (2) Justices wrote Separate Concurring Opinions.[151] As to the remaining two (2) Justices, one (1) Justice[152] merely concurred in the result, while the other joined another Justice in her Separate Opinion.[153]

Contrary to the allegations of respondents, an examination of the voting shows that nine (9) Justices voted in favor of the majority opinion, without any qualification regarding the factual

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[146] *Rollo*, pp. 897-903.

[147] *Id.* at p. 902.

[148] Justices Renato C. Corona, Adolfo S. Azcuna and Dante O. Tinga registered their dissent. Justice Dante O. Tinga wrote a dissenting opinion.

[149] Justices Hilario G. Davide, Jr. and Jose C. Vitug wrote their separate opinions voting for dismissal of the Petition.

[150] The 2004 Decision was penned by Justice Artemio V. Panganiban, with Justices Antonio T. Carpio, Ma. Alicia Austria-Martinez, Conchita Carpio-Morales and Romeo J. Callejo, Sr. concurring therein.

[151] Justices Consuelo Ynares-Santiago and Justice Angelina Sandoval-Gutierrez.

[152] Justice Leonardo A. Quisumbing.

[153] Justice Reynalo S. Puno joins in opinion of Justice Consuelo Ynares-Santiago.

findings made therein. In fact, the two (2) Justices who wrote their own Concurring Opinions echoed the lack of eligibility of MPC and the failure of the ACMs to pass the mandatory requirements.

Finally, respondents cannot argue that, from the line of questioning of then Justice Leonardo A. Quisumbing during the oral arguments in the 2004 case, he did not agree with the factual findings of this Court. Oral arguments before this Court are held precisely to test the soundness of each proponent's contentions. The questions and statements propounded by Justices during such an exercise are not to be construed as their definitive opinions. Neither are they indicative of how a Justice shall vote on a particular issue; indeed, Justice Quisumbing clearly states in the 2004 Decision that he concurs in the results. At any rate, statements made by Our Members during oral arguments are not *stare decisis*; what is conclusive are the decisions reached by the majority of the Court.

IV.
The delivery of 1,991 units of ACMs does not negate fraud on the part of respondents Willy and MPEI.

The CA in its Amended Decision explained that respondents could not be considered to have fostered a fraudulent intent to not honor their obligation, since they delivered 1,991 units of ACMs.[154] In turn, respondents argue that respondent MPEI had every intention of fulfilling its obligation, because it in fact delivered the ACMs as required by the automation contract.[155]

We disagree with the CA and respondents. The fact that the ACMs were delivered cannot induce this Court to disregard the fraud respondent MPEI had employed in securing the award of the automation contract, as established above. Furthermore, they cannot cite the fact of delivery in their favor, considering that the ACMs delivered were substandard and noncompliant with the requirements initially set for the automation project.

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[154] *Rollo,* p. 32.

[155] *Id.* at 306-307.

In Our 2004 Decision, We already found the ACMs to be below the standards set by the COMELEC. The noncompliant status of these ACMs was reiterated by this Court in its 2005 and 2006 Resolutions. The CA therefore gravely erred in considering the delivery of 1,991 ACMs as evidence of respondents' willingness to perform the obligation (and thus, their lack of fraud) considering that, as exhaustively discussed earlier, the ACMs delivered were plagued with defects and failed to meet the requirements set for the automation project.

Under Article 1233 of the New Civil Code, a debt shall not be understood to have been paid, unless the thing or service in which the obligation consists has been completely delivered or rendered. In this case, respondents cannot be considered to have *performed* their obligation, because the ACMs were defective.

V.

Estoppel does not lie against the State when it acts to rectify the mistakes, errors or illegal acts of its officials and agents.

Respondents claim that the 2004 Decision may not be invoked against them, since the petitioner and the respondents were co-respondents and not adverse parties in the 2004 case. Respondents further explain that since petitioner and respondents were on the same side at the time, had the same interest, and took the same position on the validity and regularity of the automation contract, petitioner cannot now invoke the 2004 Decision against them.[156]

Contrary to respondents' contention, estoppel generally finds no application against the State when it acts to rectify mistakes, errors, irregularities, or illegal acts of its officials and agents, irrespective of rank. This principle ensures the efficient conduct of the affairs of the State without any hindrance to the implementation of laws and regulations by the government. This holds true even if its agents' prior mistakes or illegal acts shackle government operations and allow others — some by malice — to profit from official error or misbehavior, and even if the

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[156] *Rollo*, pp. 801-803.

rectification prejudices parties who have meanwhile received benefit. [157] Indeed, in the 2004 Decision, this Court even directed the Ombudsman to determine the possible criminal liability of public officials and private persons responsible for the contract, and the OSG to undertake measures to protect the government from the ill effects of the illegal disbursement of public funds.[158]

The equitable doctrine of estoppel for the *prevention of injustice* and is for the protection of those who have been misled by that which on its face was fair and whose character, as represented, parties to the deception will not, in the interest of justice, be heard to deny.[159] It cannot therefore be utilized to insulate from liability the very perpetrators of the injustice complained of.

VI.
The findings of the Office of the Ombudsman are not controlling in the instant case.

Respondents further claim that this Court has recognized the fact that it did not determine or adjudge any fraud that may have been committed by individual respondents. Rather, it referred the matter to the Ombudsman for the determination of criminal liability.[160] The Ombudsman in fact made its own determination that there was no probable cause to hold individual respondents criminally liable.[161]

Respondents miss the point. The main issue in the instant case is whether respondents are guilty of fraud in obtaining and executing the automation contract, to justify the issuance of a writ of preliminary attachment in petitioner's favor. Meanwhile, the issue relating to the proceedings before the

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[157] *Secretary of Finance v. Ora Maura Shipping Lines*, 610 Phil. 419 (2009).

[158] *Supra* note 6.

[159] 31 C.J.S. Estoppel §1 (1964).

[160] *Rollo*, pp. 893-897.

[161] *Id.* at pp. 807-808.

Ombudsman (and this Court in G.R. No. 174777) pertains to the finding of lack of probable cause for the possible criminal liability of respondents under the Anti-Graft and Corrupt Practices Act.

The matter before Us involves petitioner's application for a writ of preliminary attachment in relation to its recovery of the expended amount under the voided contract, and not the determination of whether there is probable cause to hold respondents liable for possible criminal liability due to the nullification of the automation contract. Whether or not the Ombudsman has found probable cause for possible criminal liability on the part of respondents is not controlling in the instant case.

CONCLUSION

If the State is to be serious in its obligation to develop and implement coordinated anti-corruption policies that promote proper management of public affairs and public property, integrity, transparency and accountability,[162] it needs to establish and promote effective practices aimed at the prevention of corruption, [163] as well as strengthen our efforts at asset recovery.[164]

As a signatory to the United Nations Convention Against Corruption (UNCAC),[165] the Philippines acknowledges its obligation to establish appropriate systems of procurement based

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[162] Chapter 2, Article 5 (1), United Nations Convention Against Corruption. 2349 U.N.T.S. 41 (in force 14 Dec. 2005) (signed by the Philippines on 09 Dec. 2003 and ratified on 8 Nov. 2006).

[163] Chapter 2, Article 5 (2), United Nations Convention Against Corruption. 2349 U.N.T.S. 41 (in force 14 Dec. 2005) (signed by the Philippines on 09 Dec. 2003 and ratified on 8 Nov. 2006).

[164] Chapter 5, Article 51, United Nations Convention Against Corruption. 2349 U.N.T.S. 41 (in force 14 Dec. 2005) (signed by the Philippines on 09 Dec. 2003 and ratified on 8 Nov. 2006).

[165] United Nations Convention Against Corruption. 2349 U.N.T.S. 41 (in force 14 Dec. 2005) (signed by the Philippines on 09 Dec. 2003 and ratified on 8 Nov. 2006).

on transparency, competition and objective criteria in decision-making that are effective in preventing corruption.[166] To promote transparency, and in line with the country's efforts to curb corruption, it is useful to identify certain fraud indicators or "red flags" that can point to corrupt activity.[167] This case — arguably the first to provide palpable examples of what could be reasonably considered as "red flags" of fraud and malfeasance in public procurement — is the Court's contribution to the nation's continuing battle against corruption, in accordance with its mandate to dispense justice and safeguard the public interest.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Amended Decision dated 22 September 2008 of the Court of Appeals in CA-G.R. SP. No. 95988 is **ANNULLED AND SET ASIDE**. A new one is entered **DIRECTING** the Regional Trial Court of Makati City, Branch 59, to **ISSUE** in Civil Case No. 04-346, entitled *Mega Pacific eSolutions, Inc. vs. Republic of the Philippines*, the Writ of Preliminary Attachment prayed for by petitioner Republic of the Philippines against the properties of respondent Mega Pacific eSolutions, Inc., and Willy U. Yu, Bonnie S. Yu, Enrique T. Tansipek, Rosita Y. Tansipek, Pedro O. Tan, Johnson W. Fong, Bernard I. Fong and Lauriano Barrios.

No costs.

SO ORDERED.

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

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[166] Chapter 2, Article 9, United Nations Convention Against Corruption. 2349 U.N.T.S. 41 (in force 14 Dec. 2005) (signed by the Philippines on 09 Dec. 2003 and ratified on 8 Nov. 2006).

[167] Most Common Red Flags of Fraud and Corruption in Procurement (available at <http:siteresources.worldbank.org/INTDOII/Resources/Red_flags_reader_friendly.pdf> (last visited on 8 January 2016).

FIRST DIVISION

[G.R. No. 188020. June 27, 2016]

REN TRANSPORT CORP. and/or REYNALDO PAZCOGUIN III, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION), SAMAHANG MANGGAGAWA SA REN TRANSPORT-ASSOCIATION OF DEMOCRATIC LABOR ASSOCIATIONS (SMART-ADLO) represented by its President NESTOR FULMINAR,** *respondents.*

[G.R. No. 188252. June 27, 2016]

SAMAHANG MANGGAGAWA SA REN TRANSPORT-ASSOCIATION OF DEMOCRATIC LABOR ASSOCIATIONS (SMART-ADLO) represented by NESTOR FULMINAR, *petitioner, vs.* **REN TRANSPORT CORP. and/or REYNALDO PAZCOGUIN III,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR ORGANIZATIONS; IT IS THE DUTY OF THE EMPLOYER TO CONTINUE RECOGNIZING THE INCUMBENT BARGAINING AGENT WHERE NO PETITION FOR CERTIFICATION ELECTION CHALLENGING ITS MAJORITY IS FILED BY ANOTHER UNION 60 DAYS BEFORE THE EXPIRATION OF THE CBA.— Violation of the duty to bargain collectively is an unfair labor practice under Article 258(g) of the Labor Code. x x x Ren Transport had a duty to bargain collectively with SMART. Under Article 263 in relation to Article 267 of the Labor Code, it is during the freedom period – or the last 60 days before the expiration of the CBA – when another union may challenge the majority status of the bargaining agent through the filing of a petition for a certification election. If there is no such petition filed during the freedom period, then the employer "shall continue

to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed."

2. **ID.; ID.; UNFAIR LABOR PRACTICE (ULP); INTERFERENCE WITH THE EMPLOYEES' RIGHT TO SELF-ORGANIZATION; PRESENT IN THE FAILURE TO REMIT UNION DUES TO BARGAINING AGENT SMART AND VOLUNTARY RECOGNITION OF ANOTHER LABOR UNION RTEA.—** Interference with the employees' right to self-organization is considered an unfair labor practice under Article 258 (a) of the Labor Code. In this case, the labor arbiter found that the failure to remit the union dues to SMART and the voluntary recognition of Ren Transport Employees Association (RTEA) were clear indications of interference with the employees' right to self-organization. x x x As aptly pointed out by the labor arbiter, these acts were ill-timed in view of the existence of a labor controversy over membership in the union.

3. **ID.; ID.; NATIONAL LABOR RELATIONS COMMISSION (NLRC); NLRC DECISION THAT RESOLVED THE FOCAL ISSUE RAISED WITHOUT GOING THROUGH EVERY ARGUMENT IS A VALID DECISION.—** Section 14, Article VIII of the 1987 Constitution, states that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." It has been held that the constitutional provision does not require a "point-by-point consideration and resolution of the issues raised by the parties." In the present case, the decision shows that the NLRC resolved the focal issue raised by Ren Transport: whether or not SMART remained the exclusive bargaining agent, such that Ren Transport could be found guilty of acts of unfair labor practice. The NLRC discussion x x x shows the factual and legal bases for the NLRC's resolution of the issue of whether Ren Transport committed unfair labor practice and thereby satisfies the constitutional provision on the contents of a decision. The NLRC succeeded in disposing of all the arguments raised by Ren Transport without going through every argument, as all the assigned errors hinged on the majority status of SMART. All of these errors were addressed and settled by the NLRC by finding that SMART was still the exclusive bargaining agent of the employees of

Ren Transport. As aptly stated by the CA, a court or any other tribunal is not required to pass upon all the errors assigned by Ren Transport; the resolution of the main question renders the other issues academic or inconsequential.

4. CIVIL LAW; DAMAGES; MORAL DAMAGES; A CORPORATION AS A GENERAL RULE, IS NOT ENTITLED TO MORAL DAMAGES.— [T]he CA correctly dropped the NLRC's award of moral damages to SMART. Indeed, a corporation is not, as a general rule, entitled to moral damages. Being a mere artificial being, it is incapable of experiencing physical suffering or sentiments like wounded feelings, serious anxiety, mental anguish or moral shock. Although this Court has allowed the grant of moral damages to corporations in certain situations, it must be remembered that the grant is not automatic. The claimant must still prove the factual basis of the damage and the causal relation to the defendant's acts. In this case, while there is a showing of bad faith on the part of the employer in the commission of acts of unfair labor practice, there is no evidence establishing the factual basis of the damage on the part of SMART.

APPEARANCES OF COUNSEL

Soriano Velez & Partners Law Offices for Ren Transport, *et al.*

Remegio D. Saladero, Jr. for SMART-ADLO.

D E C I S I O N

SERENO, *C.J.*:

Before this Court are consolidated Rule 45 petitions challenging the Decision[1] and the Resolution[2] issued by the Court of Appeals (CA) in CA-G.R. SP No. 100722.

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[1] Dated 30 January 2009. *Rollo*, 188020, pp. 60-70, penned by Associate Justice Ricardo R. Rosario and concurred by Associate Justices Noel G. Tijam and Vicente S.E. Veloso.

[2] Dated 20 May 2009. *Id.* at pp. 57-59.

THE FACTS

Samahan ng Manggagawa sa Ren Transport (SMART) is a registered union, which had a five-year collective bargaining agreement (CBA) with Ren Transport Corp. (Ren Transport) set to expire on 31 December 2004.[3] The 60-day freedom period of the CBA passed without a challenge to SMART's majority status as bargaining agent.[4] SMART thereafter conveyed its willingness to bargain with Ren Transport, to which it sent bargaining proposals. Ren Transport, however, failed to reply to the demand.[5]

Subsequently, two members of SMART wrote to the Department of Labor and Employment — National Capital Region (DOLE-NCR). The office was informed that a majority of the members of SMART had decided to disaffiliate from their mother federation to form another union, Ren Transport Employees Association (RTEA).[6] SMART contested the alleged disaffiliation through a letter dated 4 April 2005.[7]

During the pendency of the disaffiliation dispute at the DOLE-NCR, Ren Transport stopped the remittance to SMART of the union dues that had been checked off from the salaries of union workers as provided under the CBA.[8] Further, on 19 April 2005, Ren Transport voluntarily recognized RTEA as the sole and exclusive bargaining agent of the rank-and-file employees of their company.[9]

On 6 July 2005, SMART filed with the labor arbiter a complaint for unfair labor practice against Ren Transport.[10]

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[3] *Supra*, note 1, at 62.

[4] *Id.*

[5] *Rollo*, (G.R. No. 188252), p. 183.

[6] *Id.*

[7] *Id.* at 63.

[8] *Id.*

[9] *Id.*

[10] *Supra* note 1 at 15.

THE LABOR ARBITER'S RULING

The labor arbiter rendered a decision[11] finding Ren Transport guilty of acts of unfair labor practice. The former explained that since the disaffiliation issue remained pending, SMART continued to be the certified collective bargaining agent; hence, Ren Transport's refusal to send a counter-proposal to SMART was not justified. The labor arbiter also held that the company's failure to remit the union dues to SMART and the voluntary recognition of RTEA were clear indications of interference with the employees' exercise of the right to self-organize.

Both parties elevated the case to the National Labor Relations Commission (NLRC). SMART contested only the failure of the labor arbiter to award damages.

Ren Transport challenged the entire Decision, assigning four errors in its Memorandum of Appeal, namely: (1) SMART was no longer the exclusive bargaining agent; (2) Ren Transport did not fail to bargain collectively with SMART; (3) Ren Transport was not obliged to remit dues to SMART; and (4) SMART lacked the personality to sue Ren Transport.[12] All the assigned errors were based on the assertion that SMART had lost its majority status.

The appeals were consolidated.

THE NLRC RULING

The NLRC issued a decision[13] affirming the labor arbiter's finding of unfair labor practice on the part of Ren Transport. Union dues were ordered remitted to SMART.

The NLRC also awarded moral damages to SMART, saying that Ren transport's refusal to bargain was inspired by malice or bad faith. The precipitate recognition of RTEA evidenced such bad faith, considering that it was done despite the pendency of the disaffiliation dispute at the DOLE-NCR.

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[11] Decision dated 13 February 2006. *Supra* note 5 at 182-190.

[12] *Supra*, note 5 at 206-217.

[13] Decision 28 May 2007. *Id.* at 243-249.

Ren Transport filed a motion for reconsideration[14] alleging, among others, that the NLRC failed to resolve all the arguments the former had raised in its memorandum of appeal.

The NLRC denied the motion for reconsideration,[15] prompting Ren Transport to file a Rule 65 petition with the CA.[16]

THE CA RULING

On 30 January 2009, the CA rendered a decision[17] partially granting the petition. It deleted the award of moral damages to SMART, but affirmed the NLRC decision on all other matters. The CA ruled that SMART, as a corporation, was not entitled to moral damages.[18]

On the contention that the NLRC decided the case without considering all the arguments of Ren Transport, the CA found that the latter had passed upon the principal issue of the existence of unfair labor practice.

Hence, both parties appealed to this Court.

THE ISSUES

Based on the foregoing facts and arguments raised in the petitions, the threshold issues to be resolved are the following: (1) whether Ren Transport committed acts of unfair labor practice; (2) whether the decision rendered by the NLRC is valid on account of its failure to pass upon all the errors assigned by Ren Transport; and (3) whether SMART is entitled to moral damages.

OUR RULING

We deny the petitions for lack of merit.

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[14] *Id.* at 250-273.

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

[16] *Id.* at 279-314.

[17] *Id.* at 22-31.

[18] *Id.* at 30.

I
Ren Transport committed acts of unfair labor practice.

Ren Transport violated its duty to bargain collectively with SMART.

Ren Transport concedes that it refused to bargain collectively with SMART. It claims, though, that the latter ceased to be the exclusive bargaining agent of the rank-and-file employees because of the disaffiliation of the majority obits members.[19]

The argument deserves no consideration.

Violation of the duty to bargain collectively is an unfair labor practice under Article 258 (g) of the Labor Code. An instance of this practice is the refusal to bargain collectively as held in *General Milling Corp. v. CA*.[20] In that case, the employer anchored its refusal to bargain with and recognize the union on several letters received by the former regarding the withdrawal of the workers' membership from the union. We rejected the defense, saying that the employer had devised a flimsy excuse by attacking the existence of the union and the status of the union's membership to prevent any negotiation.[21]

It bears stressing that Ren Transport had a duty to bargain collectively with SMART. Under Article 263 in relation to Article 267 of the Labor Code, it is during the freedom period — or the last 60 days before the expiration of the CBA — when another union may challenge the majority status of the bargaining agent through the filing of a petition for a certification election. If there is no such petition filed during the freedom period, then the employer "shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed."[22]

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[19] *Supra* note 1, at 41.

[20] 467 Phil. 125 (2004).

[21] *Id.* at 134.

[22] Article 267, Labor Code (As amended by Section 23, Republic Act No. 6715, March 21, 1989).

In the present case, the facts are not up for debate. No petition for certification election challenging the majority status of SMART was filed during the freedom period, which was from November 1 to December 31, 2004 — the 60-day period prior to the expiration of the five-year CBA. SMART therefore remained the exclusive bargaining agent of the rank-and-file employees.

Given that SMART continued to be the workers' exclusive bargaining agent, Ren Transport had the corresponding duty to bargain collectively with the former. Ren Transport's refusal to do so constitutes an unfair labor practice.

Consequently, Ren Transport cannot avail itself of the defense that SMART no longer represents the majority of the workers. The fact that no petition for certification election was filed within the freedom period prevented Ren Transport from challenging SMART's existence and membership.

Moreover, it must be stressed that, according to the labor arbiter, the purported disaffiliation from SMART was nothing but a convenient, self-serving excuse.[23] This factual finding, having been affirmed by both the CA and the NLRC, is now conclusive upon the Court.[24] We do not see any patent error that would take the instant case out of the general rule.

Ren Transport interfered with the exercise of the employees' right to self-organize.

Interference with the employees' right to self-organization is considered an unfair labor practice under Article 258 (a) of the Labor Code. In this case, the labor arbiter found that the failure to remit the union dues to SMART and the voluntary recognition of RTEA were clear indications of interference with the employees' right to self-organization.[25] It must be stressed

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[23] *Supra* note 5, at 189-190.

[24] *Meralco Industrial Engineering Services Corp. v. National Labor Relations Commission*, 572 Phil. 94-118 (2008).

[25] *Id.* at 189.

that this finding was affirmed by the NLRC and the CA; as such, it is binding on the Court, especially when we consider that it is not tainted with any blatant error. As aptly pointed out by the labor arbiter, these acts were ill-timed in view of the existence of a labor controversy over membership in the union.[26]

Ren Transport also uses the supposed disaffiliation from SMART to justify the failure to remit union dues to the latter and the voluntary recognition of RTEA. However, for reasons already discussed, this claim is considered a lame excuse that cannot validate those acts.

II.
The NLRC decision is valid.

Ren Transport next argues that the decision rendered by the NLRC is defective considering that it has failed to resolve all the issues in its Memorandum of Appeal.[27]

We do not agree.

Section 14, Article VIII of the 1987 Constitution, states that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." It has been held that the constitutional provision does not require a "point-by-point consideration and resolution of the issues raised by the parties."[28]

In the present case, the decision shows that the NLRC resolved the focal issue raised by Ren Transport: whether or not SMART remained the exclusive bargaining agent, such that Ren Transport could be found guilty of acts of unfair labor practice. We quote the NLRC discussion:

> At the outset, let it be stated that insofar as the principal issue of whether unfair labor practice was committed by respondents, there is no occasion to find, or even entertain, doubts that the findings and conclusion of the Labor Arbiter that unfair labor practice (ULP)

[26] *Id.*

[27] *Supra*, note 1 at 31.

[28] *Re: Ongjoco,* 680 Phil. 467-474 (2012).

was committed against the complainants, are infused with serious errors. We quote:

> [I]t is our considered view that the respondents committed acts of unfair labor practice even if the CBA between the complainant union and respondent company already expired and majority of the workers of the existing bargaining agent disaffiliated therefrom, formed its own union and have it registered as an independent one, still the respondent Company has the duty to bargain collectively with the existing bargaining agent. It bears stressing that the disaffiliation issue of the members of the complainant union is still pending before the DOLE and has not yet attained its finality, that there is no new bargaining agent certified yet by the DOLE, there is no legal basis yet for the respondent company to disregard the personality of the complainant union and refused or ignored the agent for renewal of its CBA. It is still the certified collective bargaining agent of the workers, because there was no new [u]nion yet being certified by the DOLE as the new bargaining agent of the workers.

The above discourse shows the factual and legal bases for the NLRC's resolution of the issue of whether Ren Transport committed unfair labor practice and thereby satisfies the constitutional provision on the contents of a decision. The NLRC succeeded in disposing of all the arguments raised by Ren Transport without going through every argument, as all the assigned errors hinged on the majority status of SMART.[29] All of these errors were addressed and settled by the NLRC by finding that SMART was still the exclusive bargaining agent of the employees of Ren Transport.

As aptly stated by the CA, a court or any other tribunal is not required to pass upon all the errors assigned by Ren Transport; the resolution of the main question renders the other issues academic or inconsequential.[30]

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[29] Ren Transport's remaining arguments in its Memorandum of Appeal filed with the NLRC are summed up as follows: (1) Ren Transport did not fail to bargain collectively with SMART; (3) Ren Transport was not obliged to remit dues to SMART; and (4) SMART lacked the personality to sue Ren Transport. *Supra* note 5 at 216-217.

[30] *Supra* note 5, at 28.

At this juncture, it is well to note that addressing every one of the errors assigned would not be in keeping with the policy of judicial economy. Judicial economy refers to "efficiency in the operation of the courts and the judicial system; especially the efficient management of litigation so as to minimize duplication of effort and to avoid wasting the judiciary's time and resources."[31] In *Salud v. Court of Appeals*,[32] the Court remarked that judicial economy is a "strong [norm] in a society in need of swift justice."[33] Now, more than ever, the value of brevity in the writing of a decision assumes greater significance, as we belong to an age in which dockets of the courts are congested and their resources limited.

III.

SMART is not entitled to an award of moral damages.

We now address the petition of SMART, which faults the CA for deleting the grant of moral damages.[34]

We hold that the CA correctly dropped the NLRC's award of moral damages to SMART. Indeed, a corporation is not, as a general rule, entitled to moral damages. Being a mere artificial being, it is incapable of experiencing physical suffering or sentiments like wounded feelings, serious anxiety, mental anguish or moral shock.[35]

Although this Court has allowed the grant of moral damages to corporations in certain situations.[36] It must be remembered

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[31] *Black's Law Dictionary*, Eighth edition, p. 863.

[32] G.R. No. 100156, 27 June 1994, 233 SCRA 384.

[33] *Id.* at 389.

[34] *Supra* note 5 at 15.

[35] *Crystal v. Bank of the Philippine Islands*, 593 Phil. 344, 354 (2008). Cited in *University of the Philippines v. Dizon*, 693 Phil. 226, 250 (2012).

[36] Corporations may recover moral damages under Articles 19, 20, and 21 of the Civil Code (*ABS-CBN Broadcasting Corp. v. Court of Appeals*, 61 Phil. 499, 527 (1999) as well as under Article 2219 (7) of the Civil Code (*Filipinas Broadcasting Network v. Ago Medical and Educational Center*, 489 Phil. 380, 400 (2005).

that the grant is not automatic. The claimant must still prove the factual basis of the damage and the causal relation to the defendant's case.[37] In ths case, while there is a showing of bad faith on the part of the employer in the commission of acts of unfair labor practice, there is no evidence establishing the factual basis of the damage on the part of SMART.

WHEREFORE, premises considered, the petitioons are **DENIED.** The Decision dated 30 January 2009 and the Resolution dated 20 May 2009 issued by the Court of Appeals in CA-G.R. SP No. 100722 are **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 203527. June 27, 2016]

SPS. AURELIO HITEROZA and CYNTHIA HITEROZA, *petitioners, vs.* **CHARITO S. CRUZADA, President and Chairman, CHRIST'S ACHIEVERS MONTESSORI, INC., and CHRIST'S ACHIEVERS MONTESSORI, INC.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES (AM NO. 01-2-04-SC); JUDGMENT BEFORE PRE-TRIAL MAY ONLY BE RENDERED AFTER THE PARTIES' SUBMISSION OF THEIR RESPECTIVE PRE-TRIAL

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[37] *First Lepanto-Taisho Insurance Corp. v. Chevron Phil. Inc.*, 679 Phil. 313, 329 (2012).

BRIEFS.— Section 4, Rule 4 of the Interim Rules provides that a judgment before pre-trial, as in the present case, may only be rendered after the parties' submission of their respective pre-trial briefs. x x x Complementing Section 4 is Section 1, Rule 4 of the Interim Rules which provides for the mandatory conduct of a pre-trial conference, x x x The conduct of a pre-trial is mandatory under the Interim Rules. Except in cases of default, Sections 1 and 4 of Rule 4 of the Interim Rules require the conduct of a pre-trial conference and the submission of the parties' pre-trial briefs **before the court may render a judgment** on intra-corporate disputes. Rule 7 of the Interim Rules (*Inspection of Corporate Books and Records*) [which] dispenses with the need for a pre-trial conference or the submission of a pre-trial brief before the court may render a judgment **applies only to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with the financial statements of a corporation.**

2. ID.; ID.; ID.; CREATION OF A MANAGEMENT COMMITTEE; REQUIREMENTS THEREIN APPLY TO APPOINTMENT OF A RECEIVER.— A corporation may be placed under receivership, or management committees may be created to preserve properties involved in a suit and to protect the rights of the parties under the control and supervision of the court. Section 1, Rule 9 of the Interim Rules provides: *SECTION 1. Creation of a management committee*. – As an incident to any of the cases filed under these Rules or the Interim Rules on Corporate Rehabilitation, a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of: (1) Dissipation, loss, wastage, or destruction of assets or other properties; and (2) Paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public. Section 2, Rule 9 of the Interim Rules, on the other hand, provides for the appointment of a receiver, xxx While the caption of Section 1, Rule 9 states "the creation of a management committee," the requirements stated in Section 1 apply to both the creation of a management committee and the appointment of a receiver, as can be gleaned from Section 2, Rule 9 which refers to "the application sufficient in form and substance." The "application" referred to in Section 2 on *Receiver* is the same application referred to in Section 1 of Rule 9.

APPEARANCES OF COUNSEL

Palabasan Taala & Associates Law Office for petitioners.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by the petitioner spouses Aurelio and Cynthia Hiteroza (*Sps. Hiteroza*) assailing the July 9, 2012 decision[2] and September 19, 2012 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 124096.

THE FACTS

Christ's Achievers Montessori, Inc. is a non-stock, non-profit corporation that operates a school in San Jose del Monte, Bulacan (hereinafter referred to as the school).[4] The petitioner Sps. Hiteroza and the respondent Charito Cruzada (*Charito*) are the incorporators, members and trustees of the School, together with Alberto Cruzada, the husband of Charito, and Jaina R. Salangsang (*Jaina*), the mother of Cynthia and Charito.[5]

On February 25, 2010, the Sps. Hiteroza filed a *Complaint*[6] for a derivative suit with prayer for the creation of a management committee, the appointment of a receiver, and a claim for damages against Charito, the President and Chairman of the school.[7]

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[1] *Rollo*, pp. 8-30.

[2] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Abraham B. Borreta. *Id.* at 400-420.

[3] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan. *Id.* at 449-450.

[4] *Id.* at 162.

[5] *Id.* at 401.

[6] Docketed as Civil Case No. 130-M-2010. *Id.* at 161-182.

[7] *Id.* at 401.

The Sps. Hiteroza alleged that Charito employed schemes and acts resulting in dissipation, loss, or wastage of the school's assets that, if left unchecked, would likely cause paralysis of the school operations, amounting to fraud and misrepresentation detrimental and prejudicial to the school's interests.[8] The particular alleged schemes and acts of Charito that brought about the Sps. Hiteroza's prayer for the creation of a management committee and the appointment of a receiver are as follows:

First, Charito lied about the school's financial status and concealed the school's real income.[9] The Sps. Hiteroza discovered the discrepancies in the reported number of enrolled students versus the actual number of enrolled students.[10] The Sps. Hiteroza claimed that the school has missing funds due to Charito's fraud.[11]

Second, Charito refused the Sps. Hiteroza's request to examine the corporate and financial records of the school, as well as an accounting of the school's receipts and expenses.[12] Charito also refused to conduct regular and special annual board meetings and the election of officers.[13]

Third, the school's debt with Unitrust Development Bank secured by the Sps. Hiteroza's three (3) lots and which are now used as the school site, ballooned from ₱2,000,000.00 to ₱7,512,492.24 due to the school's late payments or non-payment, contrary to Charito's assurance that the loan was back to ₱2,000,000.00.[14]

Fourth, Charito faked the Securities and Exchange Commission (*SEC*) reportorial requirements when she filed the General Information Sheets for the years 2006 and 2008 and falsely reported that there were annual members' meetings held when there had been none. Charito also filed an Amended Articles of Incorporation using the

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[8] *Id.* at 401-402.

[9] *Id.* at 402.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 403.

[13] *Id.*

[14] *Id.*

old signature page of the original Articles of Incorporation, without the Sps. Hiteroza's consent, and forged Cynthia's signature in the school's financial statements.[15]

Fifth, Charito caused the illegal transfer of Jaina's membership in the school to her son, Jerameel S. Cruzada. The Sps. Hiteroza claimed that the school's bylaws provide that the membership is nontransferable and Jaina could not have transferred her membership since she was already suffering from alzheimer's disease.[16]

Sixth, Charito and her family's wealth and lifestyle do not correspond with Charito and her husband' earnings of ₱10,000.00 and ₱8,000.00 per month respectively, as reflected in the School records.[17] Charito bought a house and lot at Marilao, Bulacan, with a cost of around ₱3,000,000.00 and an Isuzu Crosswind Sportivo which cost around ₱1,200,000.00.

Seventh, Charito used the school premises as her family's personal quarters without paying rent and used the school's funds to pay for their utility bills.[18]

Charito filed her belated *Answer*[19] dated April 12, 2010, and argued that the *complaint* is a nuisance and harassment suit.[20] Charito averred that the Sps. Hiteroza's real motive is to access and secure for themselves the school's income; the Sps. Hiteroza professed their "concern" for the school affairs only after almost ten (10) years.[21] Charito also averred that her family's house is situated at a low-cost subdivision and their car was obtained through hard work and not through fraud.[22]

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[15] *Id.* at 404.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 405.

[19] *Id.* at 317-331.

[20] *Id.* at 405.

[21] *Id.*

[22] *Id.*

Charito argued that the "serious situation test" in the case of *Pryce Corporation v. China Banking Corporation*[23] on the appointment of a management committee or a receiver has not been satisfied.[24] The complaint failed to show that there is a serious and imminent danger of dissipation, loss, wastage, or destruction of assets and paralysis of business operations that may be prejudicial to the minority interest of stockholders, parties-litigants, or to the general public, and that there is a necessity to preserve the parties-litigants, investors, and the creditors' rights and interests.[25]

Charito claimed that the school's improvement negates the accusation of mismanagement.[26] On the Sps. Hiteroza's right of inspection, Charito claims that a derivative suit is not the proper remedy since the right of inspection is the stockholder's personal right and his cause of action is individual.[27] Further, the derivative suit requirements have not been complied with since there is no allegation that the Sps. Hiteroza exhausted all available remedies under the school's Articles of Incorporation and By-Laws.[28] Finally, the complaint has no allegation of earnest efforts towards a compromise, a jurisdictional requirement, considering that the parties are siblings.[29]

THE RTC RULING

On May 14, 2010, the Regional Trial Court (*RTC*) rendered a *decision*[30] (the ***May 14, 2010 RTC decision***) directing Charito to allow the Sps. Hiteroza or their duly authorized representative to have access to, inspect, examine, and secure copies of books

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[23] G.R. No. 172302, February 18, 2014, 716 SCRA 217.

[24] *Rollo*, p. 405.

[25] *Id.*

[26] *Id.* at 406.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.* at 83-90.

of accounts and other pertinent records of the school. The RTC recognized that the Sps. Hiteroza, as stockholders, have the right to inspect the school's books and records and/or be furnished with the school's financial statements under Sections 74 and 75 of the Corporation Code of the Philippines.

The RTC, however, held that the allegations in the complaint do not amount to a derivative suit since any injury that may result from the claimed fraudulent acts of Charito will only affect the Sps. Hiteroza and not the school.[31] The RTC also held that the prayer for the creation of a management committee or the appointment of a receiver was **premature** since there was yet no evidence in the complaint to support the Sps. Hiteroza's allegations of fraud or misrepresentation.[32]

The Sps. Hiteroza's inspection of the School's corporate books was conducted on June 14 to 15, 2010.[33]

On September 21, 2010, the Sps. Hiteroza filed a *Report on the Inspection of Corporate Documents* (*1st Report*); they alleged that despite demand, Charito did not produce all the documents for inspection.[34] With the available documents, the Sps. Hiteroza discovered misuse, wrong declaration and/or wrong recording of funds, as well as missing funds from the coffers of the school amounting to fraud and/or misrepresentation that are detrimental to the school's interests.[35] The Sps. Hiteroza reiterated their prayer for the creation of a management committee and the appointment of a receiver for the school.[36]

Charito filed her *Comment* on the *1st Report* and claimed that this report is in the form of a motion for reconsideration which is a prohibited pleading under Rule 15 of the Rules of

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[31] *Id.* at 86-87.

[32] *Id.* at 85.

[33] *Id.* at 408.

[34] *Id.*

[35] *Id.* at 409.

[36] *Id.*

Court. Charito claims that the appointment of a management committee or a receiver is a provisional remedy and could not be obtained after no appeal was filed and the May 14, 2010 RTC decision lapsed to finality.[37]

Charito, however, admitted during the hearing before the RTC that not all documents were presented for the Sps. Hiteroza's inspection.[38] Hence, the RTC issued an *Order*[39] directing the inspection of the school's books of account.[40]

On January 17, 2011, the Sps. Hiteroza filed a *2nd Report on the Inspection of Corporate Documents* and reiterated their prayer for the creation of a management committee and the appointment of a receiver for the school. The Sps. Hiteroza alleged that Charito again refused to produce the school's main bank accounts records. The Sps. Hiteroza also alleged that their accountants found that, based on the declared amounts in the corporate books of accounts, the total unaccounted income of the School for the years 2000 to 2009 amounted to ₱27,446,989.35.

The RTC issued an *Order* dated March 3, 2011, referring the dispute for mediation at the Philippine Mediation Center, Bulacan Office.[41] The parties appeared for mediation as directed but no settlement was reached.[42] The Sps. Hiteroza filed a *Manifestation with Motion* dated November 9, 2011, reiterating their prayer for the appointment of a rehabilitation receiver and/or management committee.[43]

On March 16, 2012, the RTC issued an Order (*assailed RTC order*) appointing Atty. Rafael Chris F. Teston as the school's

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[37] *Id.* at 237-246.

[38] *Id.* at 409.

[39] RTC Order dated November 10, 2010.

[40] *Rollo*, p. 409.

[41] *Id.* at 410.

[42] *Id.*

[43] *Id.*

receiver in view of the "inability of the parties to work out an amicable settlement of their dispute, and in order to enable the court to ascertain the veracity of the claim of the [spouses Hiteroza] that Charito has unjustifiably failed and refused to comply with the final decision in this case dated May 14, 2010."[44]

Charito sought to nullify the assailed RTC order and filed a *Petition for Certiorari* dated April 3, 2012, with application for the issuance of a temporary restraining order and/or writ of preliminary injunction before the CA.[45] The Sps. Hiteroza argued that the RTC gravely abused its discretion in issuing the assailed RTC order on the appointment of a receiver since it was issued despite the absence of the following: (1) a verified application, (2) any ground enumerated under Section 1 of Rule 9 of the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC) (hereinafter referred to as the "Interim Rules"), or any "serious situation" as required by the Court in the *Pryce Corporation case*.[46] The Sps. Hiteroza also argued that the assailed RTC Order contradicted the final May 14, 2010 RTC decision denying the prayer for receivership or the creation of a management committee.[47]

THE CA RULING

In its decision[48] dated July 9, 2012, the CA granted Charito's petition and nullified the assailed RTC order on the appointment of a receiver.

The CA explained that the May 14, 2010 RTC decision already denied the Sps. Hiteroza's prayer for the creation of a management committee or the appointment of a receiver for lack of evidence

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[44] *Id.* at 77, 410-412.

[45] *Id.* at 401.

[46] *Id.* at 48-50.

[47] *Id.* at 413.

[48] *Id.* at 400-423.

and for being premature.[49] The May 14, 2010 RTC decision eventually became final and executory since no appeal was filed.[50]

The CA held that the RTC gravely abused its powers in reconsidering its final decision on the basis of the Sps. Hiteroza's reports on the inspection of the school records.[51] The CA noted that the Sps. Hiteroza's reports, which reiterated their prayer for the creation of a management committee and the appointment of a receiver, are veiled attempts to move for the reconsideration of the RTC decision; a motion for reconsideration is a prohibited pleading under Section 8 (3),[52] Rule 1 of the Interim Rules.[53]

The CA also held that there was noncompliance with the requisites for the appointment of a receiver under Section 1, Rule 9 of the Interim Rules.[54] The CA declared that the allegations on the school's dissipation of assets and funds have yet to be proven and that the RTC was still in the process of ascertaining the veracity of the Sps. Hiteroza's claims.[55] Further, there is no showing that the school is in imminent danger of paralysation of its business operations.[56]

The Sps. Hiteroza filed a motion for reconsideration of the CA decision, but the CA denied the motion for lack of merit.[57]

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[49] *Id.* at 417.

[50] *Id.*

[51] *Id.*

[52] **SEC. 8.** ***Prohibited pleadings***. — The following pleadings are prohibited:

1. Motion to dismiss;

2. Motion for a bill of particulars;

3. Motion for new trial, or for **reconsideration of judgment or order**, or for re-opening of trial; x x x (emphasis supplied)

[53] *Rollo*, p. 417.

[54] *Id.* at 417-418.

[55] *Id.* at 418.

[56] *Id.*

[57] CA Resolution dated September 19, 2012, *rollo*, pp. 449-450.

THE PETITION

The Sps. Hiteroza filed the present petition for review on *certiorari* to challenge the CA ruling.

The Sps. Hiteroza argue that the CA ruling is erroneous since it considers the May 14, 2010 RTC decision as a final judgment when, in fact, the RTC decision is preliminary as it merely grants a remedy by way of a mode of discovery,[58] *i.e.*, the inspection of corporate documents, books, and records. The May 14, 2010 RTC decision merely granted one of the reliefs asked for by the Sps. Hiteroza, but by itself, does not address all of the Sps. Hiteroza's causes of action in their complaint.[59] More importantly, Charito has not fully complied with the May 14, 2010 RTC decision since Charito refused to open the School's other corporate books and records for inspection.[60]

The Sps. Hiteroza also argue that the reports have extensively shown that there was dissipation of the school's assets and funds and that the school is heavily indebted to the bank, thus warranting the appointment of a receiver.[61]

THE ISSUES

The issues of the petition are: (1) whether the May 14, 2010 RTC Decision is a final judgment; and (2) whether the CA correctly nullified the assailed RTC Order which directed the appointment of a receiver.

OUR RULING

We ***partially grant*** the petition.

The May 14, 2010 RTC decision is <u>not</u> a final judgment since the case is not ripe for decision. No pre-trial has been

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[58] *Id.* at 24.

[59] *Id.* at 25.

[60] *Id.* at 26.

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

conducted pursuant to the Interim Rules and the parties have not submitted their pre-trial briefs.

Section 4, Rule 4 of the Interim Rules provides that a judgment before pre-trial, as in the present case, may only be rendered after the parties' submission of their respective pre-trial briefs.

SEC. 4. Judgment before pre-trial. — If, **after submission of the pre-trial briefs**, the court determines that, upon consideration of the pleadings, the affidavits and other evidence submitted by the parties, **a judgment may be rendered**, the court may order the parties to file simultaneously their respective memoranda within a non-extendible period of twenty (20) days from receipt of the order. Thereafter, the court shall render judgment, either full or otherwise, not later than ninety (90) days from the expiration of the period to file the memoranda. (emphases supplied)

Complementing Section 4 is Section 1, Rule 4 of the Interim Rules which provides for the mandatory conduct of a pre-trial conference, to quote:

SECTION 1. ***Pre-trial conference; mandatory nature.*** — Within five (5) days after the period for availment of, and compliance with, the modes of discovery prescribed in Rule 3 hereof, whichever comes later, the court shall issue and serve an order immediately setting the case for pre-trial conference and directing the parties to submit their respective pre-trial briefs. The parties shall file with the court and furnish each other copies of their respective pre-trial brief in such manner as to ensure its receipt by the court and the other party at least five (5) days before the date set for the pre-trial. x x x.

The conduct of a pre-trial is mandatory under the Interim Rules.[62] Except in cases of default,[63] Sections 1 and 4 of Rule

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[62] *Recto v. Escaler, S. J.*, 648 Phil. 399, 410 (2010).

[63] Rule 2 of Section 7.

Sec. 7. *Effect of failure to answer*. — If the defendant fails to answer within the period above provided, he shall be considered in default. Upon motion or *motu proprio*, the court shall render judgment either dismissing the complaint or granting the relief prayed for as the records may warrant. In no case shall the court award a relief beyond or different from that prayed for (*Interim Rules of Procedure for Intra-Corporate Controversies*).

4 of the Interim Rules require the conduct of a pre-trial conference and the submission of the parties' pre-trial briefs **before the court may render a judgment** on intra-corporate disputes.

Rule 7 of the Interim Rules (*Inspection of Corporate Books and Records*) dispenses with the need for a pre-trial conference or the submission of a pre-trial brief before the court may render a judgment. This Rule, however, **applies only to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with the financial statements of a corporation.**[64]

In the present case, Rule 7 of the Interim Rules does not apply since the Sps. Hiteroza's complaint did not exclusively involve the denial of the Sps. Hiteroza's right to inspect the school's records, but also several other allegations of Charito's fraud and misrepresentation in the School's management. There has been no conduct of a pre-trial conference or the submission of the parties' respective pre-trial briefs before the issuance of the May 14, 2010 RTC decision. The issuance of the May 14, 2010 RTC decision was, thus, premature.

Even a cursory examination of the issue on whether the CA correctly nullified the assailed RTC Order directing the appointment of the school's receiver immediately leads us to conclude that this is a question of fact that is not within the authority of this Court to decide. More importantly, the factual issue has not been ventilated in the proper proceedings before the trial court because the case did not even reach the pre-trial stage.[65] Thus, the appointment of the school's receiver is premature.

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[64] Rule 7, Section 1. ***Cases covered***. — The provisions of the Rule shall apply to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with the financial statements of a corporation, under Sections 74 and 75 of *Batas Pambansa Blg. 68*, otherwise known as the Corporation Code of the Philippines.

[65] *Supra* note 62, at 408-409.

The requirements in Section 1, Rule 9 of the Interim Rules apply to both the creation of a management committee and/or the appointment of a receiver.

Without going into the factual circumstances on the propriety of the appointment of a receiver, we find that the CA correctly applied the requisites of Section 1, Rule 9 of the Interim Rules (on the creation of a management committee) to determine the propriety of the appointment of a receiver.

A corporation may be placed under receivership, or management committees may be created to preserve properties involved in a suit and to protect the rights of the parties under the control and supervision of the court.[66]

Section 1, Rule 9 of the Interim Rules provides:

SECTION 1. Creation of a management committee. — As an incident to any of the cases filed under these Rules or the Interim Rules on Corporate Rehabilitation, a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of:

(1) Dissipation, loss, wastage, or destruction of assets or other properties; and

(2) Paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public.

Section 2, Rule 9 of the Interim Rules, on the other hand, provides for the appointment of a receiver, to quote:

SEC. 2. Receiver. — In the event the court finds the application to be sufficient in form and substance, the court shall issue an order: (a) appointing a receiver of known probity, integrity and competence and without any conflict of interest as hereunder defined to immediately take over the corporation, partnership or association, specifying such powers as it may deem appropriate under the

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[66] *Villamor, Jr. v. Umale*, G.R. No. 172843, September 24, 2014, 736 SCRA 325, 352.

circumstances, including any of the powers specified in Section 5 of this Rule; (b) fixing the bond of the receiver; (c) directing the receiver to make a report as to the affairs of the entity under receivership and on other relevant matters within sixty (60) days from the time he assumes office; (d) prohibiting the incumbent management of the company, partnership, or association from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; and (e) directing the payment in full of all administrative expenses incurred after the issuance of the order.

While the caption of Section 1, Rule 9 states "the creation of a management committee," the requirements stated in Section 1 apply to both the creation of a management committee and the appointment of a receiver, as can be gleaned from Section 2, Rule 9 which refers to "the application sufficient in form and substance." The "application" referred to in Section 2 on *Receiver* is the same application referred to in Section 1 of Rule 9.

The recent case of *Villamor, Jr. v. Umale*[67] that touches on these points, is instructive:

x x x Management committees and receivers are appointed when the corporation is in imminent danger of "(1) [d]issipation, loss, wastage or destruction of assets or other properties; and (2) [p]aralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public."

Applicants for the appointment of a receiver or management committee need to establish the confluence of these two requisites. This is because appointed receivers and management committees will immediately take over the management of the corporation and will have the management powers specified in law. This may have a negative effect on the operations and affairs of the corporation with third parties,[86] as persons who are more familiar with its operations are necessarily dislodged from their positions in favor of appointees who are strangers to the corporation's operations and affairs. (emphasis supplied)

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[67] *Id.* at 352-353.

In *Villamor, Jr.,* the Court recognized that Section 1, Rule 9 of the Interim Rules **applies to both** the appointment of a receiver and the creation of a management committee. Further, the Court held that there must be imminent danger of **both** the dissipation, loss, wastage, or destruction of assets or other properties; **and** paralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public, before allowing the appointment of a receiver or the creation of a management committee.

In the case of *Sy Chim v. Sy Siy Ho & Sons, Inc.*,[68] the Court similarly held that the two requisites found in Section 1 of Rule 9 of the Interim Rules should be present before a management committee may be created and a **receiver appointed** by the RTC.

The reason for the stringent requirements on the creation of a management committee and the appointment of a receiver was explained in the *Sy Chim* case, as follows:

> The rationale for the need to establish the confluence of the two (2) requisites under Section 1, Rule 9 by an applicant for the appointment of a management committee is primarily based upon the fact that such committee and receiver appointed by the court will immediately take over the management of the corporation, partnership or association, including such power as it may deem appropriate, and any of the powers specified in Section 5 of the Rule. x x x.
>
> Thus, the creation and appointment of a management committee and a receiver is an extraordinary and drastic remedy to be exercised with care and caution; and only when the requirements under the Interim Rules are shown. It is a drastic course for the benefit of the minority stockholders, the parties-litigants, or the general public allowed only under pressing circumstances and, when there is inadequacy, or ineffectual exhaustion of legal or other remedies. The power to intervene before the legal remedy is exhausted and misused when it is exercised in aid of such a purpose. The power of the court to continue a business of a corporation, partnership, or association must be exercised with the greatest care and caution.

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[68] G.R. No. 164958, January 27, 2006, 480 SCRA 465, 493-496.

There should be a full consideration of all the attendant facts, including the interest of all the parties concerned.[69]

Considering the requirements for the appointment of a receiver, we find that the CA correctly attributed grave abuse of discretion on the part of the RTC when the RTC prematurely appointed a receiver without sufficient evidence to show that there is an imminent danger of: (1) dissipation, loss, wastage, or destruction of assets or other properties; **and** (2) paralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public. The RTC explicitly stated in its May 14, 2010 decision that there was yet no evidence to support the Sps. Hiteroza's allegations on Charito's fraud and misrepresentation to justify the appointment of a receiver.[70]

Further, the appointment of the school's receiver was not based on the presence of the requirements of Section 1, Rule 9 of the Interim Rules, but based on the "inability of the parties to work out an amicable settlement of their dispute, and in order to enable the court to ascertain the veracity of the claim of the [spouses Hiteroza] that Charito has unjustifiably failed and refused to comply with the final Decision in this case dated May 14, 2010."[71]

Considering these findings, we find that the CA correctly nullified the assailed RTC order appointing a receiver for the school without satisfying the requirements of Section 1, Rule 9 of the Interim Rules.

WHEREFORE, we hereby **PARTIALLY GRANT** the petition for review on certiorari. The decision dated July 9, 2012 of the Court of Appeals in CA-G.R. SP No. 124096 is **AFFIRMED** insofar as the appointment of Atty. Rafael Chris F. Teston as receiver for the School is nullified. Civil Case No. 130-M-2010 is **REMANDED** to the Regional Trial Court to

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[69] *Id.*

[70] *Rollo,* p. 85.

[71] *Id.* at 77.

enable the conduct of the pre-trial conference and of further proceedings.

SO ORDERED.

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

Del Castillo, J., on leave.

SECOND DIVISION

[G.R. No. 203538. June 27, 2016]

ARTEX DEVELOPMENT CO., INC., *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, ATTY. MARISSA E. TIMONES, ERLINDA O. MARTEJA, ELIMAR N. JOSE, and ATTY. LUIS Y. DEL MUNDO, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; THE COURT DOES NOT INTERFERE WITH THE OMBUDSMAN'S EXERCISE OF ITS INVESTIGATIVE AND PROSECUTORIAL POWERS WITHOUT GOOD AND COMPELLING REASONS.— As a rule, the Court does not interfere with the Ombudsman's exercise of its investigative and prosecutorial powers without good and compelling reasons. We must stress that *certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right. It is meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer. This is especially true in the exercise by the Ombudsman of its constitutionally mandated powers. Thus, we have consistently

maintained our policy of non-interference in the Ombudsman's exercise of its investigatory and prosecutorial powers.

2. ID.; ID.; ID.; THE COURT CANNOT AND WILL NOT NULLIFY THE OMBUDSMAN'S FACTUAL FINDINGS ON THE SOLE GROUND THAT THE COMPLAINANT DOES NOT AGREE WITH SUCH FINDINGS.— [T]he Court cannot and will not nullify the Ombudsman's factual findings on the sole ground that the complainant does not agree with such findings. Artex points to the Ombudsman's alleged gross misapprehension of facts, which led to its erroneous conclusion that there is no probable cause to prosecute the respondents for violation of Section 3(e) of RA 3019. To confirm whether there is truth to this allegation, Artex asks us to pass upon the Ombudsman's factual findings. As correctly pointed out by the respondents, we do not normally perform this task because this Court is not a trier of facts.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ERRONEOUS EVALUATION OF THE EVIDENCE AND APPLICATION OF THE LAW ON THE FACTS OF THE CASE CANNOT BE CORRECTED BY A *CERTIORARI* PETITION.— We must remember that the Ombudsman resolved not to prosecute the respondents after conducting a preliminary investigation. x x x Under its own Rules of Procedure, we note that the Ombudsman is not even required to conduct a preliminary investigation if the complaint palpably lacks merit. In the present case, the Ombudsman found enough bases to proceed with preliminary investigation. However, after weighing Artex's allegations and evidence *vis-à-vis* the respondents' evidence and counter-arguments, the Ombudsman was not convinced that there existed a probable cause to prosecute the respondents for violation of Section 3(e) of RA 3019. We will not belabor the Ombudsman's legal and factual bases for dismissing the complaint x x x. Suffice it to say that it did not find probable cause after performing its constitutional mandate to investigate Artex's complaint. Assuming its evaluation of the evidence and application of the law on the facts of the case is erroneous (*i.e.*, error in judgment), this cannot be corrected by a *certiorari* petition. On this basis alone, we can dismiss the present petition.

4. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; WHEN PRESENT; THE USE OF A PETITION FOR *CERTIORARI* IS RESTRICTED ONLY TO TRULY EXTRAORDINARY CASES WHEREIN THE ACT OF THE LOWER COURT OR QUASI-JUDICIAL BODY IS WHOLLY VOID.— The determination of grave abuse of discretion as the exception to the general rule of non-interference in the Ombudsman's exercise of its powers is precisely the office of the extraordinary writ of *certiorari*. Artex failed to convince us that the Ombudsman gravely abused its discretion. We have consistently held that an act of a court or tribunal can only be considered to be grave abuse of discretion when the act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Furthermore, the use of a petition for *certiorari* is restricted only to truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void. Applying these standards to the present petition, we fail to see the grave abuse of discretion that the petitioner alleged. We find, on the contrary, that the Ombudsman merely performed its constitutional mandate when it dismissed the complaint as it found that the respondents had acted legally and in the performance of their official functions.

5. ID.; ID.; ID.; DISMISSAL OF THE COMPLAINT NOT TAINTED WITH GRAVE ABUSE OF DISCRETION.— The Ombudsman cannot, as it did not, readily assume, based on mere allegations, that the respondents' acts were interconnected, performed with unity, and with an eye toward preventing Artex from exercising its right of redemption. For the Ombudsman to take this approach, a clear or credible unifying purpose must first be shown, linking or animating the respondents' separate acts. Notably, the Ombudsman did not find a unifying purpose that would link the respondents' separate acts. On the contrary, it found that the respondents acted pursuant to their duty, or at least pursuant to what they, in good faith, thought the law required of them. x x x. These

findings, to our mind, sufficiently support the dismissal of the complaint. Not only did the Ombudsman address all the allegations made by Artex, it also explained why the respondents' acts were not tainted with manifest partiality, evident bad faith, or gross, inexcusable negligence.

6. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; THE MERE USE OF THE TERM *PRIMA FACIE* DID NOT CHANGE THE QUANTUM OF EVIDENCE REQUIRED IN A PRELIMINARY INVESTIGATION CONDUCTED BY THE OMBUDSMAN, FOR WHAT MATTERS IS THAT THE OMBUDSMAN ACTUALLY APPLIED THE CONCEPT OF PROBABLE CAUSE IN DETERMINING WHETHER THERE IS BASIS TO INDICT THE RESPONDENTS.— On the issue of probable cause, we note that the Ombudsman sufficiently clarified that it did not require Artex to prove a quantum of evidence higher than probable cause. It explained that "*in view of the scarcity of evidence presented by Artex, there is no sufficient ground to engender a well-founded belief that a violation of Section 3(e) of RA 3019 has been committed by the respondents.*" We find that the above phraseology is that classic definition of probable cause. Although it might have been more prudent if the Ombudsman explicitly used the term *probable cause*, the fact that it used *prima facie* instead, cannot be considered a grave abuse of its discretion. Besides, the mere use of the term *prima facie* did not change the quantum of evidence required in a preliminary investigation conducted by the Ombudsman. What matters is that the Ombudsman actually applied the concept of *probable cause* in determining whether there was basis to indict the respondents.

APPEARANCES OF COUNSEL

Feria Tantoco Robeniol Santiago for petitioner.

Melvin Cydrick M. Bughao for respondents Jose, Del Mundo and Marteja.

D E C I S I O N

BRION, *J.*:

We resolve the petition for *certiorari*[1] assailing the May 30, 2011 resolution[2] and the December 28, 2011 order[3] of the Office of the Ombudsman in Case No. OMB-C-C-10-0199-E.

Factual Antecedents

On April 14, 2010, petitioner Artex Development, Co., Inc. (*Artex*) filed a complaint[4] with the Ombudsman against the respondent public officers of the City of Manila, namely: Atty. Marissa E. Timones (*Register of Deeds*), Atty. Luis Y. Del Mundo, Jr. (*Legal Officer*), Erlinda O. Marteja (*Chairman, Auction Committee — Office of the City Treasurer*) and Elimar N. Jose (*Member-Secretary, Auction Committee — Office of the City Treasurer*).

Artex alleged that it owns two parcels of land with a total area of 451.20 square meters located in Binondo, Manila[5] (covered by Transfer Certificate of Title (*TCT*) No. 127247),[6] an eight-storey building, and machineries found thereon.[7] The parcels of land, building, and machineries (*properties*) had an appraised value of Php99,778,000.00 as of June 20, 2009.[8]

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[1] *Rollo*, pp. 3-67. The petition is filed under Rule 65 of the Rules of Court.

[2] *Id.* at 68-94. *Graft Investigation Officer I* Ma. Lucida Kristine R. Flores drafted and Overall *Deputy Ombudsman* Orlando C. Casimiro approved the assailed resolutions.

[3] *Id.* at 95-114.

[4] *Id.* at 115-123. The complaint-affidavit was attested to by Artex's representative Jeoffrey Trevor C. Typoco.

[5] *Id.* at 116.

[6] *Id.* at 126-130.

[7] *Id.* at 17, 131-132.

[8] *Id.* at 117, 133-145.

For failure to pay real estate taxes, the Office of the City Treasurer of Manila issued *warrants of levy* on the properties on November 26, 2007, and May 29, 2008.[9]

Artex claimed that the respondents, in conspiracy with one another, violated relevant laws and regulations in the conduct of the auction sale and in the issuance of a new title to the winning bidder, V.N. International Development Corporation (*VN*).[10]

Artex argued that the following facts prove that the respondents conspired to give undue benefits to VN: (1) the unconscionably low bid for the properties (*Php9,637,219.81*); (2) the unjustified refusal of the respondents to entertain Artex's attempts to redeem; (3) their overtures to ask for money;[11] and (4) their requirement for Artex to produce documents that are not necessary for the redemption such as proofs of extension of its corporate term, cancellation of the mortgage on the properties, and proof that the taxes had been paid.[12]

In detail, Artex claimed that its representatives went to the respondents' office on June 30, 2008, to redeem the property. The respondents refused to accept the payment on the ground that the *community tax certificate* (CTC) attached to the *corporate secretary's certificate* authorizing them to redeem was purportedly a fake.[13] Respondent Jose allegedly also told them: "*Sabihin [n'yo] sa boss [n'yo], huwag na i-redeem. Ibenta na lang sa bidder para di na siya mahirapan, at ako lang ang kakausapin tungkol dito.*"[14]

Artex also claimed that pursuant to the respondents' unnecessary demands, it had to extend its corporate term and

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[9] *Id.* at 117.

[10] *Id.* at 115-123.

[11] *Id.* at 117-118.

[12] *Id.* at 118-119.

[13] *Id.* at 71.

[14] *Id.* at 119.

secure the cancellation of the mortgage on the properties.[15] However, respondents Jose and Marteja still issued a *certificate of non-redemption* on June 15, 2009, although Artex had one year from the registration of the auction sale, or until July 29, 2009, within which to redeem.[16]

Artex further alleged that respondent Register of Deeds, Atty. Timones, in conspiracy with the other respondents, made it appear that TCT No. 127247 was missing ten days before the expiration of the redemption period, and issued the new TCT in favor of VN despite the absence of a final deed of conveyance.[17]

Notably, the Office of the City Legal Officer of Manila manifested in a land registration case pending with the Regional Trial Court that the issuance of the *certificate of non-redemption* was unauthorized because it was not signed by Assistant City Treasurer Vicky R. Valientes; and that it had in fact issued the *certificate of redemption* in favor of Artex on July 29, 2009.[18]

In sum, Artex argued that the respondents had no real intention of allowing the redemption and were actuated by a common sinister and malicious desire to secure for VN a title over the properties.[19] Artex thus urged the Ombudsman to prosecute the respondents for violation of Section 3 (e) of Republic Act No. (RA) 3019 or the *Anti-Graft and Corrupt Practices Act*.[20]

In defense, respondents Marteja and Jose of the Office of the City Treasurer contended that the amount paid by the winning bidder was not unconscionable because it was based on the amount of delinquent taxes and not on the market value of the

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[15] *Id.* at 119.

[16] *Id.* at 120.

[17] *Id.* at 121-122, citing Section 262 of the Local Government Code (Republic Act No. 7160).

[18] *Id.* at 72-73.

[19] *Id.* at 119-120.

[20] *Id.* at 123.

properties;[21] that Artex's representatives failed to present any payment for redemption when asked to do so;[22] that Artex did not join the auction sale despite having been advised to do so;[23] that Artex's failure to redeem the property was a result of its own negligence; and that they (the respondents) had the ministerial duty to issue the *certificate of non-redemption* after the lapse of the period of redemption, which is one year from the date of the sale, or until May 29, 2009.[24]

For his part, respondent Atty. Del Mundo Jr. of the City Legal Office claimed that he was not a member of the auction committee; that he had nothing to do with the cancellation of Artex's TCT and the issuance of the new TCT to VN; that he never asked for money from Artex; that he had the duty as the City Legal Officer to verify the genuineness of Artex's CTC; and that Artex had in fact not been paying business taxes, fees, and other charges for more than 14 years.[25]

For her part, Register of Deeds Atty. Timones denied that her office issued the *certification* that Artex's TCT was missing to prevent it from redeeming the properties; she argued that the task of checking the existence of the TCT rests with the Records Office; that the issuance of a certified true copy of Artex's TCT is not required in the redemption of the properties; that the alleged questionable date of the issuance of the new TCT in favor of VN (the day immediately following the last day for redemption) did not pertain to the issuance of the TCT but to the date of entry of VN's consolidated ownership over the properties; and that it was her ministerial duty as Register of Deeds to record VN's consolidated ownership even without the final deed of conveyance, which is merely a formality.[26]

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[21] *Id.* at 74.

[22] *Id.* at 74.

[23] *Id.* at 74-76.

[24] *Id.* at 76.

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

[26] *Id.* at 79-80.

The Findings of the Ombudsman

The Ombudsman **dismissed** the complaint and held that there was **no sufficient basis** to prosecute the respondents for violation of Section 3 (e) of RA 3019,[27] which reads:

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x.

Citing jurisprudence, the Ombudsman held that violation under Section 3 (e) of RA 3019 requires proof of the following acts:

1. The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them;
2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith, or gross, inexcusable negligence; and

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[27] *Id.* at 92. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Complaint filed against respondents ATTY. MARISSA E. TIMONES, ERLINDA O. MARTEJA, ELIMAR N. JOSE, ATTY. LUIS Y. DEL MUNDO, JR. for violation of Section 3 (e) of R.A. 3019, as amended, is hereby **DISMISSED** for lack of sufficient basis.

SO ORDERED.

4. His action caused undue injury to the Government or any private party, or gave any party any unwarranted benefit, advantage, or preference to such parties.[28]

The Ombudsman found that: (1) the supporting documents attached to the complaint failed to establish *prima facie* that the respondents violated Section 3 (e) of RA 3019; and (2) that the respondents sufficiently explained that they acted in the regular performance of their duties. The Ombudsman submitted the reasons outlined below.[29]

First, the bid amount cannot be characterized as grossly unconscionable.

Under Section 260 of the Local Government Code, the local treasurer has the duty to publicly advertise for sale or auction the property to satisfy the *tax delinquency* and the expenses of the sale, and that at any time before the scheduled date for the sale, the owner of the property may stay the proceeding by paying the *delinquent tax*, interest and expenses of the sale.[30] Also, the City of Manila's *Rules, Regulations and Conditions of the*

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[28] *Quibal v. Sandiganbayan*, 314 Phil. 66, 75-76 (1995).

[29] *Rollo*, p. 82.

[30] Section 260. *Advertisement and Sale*. — Within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale. The advertisement shall be effected by posting a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall specify the amount of the delinquent tax, the interest due thereon and expenses of sale, the date and place of sale, the name of the owner of the real property or person having legal interest therein, and a description of the property to be sold. At any time before the date fixed for the sale, the owner of the real property or person having legal interest therein may stay the proceedings by paying the delinquent tax, the interest due thereon and the expenses of sale. The sale shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as specified in the notice of the sale.

Auction Sale provides that the bidder who offers to pay the highest purchase price from which the *total amount of delinquent taxes*, penalties, and cost of sale due could be satisfied shall be entitled to the award of the property.

Thus, the benchmark for the minimum bid is not the fair market value of the properties but only the amount of the delinquent taxes, plus interests and expenses of the sale.[31]

Besides, where there is a right to redeem, inadequacy of the price is immaterial because the debtor may re-acquire the property or sell his right to redeem and thus, recover any loss he claims to have suffered by reason of the price obtained at the public sale.[32]

Second, Atty. Del Mundo did not prevent Artex from exercising its right of redemption when he questioned the validity of the latter's CTC. As a City Legal Officer, he merely applied the requirements of Section 163 of the Local Government Code, which requires that a CTC must be presented when a corporation subject to community tax pays any tax or fee. As it turned out, Artex's CTC was not among those officially allotted by the Bureau of Internal Revenue to the City of Manila, *i.e.*, it was not genuine.[33]

Third, Atty. Del Mundo's challenge against Artex's CTC did not make it legally impossible for the latter to redeem the

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Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the sanggunian concerned, and which shall form part of his records. The local treasurer shall likewise prepare and deliver to the purchaser a certificate of sale which shall contain the name of the purchaser, a description of the property sold, the amount of the delinquent tax, the interest due thereon, the expenses of sale and a brief description of the proceedings: Provided, however, That proceeds of the sale in excess of the delinquent tax, the interest due thereon, and the expenses of sale shall be remitted to the owner of the real property or person having legal interest therein. xxx

[31] *Rollo*, p. 83.

[32] *Id.* at 83-84, citing *Development Bank of the Philippines v. Vda. De Moll*, 150 Phil. 101 (1972).

[33] *Id.* at 85.

properties. Artex could have tendered its payment to the Office of the City Treasurer if the respondents refused to accept the payment on account of the alleged fake CTC. Indeed, Artex could have consigned it with the court if it was really ready to pay and redeem the properties.[34]

Fourth, there is no evidence to prove that the respondents expressed overtures at asking for money in exchange for their assistance to Artex. There is also no evidence to support the allegation that Jose and Marteja unfairly required Artex to submit documents which appear to have benefited VN.[35] Besides, Artex's corporate existence was *about to expire*, and thus, it needed to extend its corporate life to have the legal capacity to redeem the properties.[36]

Fifth, respondents Jose and Marteja had basis to issue the *certificate of non-redemption* on June 15, 2009, notwithstanding that the City of Manila later gave Artex until June 29, 2009, within which to redeem the properties.[37] Section 261 of the Local Government Code, provides among others, that *within one year from the date of the sale*, the owner of the delinquent property shall have the right to redeem the property upon payment of the amount of the delinquent tax. The same provision is found in the City of Manila's *Rules, Regulations and Conditions of the Auction Sale.*[38]

The auction was held on May 29, 2008, thus, Artex only had until May 29, 2009, within which to redeem the properties. Hence, the *certificate of non-redemption* issued on June 15, 2009, was not premature.

Sixth, the allegations against the Register of Deeds Atty. Timones were unsubstantiated, speculative, and conjectural. She

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[34] *Id.* at 86.

[35] *Id.* at 86-87.

[36] *Id.* at 87.

[37] *Id.* at 88.

[38] *Id.* at 89.

could not be charged criminally for having simply "noted" the *certification* that Artex's CTC was missing, which was prepared and signed by the records officer.[39]

Seventh, the alleged lack of final deed of conveyance in favor of VN is insufficient to criminally charge Atty. Timones. The final deed of conveyance is a mere formality to confirm the title already vested in VN. Its absence cannot operate to restore whatever rights Artex has forfeited in view of its failure to redeem the properties on time.[40] Further, Atty. Timones explained that she registered VN's title over the properties on the basis of the *consolidation of ownership* presented to her office after Artex's right of redemption had lapsed.[41]

In sum, the Ombudsman held that public officers are presumed to have acted in good faith in the performance of their duties. Their mistakes are not actionable in the absence of any clear showing that they were motivated by malice or gross negligence that amounted to bad faith. Bad faith does not only connote bad moral judgment or negligence, there must be some dishonest purpose or some moral deviation and conscious doing of a wrong, a breach of a sworn duty through some motive of intent or good will.[42]

Here, Artex failed to prove *prima facie* that the respondents acted with malice or bad faith in the performance of their official functions.

Artex moved to obtain reconsideration on the ground that only *probable cause* is required to warrant the filing of a criminal case and not a *prima facie* case.[43]

The Ombudsman denied Artex's motion for reconsideration on the same grounds discussed above[44] and explained that nowhere

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[39] *Id.* at 90.

[40] *Id.* at 90.

[41] *Id.* at 90-91.

[42] *Id.* at 91-92. Citations omitted.

[43] *Id.* at 96.

[44] *Id.* at 95-113. The dispositive portion reads:

in its assailed resolution did it require Artex to prove *prima facie* its case against the respondents.[45] It clarified that what the assailed resolution stated was that Artex's pieces of evidence were scarce to establish *prima facie* that the respondents have violated Section 3 (e) of RA 3019. In simpler terms, Artex failed to show *prima facie* that a crime has been committed and that the respondents are probably guilty and should be held for trial.[46]

Artex thus came to this court for relief via a petition for certiorari under Rule 65 of the Rules of Court.

The Petition

Artex argues that the Ombudsman gravely abused its discretion when it grossly misapprehended the facts and evidence on record.[47] It submits that the respondents acted with manifest bad faith and partiality when they premeditatedly and unjustifiably refused and delayed Artex's redemption of the properties. The issue is not what Artex could or should have done to redeem the properties but whether the respondents committed manifest bias, evident bad faith, and gross inexcusable negligence in delaying and preventing Artex from exercising its right of redemption.[48]

Artex also argues that the Ombudsman grossly erred when it treated the respondents' acts in isolation. The Ombudsman should have realized that the respondents' actions, taken as a whole, were part of their common design to willfully refuse the redemption of the properties. To illustrate, five days after they required Artex to extend its corporate life, the respondents again

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WHEREFORE, for the foregoing reasons, the *Motion for Reconsideration* dated October 22, 2011 filed by complainant ARTEX is hereby **DENIED** for lack of merit.

SO ORDERED.

[45] *Id.* at 96-97.

[46] *Id.* at 97.

[47] *Id.* at 30-60.

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

refused their plea for redemption on the ground that the CTC was invalid.[49]

Artex reasserts that it did not have to extend its corporate life. When its representatives attempted to redeem the properties between June and July 2008, it had full legal capacity because its term was to expire only in December 2008.[50] Further, the respondents should have directed its representatives to secure a valid CTC instead of denying the redemption outright. The respondents' failure to instruct its representatives to secure a valid CTC and their requirement to extend its corporate life was motivated by a sinister design to prevent the redemption of the properties.[51]

Further, Artex tendered payment for purposes of redeeming the properties. [52] Its representatives were armed with a secretary's certificate (authorizing them to redeem the properties) and manager's checks to cover the redemption price but the respondents questioned the validity of the secretary's certificate on the ground that the CTC was fake.[53]

Finally, Artex points out that the Ombudsman eluded any discussion of the following facts that would show that the respondents conspired to give undue benefit to VN: (1) the unauthorized issuance of the certificate of non-redemption;[54] (2) the issuance of a new TCT in favor of VN without the required final deed of conveyance;[55] (3) the finding of the City of Manila in an administrative case filed against the respondents that there was a common intention to prevent Artex from redeeming the

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[49] *Id.* at 33.

[50] *Id.* at 36.

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

[52] *Id.* at 38-40.

[53] *Id.* at 40-42.

[54] *Id.* at 42-44.

[55] *Id.* at 44-45.

properties;[56] (4) the respondents' intimations to ask money;[57] and (5) the respondents' requirement for Artex to submit unnecessary documents.[58]

The Comments

The Ombudsman, through the Office of the Solicitor General, maintains that it did not gravely abuse its discretion[59] when it dismissed the complaint for lack of probable cause.[60] Contrary to Artex's claim, it did not require a higher quantum of evidence. It used the term *prima facie* merely to describe that the complaint "on its face" or "at first sight" failed to prove the existence of probable cause. The term was not a reference to the quantum of evidence required but a description of the scarcity of Artex's evidence. The Ombudsman also restates the grounds discussed above for dismissing the complaint.[61]

On their part, the respondent public officers argue that probable cause cannot be established by mere suggestion or speculation; otherwise, our criminal justice system would be exposed to abuse. They maintain that they were merely performing their official functions when they questioned the validity of Artex's payment and CTC.[62] They also underscore that Artex raised question of facts, which the Court, not being a trier of facts, normally does not resolve.[63]

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[56] *Id.* at 45-49.

[57] *Id.* at 49-50.

[58] *Id.* at 50-51.

[59] *Id.* at 405-422. Comment dated June 18, 2013.

[60] *Id.* at 410-412.

[61] *Id.* at 413-419.

[62] *Id.* at 386-395. (Comment/Opposition dated March 7, 2013 filed by respondents Marteja and Jose).

[63] *Id.* at 457-461. (Comment dated January 2, 2014 filed by respondent Atty. Del Mundo, Jr.).

Issue

The sole issue is whether the Ombudsman gravely abused its discretion when it dismissed Artex's complaint against the respondents.

Our Ruling

We **dismiss** the petition for lack of merit.

As a rule, the Court does not interfere with the Ombudsman's exercise of its investigative and prosecutorial powers without good and compelling reasons.[64] We must stress that *certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right. It is meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer. This is especially true in the exercise by the Ombudsman of its constitutionally mandated powers. Thus, we have consistently maintained our policy of non-interference in the Ombudsman's exercise of its investigatory and prosecutorial powers.[65]

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[64] *Judge Angeles v. Ombudsman Gutierrez*, 685 Phil. 183, 193 (2012).

[65] *Id.* citing *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, 23 April 2010, 619 SCRA 141; A*BS-CBN Broadcasting Corporation v. Office of the Ombudsman*, G.R. No. 133347, 23 April 2010, 619 SCRA 130; *De Guzman v. Gonzalez*, G.R. No. 158104, 26 March 2010, 616 SCRA 546; *People of the Philippines v. Castillo*, G.R. No. 171188, 19 June 2009, 590 SCRA 95; *Presidential Commission on Good Government v. Desierto*, G.R. No. 139296, 23 November 2007, 538 SCRA 207; *Acuña v. Deputy Ombudsman for Luzon*, 490 Phil. 640 (2005); *Andres v. Cuevas*, 499 Phil. 36 (2005); *Reyes v. Hon. Atienza*, 507 Phil. 653 (2005); *Jimenez v. Tolentino*, 490 Phil. 367 (2005); *Nava v. Commission on Audit*, 419 Phil. 544 (2001); *Baylon v. Office of the Ombudsman*, 423 Phil. 705 (2001); *Cabahug v. People of the Philippines*, 426 Phil. 490 (2002); *Esquivel v. Ombudsman*, 437 Phil. 702 (2002); *Flores v. Office of the Ombudsman*, 437 Phil. 684 (2002); *Roxas v. Hon. Vasquez*, 411 Phil. 276 (2001); *Layus v. Sandiganbayan*, 377 Phil. 1067 (1999), *Rodrigo, Jr. v. Sandiganbayan*, 362 Phil. 646 (1999); *Camanag v. Hon. Guerrero*, 335 Phil. 945 (1997); *Ocampo v. Ombudsman*, G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725; *Young v. Office of the Ombudsman*, G.R. No. 110736, 27 December 1993, 228 SCRA 718.

Further, the burden of proof to show grave abuse of discretion in a petition for *certiorari* rests with the petitioner. Artex failed to discharge this burden. Thus, we dismiss the present petition.

We elaborate on our reasons for dismissing the petition in the following discussion.

First, the Court cannot and will not nullify the Ombudsman's factual findings on the sole ground that the complainant does not agree with such findings.

Artex points to the Ombudsman's alleged gross misapprehension of facts, which led to its erroneous conclusion that there is no probable cause to prosecute the respondents for violation of Section 3 (e) of RA 3019. To confirm whether there is truth to this allegation, Artex asks us to pass upon the Ombudsman's factual findings. As correctly pointed out by the respondents, we do not normally perform this task because this Court is not a trier of facts.

We must remember that the Ombudsman resolved not to prosecute the respondents after conducting a preliminary investigation. [66] The *Rules of Procedure of the Office of the Ombudsman,* specifically Section 2 of Rule 2, states:

> *Evaluation* — Upon evaluating the complaint, the investigating officer shall recommend whether it may be: a) dismissed outright for want of palpable merit; b) referred to respondent for comment; c) indorsed to the proper government office or agency which has jurisdiction over the case; d) forwarded to the appropriate office or official for fact-finding investigation; e) referred for administrative adjudication; or f) *subjected to a preliminary investigation*.[67]

Under its own Rules of Procedure, we note that the Ombudsman is not even required to conduct a preliminary investigation if the complaint palpably lacks merit.[68] In the present case, the

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[66] *Rollo,* p. 74.

[67] Administrative Order No. 07 of the Ombudsman dated April 10, 1990.

[68] *Supra* note 64, at 196.

Ombudsman found enough bases to proceed with preliminary investigation. However, after weighing Artex's allegations and evidence *vis-à-vis* the respondents' evidence and counter-arguments, the Ombudsman was not convinced that there existed a probable cause to prosecute the respondents for violation of Section 3 (e) of RA 3019.

We will not belabor the Ombudsman's legal and factual bases for dismissing the complaint as we have discussed these above. Suffice it to say that it did not find probable cause after performing its constitutional mandate to investigate Artex's complaint. Assuming its evaluation of the evidence and application of the law on the facts of the case is erroneous (*i.e.*, error in judgment), this cannot be corrected by a *certiorari* petition. On this basis alone, we can dismiss the present petition.

Second, even if we liberally extend the exception to the general rule against the review of the findings of the Ombudsman, there is still no basis to grant the petition.

The determination of grave abuse of discretion as the exception to the general rule of non-interference in the Ombudsman's exercise of its powers is precisely the office of the extraordinary writ of *certiorari*.[69] Artex failed to convince us that the Ombudsman gravely abused its discretion.

We have consistently held that an act of a court or tribunal can only be considered to be grave abuse of discretion when the act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Furthermore, the use of a petition for *certiorari* is restricted only to truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.[70]

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[69] *Id.* at 197.

[70] *Yu v. Judge Reyes-Carpio*, 667 Phil. 474, 481-482 (2011), citations omitted.

Applying these standards to the present petition, we fail to see the grave abuse of discretion that the petitioner alleged. We find, on the contrary, that the Ombudsman merely performed its constitutional mandate when it dismissed the complaint as it found that the respondents had acted legally and in the performance of their official functions.

Artex presses its point with the argument that the Ombudsman's failure to consider the respondents' actions as a whole and its application of a higher quantum of evidence constitute grave abuse of discretion. We find no merit in these contentions.

The Ombudsman cannot, as it did not, readily assume, based on mere allegations, that the respondents' acts were interconnected, performed with unity, and with an eye toward preventing Artex from exercising its right of redemption. For the Ombudsman to take this approach, a clear or credible unifying purpose must first be shown, linking or animating the respondents' separate acts.

Notably, the Ombudsman did not find a unifying purpose that would link the respondents' separate acts. On the contrary, it found that the respondents acted pursuant to their duty, or at least pursuant to what they, in good faith, thought the law required of them.

To stress, the Ombudsman found that: (1) respondents Jose and Marteja advised Artex's representatives to join in the auction but the latter failed to do so; (2) respondents Jose and Marteja required Artex to extend its corporate life because it was "about to expire"; (3) respondent Atty. Del Mundo advised the Office of the City Treasurer to reject the request for redemption because Artex's CTC was fake, in violation of the Local Government Code; (4) respondents Jose and Marteja issued the certificate of non-redemption in the belief that that the one-year period is counted from the auction date (the City Legal Office later opined that the one-year period is counted from the *registration of the sale* and not on the actual sale); and (5) respondent Register of Deeds Atty. Timones had the ministerial duty to record VN's consolidated ownership over the properties, even without the final deed of conveyance.

These findings, to our mind, sufficiently support the dismissal of the complaint. Not only did the Ombudsman address all the allegations made by Artex, it also explained why the respondents' acts were not tainted with manifest partiality, evident bad faith, or gross, inexcusable negligence.

On the issue of probable cause, we note that the Ombudsman sufficiently clarified that it did not require Artex to prove a quantum of evidence higher than probable cause. It explained that "*in view of the scarcity of evidence presented by Artex, there is no sufficient ground to engender a well-founded belief that a violation of Section 3 (e) of RA 3019 has been committed by the respondents*."[71]

We find that the above phraseology is the classic definition of probable cause. Although it might have been more prudent if the Ombudsman explicitly used the *term probable cause*, the fact that it used *prima facie* instead, cannot be considered a grave abuse of its discretion. Besides, the mere use of the term *prima facie* did not change the quantum of evidence required in a preliminary investigation conducted by the Ombudsman. What matters is that the Ombudsman actually applied the *concept* of *probable cause* in determining whether there was basis to indict the respondents.

WHEREFORE, premises considered, we **DISMISS** the petition and **AFFIRM** the May 30, 2011 resolution and the December 28, 2011 order of the Office of the Ombudsman in Case No. OMB-C-C-10-0199-E.

SO ORDERED.

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

Del Castillo, J., on leave.

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[71] *Rollo,* p. 97.

SECOND DIVISION

[G.R. No. 205871. June 27, 2016]

RUEL TUANO *Y* HERNANDEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

CRIMINAL LAW; DANGEROUS DRUGS LAW (RA 9165); CHAIN OF CUSTODY; NON-COMPLIANCE WITH THE REQUIREMENTS UNDER SECTION 21 CREATES UNCERTAINTY ON THE IDENTITY AND INTEGRITY OF THE 0.064 GRAM CONFISCATED SUBSTANCE IN CASE AT BAR.— Recent jurisprudence emphasize that "[l]aw enforcers should not trifle with the legal requirement to ensure the integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused." x x x While this court has ruled that "the failure of the policemen to make a physical inventory and to photograph the confiscated items are not fatal to the prosecution's cause," more recent cases highlight the need for strict compliance with the legal requirements to protect the integrity of the chain of custody, more so when the miniscule quantity of the confiscated substance – 0.064 gram, in this case – underscores the need for exacting compliance with Section 21. x x x Non-compliance with the requirements under Section 21 creates uncertainty on the identity and integrity of the confiscated substance. It casts doubt on the guilt of the accused.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

RESOLUTION

LEONEN, *J.*:

Before us is a Motion for Reconsideration of this Court's June 23, 2014 unsigned Resolution[1] affirming the Court of Appeals' June 8, 2012 Decision[2] and February 12, 2013 Resolution.[3] The Court of Appeals affirmed in toto the Regional Trial Court Decision that found petitioner Ruel Tuano y Hernandez guilty beyond reasonable doubt of violating Article II, Section 11 (3) of Republic Act No. 9165, and sentenced him to suffer imprisonment of twelve (12) years and one (1) day to twenty (20) years, and to pay a ₱300,000 fine.[4]

Petitioner argues non-compliance with Dangerous Drugs Board Regulation No. 3, series of 1979, as amended by Dangerous Drugs Board Regulation No. 2, series of 1990, on the proper procedure for handling seized dangerous drugs.[5] Specifically, the apprehending officers did not conduct inventory nor take photographs of the evidence. They did not give any explanation for such failure.[6] These duties are likewise found in the 2010 Philippine National Police Manual on Anti-Illegal Drugs Operation and Investigation.[7] Marking on the plastic sachet was not immediately made after arrest, but was made in the office.[8]

Petitioner also raises the illegality of his warrantless arrest, in that the circumstances do not show he "has committed, was about to commit, or was actually committing a crime."[9] The

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[1] *Rollo*, pp. 125-134, Resolution.

[2] *Id.* at 138-147.

[3] *Id.* at 96.

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

[5] *Id.* at 138, Motion for Reconsideration.

[6] *Id.* at 139.

[7] *Id.* at 139-141.

[8] *Id.* at 141-142.

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

circumstances also do not engender a probable cause against him, pursuant to Rule 113, Section 5 of the Revised Penal Code.[10] Police Office 2 Jerry Santos (PO2 Santos) even admitted that he was uncertain what petitioner was holding when he saw petitioner from his vehicle.[11] Petitioner submits that PO2 Santos was on a mere "fishing expedition."[12] Petitioner submits that the exclusionary rule under Article III, Section 3 (2) of the Constitution,[13] on the inadmissibility as evidence of products of unreasonable searches, applies in this case.[14]

Respondent filed a Comment[15] on the Motion for Reconsideration, to which petitioner filed a Reply.[16] Respondent reiterates that non-compliance with Section 21 of Republic Act No. 9165 does not render the confiscated items inadmissible if it is clearly shown that its integrity and evidentiary value was preserved.[17] Respondent emphasizes that there was no significant lapse of time from petitioner's apprehension, the apprehending police's marking of the confiscated sachet, up to its submission for laboratory testing.[18] Respondent also reiterates the admissibility of the confiscated sachet as evidence, since it proceeded from a warrantless search incident to a lawful arrest.[19]

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[10] *Id.*

[11] *Id.* at 143-144.

[12] *Id.* at 144.

[13] CONST., Art. III, Sec. 3 (2) provides:

SECTION 3. . . .

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[14] *Rollo*, p. 144, Motion for Reconsideration.

[15] *Id.* at 153-159, Comment.

[16] *Id.* at 167-171, Reply.

[17] *Id.* at 154, Comment.

[18] *Id.* at 156.

[19] *Id.*

I

Recalling the facts, an Information[20] charged petitioner with illegal possession of "one (1) heat-sealed transparent plastic sachet with 0.064 (zero point zero six four) gram of white crystalline substance, known as 'shabu'"[.][21]

The prosecution alleged that on March 11, 2003 at around 2:30 p.m., PO2 Santos and PO2 Eduardo Bernardo were conducting surveillance patrol.[22] While driving along Kahilum I, Pandacan, Manila, they saw petitioner waving a small plastic sachet containing a white crystalline substance they suspected to be "shabu."[23] PO2 Santos approached petitioner, introduced himself as a police officer, and inquired about the sachet. Petitioner simply replied, "[S]orry."[24] PO2 Santos confiscated the sachet and brought petitioner to the police station for investigation.[25] He marked the plastic sachet with the initials "RHT" then turned it over to police investigator PO2 Llorete.[26] They prepared the documents required for filing a case. The confiscated substance brought to the crime laboratory yielded positive for methylamphetamine hydrochloride.[27]

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[20] *Id.* at 125, Resolution, citing Court of Appeals Decision:

"That on or about March 11, 2003, in the City of Manila, Philippines, the said accused without being authorized by law to possess any dangerous drug, did then and there wil[l]fully, unlawfully and knowingly have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet with 0.064 (zero point zero six four) gram of white crystalline substance, known as *"shabu"* containing methylamphetamine hydrochloride, a dangerous drug.

"Contrary to law." (*Id.* at 74).

[21] *Id.* at 125, Resolution.

[22] *Id.* at 126.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

Petitioner countered that he was standing along the alley of Kahilum I, Pandacan, Manila with his companion "Tek-tek" when police officers arrived to arrest a "Len-len."[28] "Len-len" escaped and the police officers arrested them instead. When petitioner asked for the reason of his arrest, he was told it was for buying "shabu."[29] Petitioner claimed he was just standing there, but the police officers handcuffed him and brought him to the police station.[30]

After a second hard look at the facts, this Court resolves to reverse its earlier ruling and acquit petitioner.

II

Recent jurisprudence emphasize that "[l]aw enforcers should not trifle with the legal requirement to ensure the integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused."[31]

Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, provides:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554, 556 [Per *J.* Leonen, Third Division]; *People v. Dela Cruz*, G.R. No. 205821, October 1, 2014, 737 SCRA 486, 488 [Per *J.* Leonen, Second Division].

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment *shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof*: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally,* That *noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.*

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however,* That a final certification shall be issued immediately upon completion of the said examination and certification[.][32] (Emphasis supplied)

Mallillin v. People[33] discussed the importance of complying with the required procedures in Section 21 in relation to the unique nature of narcotic substances:

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[32] Rep. Act No. 9165 (2014), as amended, Sec. 21.

[33] 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

Indeed, *the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases by accident or otherwise in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard* that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[34] (Emphasis supplied, citations omitted)

The recitation of facts, both in the Regional Trial Court Decision[35] and in the Court of Appeals Decision,[36] does not state that a physical inventory of the confiscated sachet was conducted, or that photographs of it were taken in the presence

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[34] *Id.* at 588-589.

[35] *Rollo*, pp. 57-59, Regional Trial Court Decision.

[36] *Id.* at 75-76, Court of Appeals Decision.

of petitioner or his representative or counsel. There is also no factual finding that this was done "with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof."[37] The statutory safeguards enacted in Section 21 of Republic Act No. 9165 were not observed. There is also no showing of "justifiable grounds"[38] for the non-compliance with the requirements as to trigger such exception.

While this Court has ruled that "the failure of the policemen to make a physical inventory and to photograph the confiscated items are not fatal to the prosecution's cause,"[39] more recent cases[40] highlight the need for strict compliance with the legal requirements to protect the integrity of the chain of custody, more so when the miniscule quantity of the confiscated substance — 0.064 gram, in this case — underscores the need for exacting compliance with Section 21. In *People v. Holgado*:[41]

> Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered.
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[37] Rep. Act No. 9165 (2014), as amended, Sec. 21.

[38] Rep. Act No. 9165 (2014), as amended, Sec. 21.

[39] See, for instance, *Imson v. People*, 669 Phil. 262, 269-270 [Per *J.* Carpio, Second Division], citing *People v. Campos*, 643 Phil. 668 (2010) [Per *J.* Carpio Morales, Third Division].

[40] *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554, 556 [Per *J.* Leonen, Third Division]; *People v. Dela Cruz*, G.R. No. 205821, October 1, 2014, 737 SCRA 486, 488 [Per *J.* Leonen, Second Division].

[41] G.R. No. 207992, August 11, 2014, 732 SCRA 554 [Per *J.* Leonen, Third Division].

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[42]

Non-compliance with the requirements under Section 21 creates uncertainty on the identity and integrity of the confiscated substance. It casts doubt on the guilt of the accused. Sweeping statements on lack of significant lapse of time from apprehension of the accused to submission of the confiscated sachet for testing [43] should not be considered sufficient to secure a conviction. Neither should prosecution rely on the presumption of regularity in the performance of official duties.[44] This Court has held that "[m]arking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of Republic Act No. 9165."[45]

In the words of Justice Holmes, "I think it a less evil that some criminals should escape than that the government should play an ignoble part."[46]

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[42] *Id.* at 576-577.

[43] *Rollo*, p. 109, Comment on Petition.

[44] *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554, 570 [Per *J.* Leonen, Third Division].

[45] *Id.*, citing *People v. Magat*, 588 Phil. 395, 405 (2008) [Per *J.* Tinga, Second Division].

[46] See *People v. Tudtud*, 458 Phil. 752, 764 (2003) [Per *J.* Tinga, Second Division], citing *Olmstead v. United States*, 277 US 438, 470 (1927); 72 L. Ed. 944.

WHEREFORE, the Resolution dated June 23, 2014 affirming the Court of Appeals' June 8, 2012 Decision and February 12, 2013 Resolution in CA-G.R. CR. No. 33363 is hereby **RECONSIDERED.** Petitioner Ruel Tuano y Hernandez is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from receipt of this Resolution on the action taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

SO ORDERED.

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

Del Castillo, J., on official leave.

THIRD DIVISION

[G.R. No. 209344. June 27, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAIME BRIOSO *alias* TALAP-TALAP,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; STATURORY RAPE; ELEMENTS; PRESENT.— Statutory rape is committed when: (1) the offended party is under twelve (12)

years of age; and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse. x x x. In the present case, both the RTC and the CA found that the prosecution was able to prove beyond reasonable doubt all the elements of statutory rape and this Court finds no cogent reason to depart from these findings.

2. ID.; ID.; ID.; FORCE, INTIMIDATION AND PHYSICAL EVIDENCE OF INJURY ARE NOT RELEVANT CONSIDERATIONS, AS THE ONLY SUBJECT OF INQUIRY IS THE AGE OF THE WOMAN AND WHETHER CARNAL KNOWLEDGE TOOK PLACE.— This Court has consistently held that "rape under Article 266-A(1)(d) of the Revised Penal Code, as amended, is termed statutory rape as it departs from the usual modes of committing rape." What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF CHILD-VICTIMS ARE NORMALLY GIVEN FULL WEIGHT AND CREDIT, SINCE WHEN A GIRL, PARTICULARLY IF SHE IS A MINOR, SAYS THAT SHE HAS BEEN RAPED, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO SHOW THAT RAPE HAS, IN FACT, BEEN COMMITTED.— Settled is the rule that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has, in fact, been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the

shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. Considering that AAA was only four (4) years old when she was raped and was only eleven (11) years old when she took the witness stand, she could not have invented a horrible story.

4. ID.; ID.; ID.; THE VICTIM'S DELAY IN REPORTING THE RAPE INCIDENTS TO PERSONS CLOSE TO HER OR THE PROPER AUTHORITIES, IN THE FACE OF THREATS OF PHYSICAL VIOLENCE, IS INSIGNIFICANT AND DOES NOT AFFECT THE VERACITY OF HER CHARGES.— The Court is neither persuaded by accused-appellant's argument that AAA's unexplained delay of five (5) days in reporting the rape to her mother greatly affects her credibility. This Court has repeatedly held that delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim. AAA's delay in reporting the incidents to her mother or the proper authorities is insignificant and does not affect the veracity of her charges. It should be remembered that accused-appellant threatened to kill her if she told anyone of the incident. This Court has explained why a rape victim's deferral in reporting the crime does not equate to falsification of the accusation, to wit: The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.

5. ID.; ID.; ID.; DELAY IN REPORTING AN INCIDENT OF RAPE IS NOT AN INDICATION OF A FABRICATED CHARGE AND DOES NOT NECESSARILY CAST DOUBT ON THE CREDIBILITY OF THE COMPLAINANT, AS HUMAN REACTIONS VARY AND ARE UNPREDICTABLE WHEN FACING A SHOCKING AND

HORRIFYING EXPERIENCE SUCH AS SEXUAL ASSAULT, THUS, NOT ALL RAPE VICTIMS CAN BE EXPECTED TO ACT CONFORMABLY TO THE USUAL EXPECTATIONS OF EVERYONE.— [I]t has been written that a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness. Moreover, delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant. It is likewise settled in jurisprudence that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault, thus, not all rape victims can be expected to act conformably to the usual expectations of everyone. In the instant case, AAA, being only four (4) years old at the time that she was violated and threatened with death if she reports the incident, would naturally be cowed into silence because of fear for her life.

6. **ID.; ID.; ID.; A RAPE VICTIM CANNOT BE EXPECTED TO MECHANICALLY KEEP AND THEN GIVE AN ACCURATE ACCOUNT OF THE TRAUMATIC AND HORRIFYING EXPERIENCE SHE HAD UNDERGONE.—** Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.

7. **ID.; ID.; PRESENTATION OF EVIDENCE; OBJECTIONS TO THE MANNER OF QUESTIONING ADOPTED BY THE PUBLIC PROSECUTOR IN THE COURSE OF THE ORAL EXAMINATION OF THE RAPE VICTIM SHOULD BE RAISED AS SOON AS THE GROUNDS THEREFORE BECAME REASONABLY APPARENT.—** As to the leading questions asked by the prosecutor during AAA's direct examination, it is too late in the day for accused-appellant to

object to the manner of questioning adopted by the public prosecutor. Accused-appellant should have interposed his objections in the course of the oral examination of AAA, as soon as the grounds therefor became reasonably apparent. As it were, he raised not a whimper of protest as the public prosecutor recited his offer or propounded questions to AAA. Worse, accused-appellant subjected AAA to cross-examination on the very matters covered by the questions being objected to; therefore, he is barred from arguing that the victim was "only made to confirm the leading questions propounded to her which are all in line with the theory of the prosecution."

8. ID.; ID.; LEADING QUESTIONS CAN BE ASKED OF A WITNESS WHO IS A CHLD OF TENDER YEARS, ESPECIALLY WHEN SAID WITNESS HAS DIFFICULTY GIVING AN INTELLIGIBLE ANSWER, AS WHEN THE LATTER HAS NOT REACHED THAT LEVEL OF EDUCATION NECESSARY TO GRASP THE SIMPLE MEANING OF A QUESTION, MORE SO, ITS UNDERLYING GRAVITY.— [It] is true that, as a rule, leading questions are not allowed in direct examination. However, Section 10 (c) of Rule 132 allows leading questions to be asked of a witness who is a child of tender years, especially when said witness has difficulty giving an intelligible answer, as when the latter has not reached that level of education necessary to grasp the simple meaning of a question, moreso, its underlying gravity. This exception is now embodied in Section 20 of the Rule on Examination of a Child Witness, which took effect on December 15, 2000. Under Section 4 thereof, a child witness is any person who at the time of giving testimony is below the age of eighteen (18) years. In the instant case, AAA was only eleven (11) years old when she took the witness stand. Thus, the decision of the RTC to allow the prosecution to ask AAA leading questions is justified.

9. ID.; ID.; CREDIBILITY OF WITNESSES; IT IS UNREASONABLE TO DEMAND A STANDARD RATIONAL REACTION TO AN IRRATIONAL EXPERIENCE, ESPECIALLY FROM A YOUNG VICTIM, AS ONE CANNOT BE EXPECTED TO ACT AS USUAL IN AN UNFAMILIAR SITUATION AS IT IS IMPOSSIBLE TO PREDICT THE WORKINGS OF A HUMAN MIND

PLACED UNDER EMOTIONAL STRESS.— [T]his Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. AAA's conduct, *i.e.*, nonchalance or indifference in the presence of the accused-appellant immediately after the latter supposedly raped her, is also not enough to discredit her. Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim. One cannot be expected to act as usual in an unfamiliar situation as it is impossible to predict the workings of a human mind placed under emotional stress. Moreover, it is wrong to say that there is a standard reaction or behavior among victims of the crime of rape since each of them had to cope with different circumstances.

10. ID.; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN EXAMINATION OF THE ENTIRE RECORDS OF A CASE MAY BE EXPLORED FOR THE PURPOSE OF ARRIVING AT A CORRECT CONCLUSION, AS AN APPEAL IN CRIMINAL CASES THROWS THE WHOLE CASE OPEN FOR REVIEW, IT BEING THE DUTY OF THE COURT TO CORRECT SUCH ERROR AS MAY BE FOUND IN THE JUDGMENT APPEALED FROM, WHETHER THEY ARE MADE THE SUBJECT OF THE ASSIGNMENT OF ERRORS OR NOT.— [I]t bears to reiterate the rule that in criminal cases, an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the court to correct such error as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not. Consistent with this rule, the Court digresses from the rulings of the RTC and the CA finding accused-appellant guilty only of the crime of statutory rape, as the Court finds that accused-appellant was, in fact, charged and proven guilty of two counts of rape.

11. ID.; ID.; PROSECUTION OF OFFENSES; WHEN TWO OR MORE OFFENSES ARE CHARGED IN A SINGLE COMPLAINT OR INFORMATION BUT THE ACCUSED FAILS TO OBJECT TO IT BEFORE TRIAL, THE COURT

MAY CONVICT THE APPELLANT OF AS MANY AS ARE CHARGED AND PROVED, AND IMPOSE ON HIM THE PENALTY FOR EACH OFFENSE, SETTING OUT SEPARATELY THE FINDINGS OF FACT AND LAW IN EACH OFFENSE.— The Information has sufficiently informed accused-appellant that he is being charged with two counts of rape. It is true that Section 13, Rule 110 of the Revised Rules of Criminal Procedure requires that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." However, Section 3, Rule 120 of the same Rules, as well as settled jurisprudence, also states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." Consequently, sine accused-appellant failed to file a motion to quash the Information, he can be convicted with two counts of rape.

12. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; PROPER PENALTY.—** As to the penalty for the rape committed by accused-appellant under paragraph 1 (d), Article 266-A of the RPC, as amended, Article 266-B of the same Code provides that the death penalty shall be imposed if the victim is a child below seven years old. However, following Republic Act No. 9346 (RA 9346), the RTC, as affirmed by the CA, correctly imposed upon accused-appellant the penalty of *reclusion perpetua* is lieu of death, but it should be specified that it is without eligibility for parole, as the RTC did not state it in the dispositive portion of its Decision.

13. **ID.; ID.; RAPE THROUGH SEXUAL ASSAULT UNDER PARAGRAPH 2, ARTICLE 266-A OF THE REVISED PENAL CODE, IN RELATION TO REPUBLIC ACT NO. 7610 (THE SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT); PROPER PENALTY.—** With respect to the penalty for rape through sexual assault under paragraph 2, Article 266-A of the RPC, it is undisputed that at the time of the commission of the sexual abuse, AAA was four (4) years old. This calls for the application of Republic

Act No. 7610 (R.A. 7610), *or The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,* which defines sexual abuse of children and prescribes the penalty therefor in Section 5 (b), Article III. x x x The abovequoted paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one – through coercion, intimidation or influence – engages in sexual intercourse or lascivious conduct with a child. x x x In the present case, AAA was four years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, accused-appellant was aptly prosecuted under paragraph 2, Article 266-A of the RPC, as amended, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is *prision mayor,* considering that AAA was below twelve (12) years of age at the time of the commission of the offense, and considering further that accused-appellant's act of inserting his finger in AAA's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period. x x x Hence, accused-appellant should be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal,* as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal,* as maximum.

14. ID.; ID.; STATUTORY RAPE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— As to accused-appellant's civil liabilities, it is settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering. Exemplary damages are also called for, by way of public example, and to protect the young from sexual abuse. The RTC and the CA awarded in AAA's favor the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages for the rape committed under paragraph 1 (d) of Article 266-A. In recent rulings of this Court, the amounts of civil indemnity, moral damages and exemplary damages have been increased in cases where the

penalty for the crime committed is death which, however, cannot be imposed because of RA 9346. In the most recent case of *People v. Ireneo Jugueta*, the increase in the amounts of civil indemnity, moral damages and exemplary damages has been explained in detail. As it now stands, in cases of simple or qualified rape, among others, where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of RA 9346, the amounts of civil indemnity, moral damages and exemplary damages are pegged uniformly at ₱100,000.00. Thus, the awards of civil indemnity, moral damages and exemplary damages, given to AAA, should be increased to ₱100,000.00 each.

15. ID.; ID.; RAPE THROUGH SEXUAL ASSAULT; CIVIL LIABILITY OF ACCUSED-APPELLANT.— With respect to the rape through sexual assault under paragraph 2, Article 266-A , accused should pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, in accordance with prevailing jurisprudence. The Court additionally orders accused-appellant to pay interest of six percent (6%) *per annum* from the finality of this judgment until all the monetary awards for damages are fully paid, in accordance with prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before the Court is an ordinary appeal filed by accused-appellant Jaime Brioso (*Brioso*) assailing the Decision[1] of the Court of Appeals (*CA*), dated March 22, 2013, in CA-G.R. CR-H.C. No. 05234, which affirmed with modification the

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 2-15.

Decision[2] of the Regional Trial Court (*RTC*) of Baler, Aurora, Branch 96, in Criminal Case No. 2795, finding Brioso guilty of the crime of statutory rape, in relation to Republic Act No. 7610 (*RA 7610*), and imposing upon him the penalty of *reclusion perpetua*.

The antecedents are as follows:

Around 5 o'clock in the afternoon of May 31, 2001, the victim, AAA,[3] who was then four (4) years old,[4] was playing at the basketball court near their house located at Barangay Dimanayat, San Luis, Aurora. Accused-appellant then approached and asked her to go with him to a nearby mango tree where he promised to give her candies. When AAA agreed, accused-appellant took her hand and led her to the mango tree which was near his house. Upon reaching the mango tree, accused-appellant immediately removed AAA's short pants and panty then proceeded to mash her private organ and inserted his finger into her vagina. Thereafter, accused-appellant made her lie down on the ground and inserted his penis into her vagina. Accused-appellant warned AAA not to tell anybody about what he did to her, otherwise he will kill her. Stricken by fear, AAA went home without telling anybody about her ordeal. However, the next morning, AAA's mother, BBB, observed that her daughter had difficulty urinating. She examined AAA's vagina and found that it was swollen. BBB then cleaned AAA's sex organ and asked her the reason why it was swollen. AAA then told BBB that accused-appellant molested her. Upon learning about what happened to her daughter, BBB brought her child to one of their Barangay Kagawads to report the incident. The following morning, the Barangay Kagawad accompanied AAA and BBB to the Office of the

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[2] Penned by Judge Corazon D. Soluren, CA *rollo*, pp. 14-23.

[3] The initials AAA represent the private offended party, whose name is withheld to protect her privacy. Under Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), the name, address, and other identifying information of the victim are made confidential to protect and respect the right to privacy of the victim.

[4] See Exhibit "C", records, p. 7.

Department of Social Welfare and Development in San Luis where AAA related her ordeal and again pointed to accused-appellant as the culprit. They were then brought to the local police station where a criminal complaint was filed against accused-appellant. There, the authorities gathered information regarding AAA's molestation where AAA reiterated her statements. Thereafter, AAA was examined by a medical doctor who prepared a medico-legal report.

Subsequently, the Office of the Provincial Prosecutor of Aurora filed an Information[5] with the RTC of Baler, charging accused-appellant with the crime of statutory rape, the pertinent portions of which read as follows:

x x x x x x x x x

That in, about or sometime on the last week of May, 2001, in Barangay Dimanayat, San Luis, Province of Aurora, and within the jurisdiction of this Honorable Court, said accused Jaime Brioso alyas (sic) "Talap-talap", did then and there wilfully (sic), unlawfully and feloniously with lewdness mashed and inserted a finger into the vagina of a four (4)-year-old child [AAA] and have carnal knowledge of the said minor child against her will.

x x x x x x x x x[6]

The Information was initially sent to the archives because the authorities were not able to arrest accused-appellant. Eventually, on October 5, 2007, accused-appellant was arrested. He was arraigned on October 25, 2007 wherein he pleaded not guilty.[7]

In his defense, accused-appellant denied the allegations of the prosecution and raised the defense of alibi.

Pre-trial was conducted on April 16, 2008.[8] Thereafter, trial ensued.

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[5] Records, p. 1.

[6] *Id.*

[7] See RTC Order dated October 25, 2007, *id.* at 21.

[8] See Pre-Trial Order, *id.* at 51-54.

On August 24, 2011, the RTC rendered its Decision finding accused-appellant guilty as charged, the dispositive portion of which reads as follows:

> WHEREFORE, under the above premises, this Court hereby finds JAIME BRIOSO GUILTY beyond reasonable doubt of the crime of Statutory Rape under Article 266-A (1) (d) of the Revised Penal Code, in relation to R.A. 7610, and hereby sentences him to suffer the penalty of *reclusion perpetua* and to pay to [AAA] the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages.
>
> SO ORDERED.[9]

The RTC gave full credence to the testimony of AAA holding that she testified on the rape that happened to her in a straightforward and credible manner. The RTC also cited the findings of the medico-legal which corroborated the testimony of AAA. The trial court did not give weight to accused-appellant's defense of alibi because the place where he claims to be at the time of the rape is just a few minutes walk from the scene of the crime, hence, it is not physically impossible for him to be at the said scene at the time of the commission of the rape. The RTC further held that AAA positively identified accused-appellant as the one who raped her.

Accused-appellant appealed the RTC Decision with the CA.[10]

On March 22, 2013, the CA promulgated its assailed Decision affirming the judgment of the RTC *in toto*.

The CA held, among others, that: it found no reason to depart from the findings of the RTC regarding the credibility of AAA; AAA's delay in reporting her rape may not be construed as indication of a false accusation; under the Rules of Court, a child of tender years may be asked leading questions; accused-appellant failed to allege and prove any improper motive on AAA's part to falsely accuse him of rape.

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[9] Records, p. 265.

[10] See Notice of Appeal, *id.* at 269.

On April 11, 2013, accused-appellant, through counsel, filed a Notice of Appeal manifesting his intention to appeal the CA Decision to this Court.[11]

In its Resolution dated May 3, 2013, the CA gave due course to accused-appellant's Notice of Appeal and directed its Judicial Records Division to elevate the records of the case to this Court.[12]

Hence, this appeal was instituted.

In a Resolution[13] dated December 4, 2013, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

In its Manifestation[14] dated February 17, 2014, the Office of the Solicitor General (*OSG*) informed this Court that it will no longer file a supplemental brief because it had already adequately addressed in its brief filed before the CA all the issues and arguments raised by accused-appellant in his brief.

In the same manner, accused-appellant filed a Manifestation in Lieu of Supplemental Brief[15] dated March 4, 2014, indicating that he no longer intends to file a supplemental brief and is adopting his brief, which was filed with the CA, as his supplemental brief as it had adequately discussed all the matters pertinent to his defense.

Accused-appellant's basic contention is that he was wrongly convicted because the prosecution failed to prove his guilt beyond reasonable doubt. In support of his claim, he posits the following arguments: (1) AAA's unexplained delay of five (5) days in reporting her alleged rape to her mother, as well as her failure to immediately identify accused-appellant as the supposed

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[11] CA *rollo*, pp. 147-149.

[12] *Id.* at 154.

[13] *Rollo*, p. 21.

[14] *Id.* at 24-27.

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

perpetrator of the crime, greatly affects her credibility; (2) AAA's credibility is also subject to question considering her failure to clearly narrate her alleged rape during her testimony in court and that what she did was merely to confirm the leading questions propounded to her by the prosecutor; (3) AAA's actuations immediately after her supposed rape, wherein she showed no outrage or fear towards accused-appellant, are not the natural reaction of the victim of a crime.

The appeal lacks merit.

The pertinent provisions of Articles 266-A of the Revised Penal Code, as amended, provide:

> Art. 266-A. *Rape; When and How 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 offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> x x x x x x x x x

Statutory rape is committed when: (1) the offended party is under twelve (12) years of age; and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority.[16] It is enough that the age of the victim is proven and that there was sexual intercourse.[17]

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[16] *People v. Gutierrez*, G.R. No. 208007, April 2, 2014, 720 SCRA 607, 613.

[17] *Id*.

This Court has consistently held that "rape under Article 266-A (1) (d) of the Revised Penal Code, as amended, is termed statutory rape as it departs from the usual modes of committing rape."[18] What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old.[19] Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place.[20] The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.[21]

Moreover, under Article 266-B, the penalty for statutory rape is death if, among others, the victim is below seven (7) years old, thus:

> ART. 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> x x x x x x x x x
>
> 5. When the victim is a child below seven (7) years old.
>
> x x x x x x x x x

In the present case, both the RTC and the CA found that the prosecution was able to prove beyond reasonable doubt all the elements of statutory rape and this Court finds no cogent reason to depart from these findings, as will be discussed below.

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[18] *Id.*, *People v. Vergara*, 724 Phil. 702, 708 (2014); *People v. Teodoro*, 622 Phil. 328, 327 (2009).

[19] *People v. Gutierrez*, *supra* note 16.

[20] *Id.*

[21] *Id.*

Accused-appellant's arguments in the instant appeal basically harp on the alleged loopholes, inconsistencies and improbabilities in the testimonies of the victim and her mother which supposedly cast doubt on their credibility as witnesses.

Settled is the rule that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has, in fact, been committed.[22] When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true.[23] Youth and immaturity are generally badges of truth and sincerity.[24] Considering that AAA was only four (4) years old when she was raped and was only eleven (11) years old when she took the witness stand, she could not have invented a horrible story.

Besides, the testimony of AAA is corroborated by the findings of the physician who examined her indicating "swelling and tenderness of the *labia majora*," "swelling, redness and tenderness of the *labia minora*," "whitish discharge from the vaginal os," "multiple erosions at the perineum and *labia minora*," "broken hymen at the 4 & 5 o'clock positions."[25] When asked about her findings, the physician concluded "that there was a penetration of the area causing all these erosions, all these wounds [and] lacerations and there was a penetration of something that was hard breaking into the hymen."[26] Thus, the RTC and the CA are correct in concluding that both the victim's positive testimony and the findings of the medico-legal officer complemented each

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[22] *People v. Piosang*, 710 Phil. 519, 526 (2013).

[23] *Id.*

[24] *Id.*

[25] See Medico-Legal Report, Exhibit "B", records, p. 6.

[26] TSN, September 11, 2008, p. 8.

other in the conclusion that accused-appellant had sexual intercourse with the victim.

The Court is neither persuaded by accused-appellant's argument that AAA's unexplained delay of five (5) days in reporting the rape to her mother greatly affects her credibility. This Court has repeatedly held that delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim. [27] AAA's delay in reporting the incidents to her mother or the proper authorities is insignificant and does not affect the veracity of her charges. It should be remembered that accused-appellant threatened to kill her if she told anyone of the incident. This Court has explained why a rape victim's deferral in reporting the crime does not equate to falsification of the accusation, to wit:

> The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.[28]

Further, it has been written that a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. [29] It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness.[30] Moreover, delay in reporting an incident of rape is not an indication of a fabricated charge and does not

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[27] *People v. Buclao*, G.R. No. 208173, June 11, 2014, 726 SCRA 365, 378.

[28] *People v. Pareja*, G.R. No. 202122, January 15, 2014, 714 SCRA 131, 154; *People v. Ogarte*, 664 Phil. 642, 661 (2011).

[29] *People v. Buclao, supra* note 27, at 378-379.

[30] *Id.*

necessarily cast doubt on the credibility of the complainant.[31] It is likewise settled in jurisprudence that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault, thus, not all rape victims can be expected to act conformably to the usual expectations of everyone.[32] In the instant case, AAA, being only four (4) years old at the time that she was violated and threatened with death if she reports the incident, would naturally be cowed into silence because of fear for her life.

Accused-appellant also contends that AAA's credibility is again put into question because she failed to clearly narrate her alleged rape during her testimony in court and that what she did was merely to confine the leading questions propounded to her by the prosecutor.

The Court does not agree. The Court quotes with approval the CA's ruling, thus:

> Also, that AAA was unable to narrate the rape with ease without the leading questions propounded by the prosecutor and the trial court is not unnatural. To be sure, a court cannot expect a rape victim to remember every ugly detail of the appalling outrage, especially so since she might in fact have been trying not to remember them. Thus, it is palpable that AAA remembered the painful sexual intercourse forced upon her by the accused-appellant. She just did not want to replay the whole rape in her mind and simply gave her terse but sufficient answers to the questions posed by the prosecution and the trial judge during her direct examination.[33]

Rape is a painful experience which is oftentimes not remembered in detail.[34] For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological

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[31] *People v. Velasco*, G.R. No. 190318, November 27, 2013, 710 SCRA 784, 797.

[32] *Id.*

[33] *Rollo*, p. 12.

[34] *People v. Pareja*, *supra* note 28, at 148.

wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget.[35] Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[36]

As to the leading questions asked by the prosecutor during AAA's direct examination, it is too late in the day for accused-appellant to object to the manner of questioning adopted by the public prosecutor. Accused-appellant should have interposed his objections in the course of the oral examination of AAA, as soon as the grounds therefor became reasonably apparent.[37] As it were, he raised not a whimper of protest as the public prosecutor recited his offer or propounded questions to AAA. Worse, accused-appellant subjected AAA to cross-examination on the very matters covered by the questions being objected to;[38] therefore, he is barred from arguing that the victim was "only made to confirm the leading questions propounded to her which are all in line with the theory of the prosecution."

Moreover, it is true that, as a rule, leading questions are not allowed in direct examination. However, Section 10 (c) of Rule 132 allows leading questions to be asked of a witness who is a child of tender years, especially when said witness has difficulty giving an intelligible answer, as when the latter has not reached that level of education necessary to grasp the simple meaning of a question, moreso, its underlying gravity. This exception is now embodied in Section 20[39] of the Rule on Examination of a Child Witness, which took effect on December 15, 2000. Under Section 4 thereof, a child witness is any person who at the time of giving testimony is below the age of eighteen (18) years. In

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[35] *Id.*

[36] *Id.*

[37] *People v. Santos*, 590 Phil. 564, 582 (2008).

[38] TSN, August 7, 2008, pp. 12-18.

[39] Sec. 20. *Leading questions.* — The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice.

the instant case, AAA was only eleven (11) years old when she took the witness stand. Thus, the decision of the RTC to allow the prosecution to ask AAA leading questions is justified.

Accused-appellant likewise posits that AAA's actuations immediately after her supposed rape, wherein she showed no outrage or fear towards accused-appellant, and that her belated display of fear when she took the witness stand seven years after the crime was supposedly committed are not the natural reaction of the victim of a crime.

However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped.[40] AAA's conduct, *i.e.*, nonchalance or indifference in the presence of the accused-appellant immediately after the latter supposedly raped her, is also not enough to discredit her. As earlier stated, victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations.[41] It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim.[42] One cannot be expected to act as usual in an unfamiliar situation as it is impossible to predict the workings of a human mind placed under emotional stress.[43] Moreover, it is wrong to say that there is a standard reaction or behavior among victims of the crime of rape since each of them had to cope with different circumstances.[44]

Anent accused-appellant's defense of alibi, the Court, likewise, quotes the findings and conclusions of the CA with approval, to wit:

x x x [A]ccused-appellant's defense of alibi deserves scant consideration.

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[40] *People v. Pareja*, *supra* note 28, at 153.

[41] *Id.*

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

[43] *Id.* at 154.

[44] *Id.*

For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired, but more importantly, the facility of access between the two places. Due to its doubtful nature, alibi must be supported by clear and convincing proof.

In the instant case, the accused-appellant failed to demonstrate that it was physically impossible for him to be at the mango tree where the rape of AAA took place. It would indeed be too fragile an *alibi* for an accused to establish such impossibility where the *locus delicti* and the house of Pedro Esplana — the place where he was supposedly having a drinking spree with friends — are **located in the same barangay.**

x x x x x x x x x[45]

At this juncture, it bears to reiterate the rule that in criminal cases, an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the court to correct such error as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not.[46] Consistent with this rule, the Court digresses from the rulings of the RTC and the CA finding accused-appellant guilty only of the crime of statutory rape, as the Court finds that accused-appellant was, in fact, charged and proven guilty of two counts of rape.

A perusal of the Information filed against accused-appellant would show that he was charged with two offenses, the first of which is rape under paragraph 1 (d), Article 266-A of the RPC, as amended, and the second is rape as an act of sexual assault under paragraph 2, Article 266-A of the same law. Accused-

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[45] *Rollo*, p. 14.

[46] *People v. Bonaagua*, 665 Phil. 750, 766 (2011); *People v. Lindo*, 641 Phil. 635, 647 (2010).

appellant was charged of having carnal knowledge of AAA, who was under twelve years of age at the time, under paragraph 1 (d) of Article 266-A, and he was also charged of committing rape through sexual assault by inserting his finger into the genital of AAA under the second paragraph of Article 266-A, pertinent portions of which provide as follows:

Art. 266-A. *Rape; When And How Rape is Committed. —*

x x x x x x x x x

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person

x x x x x x x x x

Indeed, two instances of rape were proven at the trial. *First*, it was established that accused-appellant inserted his penis into the private part of his victim, AAA. *Second*, through the testimony of AAA, it was proven that accused-appellant also inserted his finger in AAA's private part. Pertinent portions of the said testimony read as follows:

x x x x x x x x x

PROS. Casar
You said that you are afraid of Talaptalap. Why are you afraid of him?
A (No answer from the witness)

THE COURT:
Put it on record that the child is crying.

PROS. Casar
Please tell us why are you afraid of Talaptalap? Is it because he did something to you?
A Yes, sir.

PROS. Casar
What did he do to you?

THE COURT:
Put it on record that the child is still crying.

PROS. Casar
What did he do to you?
A (No answer from the witness)

THE COURT:
You ask her direct questions, fiscal.

PROS. Casar
Did he "hipo" your "pekpek"?
A Yes, sir.

PROS. Casar
Will you please demonstrate to us how did he make "hipo" with your "pekpek?"
A (No answer from the witness).

PROS. Casar
Did Talaptalap lower your panty and short before he made "hipo" you?
A Yes, sir.

PROS. Casar
And after lowering your lower garments you said he made "hipo" you, how did he "hipo" you?
A (No answer from the witness)

PROS. Casar
After lowering your shorts and your panty did he use his hands in making "hipo" with your "pekpek?"
A Yes, sir.

PROS. Casar
Did he insert his fingers into your "pekpek?"
A Yes sir.

PROS. Casar
You said he inserted his fingers into your vagina. How about his penis, did he also insert his penis inside your vagina or to your "pekpek?"
A (No answer from the witness)

PROS. Casar
Did he insert his penis inside your vagina?
A Yes, sir.

PROS. Casar
After inserting his penis into your vagina what else did he do to you?
A (No answer from the witness)

PROS. Casar
Were you hurt because he inserted his finger into your vagina?
A Yes, sir.

PROS. Casar
Did you cry because you got hurt?
A Yes, sir.

PROS. Casar
What did he tell you? Did he tell you not to tell anybody what he has done to you?
A Yes, sir.

PROS. Casar
That is the reason why it take you (sic) hard time in telling us what you have told us?
A Yes, sir.[47]

The Information has sufficiently informed accused-appellant that he is being charged with two counts of rape. It is true that Section 13, Rule 110 of the Revised Rules of Criminal Procedure requires that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." However, Section 3, Rule 120 of the same Rules, as well as settled jurisprudence, also states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." [48] Consequently, since accused-appellant failed to file a motion to quash the Information, he can be convicted with two counts of rape.

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[47] TSN, August 7, 2008, pp. 7-9.

[48] *People, et al. v. Court of Appeals, 21st Division, Mindanao Station, et al.*, G.R. No. 183652, February 25, 2015, 751 SCRA 675, 714-715; *People v. Ching*, 661 Phil. 208, 220 (2011).

As to the penalty for the rape committed by accused-appellant under paragraph 1 (d), Article 266-A of the RPC, as amended, Article 266-B of the same Code provides that the death penalty shall be imposed if the victim is a child below seven years old. However, following Republic Act No. 9346 (RA 9346),[49] the RTC, as affirmed by the CA, correctly imposed upon accused-appellant the penalty of *reclusion perpetua* in lieu of death, but it should be specified that it is without eligibility for parole,[50] as the RTC did not state it in the dispositive portion of its Decision.

With respect to the penalty for rape through sexual assault under paragraph 2, Article 266-A of the RPC, it is undisputed that at the time of the commission of the sexual abuse, AAA was four (4) years old. This calls for the application of Republic Act No. 7610 (R.A. 7610), *or The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*, which defines sexual abuse of children and prescribes the penalty therefor in Section 5 (b), Article III, to wit:

> SEC. 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code,

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[49] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[50] Pursuant to the Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties (A.M. No. 15-08-02-SC, dated August 4, 2015).

> for rape or lascivious conduct, as the case may be: *Provided*, That **the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.**[51]

The abovequoted paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence — engages in sexual intercourse or lascivious conduct with a child.

In connection with the above provision of law, Section 2 (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases,[52] which was promulgated pursuant to Section 32 of R.A. No. 7610, defines "Lascivious conduct" as:

> [T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

In the present case, AAA was four years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, accused-appellant was aptly prosecuted under paragraph 2, Article 266-A of the RPC, as amended, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is *prision mayor*, considering that AAA was below twelve (12) years of age at the time of the commission of the offense, and considering further that accused-appellant's act of inserting his finger in AAA's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b),

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[51] Emphasis supplied.

[52] Adopted on October 11, 1993.

Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period.

Thus, as held in *People v. Ching*:[53]

> The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article [336 of the Revised Penal Code, as amended by R.A. No. 8353], in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."
>
> Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is reclusion temporal in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.[54]

Hence, accused-appellant should be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

As to accused-appellant's civil liabilities, it is settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of

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[53] *Supra* note 48.

[54] *Id.* at 222-223.

mental and physical suffering.[55] Exemplary damages are also called for, by way of public example, and to protect the young from sexual abuse.[56]

The RTC and the CA awarded in AAA's favor the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages for the rape committed under paragraph 1 (d) of Article 266-A. In recent rulings of this Court,[57] the amounts of civil indemnity, moral damages and exemplary damages have been increased in cases where the penalty for the crime committed is death which, however, cannot be imposed because of RA 9346. In the most recent case of *People v. Ireneo Jugueta*,[58] the increase in the amounts of civil indemnity, moral damages and exemplary damages has been explained in detail. As it now stands, in cases of simple or qualified rape, among others, where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of RA 9346, the amounts of civil indemnity, moral damages and exemplary damages are pegged uniformly at ₱100,000.00. Thus, the awards of civil indemnity, moral damages and exemplary damages, given to AAA, should be increased to ₱100,000.00 each.

With respect to the rape through sexual assault under paragraph 2, Article 266-A, accused should pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, in accordance with prevailing jurisprudence.[59]

The Court additionally orders accused-appellant to pay interest of six percent (6%) *per annum* from the finality of this judgment

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[55] *People v. Piosang*, *supra* note 22, at 530.

[56] *Id*.

[57] *People v. Nilo Colentava*, G.R. No. 190348, February 9, 2015, 750 SCRA 165, 186; *People v. Gambao, et al.*, 718 Phil. 507, 531 (2013).

[58] G.R. No. 202124, April 5, 2016.

[59] *People v. Ricalde*, G.R. No. 211002, January 21, 2015, 747 SCRA 542,

until all the monetary awards for damages are fully paid, in accordance with prevailing jurisprudence.[60]

WHEREFORE, the instant appeal is **DISMISSED** and the Decision dated March 22, 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 05234 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

1. Accused-appellant JAIME BRIOSO, alias Talap-Talap, is found guilty of Statutory Rape under paragraph 1 (d), Article 266-A of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is **ORDERED** to **PAY** the victim, AAA, the increased amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.

2. Accused-appellant is also found guilty of Rape Through Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, in relation to Republic Act No. 7610, and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. He is **ORDERED** to **PAY** AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

3. Accused-appellant is additionally **ORDERED** to **PAY** the victim interest of six percent (6%) *per annum* on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

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

568; *People v. Subesa*, 676 Phil. 403, 418 (2011); *People v. Bonaagua*, *supra* note 46, at 772.

[60] *People v. Obaldo Bandril y Tabling*, G.R. No. 212205, July 6, 2015.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated February 14, 2016.

SECOND DIVISION

[G.R. No. 209384. June 27, 2016]

URBANO F. ESTRELLA, *petitioner, vs.* **PRISCILLA P. FRANCISCO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL LAND REFORM CODE; AGRICULTURAL TENANCY; THE AGRICULTURAL LEASEHOLD SUBSISTS, NOTWITHSTANDING THE RESULTING CHANGE IN OWNERSHIP OF THE LANDHOLDING, AND THE LESSEE'S RIGHTS ARE MADE ENFORCEABLE AGAINST THE TRANSFEREE OR OTHER SUCCESSOR-IN-INTEREST OF THE ORIGINAL LESSOR.—The existence of an agricultural tenancy relationship between the lessor and the lessee gives the latter rights that attach to the landholding, regardless of whoever may subsequently become its owner. This strengthens the security of tenure of the tenants and protects them from being dispossessed of the landholding or ejected from their leasehold by the death of either the lessor or of the tenant, the expiration of a term/period in the leasehold contract, or the alienation of the landholding by the lessor. If either party dies, the leasehold continues to bind the lessor (or his heirs) in favor of the tenant (or his surviving spouse/ descendants). In case the lessor alienates the land, the transferee is subrogated to the rights and substituted to the obligations of the lessor-transferor. The agricultural leasehold subsists, notwithstanding the resulting change in ownership of the landholding, and the lessee's rights are made enforceable against the transferee or other successor-in-interest of the original lessor.

2. ID.; ID.; ID.; LESSEE'S RIGHT OF REDEMPTION: THE LESSEE HAS A PREFERENTIAL RIGHT TO BUY THE LANDHOLDING UNDER REASONABLE TERMS AND CONDITIONS IF EVER THE AGRICULTURAL LESSOR DECIDES TO SELL IT, AND HE HAS THE RIGHT TO REDEEM THE LANDHOLDING FROM THE VENDEE IN THE EVENT THAT THE LESSOR SELLS IT

WITHOUT THE LESSEE'S KNOWLEDGE.— To protect the lessee's security of tenure, the Code grants him the right of pre-emption – the preferential right to buy the landholding under reasonable terms and conditions if ever the agricultural lessor decides to sell it. As an added layer of protection, the Code also grants him the right to redeem the landholding from the vendee in the event that the lessor sells it without the lessee's knowledge.

3. ID.; ID.; ID.; ID.; THE AGRICULTURAL LESSEE HAS A REDEMPTION PERIOD OF 180-DAYS RECKONED FROM WRITTEN NOTICE OF SALE; FAILURE OF THE VENDEE TO SERVE WRITTEN NOTICE OF THE SALE TO THE AGRICULTURAL LESSESS AND THE DEPARTMENT OF AGRARIAN REFORM PREVENTS THE COMMENCEMENT OF THE 180-DAY REDEMPTION PERIOD.— Originally, the lessee had a redemption period of two years from registration of the sale x x x. In 1971, R.A. 6389 amended Section 12 of the Code and shortened the redemption period: Sec. 12. *Lessee's right of Redemption*. x x x. The right of redemption under this Section may be exercised **within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale,** and shall have priority over any other right of legal redemption. x x x. More recently in *Po v. Dampal*, we held that the failure of the vendee to serve written notice of the sale to the lessee and the DAR prevents the running of the 180-day redemption period; the lessee's constructive knowledge of the sale does not dispense with the vendee's duty to give written notice. Simply put, Section 12 expressly states that the 180-day period must be reckoned from *written notice of sale*. If the agricultural lessee was never notified in writing of the sale of the landholding, there is yet no prescription period to speak of. As the *vendee*, respondent Francisco had the express duty to serve written notice on Estrella, the agricultural lessee, and on the DAR. Her failure to discharge this legal duty prevented the commencement of the 180-day redemption period. Francisco only gave written notice of the sale in her answer before the PARAD wherein she admitted the fact of the sale. Thus, Estrella timely exercised his right of redemption. To hold otherwise would allow Francisco to profit from her own neglect to perform a legally mandated duty.

4. ID.; ID.; ID.; ID.; A TENANT'S FAILURE TO TENDER PAYMENT OR CONSIGN IT IN COURT UPON FILING THE REDEMPTION SUIT IS NOT NECESSARILY FATAL, FOR HE CAN STILL CURE THE DEFECT AND COMPLETE HIS ACT OF REDEMPTION BY CONSIGNING HIS PAYMENT WITH THE COURT WITHIN THE REMAINING PRESCRIPTIVE PERIOD.— [D]espite the timely filing of the redemption suit, Estrella did not validly exercise his right to redeem the property. As early as 1969 in *Basbas v. Entena*, this Court had already held that the valid exercise of the right of redemption requires either tender of the purchase price or valid consignation thereof in Court: x x x. After the amendment of Section 12 of the Code, a certification from the Land Bank that it will finance the redemption will also suffice in lieu of tender of payment or consignation. In the present case, Estrella manifested his willingness to pay the redemption price but failed to tender payment or consign it with the PARAD when he filed his complaint. To be sure, a tenant's failure to tender payment or consign it in court filing the redemption suit is not necessarily fatal; he can still cure the defect and complete his act of redemption by consigning his payment with the court within the remaining prescriptive period.

5. ID.; ID.; ID.; ID.; THE FILING OF A PETITION OR REQUEST FOR REDEMPTION WITH THE DAR THROUGH THE PARAD SUSPENDS THE RUNNING OF THE REDEMPTION PERIOD, BUT IF THE PETITION IS NOT RESOLVED WITHIN SIXTY DAYS, THE 180-DAY REDEMPTION PERIOD RESUMES RUNNING.— Ordinarily, the 180-day redemption period begins to run from the date that the vendee furnishes written notice of the sale to the lessee. The filing of a petition or request for redemption with the DAR (through the PARAD) suspends the running of the redemption period. However, as the cases of *Basbas* and *Almeda v. Court of Appeals* – as well the amendment to Section 12 of the Code – evidently show, Congress did not intend the redemption period to be indefinite. This 180-day period resumes running if the petition is not resolved within sixty days. Because Francisco failed to serve Estrella written notice of the sale, Estrella's 180-day redemption period was intact when he filed the complaint before the PARAD. The filing of the complaint

prevented the running of the prescription period and gave Estrella time to cure the defect of his redemption through consignment of the redemption price. After the lapse of sixty days, Estrella's 180-day redemption period began running pursuant to Section 12 of the Code. Nevertheless, Estrella could still have consigned payment within this 180-day period.

6. ID.; ID.; ID.; ID.; TENDER OF THE REDEMPTION PRICE OR ITS VALID CONSIGNATION MUST BE MADE WITHIN THE PRESCRIBED REDEMPTION PERIOD; RATIONALE.— The exercise of the right of redemption must be made in accordance with the law. Tender of the redemption price or its valid consignation must be made within the prescribed redemption period. The reason for this rule is simple: x x x **Only by such means can the buyer become certain that the offer to redeem is one made seriously and in good faith. A buyer cannot be expected to entertain an offer of redemption without attendant evidence that the redemptioner can, and is willing to accomplish the repurchase immediately. A different rule would leave the buyer open to harassment by speculators or crackpots as well as to unnecessary prolongation of the redemption period, contrary to the policy of the law.** x x x. Unfortunately, even after the lapse of the 240 days (the 60-day freeze period and the 180-day redemption period), there was neither tender nor judicial consignation of the redemption price. Even though Estrella repeatedly manifested his willingness to consign the redemption price, he never actually did.

7. ID.; ID.; ID.; ID.; THE REDEMPTION IS INEFFECTIVE WHERE THE LESSEE FAILS TO EXERCISE THE RIGHT IN ACCORDANCE WITH THE LAW.— While Estrella exercised his right of redemption in a timely manner, the redemption was ineffective because he failed to exercise this right in accordance with the law. Notably, he had also repeatedly manifested his inability to even pay judicial costs and docket fees. He has been declared (twice) as a pauper litigant who was "living below the poverty threshold level because of limited income." This casts considerable doubt on Estrella's ability to pay the full of the property. In sum, we have no choice but to deny the petition.

8. ID.; ID.; PROTECTION OF THE RIGHTS OF AGRIULTURAL LESSEES SHOULD NOT BE AT THE EXPENSE OF TRAMPLING UPON THE LANDOWNER'S RIGHTS WHICH ARE LIKEWISE PROTECTED BY LAW.— The Agricultural Land Reform Code is a social legislation designed to promote economic and social stability. It must be interpreted liberally to give full force and effect to its clear intent, which is "to achieve a dignified existence for the small farmers" and to make them "more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society." Nevertheless, while we endeavor to protect the rights of agricultural lessees, we must be mindful not to do so at the expense of trampling upon the landowners' rights which are likewise protected by law.

APPEARANCES OF COUNSEL

Valeriano B. Mariano for petitioner.

D E C I S I O N

BRION, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the **November 28, 2012 resolution**[1] of the Court of Appeals (*CA*) in **CA-G.R. SP No. 121519**.[2] The CA dismissed petitioner Urbano F. Estrella's (*Estrella*) appeal from the Department of Agrarian Reform Adjudication Board's (*DARAB*) **February 23, 2009 decision**[3] in **DARAB Case No. 13185** which denied Estrella's right of redemption over an agricultural landholding.

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[1] *Rollo*, p. 30.

[2] Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Remedios A. Salazar-Fernando and Leoncia R. Dimagiba.

[3] *Rollo*, p. 91.

ANTECEDENTS

Lope Cristobal (*Cristobal*) was the owner of a twenty-three thousand nine hundred and thirty-three square meter (23,933 sqm.) parcel of agricultural riceland (*subject landholding*) in *Cacarong Matanda*, Pandi, Bulacan, covered by Transfer Certificate of Title (*TCT*) No. T-248106 of the Register of Deeds of Bulacan. Estrella was the registered agricultural tenant-lessee of the subject landholding.

On September 22, 1997, Cristobal sold the subject landholding to respondent Priscilla Francisco (*Francisco*) for five hundred thousand pesos (₱500,000.00),[4] without notifying Estrella.

Upon discovering the sale, Estrella sent Cristobal a demand letter dated March 31, 1998, for the return of the subject landholding.[5] He also sent Francisco a similar demand letter dated July 31, 1998. Neither Cristobal nor Francisco responded to Estrella's demands.[6]

On February 12, 2001, Estrella filed a complaint[7] against Cristobal and Francisco for legal redemption, recovery, and maintenance of peaceful possession before the Office of the Provincial Agrarian Reform Adjudicator (*PARAD*). His complaint was docketed as **DCN. R-03-02-2930'01.**

Estrella alleged that the sale between Cristobal and Francisco was made secretly and in bad faith, in violation of Republic Act No. (*R.A.*) 3844, the Agricultural Land Reform Code (*the Code*).[8] He insisted that he never waived his rights as a registered tenant over the property and that he was willing to match the sale price. Estrella concluded that as the registered tenant, he is entitled to legally redeem the property from Francisco. He

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[4] *Id.* at 45 and 69.

[5] *Id.* at 79.

[6] *Id.* at 80.

[7] *Id.* at 43.

[8] THE AGRICULTURAL LAND REFORM CODE, R.A. No. 3844 (1963).

also manifested his ability and willingness to deposit the amount of ₱500,000.00 with the PARAD as the redemption price.[9]

Cristobal did not file an answer while Francisco denied all the allegations in the complaint except for the fact of the sale.[10] Francisco claimed that she was an innocent purchaser in good faith because she only bought the property after: (1) Cristobal assured her that there would be no problems regarding the transfer of the property; and (2) Cristobal personally undertook to compensate Estrella. Therefore, Estrella had no cause of action against her.

On June 23, 2002, the PARAD rendered its decision recognizing Estrella's right of redemption.[11] The PARAD found that neither Cristobal nor Francisco notified Estrella in writing of the sale. In the absence of such notice, an agricultural lessee has a right to redeem the landholding from the buyer pursuant to Section 12 of the Code.[12]

Francisco appealed the PARAD's decision to the DARAB where it was docketed as **DARAB Case No. 13185.**

On February 23, 2009, the DARAB reversed the PARAD's decision and denied Estrella the right of redemption.[13] Citing Section 12 of the Code as amended, the DARAB held that the right of redemption may be exercised within 180 days from written notice of the sale. Considering that more than three years had lapsed between Estrella's discovery of the sale and his filing of the case for redemption, the DARAB concluded that Estrella slept on his rights and lost the right to redeem the landholding.

Estrella moved for reconsideration but the DARAB denied the motion.

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[9] *Rollo*, p. 45.

[10] *Id.* at 69.

[11] *Id.* at 84.

[12] *Id.* at 88.

[13] *Id.* at 91.

On September 30, 2011, Estrella filed a motion before the CA to declare himself as a pauper litigant and manifested his intention to file a petition for review of the DARAB's decision.[14] He alleged that he was living below the poverty line and did not have sufficient money or property for food, shelter, and other basic necessities.

On October 17, 2011, Estrella filed a petition for review[15] of the DARAB's decision before the CA. The petition was docketed as **CA-G.R. SP No. 121519.**

Estrella emphasized that the purpose of the State in enacting the agrarian reform laws is to protect the welfare of landless farmers and to promote social justice towards establishing ownership over the agricultural land by the tenant-lessees.[16] He insisted that the DARAB erred in denying him the right of redemption based on a technicality and that the redemption period in Sec. 12 of the Code does not apply in his case because neither the lessor nor the vendee notified him in writing of the sale.[17]

On November 28, 2012, the CA dismissed Estrella's petition for review for failure to show any reversible error in the DARAB's decision.[18] Estrella received a copy of the CA's resolution on April 10, 2013.[19]

On April 11, 2013, Estrella filed a motion for a twenty-day extension of time (or until April 31, 2013) to file his motion for reconsideration of the November 28, 2012 resolution.[20]

On April 30, 2013, Estrella requested another ten-day extension of time (or until May 9, 2013) to file his motion for reconsideration.[21]

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[14] *Id.* at 9.

[15] *Id.* at 51.

[16] *Id.* at 61.

[17] *Id.* at 62 and 64.

[18] *Id.* at 30.

[19] *Id.* at 20.

[20] *Id.* at 20 and 36.

[21] *Id.* at 20 and 38.

On May 9, 2013, Estrella filed his Motion for Reconsideration arguing that his right of redemption had not yet prescribed because he was not given written notice of the sale to Francisco.[22]

On May 30, 2013, the CA denied Estrella's motions for extension of time, citing the rule that the reglementary period to file a motion for reconsideration is non-extendible.[23] The CA likewise denied Estrella's Motion for Reconsideration.

Hence, the present recourse to this Court.

On August 23, 2013, Estrella filed a motion for extension of time to file his petition for review and a motion to be declared as a pauper litigant.[24] We granted both motions on October 13, 2013.

THE PARTIES' ARGUMENTS

Estrella argues that an agricultural tenant's right of redemption over the landholding cannot prescribe when neither the lessor-seller nor the buyer has given him written notice of the sale.

On the other hand, Francisco counters that Estrella failed to make a formal tender of or to consign with the PARAD the redemption price as required in *Quiño v. Court of Appeals*.[25] She also questioned the genuineness of Estrella's claim to be a pauper litigant. Francisco points out that a person who claims to be willing to pay the redemption price of ₱500,000.00 is not, by any stretch of the imagination, a pauper.[26]

OUR RULING

We find no merit in the petition.

The use and ownership of property bears a social function, and all economic agents are expected to contribute to the common good.[27]

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[22] *Id.* at 20 and 40.

[23] *Id.* at 6 and 33.

[24] *Id.* at 2.

[25] 353 Phil. 449 (1998).

[26] *Id.* at 100-103.

[27] Art. XII, Sec. 6, CONSTITUTION.

To this end, property ownership and economic activity are always subject to the duty of the State to promote distributive justice and intervene when the common good requires.[28]

As early as 1973, the Philippines has already declared our goal of emancipating agricultural tenants from the bondage of the soil.[29] The State adopts a policy of promoting social justice, establishing owner cultivatorship of economic-size farms as the basis of Philippine agriculture, and providing a vigorous and systematic land resettlement and redistribution program.[30]

In pursuit of land reform, the State enacted the *Agricultural Land Reform Code* in 1963. The Code established an agricultural leasehold system that replaced all existing agricultural share tenancy systems at that point.

The existence of an agricultural tenancy relationship between the lessor and the lessee gives the latter rights that attach to the landholding, regardless of whoever may subsequently become its owner.[31] This strengthens the security of tenure of the tenants and protects them from being dispossessed of the landholding or ejected from their leasehold by the death of either the lessor or of the tenant, the expiration of a term/period in the leasehold contract, or the alienation of the landholding by the lessor.[32] If either party dies, the leasehold continues to bind the lessor (or his heirs) in favor of the tenant (or his surviving spouse/ descendants). In case the lessor alienates the land, the transferee is subrogated to the rights and substituted to the obligations of the lessor-transferor. The agricultural leasehold subsists, notwithstanding the resulting change in ownership of the

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[28] *Id.*

[29] Art. XIV, Sec. 12, 1973 CONSTITUTION.

[30] Sec. 2, COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, R.A. No. 6657 (1988); Sec. 2, R.A. No. 6389 (1971).

[31] Secs. 9 and 10, AGRICULTURAL LAND REFORM CODE. See also *Relucio III v. Macaraig*, 255 Phil. 613, 622 (1989); and *Planters Development Bank v. Garcia*, 513 Phil. 294, 307 (2005).

[32] Secs. 9 and 10, AGRICULTURAL LAND REFORM CODE.

landholding, and the lessee's rights are made enforceable against the transferee or other successor-in-interest of the original lessor.

To protect the lessee's security of tenure, the Code grants him the right of pre-emption — the preferential right to buy the landholding under reasonable terms and conditions if ever the agricultural lessor decides to sell it.[33] As an added layer of protection, the Code also grants him the right to redeem the landholding from the vendee in the event that the lessor sells it without the lessee's knowledge.[34]

Originally, the lessee had a redemption period of two years from registration of the sale:

> Sec. 12. *Lessee's Right of Redemption*. — In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: Provided, That the entire landholding sold must be redeemed: Provided, further, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of redemption under this Section may be exercised within two years from the registration of the sale, and shall have priority over any other right of legal redemption.[35]

In *Padasas v. Court of Appeals*,[36] we held that a lessee's actual knowledge of the sale of the landholding is immaterial because the Code specifically and definitively provides that the redemption period must be counted from the registration of the sale. This ruling was subsequently affirmed in *Manuel v. Court of Appeals*.[37]

In 1971, R.A. 6389 amended Section 12 of the Code and shortened the redemption period:

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[33] Sec. 11, AGRICULTURAL LAND REFORM CODE, as amended.

[34] *Id.*, Sec. 12.

[35] Sec. 12, AGRICULTURAL LAND REFORM CODE (1963).

[36] 172 Phil. 243, 251-252 (1978).

[37] 204 Phil. 109, 116 (1982).

Sec. 12. Lessee's right of Redemption. — In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: Provided, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of redemption under this Section may be exercised ***within one hundred eighty days from notice in writing which shall be served*** **by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale,** and shall have priority over any other right of legal redemption. The redemption price shall be the reasonable price of the land at the time of the sale.

Upon the filing of the corresponding petition or request with the department or corresponding case in court by the agricultural lessee or lessees, the period of one hundred and eighty days shall cease to run.

Any petition or request for redemption shall be resolved within sixty days from the filing thereof; otherwise, the said period shall start to run again.

The Department of Agrarian Reform shall initiate, while the Land Bank shall finance, said redemption as in the case of pre-emption.[38] [emphases and underscoring supplied]

In *Mallari v. Court of Appeals*,[39] we held that the lessee's right of redemption will not prescribe if he is not served written notice of the sale. We affirmed this ruling in *Springsun Management Systems v. Camerino*[40] and *Planters Development Bank v. Garcia*. [41]

More recently in *Po v. Dampal*,[42] we held that the failure of the vendee to serve written notice of the sale to the lessee and the DAR prevents the running of the 180-day redemption period;

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[38] Sec. 12, AGRICULTURAL LAND REFORM CODE, as amended by Sec. 4, R.A. 6389 (1971).

[39] 244 Phil. 518, 523 (1988).

[40] 489 Phil. 769, 790 (2005).

[41] *Supra* note 31, at 313-314.

[42] 623 Phil. 523, 530 (2009).

the lessee's constructive knowledge of the sale does not dispense with the vendee's duty to give written notice.

Simply put, Section 12 expressly states that the 180-day period must be reckoned from *written notice of sale*. If the agricultural lessee was never notified in writing of the sale of the landholding, there is yet no prescription period to speak of.[43]

As the *vendee*, respondent Francisco had the express duty to serve written notice on Estrella, the agricultural lessee, and on the DAR. Her failure to discharge this legal duty prevented the commencement of the 180-day redemption period. Francisco only gave written notice of the sale in her answer [44] before the PARAD wherein she admitted the fact of the sale.[45] Thus, Estrella timely exercised his right of redemption. To hold otherwise would allow Francisco to profit from her own neglect to perform a legally mandated duty.

However, despite the timely filing of the redemption suit, Estrella did not validly exercise his right to redeem the property. As early as 1969 in *Basbas v. Entena*,[46] this Court had already held that the valid exercise of the right of redemption requires either tender of the purchase price or valid consignation thereof in Court:

> x x x the right of legal redemption must be exercised within specified time limits: and the statutory periods would be rendered meaningless and of easy evasion unless the redemptioner is required to make an actual tender in good faith of what he believed to be the reasonable price of the land sought to be redeemed. The existence of the right of redemption operates to depress the market value of the land until the period expires, and to render that period indefinite by permitting

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[43] *Springsun Management Systems Corp. v. Camerino*, *supra* note 40; and *Planters Development Bank v. Garcia*, *supra* note 31, at 313-314.

[44] *Rollo*, p. 69.

[45] See *Planters Development Bank v. Garcia*, *supra* note 31, at 314-315, citing *Quiño v. Court of Appeals*, *supra* note 25, at 457 where we considered summons and the accompanying petition as written notice of the sale.

[46] 138 Phil. 721 (1969).

the tenant to file a suit for redemption, with either party unable to foresee when final judgment will terminate the action, would render nugatory the period of two years [now 180 days] fixed by the statute for making the redemption and virtually paralyze any efforts of the landowner to realize the value of his land. No buyer can be expected to acquire it without any certainty as to the amount for which it may be redeemed, so that he can recover at least his investment in case of redemption. In the meantime, the landowner's needs and obligations cannot be met. It is doubtful if any such result was intended by the statute, absent clear wording to that effect.

The situation becomes worse when, as shown by the evidence in this case, the redemptioner has no funds and must apply for them to the Land Authority, which, in turn, must depend on the availability of funds from the Land Bank. It then becomes practically certain that the landowner will not be able to realize the value of his property for an indefinite time beyond the two years redemption period.[47]

After the amendment of Section 12 of the Code, a certification from the Land Bank that it will finance the redemption will also suffice in lieu of tender of payment or consignation.[48]

In the present case, Estrella manifested his willingness to pay the redemption price but failed to tender payment or consign it with the PARAD when he filed his complaint. To be sure, a tenant's failure to tender payment or consign it in court upon filing the redemption suit is not necessarily fatal; he can still cure the defect and complete his act of redemption by consigning his payment with the court within the remaining prescriptive period.[49]

Ordinarily, the 180-day redemption period begins to run from the date that the vendee furnishes written notice of the sale to the lessee. The filing of a petition or request for redemption with the DAR (through the PARAD) suspends the running of the redemption period.

However, as the cases of *Basbas* and *Almeda v. Court of Appeals* [50] — as well the amendment to Section 12 of the Code

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[47] *Id.* at 728.

[48] *Mallari v. Court of Appeals*, *supra* note 39, at 524.

[49] *Lusung, et al. v. Santos,* 204 Phil. 302, 309 (1982).

[50] 168 Phil. 348, 355 (1977).

— evidently show, Congress did not intend the redemption period to be indefinite. This 180-day period resumes running if the petition is not resolved within sixty days.[51]

Because Francisco failed to serve Estrella written notice of the sale, Estrella's 180-day redemption period was intact when he filed the complaint before the PARAD. The filing of the complaint prevented the running of the prescription period and gave Estrella time to cure the defect of his redemption through consignment of the redemption price.

After the lapse of sixty days, Estrella's 180-day redemption period began running pursuant to Section 12 of the Code. Nevertheless, Estrella could still have consigned payment within this 180-day period.

The exercise of the right of redemption must be made in accordance with the law. Tender of the redemption price or its valid consignation must be made within the prescribed redemption period.[52] The reason for this rule is simple:

x x x **Only by such means can the buyer become certain that the offer to redeem is one made seriously and in good faith. A buyer cannot be expected to entertain an offer of redemption without attendant evidence that the redemptioner can, and is willing to accomplish the repurchase immediately. A different rule would leave the buyer open to harassment by speculators or crackpots as well as to unnecessary prolongation of the redemption period, contrary to the policy of the law.** While consignation of the tendered price is not always necessary because legal redemption is not made to discharge a pre-existing debt, a valid tender is indispensable, for the reasons already stated. Of course, consignation of the price would remove all controversy as to the redemptioner's ability to pay at the proper time.[53] [emphasis supplied]

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[51] Sec. 12, AGRICULTURAL LAND REFORM CODE, as amended.

[52] *Almeda v. Court of Appeals*, *supra* note 50, at 355-356; *Baltazar v. Court of Appeals*, 192 Phil. 137, 154 (1981); and *Lusung v. Vda. De Santos*, *supra* note 49 at 307, 309.

[53] *Torres de Conejero v. Court of Appeals*, L-21812, April 29, 1966, 16 SCRA 775, 783-784, cited in *Basbas v. Entena*, *supra* note 46, at 727 and in *Almeda v. Court of Appeals*, *supra* note 50, at 356.

Unfortunately, even after the lapse of the 240 days (the 60-day freeze period and the 180-day redemption period), there was neither tender nor judicial consignation of the redemption price. Even though Estrella repeatedly manifested his willingness to consign the redemption price, he never actually did.

While Estrella exercised his right of redemption in a timely manner, the redemption was ineffective because he failed to exercise this right in accordance with the law. Notably, he had also repeatedly manifested his inability to even pay judicial costs and docket fees. He has been declared (twice) as a pauper litigant who was "living below the poverty threshold level because of limited income."[54] This casts considerable doubt on Estrella's ability to pay the full price of the property. In sum, we have no choice but to deny the petition.

The Agricultural Land Reform Code is a social legislation designed to promote economic and social stability. It must be interpreted liberally to give full force and effect to its clear intent, which is "to achieve a dignified existence for the small farmers" and to make them "more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society."[55] Nevertheless, while we endeavor to protect the rights of agricultural lessees, we must be mindful not to do so at the expense of trampling upon the landowners' rights which are likewise protected by law.

WHEREFORE, we hereby **DENY** the petition for lack of merit; accordingly, we **AFFIRM** the November 28, 2012 resolution of the Court of Appeals in CA-G.R. SP No. 121519. No costs.

SO ORDERED.

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

Del Castillo, J., on leave.

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[54] *Rollo,* p. 34.

[55] *Catorce v. Court of Appeals*, 214 Phil. 181, 184-185 (1984).

FIRST DIVISION

[G.R. No. 209794. June 27, 2016]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES JOSE AMAGAN and AURORA AMAGAN, doing business under the trade name and style "A & J Seafoods and Marine Products," and John Doe,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL (OGCC) IS THE PRINCIPAL LAW OFFICE OF GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS (GOCC) AND THEIR SUBSIDIARIES, AND THE SAME EXERCISES CONTROL AND SUPERVISION OVER ALL LEGAL DEPARTMENTS OR DIVISIONS THEREOF.— Section 10, Chapter 3, Title III, Book IV, of the Administrative Code of 1987 explicitly designates the OGCC as the principal law office of GOCCs and their subsidiaries, grants it control and supervision over all legal departments or divisions thereof, and empowers it to promulgate rules and regulations to effectively implement the objectives of the office of the OGCC: Section 10. *Office of the Government Corporate Counsel.* – The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate off-springs and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.

2. ID.; ID.; ID.; ID.; 2011 OFFICE OF THE GOVERNMENT CORPRATE COUNSEL (OGCC) RULES; THE LEGAL DEPARTMENTS OF THE GOVERNMENT CORPORATIONS

OR ENTITIES ARE NOT PRECLUDED FROM PARTICIPATING AS COUNSEL THEREOF, AS LONG AS THE OGCC CONSENTS TO SUCH PARTICIPATION, AND THE SAID LEGAL DEPARTMENT ACTS UNDER THE CONTROL AND SUPERVISION OF THE OGCC.— [R]ule 5, Section 1 of the Rules Governing the Exercise by the Office of the Government Corporate Counsel of its Authority, Duties and Powers as Principal Law Office of all GOCCs (2011 OGCC Rules) states that the OGCC shall handle all cases by the GOCCs, **unless the legal departments of its client government corporations or entities are duly authorized or deputized by the OGCC.** This Court had earlier occasion to tackle this question in *Land Bank of the Philippines v. Teresita Panlilio-Luciano,* which authority was cited in the Letters of Authority issued by the OGCC, where it was already definitively held that the LBP Legal Department was not precluded from participating as counsel for LBP, as long as the OGCC consents to such participation, and the said Legal Department acts under the control and supervision of the OGCC. x x x Here, there is no serious dispute that the OGCC had, in fact, directly participated as counsel for LBP when it filed its Manifestation and Confirmation of Authority before the RTC, attaching thereto the Letters of Authority it had earlier issued which authorized the lawyers in the LBP Legal Services Group to handle the instant case. To be sure, subsequent pleadings and motions in the RTC and in this Court were filed by the OGCC as the lead counsel of LBP, with the LBP Legal Services Group acting as collaborating counsel thereof. These filings of the OGCC clearly and unequivocally demonstrate the OGCC's control and supervision over the actions of the LBP Legal Services Group, and its approval of the actions already undertaken by the latter. Considering that the OGCC already entered its appearance as lead counsel for LBP in the instant case, and had clearly demonstrated that the suit of LBP was being litigated by its "principal law office," then the ratiocination by the court *a quo* in its second assailed Order dated October 1, 2013 – that the complaint should still have been initiated by the OGCC – is clearly puerile, and unduly puts stress on a technicality that, in the final analysis, does not even exist. Accordingly, the assailed orders of April 18, 2013 and October 1, 2013 should be, as they are hereby, reversed.

3. REMEDIAL LAW; EVIDENCE; THE LOWER COURT IS IN A BETTER POSITION TO HEAR AND RESOLVE FACTUAL ASSERTIONS.— [A]s regards the Petition's prayer for the issuance of a Preliminary Mandatory Injunction to allow it and/or its authorized representatives to inspect and conduct an appraisal of the chattels mortgaged by Respondents to determine their current condition and value, we note that its exercise would, in this case, require a determination of the facts and circumstances on which the prayer is premised. As such, the lower court would be in a better position to hear and resolve these factual assertions. In this connection, this Court has, in the past, under authority of Section 6, Rule 46 of the Rules of Court, remanded cases to lower courts for the reception of evidence and determination of facts. Given the urgency of the matter, the RTC is ordered to act with dispatch on petitioner's prayer for the issuance of a Preliminary Mandatory Injunction and the grant of a Writ of Replevin.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
LBP Legal Services Group, collaborating counsel for petitioner.
Arnold Taer Oclarit for respondents.

D E C I S I O N

CAGUIOA, *J.*:

The instant petition for review on *certiorari* under Rule 45 of the Rules of Court, with a prayer for the issuance of a Preliminary Mandatory Injunction and the grant of a Writ of Replevin, seeks to reinstate Petitioner Land Bank of the Philippines' (LBP) Complaint for Replevin[1] filed against Respondents Spouses Jose and Aurora Amagan (Respondents).

The issues raised in this case are pretty straightforward: (1) whether the Office of the Government Corporate Counsel (OGCC)

[1] Denominated as "Recovery of Chattel" by Petitioner in the Complaint.

is the principal law office of Government Owned and Controlled Corporations (GOCCs), and (2) whether the OGCC had validly consented to, or otherwise authorized, the participation of the LBP Legal Services Group, in the prosecution of the instant Complaint for Replevin.

In turn, the resolution of these issues is simple, direct and unequivocal. In a number of cases, this Court has consistently held that it is the OGCC, and not the LBP Legal Services Group, which is the principal law office tasked to primarily handle cases filed by or against LBP, but this does not preclude participation of the LBP Legal Services Group as long as the OGCC consents to such participation, and the LBP Legal Services Group acts under the control and supervision of the OGCC. It is beyond cavil in this case that indeed the OGCC has consented to the filing by the LBP Legal Services Group of the instant Complaint for Replevin, and its continued prosecution of the same. For these reasons, we grant the Petition, reverse and set aside the questioned orders of the Regional Trial Court, Branch 37, General Santos City, and accordingly order the reinstatement of Civil Case No. 8042.

The salient facts that gave rise to the foregoing issues are very simple:

On March 31, 2011, LBP, through the LBP Legal Services Group, filed a Complaint for Replevin,[2] docketed as Civil Case No. 8042 and raffled to Branch 37 of the Regional Trial Court of General Santos City (RTC).

After LBP filed an Amended Complaint, pursuant to the April 27, 2011 Order of the RTC, specifically indicating the properties and chattels subject of the same,[3] Respondents filed a Motion to Dismiss,[4] which was followed by another Motion to Dismiss (with Urgent Prayer for Quashal of Writ of Replevin)[5] both

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[2] *Rollo*, pp. 87-92.

[3] *Id.* at 175.

[4] *Id.* at 285-290.

[5] *Id.* at 291-297.

anchored on the fact that the instant Complaint for Replevin was not filed or initiated by the OGCC, and that the LBP Legal Services Group is not authorized to initiate the instant complaint against Respondents.

In its Comment/Opposition filed on June 14, 2012,[6] LBP informed the RTC that the OGCC had, in fact, earlier issued Letters of Authority[7] as far back as June 5, 2009, already authorizing, and delegating its powers to, the LBP Legal Services Group, through Attys. Rosemarie M. Osoteo, Nestor A. Velasco, and Buenaventura R. Del Rosario, in order to appear as counsel for LBP in its current and future cases.

Subsequently, in a Manifestation and Confirmation of Authority dated August 28, 2012,[8] the OGCC confirmed the authority previously delegated to the aforementioned lawyers of the LBP Legal Services Department signed by no less than Government Corporate Counsel Raoul C. Creencia.[8a]

Notwithstanding the foregoing clarifications, the RTC, on April 18, 2013, issued the first assailed Order[9] dismissing the Petition for Replevin, to wit:

WHEREFORE, in view of all the foregoing and for the reason that plaintiff has strayed from the commonly accepted practice among agencies or instrumentalities of the government to avail of the service or facilities of the Government Service Insurance System for their insurable interest and for the complaint not being filed or instituted by the proper party, as provided by law, amounting to lack of cause of action, the Complaint for Replevin is **DISMISSED**.

The wrench [sic] of replevin imposed on the properties proceeding from the order of this court dated 18 July 2011 is lifted. Defendants are restored in good standing in the operation of the processing

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[6] *Id.* at 300-302.

[7] *Id.* at 303-307.

[8] *Id.* at 316-319.

[8a] *Id.* at 322-324.

[9] *Id.* at 35-53. Penned by Judge Panambulan M. Mimbisa.

complex and all the machineries and facilities contained therein. Accordingly, the Sheriff of this court is relieved of his duties as custodial overseer of the complex. The visitorial authority of the Sheriff, on behalf of the court, stays unless revoked or modified by a competent court or authority.

SO ORDERED.[10]

In a Motion for Reconsideration dated April 29, 2013, signed by the OGCC, LBP sought to reconsider the first assailed Order.[11]

On October 1, 2013, the RTC issued the second assailed Order[12] denying the Motion for Reconsideration, to wit:

> The court stands by its resolution. The complaint was not initiated by the Office of the Government Corporate Counsel as shown by the absence of the signature of any government corporate counsel in any part of the complaint. If it is any further indication of the non-participation of the OGCC in the complaint, the papers used did not bear the zeal [sic] of the agency. The authority to attend hearings on this case or even the signature of ATTY. RAOUL C. CREENCIA, a government corporate counsel, cannot supplant the mandatory requirement of the law for the complaint to be initiated by the OGCC. These assertions of plaintiff cannot substitute for the specific act required of the OGCC to perform namely, to file the case directly or serve as a curative potion that could retroact to the time of the filing of the case.
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> The signature of ATTY. RAOUL C. CREENCIA, a Government Corporate Counsel in the Motion for Reconsideration filed by the Legal Department of Land Bank has just heightened the obvious that the complaint was not initiated by the OGCC as mandated by law. This is no simple technical defect that can be rectified by the simple expedeniency [sic] of affixing a signature of a government corporate counsel in the Motion for Reconsideration. This is too little too late. This is about substantive law which need to be observed or complied with to entrench the complaint with authority.

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

[11] *Id.* at 344-347.

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

This court wishes to point out by way of further emphasis that the plaintiff bank deviated from a time honored practice among government agencies to engage the services of the Government Service Insurance System for their insurance needs and requirements. This may not be mandatory but is advisable.

WHEREFORE, for the foregoing reasons, plaintiff's Motion for Reconsideration is DENIED.

SO ORDERED.

Hence, this Petition, filed directly with this Court on pure questions of law.

As stated at the outset, we find meritorious, and accordingly grant, the Petition.

Section 10, Chapter 3, Title III, Book IV, of the Administrative Code of 1987 explicitly designates the OGCC as the principal law office of GOCCs and their subsidiaries, grants it control and supervision over all legal departments or divisions thereof, and empowers it to promulgate rules and regulations to effectively implement the objectives of the office of the OGCC:

Section 10. *Office of the Government Corporate Counsel*. — The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate off-springs and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.

In turn, Rule 5, Section 1 of the Rules Governing the Exercise by the Office of the Government Corporate Counsel of its Authority, Duties and Powers as Principal Law Office of all GOCCs (2011 OGCC Rules) states that the OGCC shall handle all cases by the GOCCs, **unless the legal departments of its client government corporations or entities are duly authorized or deputized by the OGCC.**

This Court had earlier occasion to tackle this question in *Land Bank of the Philippines v. Teresita Panlilio-Luciano*,[13] which authority was cited in the Letters of Authority issued by the OGCC,[14] where it was already definitively held that the LBP Legal Department was not precluded from participating as counsel for LBP, as long as the OGCC consents to such participation, and the said Legal Department acts under the control and supervision of the OGCC. In *Land Bank of the Philippines v. AMS Farming Corporation*,[15] this Court already recognized the letter of authority of the OGCC giving its conformity to and acquiescence for the LBP Legal Department to appear as its collaborating counsel in all LBP cases, and that there was no need for the concurrence of the COA since the LBP was being represented by its own Legal Department and was not incurring additional cost for the said legal services.

In *Luciano*, we already clarified the dynamics of OGCC's role as principal law office of all GOCCs and that of the LBP Legal Services Group[16] — which ruling has been

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[13] G.R. No. 165428, July 13, 2005 (Unsigned Resolution).

[14] *Rollo*, pp. 303-307.

[15] 590 Phil. 170, 199 (2008).

[16] In fact, this Court even acknowledged that both the OGCC and the legal department of a GOCC can each contribute their distinct advantages for the successful outcome of any case brought to them.

> We do not discount the LBP Legal Department's unique position to assist in the litigation of this case. Its familiarity with the facts, as well as with the day-to-day workings of the LBP, invests it with distinct advantages in handling the petition that might not be shared by the members of the OGCC. From the prescribed statutory setup between the LBP Legal Department and the OGCC, we can discern similarities to the prevalent practice in law firms of having junior associates probe into the factual background of cases and prepare the initial drafts, their output subject to the review and approval of the firm's senior partner. The junior associate (or the LBP Legal Department) would have the advantage gained by proximity to the milieu, but the senior partner would have the advantage of a wider perspective enriched by experience. The correlative advantage of the OGCC might not necessarily be derived from years of experience, but putatively from its vantage point as overseer of all legal processes emanating from and involving all GOCCs.

consistently invoked by this Court in a number of cases involving LBP:[17]

> **Does this ruling of the Court likewise preclude participation in this petition from the LBP Legal Department? It does not, so long as the OGCC consents to such participation, and the Legal Department so acts under the control and supervision of the OGCC.** For all practical intents, the members of the LBP Legal Department would be free to develop the theories behind this case, or to draft and co-sign pleadings. However, these actions must meet the approval of the OGCC, such approval being sufficiently evidenced by the OGCC's signature on the pleadings filed before this Court.[18] (Emphasis supplied)

Here, there is no serious dispute that the OGCC had, in fact, directly participated as counsel for LBP when it filed its Manifestation and Confirmation of Authority before the RTC, attaching thereto the Letters of Authority it had earlier issued which authorized the lawyers in the LBP Legal Services Group to handle the instant case. To be sure, subsequent pleadings and motions in the RTC and in this Court were filed by the OGCC as the lead counsel of LBP, with the LBP Legal Services

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The OGCC and the LBP Legal Department would be served well in accepting the prescribed statutory setup and acceding to the benefits of the imposed relationship. Indeed, the petition could have been dismissed outright considering that it was not filed by the OGCC. Instead, we have allowed it to stand thus far and even endeavored to elaborate upon it in quite a few extensive resolutions, not because the petition has obvious or indubitable merit, but out of a legitimate concern to see to it that the law is followed, with the framework established by the Administrative Code observed by the OGCC and the LBP Legal Department alike. It is hoped that the Court's atypical indulgence of this petition, as expressed by this *Resolution* and the two that came before it, would appropriately guide the LBP and the OGCC in future litigations. But the time would come for the present petition to be litigated solely on the merits.

[17] See *Land Bank of the Philippines v. Martinez*, 556 Phil. 809 (2007); *Land Bank of the Philippines v. AMS Farming Corporation*, *supra* note 15; *Hernandez-Nievera v. Hernandez*, 658 Phil. 1 (2011).

[18] *Land Bank of the Philippines v. Teresita Panlilio-Luciano*, *supra* note 13.

Group acting as collaborating counsel thereof. These filings of the OGCC clearly and unequivocally demonstrate the OGCC's control and supervision over the actions of the LBP Legal Services Group, and its approval of the actions already undertaken by the latter.

Considering that the OGCC already entered its appearance as lead counsel for LBP in the instant case, and had clearly demonstrated that the suit of LBP was being litigated by its "principal law office," then the ratiocination by the court *a quo* in its second assailed Order dated October 1, 2013 — that the complaint should still have been initiated by the OGCC — is clearly puerile, and unduly puts stress on a technicality that, in the final analysis, does not even exist. Accordingly, the assailed orders of April 18, 2013 and October 1, 2013 should be, as they are hereby, reversed.

As to the legality of LBP's act of obtaining the required replevin bond from a private insurance firm and not from the GSIS, this has been rendered a non-issue by the RTC itself as it had acknowledged the legality of obtaining bonds from private insurance companies.[19]

Lastly, as regards the Petition's prayer for the issuance of a Preliminary Mandatory Injunction to allow it and/or its authorized representatives to inspect and conduct an appraisal of the chattels mortgaged by Respondents to determine their current condition and value, we note that its exercise would, in this case, require a determination of the facts and circumstances on which the prayer is premised. As such, the lower court would be in a better position to hear and resolve these factual assertions.[20]

In this connection, this Court has, in the past, under authority of Section 6, Rule 46 of the Rules of Court, remanded cases to lower courts for the reception of evidence and determination of facts.[21] Given the urgency of the matter, the RTC is ordered to

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[19] *Rollo*, pp. 35-55.

[20] See *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, 634 Phil. 9 (2010).

[21] *Id.*

act with dispatch on petitioner's prayer for the issuance of a Preliminary Mandatory Injunction and the grant of a Writ of Replevin.

WHEREFORE, PREMISES CONSIDERED, the petition for review filed by Petitioner Land Bank of the Philippines is **GRANTED,** as follows:

1. Civil Case No. 8042 is hereby **REINSTATED;** and

2. the Regional Trial Court, Branch 37, General Santos City is hereby directed to immediately set a hearing for the reception of evidence and accordingly resolve with dispatch the prayer for the issuance of a Preliminary Mandatory Injunction and the grant of a Writ of Replevin.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 166890. June 28, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **APOLONIO BAUTISTA, JR.,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT (CA NO. 141, AS AMENDED, AND PROPERTY REGISTRATION DECREE (PD NO. 1529); JUDICIAL CONFIRMATION OF IMPERFECT TITLE; THE APPLICANT FOR JUDICIAL CONFIRMATION OF IMPERFECT TITLE MUST ESTABLISH THAT HE, EITHER PERSONALLY OR THROUGH HIS PREDECESSOR-IN-

INTEREST, OPENLY, CONTINOUSLY AND EXCLUSIVELY POSSESSED AND OCCUPIED THE ALIENABLE AND DISPOSABLE LANDS OF THE PUBLIC DOMAIN UNDER A BONA FIDE CLAIM OF OWNERSHIP, SINCE JUNE 12, 1945, OR EARLIER. The Government has correctly insisted that the requisite period of possession of the property should conform to that provided for in Section 48(b) of the *Public Land Act*, as amended by Presidential Decree No. 1073, which has limited the right to apply for judicial confirmation to citizens of the Philippines "who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. x x x" The provision is reprised by Section 14(1) of Presidential Decree No. 1529 (*Property Registration Decree*), adopting the length of possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

2. ID.; ID.; ID.; ID.; THE APPLICATION FOR JUDICIAL CONFIRMATION OF IMPERFECT TITLE MUST BE REJECTED WHERE THE REQUISITE LENGTH OF POSSESSION AND OCCUPATION HAS NOT BEEN ESTABLISHED.— [A]polonio, Jr. presented only himself to establish the possession and ownership of his father, Apolonio, Sr., who was his immediate predecessor-in-interest. He did not present as witnesses during the trial either of the transferors of Apolonio, Sr. – that is, Mario Jardin or Cornelia Villanueva – to establish the requisite length of the possession of the predecessors-in-interest of the applicant that would be tacked to his own. His personal incompetence to attest to the possession of the property within the time required by law underscored the weakness of the evidence on possession, particularly as it has not been denied that the applicant had arrived in the Philippines only on November 28, 1987. Considering that the possession and occupation of the property in question by Apolonio, Jr. and his predecessors-in-interest were not shown in the records to have been "since June 12, 1945, or earlier," the application must be rejected. We should stress that only

the title of those who had possessed and occupied alienable and disposable lands of the public domain within the requisite period could be judicially confirmed. Indeed, alienable public land held by a possessor, either personally or through his predecessor-in-interest, openly, continuously and exclusively during the prescribed statutory period is converted to private property by the mere lapse or completion of the period.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jose A. Suing for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The applicant for judicial confirmation of imperfect title must trace his possession of the subject land to June 12, 1945, or earlier. Any length of possession that does not comply with the requirement cannot support the application, which must be then dismissed for failure to comply with Commonwealth Act No. 141 (*Public Land Act*) and Presidential Decree No. 1529 (*Property Registration Decree*).

The Case

The Government appeals the adverse judgment promulgated on September 30, 2004,[1] whereby the Court of Appeals (CA) affirmed the decision of the Municipal Trial Court (MTC) of Subic, Zambales rendered on November 17, 1998 in LRC Case No. N-12-10-96 entitled *In Re: Application for Land Registration of Lot 17078 of Cad. 547-D, Subic Cadastre*[2] granting the application of respondent Apolonio Bautista, Jr. for the judicial confirmation of title of Lot 17078 of Cad. 547-D, Subic Cadastre.

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[1] *Rollo*, pp. 60-71; penned by Associate Justice Vicente S.E. Veloso (retired), with the concurrence of Associate Justice Roberto A. Barrios (retired/deceased) and Associate Justice Amelita G. Tolentino (retired).

[2] *Id.* at 40-42; penned by Municipal Judge Miguel F. Famularcano, Jr.

Antecedents

After acquiring Lot 17078 of Cad. 547-D, Subic Cadastre, located in Capisanan, Subic, Zambales from Mario Jardin on February 15, 1971 and Cornelia Villanueva on May 25, 1973, Apolonio, Sr. had the property declared for taxation purposes. He had been the sole and exclusive possessor and occupant from the time of acquisition until his death, with no party questioning his possession and ownership, or staking any adverse claim against him thereon.[3] He died in 1987, and was succeeded by his children, namely: respondent Apolonio, Jr. and his siblings. Apolonio, Sr.'s children executed an extra-judicial settlement of their father's estate, whereby Apolonio, Jr.'s brothers and sisters waived their rights in his favor. Thus, the property was declared for taxation purposes in Apolonio, Jr.'s name under Tax Declaration No. 014-0432A of the Municipality of Subic, Zambales. There were no arrears in real estate taxes.[4] The declared value was ₱73,040.00.[5]

On October 21, 1996, Apolonio Jr. commenced LRC Case No. N-12-10-96 in the MTC. He later on testified that his father had been in actual possession since 1969, and had eventually acquired the land from Jardin and Villanueva through the notarized Deeds of Absolute Sale dated February 15, 1971, and May 25, 1973; and that his father had paid taxes on the land.

The Government did not interpose any timely objection to the testimony of Apolonio, Jr. It did not also object to the documentary evidence (*i.e.*, the deeds of absolute sale and tax declarations) offered by him. Hence, the MTC admitted all the evidence presented by Apolonio, Jr.

In due course, the MTC granted Apolonio, Jr.'s application, and declared him as the owner in fee simple of the land, [6] and confirmed his ownership thereof.[7]

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[3] *Id.* at 62.

[4] *Id.*

[5] *Id.* at 37.

[6] *Id.*

[7] *Id.* at 40-42.

The Government appealed the decision to the Court of Appeals (CA), which, on September 30, 2004, promulgated its assailed decision affirming the ruling of the MTC.[8] The CA pointed out that the Government did not present evidence against the claim of Apolonio Jr.; and that the Government did not timely object to his testimony on the ground of its being hearsay.[9]

Issue

In this appeal, the Government reiterates that the testimony of Apolonio, Jr. on possession, being hearsay, had no probative value; that the alienation of public land should always undergo careful scrutiny; and that the Court should carefully re-examine the factual issues that could alter the result of the case.[10]

The Government points out that Apolonio, Jr. had given only general statements pertaining to the open, continuous, exclusive and notorious possession of his father since 1971; that such statements were mere conclusions of law, and did not prove the alleged possession; that because the application for judicial confirmation of imperfect title was filed on October 21, 1996, the applicable law was Section 48 (b) of Commonwealth Act No. 141 (*Public Land Act*), as amended by Presidential Decree No. 1073; that, accordingly, the required period of possession must be "since June 12, 1945 or earlier," as stated in *Republic v. Doldol*,[11] a more stringent requirement the non-compliance with which was fatal to his cause.[12]

Lastly, the Government points out that tax declarations or tax receipts did not suffice to prove ownership of land in fee simple; that although it was the State's policy to encourage and promote distribution of alienable public lands as an ideal of social justice, stringent safeguards must be adopted and applied

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[8] *Supra* note 1.

[9] *Id.*

[10] *Rollo*, pp. 15-18.

[11] G.R. No. 132963, September 10, 1998, 295 SCRA 359, 364-365.

[12] *Rollo*, p. 20.

to prevent the lands from going to the wrong hands; and that Apolonio, Jr.'s reliance on hearsay evidence showed his unfitness to own the land.[13]

In response, Apolonio Jr. insists that he had duly established his lawful occupation of the land as owner in fee simple; that the Government did not timely object to his testimony, and did not also controvert his evidence; that the property had been properly identified; and that the lower courts had observed the legal safeguards and guidelines in granting his application for judicial confirmation of his ownership in fee simple. [14]

Ruling of the Court

We reverse.

The Government has correctly insisted that the requisite period of possession of the property should conform to that provided for in Section 48 (b) of the *Public Land Act*, as amended by Presidential Decree No. 1073, which has limited the right to apply for judicial confirmation to citizens of the Philippines "who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. x x x" The provision is reprised by Section 14 (1) of Presidential Decree No. 1529 (*Property Registration Decree*), adopting the length of possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

We note that in its amendment of the *Public Land Act* that took effect on January 25, 1977, Presidential Decree No. 1073 changed the length of the requisite possession from "thirty (30)

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

[14] *Id.* at 85-87.

years immediately preceding the filing of the application" to possession "since June 12, 1945, or earlier." *Republic v. Naguit* [15] has explained this change thusly:

> When the Public Land Act was first promulgated in 1936, the period of possession deemed necessary to vest the right to register their title to agricultural lands of the public domain commenced from July 26, 1894. However, this period was amended by R.A. No. 1942, which provided that the bona fide claim of ownership must have been for at least thirty (30) years. Then in 1977, Section 48(b) of the Public Land Act was again amended, this time by P.D. No. 1073, which pegged the reckoning date at June 12, 1945. x x x

Based on the records before us, Apolonio, Jr. presented only himself to establish the possession and ownership of his father, Apolonio, Sr., who was his immediate predecessor-in-interest. He did not present as witnesses during the trial either of the transferors of Apolonio, Sr. — that is, Mario Jardin or Cornelia Villanueva — to establish the requisite length of the possession of the predecessors-in-interest of the applicant that would be tacked to his own. His personal incompetence to attest to the possession of the property within the time required by law underscored the weakness of the evidence on possession, particularly as it has not been denied that the applicant had arrived in the Philippines only on November 28, 1987. Considering that the possession and occupation of the property in question by Apolonio, Jr. and his predecessors-in-interest were not shown in the records to have been "since June 12, 1945, or earlier," the application must be rejected.

We should stress that only the title of those who had possessed and occupied alienable and disposable lands of the public domain within the requisite period could be judicially confirmed. Indeed, alienable public land held by a possessor, either personally or through his predecessors-in-interest, openly, continuously and

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[15] G.R. No. 144507, January 17, 2005, 448 SCRA 442.

exclusively during the prescribed statutory period is converted to private property by the mere lapse or completion of the period.[16]

That the Government did not timely object to the admission of the testimony of Apolonio, Jr., or of the other evidence presented by him was of no consequence to the success of the application. If he had no personal knowledge of the facts establishing the possession of property for the requisite period, no court can give any value to his assertion, particularly as it was conceded by him no less that he had no personal or direct competence to know the truth of his assertion. It was one thing for the trial court to admit the evidence, but quite another to give it any worth for purposes of judicial adjudication.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on September 30, 2004; **DISMISSES** the application of respondent Apolonio Bautista, Jr. for the judicial confirmation of his imperfect title in LRC Case No. N-12-10-96; and **ORDERS** Apolonio Bautista, Jr. to pay the costs of suit.

SO ORDERED.

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

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[16] *Director of Lands v. Intermediate Appellate Court*, No. L-7300`` , December 29, 1986, 146 SCRA 509, 518. See also the dissenting opinion of Justice Teehankee in *Manila Electric Company v. Judge Castro-Bartolome*, No. L-49623, June 29, 1982, 114 SCRA 799, 813.

FIRST DIVISION

[G.R. No. 206528. June 28, 2016]

PHILIPPINE ASSET GROWTH TWO, INC. (Successor-In-Interest of Planters Development Bank) and PLANTERS DEVELOPMENT BANK, *petitioners, vs.* **FASTECH SYNERGY PHILIPPINES, INC. (Formerly First Asia System Technology, Inc.), FASTECH MICROASSEMBLY & TEST, INC., FASTECH ELECTRONIQUE, INC., and FASTECH PROPERTIES, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WHERE A PARTY IS REPRESENTED BY SEVERAL COUNSELS, NOTICE TO ONE IS SUFFICIENT, AND BINDS THE SAID PARTY, AS NOTICE TO ANY ONE OF THE SEVERAL COUNSELS ON RECORD IS EQUIVALENT TO NOTICE TO ALL, AND SUCH NOTICE STARTS THE RUNNING OF THE PERIOD TO APPEAL NOTWITHSTANDING THAT THE OTHER COUNSEL ON RECORD HAS NOT RECEIVED A COPY OF THE DECISION OR RESOLUTION.— It is a long-standing doctrine that where a party is represented by several counsels, notice to one is sufficient, and binds the said party. Notice to any one of the several counsels on record is equivalent to notice to all, and such notice starts the running of the period to appeal notwithstanding that the other counsel on record has not received a copy of the decision or resolution. In the present case, PDB was represented by both Janda Asia & Associates and Divina Law. It was not disputed that Janda Asia & Associates, which remained a counsel of record, albeit, as collaborating counsel, received notice of the CA's March 5, 2013 Resolution on March 12, 2013. As such, it is from this date, and not from Divina Law's receipt of the notice of said resolution on April 3, 2013 that the fifteen (15)-day period to file the petition for review on *certiorari* before the Court started to run. Hence, petitioners only had until March 27,

2013 to file a petition for review on *certiorari* before the Court, and the petition filed on April 18, 2013 was filed out of time. Notably, there is no showing that the CA had already resolved PAGTI's motion for substitution; hence, it remained bound by the proceedings and the judgment rendered against its transferor, PDB.

2. ID.; ID.; ID.; THE FAILURE TO PERFECT AN APPEAL IN THE MANNER AND WITHIN THE PERIOD PROVIDED FOR BY LAW RENDERS THE DECISION APPEALED FROM FINAL AND EXECUTORY, BEYOND THE COMPETENCE OF THE COURT TO REVIEW; EXCEPTIONS.— Generally, the failure to perfect an appeal in the manner and within the period provided for by law renders the decision appealed from final and executory, and beyond the competence of the Court to review. However, the Court has repeatedly relaxed this procedural rule in the higher interest of substantial justice. In *Barnes v. Padilla*, it was held that: [A] final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. However, this Court has relaxed this rule in order to serve substantial justice[,] considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. After a meticulous scrutiny of this case, the Court finds that the unjustified rehabilitation of respondents, by virtue of the CA ruling if so allowed to prevail, warrants the relaxation of the procedural rule violated by petitioners in the higher interest of substantial justice.

3. COMMERCIAL LAW; CORPORATIONS; REPUBLIC ACT NO. 10142, OTHERWISE KNOWN AS THE FINANCIAL REHABILITATION AND INSOLVENCY ACT OF 2010 (FRIA); REHABILITATION DEFINED; PURPOSE.— Rehabilitation is statutorily defined under Republic Act No. 10142, otherwise known as the "Financial Rehabilitation and Insolvency Act of 2010" (FRIA), as follows: Section 4. *Definition of Terms.* – As used in this Act, the term: x x x x (gg)

Rehabilitation shall refer to the **restoration of the debtor to a condition of successful operation and solvency**, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated. Case law explains that corporate rehabilitation contemplates a continuance of corporate life and activities in an effort **to restore and reistate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.** Thus, the basic issues in rehabilitation proceedings concern the viability and desirability of continuing the business operations of the distressed corporation, all with a view of effectively restoring it to a state of solvency or to its former healthy financial condition through the adoption of rehabilitation plan.

4. ID.; ID.; 2008 RULES OF PROCEDURE ON CORPORATE REHABILITATION; REHABILITATION PLAN; MUST STATE ANY MATERIAL FINANCIAL COMMITMENT TO SUPPORT THE REHABILITATION PLAN AND SHOULD INCLUDE A PROPER LIQUIDATION ANALYSIS; NOT COMPLIED WITH.— In the present case, however, the Rehabilitation Plan failed to comply with the minimum requirements, *i.e.*: (*a*) material financial commitments to support the rehabilitation plan; and (*b*) a proper liquidation analysis, under Section 18, Rule 3 of the 2008 Rules of Procedure on Corporate Rehabilitation (Rules), which Rules were in force at the time respondents' rehabilitation petition was filed on April 8, 2011.

5. ID.; ID.; ID.; ID.; ID.; A DISTRESSED CORPORATION CANNOT BE RESTORED TO ITS FORMER POSITION OF SUCCESSFUL OPERATION AND REGAIN SOLVENCY BY THE SOLE STRATEGY OF DELAYING PAYMENTS/ WAIVING ACCRUED INTEREST AND PENALTIES AT THE EXPENSE OF THE CREDITORS, BUT THERE MUST BE A MATERIAL FINANCIAL COMMITMENT WHICH MAY INCLUDE THE VOLUNTARY UNDERTAKINGS OF THE STOCKHOLDERS OR THE WOULD-BE INVESTORS OF THE DEBTOR-CORPORATION INDICATING THEIR

READINESS, WILLINGNESS, AND ABILITY TO CONTRIBUTE FUNDS OR PROPERTY TO GUARANTEE THE CONTINUED SUCCESSFUL OPERATION OF THE DEBTOR-CORPORATION DURING THE PERIOD OF REHABILITATION.— A material financial commitment becomes significant in gauging the resolve, determination, earnestness, and good faith of the distressed corporation in financing the proposed rehabilitation plan. This commitment may include the **voluntary undertakings** of the stockholders or the would-be investors of the debtor-corporation indicating their readiness, willingness, and ability to contribute funds or property **to guarantee the continued successful operation of the debtor-corporation during the period of rehabilitation.** In this case, respondents' Chief Operating Officer, Primo D. Mateo, Jr., in his executed Affidavit of General Financial Condition dated April 8, 2011, averred that respondents will not require the infusion of additional capital as he, instead, proposed to have all accrued penalties, charges, and interests waived, and a reduced interest rate prospectively applied to all respondents' obligations, in addition to the implementation of a two (2)-year grace period. Thus, there appears to be no concrete plan to build on respondents' beleaguered financial position through substantial investments as the plan for rehabilitation appears to be pegged merely on financial reprieves. Anathema to the true purpose of rehabilitation, a distressed corporation cannot be restored to its former position of successful operation and regain solvency by the sole strategy of delaying payments/waiving accrued interests and penalties at the expense of the creditors.

6. ID.; ID.; ID.; ID.; ID.; A LEGALLY BINDING INVESTMENT COMMITMENT FROM THIRD PARTIES IS REQUIRED TO QUALIFY AS A MATERIAL FINANCIAL COMMITMENT.— The Court also notes that while respondents have substantial total assets, a large portion of the assets of Fastech Synergy and Fastech Properties is comprised of noncurrent assets, such as advances to affiliates which include Fastech Microassembly, and investment properties which form part of the common assets of Fastech Properties, Fastech Electronique, and Fastech Microassembly. Moreover, while there is a claim that *unnamed* customers have made investments by way of consigning production equipment, and advancing

money to fund procurement of various equipment intended to increase production capacity, this can hardly be construed as a material financial commitment which would inspire confidence that the rehabilitation would turn out to be successful. Case law holds that nothing short of legally binding investment commitment/s from third parties is required to qualify as a material financial commitment. Here, no such binding investment was presented.

7. ID.; ID.; ID.; ID.; ID.; ABSENT LIQUIDATION ANALYSIS IN THE REHABILITATION PLAN, THE COURT COULD NOT ASCERTAIN IF THE PETITIONING DEBTOR'S CREDITORS CAN RECOVER BY WAY OF THE PRESENT VALUE OF PAYMENTS PROJECTED IN THE PLAN.— Respondents likewise failed to include any liquidation analysis in their Rehabilitation Plan. The total liquidation assets and the estimated liquidation return to the creditors, as well as the fair market value vis-à-vis the forced liquidation value of the fixed assets were not shown. As such, the Court could not ascertain if the petitioning debtor's creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated. This is a crucial factor in a corporate rehabilitation case, which the CA, unfortunately, failed to address.

8. ID.; ID.; ID.; ID.; EFFECT OF NON-COMPLIANCE WITH THE MINIMUM REQUIREMENTS; THE REMEDY OF REHABILITATION SHOULD BE DENIED TO CORPORATIONS THAT DO NOT QUALIFY UNDER THE RULES, NEITHER SHOULD IT BE ALLOWED TO CORPORATIONS WHOSE SOLE PURPOSE IS TO DELAY THE ENFORCEMENT OF ANY OF THE RIGHTS OF THE CREDITORS.— The failure of the Rehabilitation Plan to state any material financial commitment to support rehabilitation, as well as to include a liquidation analysis, renders the CA's considerations for approving the same, *i.e.*, that: (*a*) respondents would be able to meet their obligations to their creditors within their operating cash profits and other assets without disrupting their business operations; (*b*) the Rehabilitation Receiver's opinion carries great weight; and (*c*) rehabilitation will be beneficial for respondents' creditors, employees, stockholders, and the economy, as actually

unsubstantiated, and hence, insufficient to decree the feasibility of respondents' rehabilitation. It is well to emphasize that the remedy of rehabilitation should be denied to corporations that do not qualify under the Rules. Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors.

9. ID.; ID.; ID.; ID.; TEST IN EVALUATING THE ECONOMIC FEASIBILITY OF A PROPOSED REHABILITATION PLAN.— The test in evaluating the economic feasibility of the plan was laid down in *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation (Bank of the Philippine Islands)*, to wit: In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that a thorough examination and analysis of the distressed corporation's financial data must be conducted. If the results of such examination and analysis show that there is a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible. In such case, the rehabilitation court may convert the proceedings into one for liquidation.

10. ID.; ID.; ID.; CHARACTERISTICS OF AN ECONOMICALLY FEASIBLE REHABILITATION PLAN AS DISTINGUISHED FROM AN INFEASIBLE REHABILITATION PLAN.— In the recent case of *Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc.*, the Court took note of the characteristics of an economically feasible rehabilitation plan as opposed to an infeasible rehabilitation plan: Professor Stephanie V. Gomez of the University of the Philippines College of Law suggests specific characteristics of an economically feasible rehabilitation plan: a. The debtor has assets that can generate more cash if used in its daily operations than if sold. b. Liquidity issues

can be addressed by *a practicable business plan* that will generate enough cash to sustain daily operations. c. The debtor has a definite source of financing for the proper and full implementation of a Rehabilitation Plan that is anchored on realistic assumptions and goals. These requirements put emphasis on liquidity: the cash flow that the distressed corporation will obtain from rehabilitating its assets and operations. A corporation's assets may be more than its current liabilities, but some assets may be in the form of land or capital equipment, such as machinery or vessels. Rehabilitation sees to it that these assets generate more value if used efficiently rather that if liquidated. On the other hand, this court enumerated the characteristics of a rehabilitation plan that is infeasible: (a) the absence of a sound and workable business plan; (b) baseless and unexplained assumptions, targets and goals; (c) speculative capital infusion or complete lack thereof for the execution of the business plan; (d) cash flow cannot sustain daily operations; and (e) negative net worth and the assets are near full depreciation or fully depreciated.

11. ID.; ID.; ID.; ID.; THE DETERMINATION OF THE VALIDITY AND THE APPROVAL OF THE REHABILITATION PLAN IS NOT THE RESPONSIBILITY OF THE REHABILITATION RECEIVER, BUT REMAINS THE FUNCTION OF THE COURT, AND WHILE THE COURT MAY CONSIDER THE REHABILITATION RECEIVER'S REPORT FAVORABLY RECOMMENDING THE DEBTOR'S REHABILITATION, IT IS NOT BOUND THEREBY IF, IN ITS JUDGMENT, THE DEBTOR'S REHABILITATION IS NOT FEASIBLE.— The CA's reliance on the expertise of the court-appointed Rehabilitation Receiver, who opined that respondents' rehabilitation is viable, in order to justify its finding that the financial statements submitted were reliable, overlooks the fact that the determination of the validity and the approval of the rehabilitation plan is not the responsibility of the rehabilitation receiver, but remains the function of the court. The rehabilitation receiver's duty *prior* to the court's approval of the plan is to study the best way to rehabilitate the debtor, and to ensure that the value of the debtor's properties is reasonably maintained; and *after* approval, to implement the rehabilitation plan. Notwithstanding the credentials of the

court-appointed rehabilitation receiver, the duty to determine the feasibility of the rehabilitation of the debtor rests with the court. While the court may consider the receiver's report favorably recommending the debtor's rehabilitation, it is not bound thereby if, in its judgment, the debtor's rehabilitation is not feasible.

12. ID.; ID.; ID.; ID.; THE REMEDY OF REHABILITATION SHOULD BE DENIED TO CORPORATIONS WHOSE INSOLVENCY APPEARS TO BE IRREVERSIBLE AND WHOSE SOLE PURPOSE IS TO DELAY THE ENFORCEMENT OF ANY OF THE RIGHTS OF THE CREDITORS.— The purpose of rehabilitation proceedings is not only to enable the company to gain a new lease on life, but also to allow creditors to be paid their claims from its earnings when so rehabilitated. Hence, the remedy must be accorded only after a judicious regard of all stakeholders' interests; it is not a one-sided tool that may be graciously invoked to escape every position of distress. Thus, the remedy of rehabilitation should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by: (*a*) the absence of a sound and workable business plan; (*b*) baseless and unexplained assumptions, targets, and goals; and (*c*) speculative capital infusion or complete lack thereof for the execution of the business plan, as in this case.

13. ID.; ID.; ID.; A DISTRESSED CORPORATION SHOULD NOT BE REHABILITATED WHEN THE RESULTS OF THE FINANCIAL EXAMINATION AND ANALYSIS CLEARLY INDICATE THAT THERE LIES NO REASONABLE PROBABILITY THAT IT MAY BE REVIVED, TO THE DETRIMENT OF ITS NUMEROUS STAKEHOLDERS WHICH INCLUDE NOT ONLY THE CORPORATION'S CREDITORS BUT ALSO THE PUBLIC AT LARGE.— A distressed corporation should not be rehabilitated when the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that it may be revived, to the detriment of its numerous stakeholders which include not only the corporation's creditors but also the public at large. In *Bank of the Philippine*

Islands: Recognizing the volatile nature of every business, the rules on corporate rehabilitation have been crafted in order to give companies sufficient leeway to deal with debilitating financial predicaments in the hope of restoring or reaching a sustainable operating form if only to best accommodate the various interests of all its stakeholders, may it be the corporation's stockholders, its creditors, and even the general public. Thus, the higher interest of substantial justice will be better subserved by the reversal of the CA Decision. Since the rehabilitation petition should not have been granted in the first place, it is of no moment that the Rehabilitation Plan is currently under implementation. While payments in accordance with the Rehabilitation Plan were already made, the same were only possible because of the financial reprieves and protracted payment schedule accorded to respondents, which, as above-intimated, only works at the expense of the creditors and ultimately, do not meet the true purpose of rehabilitation.

APPEARANCES OF COUNSEL

Divina Law for petitioners.
Quicho & Angeles for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a petition for review on *certiorari*[1] assailing the Decision[2] dated September 28, 2012 and the Resolution[3] dated March 5, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 122836 which: (*a*) approved the Rehabilitation Plan [4] of respondents Fastech Synergy Philippines, Inc. (formerly

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[1] *Rollo*, Vol. I, pp. 3-29.

[2] *Id.* at 33-56. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Hakim S. Abdulwahid and Rodil V. Zalameda concurring.

[3] *Id.* at 147-149.

[4] *Id.* at 329-340. See also Amended Rehabilitation Plan; *rollo*, Vol. II, pp. 697-720.

First Asia System Technology, Inc.) (Fastech Synergy), Fastech Microassembly & Test, Inc. (Fastech Microassembly), Fastech Electronique, Inc. (Fastech Electronique), and Fastech Properties, Inc. (Fastech Properties; collectively, respondents); (*b*) enjoined petitioner Planters Development Bank (PDB) from effecting the foreclosure of respondents' properties during the implementation thereof; and (*c*) remanded the case to the Regional Trial Court (RTC) of Makati City, Branch 149 (RTC-Makati) to supervise its implementation.

The Facts

On April 8, 2011, respondents filed a verified Joint Petition[5] for corporate rehabilitation (rehabilitation petition) before the RTC-Makati, with prayer for the issuance of a Stay or Suspension Order,[6] docketed as SP Case No. M-7130. They claimed that: (*a*) their business operations and daily affairs are being managed by the same individuals;[7] (*b*) they share a majority of their common assets;[8] and (*c*) they have common creditors and common liabilities.[9]

Among the common creditors listed in the rehabilitation petition was PDB,[10] which had earlier filed a petition[11] for extrajudicial foreclosure of mortgage over the two (2) parcels of land, covered by Transfer Certificate of Title (TCT) Nos. T-458102[12] and T-458103[13] and registered in the name of Fastech Properties (subject properties),[14] listed as common assets of respondents in the

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[5] Dated April 8, 2011. *Rollo*, Vol. I, pp. 208-231.

[6] *Id.* at 229.

[7] See *id.* at 210-215 and 220.

[8] See *id.* at 219-220.

[9] See *id.* at 215-220. See also *id.* at 34-35.

[10] *Id.* at 215.

[11] Not attached to the records of this case.

[12] *Rollo*, Vol. I, pp. 175-177.

[13] *Id.* at 178-180.

[14] See *id.* at 225.

rehabilitation petition.[15] The foreclosure sale was held on April 13, 2011, with PDB emerging as the highest bidder.[16] Respondents claimed that this situation has impacted on their chance to recover from the losses they have suffered over the years, since the said properties are being used by Fastech Microassembly and Fastech Electronique[17] in their business operations, and a source of significant revenue for their owner-lessor, Fastech Properties.[18] Hence, respondents submitted for the court's approval their proposed Rehabilitation Plan,[19] which sought: (*a*) a waiver of all accrued interests and penalties; (*b*) a grace period of two (2) years to pay the principal amount of respondents' outstanding loans, with the interests accruing during the said period capitalized as part of the principal, to be paid over a twelve (12)-year period after the grace period; and (*c*) an interest rate of four percent (4%) and two percent (2%) per annum (p.a.) for creditors whose credits are secured by real estate and chattel mortgages, respectively.[20]

On April 19, 2011, the RTC-Makati issued a Commencement Order with Stay Order,[21] and appointed Atty. Rosario S. Bernaldo as Rehabilitation Receiver, which the latter subsequently accepted.[22]

After the initial hearing on May 18, 2011, and the filing of the comments/oppositions on the rehabilitation petition,[23] the RTC-Makati gave due course to the said petition, and, thereafter,

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[15] *Id.* at 219.

[16] See *rollo*, Vol. II, p. 785.

[17] See *rollo*, Vol. I, pp. 221-222 and 225. Notably, Fastech Synergy owns a majority of the shares of Fastech Microassembly and Fastech Electronique, and relies on dividends from such shareholdings; *id.* at 221.

[18] *Id.* at 225.

[19] *Id.* at 329-340.

[20] *Id.* at 223-224.

[21] *Rollo*, Vol. II, pp. 646-650. Issued by Presiding Judge Cesar O. Untalan.

[22] See Manifestation (Acceptance of Appointment as Rehabilitation Receiver) dated April 26, 2011; *id.* at 65l-653.

[23] See *rollo*, Vol. I, p. 36; and *rollo*, Vol. II, p. 721.

referred the same to the court-appointed Rehabilitation Receiver, who submitted in due time her preliminary report,[24] opining that respondents may be rehabilitated, considering that their assets appear to be sufficient to cover their liabilities, but reserved her comment to the Rehabilitation Plan's underlying assumptions, financial goals, and procedures to accomplish said goals after the submission of a revised rehabilitation plan as directed by the RTC-Makati,[25] which respondents subsequently complied.[26]

After the creditors had filed their respective comments and/or oppositions to the revised Rehabilitation Plan, and respondents had submitted their consolidated reply[27] thereto, the court-appointed Rehabilitation Receiver submitted her comments,[28] opining that respondents may be successfully rehabilitated, considering the sufficiency of their assets to cover their liabilities and the underlying assumptions, financial projections and procedures to accomplish said goals in their Rehabilitation Plan.[29]

The RTC-Makati Ruling

In a Resolution[30] dated December 9, 2011, the RTC-Makati dismissed the rehabilitation petition despite the favorable recommendation of its appointed Rehabilitation Receiver. It found

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[24] See Rehabilitation Receiver's Preliminary Report (*rollo*, Vol. II, pp. 724-735) attached as Annex "A" in the Manifestation and Compliance dated July 20, 2011 (*rollo*, Vol. II. pp. 721-723).

[25] *Id.* at 734-735.

[26] See Amended Rehabilitation Plan attached as Annex "A" in the compliance dated July 27, 2011; *id.* at 690-720.

[27] See Compliance and Consolidated Reply (to the Comments on the Revised Rehabilitation Plan) dated September 29, 2011 with attached as Annex "A" the Project Plan; *id.* at 741-767.

[28] See Compliance and Comments (to the Compliance and Consolidated Reply of the Petitioners [herein respondents]) dated October 11, 2011 with attached as Annex "A" the Rehabilitation Receiver's Comments; *id.* at 768-777.

[29] *Id.* at 777.

[30] *Id.* at 778-784. Penned by Presiding Judge Cesar O. Untalan.

the facts and figures submitted by respondents to be unreliable in view of the disclaimer of opinion of the independent auditors who reviewed respondents' 2009 financial statements,[31] which it considered as amounting to a "straightforward unqualified adverse opinion."[32] In the same vein, it did not give credence to the unaudited 2010 financial statements as the same were mere photocopied documents and unsigned by any of respondents' responsible officers.[33] It also observed that respondents added new accounts and/or deleted/omitted certain accounts.[34] Furthermore, it rejected the revised financial projections as the bases for which were not submitted for its evaluation on the ground of confidentiality.[35]

Aggrieved, respondents appealed [36] to the CA, with prayer for the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction (WPI), docketed as CA-G.R. SP No. 122836.

The Proceedings Before the CA

In a Resolution dated January 24, 2012, the CA issued a TRO[37] so as not to render moot and academic the case before it in view of PDB's pending *Ex-Parte* Petition for Issuance of a Writ of Possession over the subject properties before the RTC of Biñan, Laguna, docketed as LRC Case No. B-5141.[38] Thereafter, the CA issued a WPI[39] on March 22, 2012.

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[31] See Reports of Independent Auditors both dated April 27, 2010 for Fastech Synergy and Fastech Electronique, respectively; *rollo*, Vol. I, p. 485; and *rollo*, Vol. II, p. 542.

[32] *Rollo*, Vol. II, p. 782.

[33] *Id.* at 783.

[34] *Id.* at 782.

[35] *Id.* at 783.

[36] See *rollo*, Vol. I, pp. 57-140.

[37] See *rollo*, Vol. II, pp. 817-819. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Rebecca De Guia-Salvador and Rodil V. Zalameda concurring.

[38] *Id.* at 818. See also *id.* at 785-790.

On April 30, 2012, the court-appointed Rehabilitation Receiver submitted a manifestation[40] before the CA, maintaining that the rehabilitation of respondents is viable since the financial projections and procedures set forth to accomplish the goals in their Rehabilitation Plan are attainable.[41]

After the creditors and respondents had filed their respective comments and reply to the manifestation, the CA rendered a Decision[42] dated September 28, 2012 (September 28, 2012 Decision), reversing and setting aside the RTC-Makati ruling.[43] It ruled that the RTC-Makati grievously erred in disregarding the report/opinion of the Rehabilitation Receiver that respondents may be successfully rehabilitated, despite being highly qualified to make an opinion on accounting in relation to rehabilitation matters.[44] It likewise observed that the RTC-Makati failed to distinguish the difference between an adverse or negative opinion and a disclaimer or when an auditor cannot formulate an opinion with exactitude for lack of sufficient data.[45] Finally, the CA declared that the Rehabilitation Plan is feasible and should be approved, finding that respondents would be able to meet their obligations to their creditors within their operating cash profits and other assets without disrupting their business operations, which will be beneficial to their creditors, employees, stockholders, and the economy.[46]

Accordingly, the CA reinstated the rehabilitation petition, approved respondents' Rehabilitation Plan, and remanded the

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[39] See *id.* at 898-900. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Hakim S. Abdulwahid and Rodil V. Zalameda concurring.

[40] Not attached in the records of this case.

[41] See *rollo*, Vol. I, pp. 39-40.

[42] *Id.* at 33-56.

[43] *Id.* at 55.

[44] *Id.* at 50-51.

[45] *Id.* at 52.

[46] *Id.* at 53-55.

case to the RTC-Makati to supervise its implementation. Considering that respondents' creditors are placed in equal footing as a necessary consequence, it permanently enjoined PDB from "effecting the foreclosure" of the subject properties during the implementation of the Rehabilitation Plan.[47]

Dissatisfied, PDB filed a motion for reconsideration[48] which was, however, denied in a Resolution[49] dated March 5, 2013 (March 5, 2013 Resolution).

In the interim, DivinaLaw entered[50] its appearance as the new lead counsel of PDB, in collaboration[51] and with the conformity of its counsel of record, Janda Asia & Associates.[52] On April 3, 2013, DivinaLaw, on behalf of petitioner Philippine Asset Growth Two, Inc. (PAGTI), filed a Motion for Substitution of Parties (motion for substitution),[53] averring that PAGTI had acquired PDB's claims and interests in the instant case, hence, should be substituted as a party therein.

The Proceedings Before the Court

On April 18, 2013, PAGTI and PDB (petitioners), represented by DivinaLaw, filed the instant petition, claiming that PDB received a copy of the March 5, 2013 Resolution on April 3, 2013.[54]

On July 10, 2013, respondents filed their Urgent Motion to Dismiss Petition for Review on *Certiorari* for Being Filed Out

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

[48] Dated October 24, 2012. *Id.* at 150-164.

[49] *Id.* at 147-149.

[50] See Entry of Appearance dated February 13, 2013; *rollo*, Vol. III, pp. 1011-1013.

[51] *Id.* at 1011.

[52] *Id.* at 1020.

[53] Dated April 1, 2013. *Rollo*, Vol. II, pp. 901-904.

[54] See *rollo*, Vol. I, p. 14.

of Time[55] (urgent motion), positing that contrary to petitioners' claim that PDB received notice of the March 5, 2013 Resolution on April 3, 2013, its counsel, Janda Asia & Associates, already received a copy of the said resolution on March 12, 2013. Thus, petitioners only had until March 27, 2013 to file a petition for review on *certiorari* before the Court, and the petition filed on April 18, 2013 was filed out of time.[56]

Meanwhile, the Court required respondents to file their comment[57] to the petition, and subsequently directed petitioners to submit their comment on respondents' urgent motion, and reply to the latter's comment.[58]

In their Comment,[59] respondents prayed for the dismissal of the petition and reiterated their stand that the same was filed out of time, arguing that the receipt of the March 5, 2013 Resolution on March 12, 2013 by Janda Asia & Associates, which remained as collaborating counsel of PDB, binds petitioners and started the running of the fifteen (15)-day period within which to file a petition for review on *certiorari* before the Court. Thus, the petition filed on April 18, 2013 was filed beyond the reglementary period.[60] Respondents likewise maintained the viability of the rehabilitation plan, which will benefit not only their employees, but their stockholders, creditors, and the general public.[61]

For their part, petitioners contended[62] that: (*a*) the date of receipt of petitioners' lead counsel, *i.e.*, DivinaLaw's receipt

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[55] Dated July 9, 2013. *Rollo*, Vol. III, pp. 999-1008.

[56] *Id.* at 1004. See also Certification dated June 27, 2013 issued by the Philippine Postal Corporation, National Capital Region; *id.* at 1010.

[57] See Resolution dated June 3, 2013; *rollo*, Vol. II, pp. 997-998.

[58] See Resolution dated September 25, 2013; *rollo*, Vol. III, pp. 1202-1202-A.

[59] *Id.* at 1063-1103. Dated August 15, 2013.

[60] *Id.* at 1065-1066.

[61] See *id.* at 1078-1080.

[62] See petitioners' Consolidated Comment on the Motion to Dismiss

of the March 5, 2013 Resolution, should be the reckoning point of the fifteen (15)-day period within which to file the instant petition, since only the lead counsel is entitled to service of court processes,[63] citing the case of *Home Guaranty Corporation v. R-II Builders, Inc.*;[64] and (*b*) the CA erred in not upholding the dismissal of the rehabilitation petition despite the insufficiency of the Rehabilitation Plan which was based on financial statements that contained misleading statements, and financial projections that are mere unfounded assumptions/speculations.[65]

Thereafter, respondents filed a Manifestation and Update (Re: Compliance to [the CA] Decision dated September 28, 2012)[66] before the Court, stating that it had achieved the EBITDA[67] requirement of the Rehabilitation Plan and made quarterly payments in favor of the bank and non-bank creditors from December 28, 2014 to September 28, 2015, totalling ₱27,119,481.79.[68] However, the amount of ₱8,364,836.53 in favor of PDB was not accepted, and is being held by respondents.[69]

The Issues Before the Court

The essential issues for the Court's resolution are: (*a*) whether or not the petition for review on *certiorari* was timely filed; and (*b*) the Rehabilitation Plan is feasible.

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and Reply to Respondents' Comment dated 15 August 2013; *id.* at 1203-1210.

[63] *Id.* at 1204.

[64] 667 Phil. 781, 792 (2011).

[65] See *rollo*, Vol. III, pp. 1205-1208.

[66] Dated December 1, 2015. *Id.* at 1270-1274.

[67] *I.e.*, earnings before interest, taxes, depreciation, and amortization.

[68] See *rollo*, Vol. III, p. 1277.

Total payments due under the Rehabilitation Plan	₱35,484,318.32
Less: Payments not accepted by PDB	(8,364,836.53)
Total payments made	₱27,119,491.79

[69] See *id.* at 1271.

The Court's Ruling

I.

The Court first resolves the procedural issue anent the timeliness of the petition's filing.

It is a long-standing doctrine that where a party is represented by several counsels, notice to one is sufficient, and binds the said party.[70] Notice to any one of the several counsels on record is equivalent to notice to all, and such notice starts the running of the period to appeal notwithstanding that the other counsel on record has not received a copy of the decision or resolution.[71]

In the present case, PDB was represented by both Janda Asia & Associates and DivinaLaw. It was not disputed that Janda Asia & Associates, which remained a counsel of record, albeit, as collaborating counsel, received notice of the CA's March 5, 2013 Resolution on March 12, 2013. As such, it is from this date, and not from DivinaLaw's receipt of the notice of said resolution on April 3, 2013 that the fifteen (15)-day period[72] to file the petition for review on *certiorari* before the Court started to run. Hence, petitioners only had until March 27, 2013 to file a petition for review on certiorari before the Court, and the petition filed on April 18, 2013 was filed out of time. Notably, there is no showing that the CA had already resolved PAGTI's motion for substitution;[73] hence, it remained bound by the proceedings and the judgment rendered against its transferor, PDB.

Generally, the failure to perfect an appeal in the manner and within the period provided for by law renders the decision appealed

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[70] See *National Power Corporation v. Sps. Laohoo*, 611 Phil. 194, 212-213 (2009).

[71] *Philippine Ports Authority v. Sargasso Construction & Development Corp.*, 479 Phil. 428, 438 (2004), citing *Albano v. CA*, 415 Phil. 76, 85 (2001).

[72] See Section 2, Rule 45 of the Rules of Court.

[73] The motion for substitution was only filed on April 3, 2013; see *rollo*, Vol. II, p. 901.

from final and executory,[74] and beyond the competence of the Court to review. However, the Court has repeatedly relaxed this procedural rule in the higher interest of substantial justice. In *Barnes v. Padilla*,[75] it was held that:

> [A] final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.
>
> However, this Court has relaxed this rule in order to serve substantial justice[,] considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.[76]

After a meticulous scrutiny of this case, the Court finds that the unjustified rehabilitation of respondents, by virtue of the CA ruling if so allowed to prevail, warrants the relaxation of the procedural rule violated by petitioners in the higher interest of substantial justice. The reasons therefor are hereunder explained.

II.

Rehabilitation is statutorily defined under Republic Act No. 10142, [77] otherwise known as the "Financial Rehabilitation and Insolvency Act of 2010" (FRIA), as follows:

> Section 4. *Definition of Terms*. — As used in this Act, the term:

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[74] See *Go v. BPI Finance Corporation*, 712 Phil. 579, 586 (2013).

[75] 482 Phil. 903 (2004).

[76] *Id.* at 915.

[77] Entitled "AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF FINANCIALLY DISTRESSED ENTERPRISES AND INDIVIDUALS," lapsed into law on July 18, 2010 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution.

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(gg) *Rehabilitation* shall refer to the **restoration of the debtor to a condition of successful operation and solvency**, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated. (Emphasis supplied)

Case law explains that corporate rehabilitation contemplates a continuance of corporate life and activities in an effort **to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.**[78] Thus, the basic issues in rehabilitation proceedings concern the viability and desirability of continuing the business operations of the distressed corporation,[79] all with a view of effectively restoring it to a state of solvency or to its former healthy financial condition through the adoption of a rehabilitation plan.

III.

In the present case, however, the Rehabilitation Plan failed to comply with the minimum requirements, *i.e.*: (*a*) material financial commitments to support the rehabilitation plan; and (b) a proper liquidation analysis, under Section 18, Rule 3 of the 2008 Rules of Procedure on Corporate Rehabilitation[80] (Rules), which Rules were in force at the time respondents' rehabilitation petition was filed on April 8, 2011:

Section 18. *Rehabilitation Plan.* — The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its

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[78] See *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, G.R. No. 205469, March 25, 2015, 754 SCRA 493, 504-505; emphasis and underscoring in the original.

[79] See Section 31 of the FRIA.

[80] See A.M. No. 00-8-10-SC (January 16, 2009).

implementation, giving due regard to the interests of secured creditors such as, but not limited, to the non-impairment of their security liens or interests; (c) **the material financial commitments to support the rehabilitation plan**; (d) the means for the execution of the rehabilitation plan, which may include debt to equity conversion, restructuring of the debts, *dacion en pago* or sale or exchange or any disposition of assets or of the interest of shareholders, partners or members; (e) **a liquidation analysis setting out for each creditor that the present value of payments it would receive under the plan is more than that which it would receive if the assets of the debtor were sold by a liquidator within a six-month period from the estimated date of filing of the petition**; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan. (Emphases supplied)

The Court expounds.

A. Lack of Material Financial Commitment to Support the Rehabilitation Plan.

A material financial commitment becomes significant in gauging the resolve, determination, earnestness, and good faith of the distressed corporation in financing the proposed rehabilitation plan. This commitment may include the **voluntary undertakings** of the stockholders or the would-be investors of the debtor-corporation indicating their readiness, willingness, and ability to contribute funds or property **to guarantee the continued successful operation of the debtor-corporation during the period of rehabilitation.**[81]

In this case, respondents' Chief Operating Officer, Primo D. Mateo, Jr., in his executed Affidavit of General Financial Condition[82] dated April 8, 2011, averred that respondents will not require the infusion of additional capital as he, instead, proposed to have all accrued penalties, charges, and interests waived, and a reduced interest rate prospectively applied to all

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[81] See *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, *supra* note 78, at 509; emphases and underscoring in the original.

[82] *Rollo*, Vol. II, pp. 603-616.

respondents' obligations, in addition to the implementation of a two (2)-year grace period.[83] Thus, there appears to be no concrete plan to build on respondents' beleaguered financial position through substantial investments as the plan for rehabilitation appears to be pegged merely on financial reprieves. Anathema to the true purpose of rehabilitation, a distressed corporation cannot be restored to its former position of successful operation and regain solvency by the sole strategy of delaying payments/waiving accrued interests and penalties at the expense of the creditors.

The Court also notes that while respondents have substantial total assets, a large portion of the assets of Fastech Synergy[84] and Fastech Properties[85] is comprised of noncurrent

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[83] *Id.* at 613.

[84] Fastech Synergy's Separate Statements of Financial Position (Expressed in U.S. Dollars) for the Years Ending December 31, 2008 and December 31, 2009 provide the following data:

	Note	December 31 2009	2008
ASSETS			
Current Assets			
Cash		$2,402	$3,292
Receivables-net	*4*	40,155	40,565
Prepaid expenses and other current assets		2,520	3,027
Total Current Assets		45,077	46,884
Noncurrent Assets			
Advances to affiliates	*5*	3,069,825	3,146,195
Investment in a subsidiary	*6*	26,553,277	26,553,277
Total Noncurrent Assets		26,623,102	26,699,472
		$26,668,179	$26,746,356

(see *rollo*, Vol. I, p. 486).

[85] Fastech Properties's Statements of Financial Position (Expressed in U.S. Dollars) for the Years Ending December 31, 2008 and December 31, 2009 provides the following data:

	Note	December 31 2009	2008
ASSETS			
Current Assets			
Cash		$7,413	$8,203
Receivables	*5*	30,245	33,292
Advances to related parties — net	*11*	27,441	-
Other current assets		11,296	13,785
Total Current Assets		76,395	55,280

assets,[86] such as advances to affiliates which include Fastech Microassembly,[87] and investment properties which form part of the common assets of Fastech Properties, Fastech Electronique, and Fastech Microassembly.[88] Moreover, while there is a claim that *unnamed* customers have made investments by way of consigning production equipment, and advancing money to fund procurement of various equipment intended to increase production capacity,[89] this can hardly be construed as a material financial commitment which would inspire confidence that the rehabilitation would turn out to be successful. Case law holds that nothing short of legally binding investment commitment/s from third parties is required to qualify as a material financial commitment.[90] Here, no such binding investment was presented.

B. Lack of Liquidation Analysis.

Respondents likewise failed to include any liquidation analysis in their Rehabilitation Plan. The total liquidation assets and the estimated liquidation return to the creditors, as well as the fair market value vis-à-vis the forced liquidation value of the fixed assets were not shown. As such, the Court could not ascertain if the petitioning debtor's creditors can recover by way of the present value of payments projected in the plan, more if the

Noncurrent Assets			
Investment properties — net	*6*	6,819,369	7,332,479
Office furniture, fixture and equipment — net	*7*	72,023	87,222
Other noncurrent assets	*8*	267,313	259,888
Total Noncurrent Assets		7,158,705	7,679,589
		$7,235,100	$7,734,869

(see *rollo*, Vol. II, p. 577).

[86] Pertinent to this case, it has been opined by one accountant that "[i]f a company has a high proportion of noncurrent to current assets, this can be an indicator of poor liquidity, since a large amount of cash may be needed to support ongoing investments in noncash assets." See <http://www.accountingtools.com/noncurrent-asset> (visited May 20, 2016).

[87] *Rollo*, Vol. I, pp. 486 and 500.

[88] See *rollo*, Vol. I, p. 219; and *rollo*, Vol. II, pp. 577 and 593.

[89] See *rollo*, Vol. II, p. 614.

[90] See *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, *supra* note 78, at 510.

debtor continues as a going concern than if it is immediately liquidated. This is a crucial factor in a corporate rehabilitation case, which the CA, unfortunately, failed to address.

C. Effect of Non-Compliance.

The failure of the Rehabilitation Plan to state any material financial commitment to support rehabilitation, as well as to include a liquidation analysis, renders the CA's considerations for approving the same, *i.e.*, that: (*a*) respondents would be able to meet their obligations to their creditors within their operating cash profits and other assets without disrupting their business operations; (*b*) the Rehabilitation Receiver's opinion carries great weight; and (*c*) rehabilitation will be beneficial for respondents' creditors, employees, stockholders, and the economy, [91] as actually unsubstantiated, and hence, insufficient to decree the feasibility of respondents' rehabilitation. It is well to emphasize that the remedy of rehabilitation should be denied to corporations that do not qualify under the Rules. Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors.

Even if the Court were to set aside the failure of the Rehabilitation Plan to comply with the fundamental requisites of material financial commitment to support the rehabilitation and an accompanying liquidation analysis, a review of the financial documents presented by respondents fails to convince the Court of the feasibility of the proposed plan.

IV.

The test in evaluating the economic feasibility of the plan was laid down in *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*[92] (*Bank of the Philippine Islands*), to wit:

> In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that a thorough examination and analysis of the distressed corporation's financial data must be conducted. If

[91] *Rollo*, Vol. I, pp. 53-55.

[92] G.R. No. 175844, July 29, 2013, 702 SCRA 432.

the results of such examination and analysis show that there is a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible. In such case, the rehabilitation court may convert the proceedings into one for liquidation.[93]

In the recent case of *Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc.*,[94] the Court took note of the characteristics of an economically feasible rehabilitation plan as opposed to an infeasible rehabilitation plan:

> Professor Stephanie V. Gomez of the University of the Philippines College of Law suggests specific characteristics of an economically feasible rehabilitation plan:
>
> a. The debtor has assets that can generate more cash if used in its daily operations than if sold.
>
> b. Liquidity issues can be addressed by *a practicable business plan* that will generate enough cash to sustain daily operations.
>
> c. The debtor has a definite source of financing for the proper and full implementation of a Rehabilitation Plan that is anchored on realistic assumptions and goals.
>
> These requirements put emphasis on liquidity: the cash flow that the distressed corporation will obtain from rehabilitating its assets and operations. A corporation's assets may be more than its current liabilities, but some assets may be in the form of land or capital equipment, such as machinery or vessels. Rehabilitation sees to it that these assets generate more value if used efficiently rather than if liquidated.

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[93] *Id.* at 447-448.

[94] See G.R. No. 177382, February 17, 2016.

On the other hand, this court enumerated the characteristics of a rehabilitation plan that is infeasible:

(a) the absence of a sound and workable business plan;

(b) baseless and unexplained assumptions, targets and goals;

(c) speculative capital infusion or complete lack thereof for the execution of the business plan;

(d) cash flow cannot sustain daily operations; and

(e) negative net worth and the assets are near full depreciation or fully depreciated.

In addition to the tests of *economic feasibility*, Professor Stephanie V. Gomez also suggests that the Financial and Rehabilitation and Insolvency Act of 2010 emphasizes on rehabilitation that provides for better *present value recovery* for its creditors.

Present value recovery acknowledges that, in order to pave way for rehabilitation, the creditor will not be paid by the debtor when the credit falls due. The court may order a suspension of payments to set a rehabilitation plan in motion; in the meantime, the creditor remains unpaid. By the time the creditor is paid, the financial and economic conditions will have been changed. Money paid in the past has a different value in the future. It is unfair if the creditor merely receives the face value of the debt. Present value of the credit takes into account the interest that the amount of money would have earned if the creditor were paid on time.

Trial courts must ensure that the projected cash flow from a business' rehabilitation plan allows for the closest present value recovery for its creditors. If the projected cash flow is realistic and allows the corporation to meet all its obligations, then courts should favor rehabilitation over liquidation. However, if the projected cash flow is unrealistic, then courts should consider converting the proceedings into that for liquidation to protect the creditors.[95]

A perusal of the 2009 audited financial statements shows that respondents' cash operating position[96] was not even enough

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[95] *Id.*

[96] "A company's cash position refers specifically to its level of cash

to meet their maturing obligations. Notably, their current assets were materially lower than their current liabilities,[97] and consisted mostly of advances to related parties in the case of Fastech Microassembly, Fastech Electronique, and Fastech Properties.[98] Moreover, the independent auditors recognized the absence of available historical or reliable market information to support the assumptions made by the management to determine the recoverable amount (value in use) of respondents' properties and equipment.[99]

On the other hand, respondents' unaudited financial statements for the year 2010, and the months of February and March 2011 were unaccompanied by any notes or explanation on how the figures were arrived at. Besides, respondents' cash operating position remained insufficient to meet their maturing obligations as their current assets are still substantially lower than their

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compared to its pending expenses and liabilities. . . . . In general, a stable cash position means the company can easily meet its current liabilities with the cash or liquid assets it has on hand. Current liabilities are debts with payments due within the next [twelve (12)] months." (See footnote 54 in *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, *supra* note 78, at 511.)

[97] Respondents' current assets and current liabilities for the Years Ending December 31, 2008 and December 31, 2009 are as follows:

	Fastech Synergy		Fastech Microassembly	
	2009	2008	2009	2008
Total Current Assets	$45,077	46,884	$2,632,581	1,378,610
Total Current Liabilities	15,836,794	15,449,590	13,283,244	10,907,065
	(See *rollo*, Vol. I, p. 486)		(See *rollo*, Vol. II, p. 507)	
	Fastech Electronique		Fastech Properties	
	2009	2008	2009	2008
Total Current Assets	$7,862,531	7,249,329	$76,395	55,280
Total Current Liabilities	18,472,201	17,265,841	760,671	1,749,468
	(See *rollo*, Vol. II, p. 544)		(See *rollo*, Vol. II, p. 577)	

[98] See *rollo*, Vol. II, pp. 507, 544, and 577.

[99] See Reports of Independent Auditors both dated April 27, 2010 for Fastech Synergy and Fastech Electronique, respectively; *rollo*, Vol. I, p. 485; and *rollo*, Vol. II, p. 542.

current liabilities.[100] The Court also notes the RTC-Makati's observation that respondents added new accounts and/or deleted/ omitted certain accounts,[101] but failed to explain or justify the same.

Verily, respondents' Rehabilitation Plan should have shown that they have enough serviceable assets to be able to continue its business operation. In fact, as opposed to this objective, the revised Rehabilitation Plan still requires "front load Capex spending" to replace common equipment and facility equipment to ensure sustainability of capacity and capacity robustness,[102] thus, further sacrificing respondents' cash flow. In addition, the Court is hard-pressed to see the effects of the outcome of the streamlining

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[100] Respondents' current assets and current liabilities for the Years 2009 and 2010, the months of January and February 2011 are as follows:

1. Fastech Synergy

	2009	2010	January 2011	February 2011
Total Current Assets	$45,077	28,079	0,576	27,433
Total Current Liabilities	12,731,18	13,314,174	13,212,364	13,405,650

(see *rollo*, Volume I, p. 469)

2. Fastech Microassembly

	2009	2010	January 2011	February 2011
Total Current Assets	$429,541	658,500	620,424	707,569
Total Current Liabilities	11,200,082	12,006,197	11,823,613	12,016,421

(see *id.* at 472)

3. Fastech Electronique

	2009	2010	January 2011	February 2011
Total Current Assets	$800,834	1,038,679	1,063,228	1,315,983
Total Current Liabilities	11,455,938	11,419,679	11,588,710	11,881,270

(see *id.* at 476)

4. Fastech Properties

	2009	2010	January 2011	February 2011
Total Current Assets	$48,954	102,621	108,702	89,275
Total Current Liabilities	504,457	571,224	471,104	373,247

(see *id.* at 479).

[101] See *rollo*, Vol. II, pp. 782-783.

[102] See *rollo*, Vol. III, p. 1198.

of respondents' manufacturing operations on the carrying value of their existing properties and equipment.

In fine, the Rehabilitation Plan and the financial documents submitted in support thereof fail to show the feasibility of rehabilitating respondents' business.

V.

The CA's reliance on the expertise of the court-appointed Rehabilitation Receiver, who opined that respondents' rehabilitation is viable, in order to justify its finding that the financial statements submitted were reliable, overlooks the fact that the determination of the validity and the approval of the rehabilitation plan is not the responsibility of the rehabilitation receiver, but remains the function of the court. The rehabilitation receiver's duty *prior* to the court's approval of the plan is to study the best way to rehabilitate the debtor, and to ensure that the value of the debtor's properties is reasonably maintained; and *after* approval, to implement the rehabilitation plan.[103] Notwithstanding the credentials of the court-appointed rehabilitation receiver, the duty to determine the feasibility of the rehabilitation of the debtor rests with the court. While the court may consider the receiver's report favorably recommending the debtor's rehabilitation, it is not bound thereby if, in its judgment, the debtor's rehabilitation is not feasible.

The purpose of rehabilitation proceedings is not only to enable the company to gain a new lease on life, but also to allow creditors to be paid their claims from its earnings when so rehabilitated. Hence, the remedy must be accorded only after a judicious regard of all stakeholders' interests; it is not a one-sided tool that may be graciously invoked to escape every position of distress.[104] Thus, the remedy of rehabilitation should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by: (*a*) the absence of a

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[103] See Section 12, Rule 3 of the 2008 Rules.

[104] See *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, *supra* note 78, at 513.

sound and workable business plan; (*b*) baseless and unexplained assumptions, targets, and goals; and (*c*) speculative capital infusion or complete lack thereof for the execution of the business plan,[105] as in this case.

VI.

In view of all the foregoing, the Court is therefore constrained to grant the instant petition, notwithstanding the preliminary technical error as above-discussed. A distressed corporation should not be rehabilitated when the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that it may be revived, to the detriment of its numerous stakeholders which include not only the corporation's creditors but also the public at large. In *Bank of the Philippine Islands*:[106]

> Recognizing the volatile nature of every business, the rules on corporate rehabilitation have been crafted in order to give companies sufficient leeway to deal with debilitating financial predicaments in the hope of restoring or reaching a sustainable operating form if only to best accommodate the various interests of all its stakeholders, may it be the corporation's stockholders, its creditors, and even the general public.[107]

Thus, the higher interest of substantial justice will be better subserved by the reversal of the CA Decision. Since the rehabilitation petition should not have been granted in the first place, it is of no moment that the Rehabilitation Plan is currently under implementation. While payments in accordance with the Rehabilitation Plan were already made, the same were only possible because of the financial reprieves and protracted payment schedule accorded to respondents, which, as above-intimated, only works at the expense of the creditors and ultimately, do not meet the true purpose of rehabilitation.

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[105] *Wonder Book Corporation v. Philippine Bank of Communications*, 691 Phil. 83, 95 (2012).

[106] *Supra* note 92.

[107] *Id.* at 446.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 28, 2012 and the Resolution dated March 5, 2013 of the Court of Appeals in CA-G.R. SP No. 122836 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Joint Petition for corporate rehabilitation filed by respondents Fastech Synergy Philippines, Inc. (formerly First Asia System Technology, Inc.), Fastech Microassembly & Test, Inc., Fastech Electronique, Inc., and Fastech Properties, Inc., before the Regional Trial Court of Makati City, Branch 149 in SP Case No. M-7130 is **DISMISSED.**

SO ORDERED.

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

EN BANC

[G.R. No. 210565. June 28, 2016]

EMMANUEL D. QUINTANAR, BENJAMIN O. DURANO, CECILIO C. DELAVIN, RICARDO G. GABORNI, ROMEL G. GERARMAN, JOEL JOHN P. AGUILAR, RAMIRO T. GAVIOLA, RESTITUTO D. AGSALUD, MARTIN E. CELIS, PATRICIO L. ARIOS, MICHAEL S. BELLO, LORENZO C. QUINLOG, JUNNE G. BLAYA, SANTIAGO B. TOLENTINO, JR., NESTOR A. MAGNAYE, ARNOLD S. POLVORIDO, ALLAN A. AGAPITO, ARIEL E. BAUMBAD, JOSE T. LUTIVA, EDGARDO G. TAPALLA, ROLDAN C. CADAYONA, REYNALDO V. ALBURO, RUDY C. ULTRA, MARCELO R. CABILI, ARNOLD B. ASIATEN, REYMUNDO R. MACABALLUG, JOEL R. DELEÑA, DANILO T. OQUIÑO, GREG B.

CAPARAS and ROMEO T. ESCARTIN, *petitioners, vs.* **COCA-COLA BOTTLERS, PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; CONFINED TO CORRECTING ERRORS OF JUDGMENT ONLY.— [T]he petitioners erred in resorting to this petition for review on *certiorari* under Rule 45 of the Rules of Court and alleging, at the same time, that the CA abused its discretion in rendering the assailed decision. Well-settled is the rule that grave abused of discretion or errors of jurisdiction may be corrected only by the special civil action of *certiorari* under Rule 65. Such corrective remedies do not avail in a petition for review on *certiorari* which is confined to correcting errors of judgment only. Considering that the petitioners have availed of the remedy under Rule 45, recourse to Rule 65 cannot be allowed either as an add-on or as a substitute for appeal.

2. ID.; ID.; ID.; ID.; ONLY ERRORS OF LAW ARE GENERALLY REVIEWED THEREIN, BUT IN EXCEPTIONAL CASES, THE COURT MAY BE URGED TO PROBE AND RESOLVE FACTUAL ISSUES WHEN THERE IS INSUFFICIENT OR INSUBSTANTIAL EVIDENCE TO SUPPORT THE FINDINGS OF THE TRIBUNAL OR THE COURT BELOW, OR WHEN TOO MUCH IS CONCLUDED, INFERRED OR DEDUCED FROM THE BARE OR INCOMPLETE FACTS SUBMITTED BY THE PARTIES OR, WHERE THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION CAME UP WITH CONFLICTING POSITIONS.— [I]t is observed that from a perusal of the petitioners' arguments, it is quite apparent that the petition raises questions of facts, inasmuch as this Court is being asked to revisit and assess anew the factual findings of the CA and the NLRC. The petitioners fundamentally assail the findings of the CA that the evidence on record did not support their claims for illegal dismissal against Coca-Cola. In effect, they would have the Court sift through, calibrate

and re-examine the credibility and probative value of the evidence on record so as to ultimately decide whether or not there is sufficient basis to hold the respondents accountable for their alleged illegal dismissal. This clearly involves a factual inquiry, the determination of which is the statutory function of the NLRC. Basic is the rule that the Court is not a trier of facts and this doctrine applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. Only errors of law are generally reviewed in petitions for review on *certiorari* under Rule 45 of the Rules of Court. In exceptional cases, however, the Court may be urged to probe and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or the court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties or, where the LA and the NLRC came up with conflicting positions. In this case, considering the conflicting findings of the LA and the NLRC on one hand, and the CA on the other, the Court is compelled to resolve the factual issues along with the legal ones.

3. LABOR AND SOCIAL LEGISLATION; LABOR CODE; REGULAR EMPLOYMENT; ROUTE-HELPERS ARE NOT TEMPORARY WORKERS OF RESPONDENT COCA-COLA BUT ARE CONSIDERED REGULAR EMPLOYEES THEREOF ENTITLED TO SECURITY OF TENURE, FOR THEY ARE PERFORMING FUNCTIONS WHICH ARE NECESSARY AND DESIRABLE IN THE USUAL BUSINESS OR TRADE OF RESPONDENT COCA-COLA.— Contrary to the position taken by the Coca-Cola, it cannot be said that route-helpers, such as the petitioners no longer enjoy the employee-employer relationship they had with Coca-Cola since they became employees of Interserve. A cursory review of the jurisprudence regarding this matter reveals that the controversy regarding the characterization of the relationship between route-helpers and Coca-Cola is no longer a novel one. x x x. [I]n 2008, in *Pacquing v. Coca-Cola Philippines, Inc. (Pacquing)*, the Court applied the ruling in *Magsalin* under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled). It was stressed therein that because the petitioners, as route helpers,

were performing the same functions as the employees in *Magsalin*, which were necessary and desirable in the usual business or trade of Coca-Cola Philippines, Inc., they were considered regular employees of Coca-Cola entitled to security of tenure. x x x The Court once more asserted the findings that route-helpers were indeed employees of Coca-Cola in *Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz* x x x. From all these, a pattern emerges by which Coca-Cola consistently resorts to various methods in order to deny its route-helpers the benefits of regular employment. Despite this, the Court, consistent with sound pronouncements above, adopts the rulings made in *Pacquing* that Interserve was a labor-only contractor and the Coca-Cola should be held liable pursuant to the principle of *stare decisis et non quieta movere.*

4. CIVIL LAW; CIVIL CODE OF THE PHILIPPINES; DOCTRINE OF STARE DECISIS ET NON QUIETA MOVERE; ENJOINS ADHERENCE TO JUDICIAL PRECEDENTS, AND ABANDONMENT THEREOF MUST BE BASED ONLY ON STRONG AND COMPELLING REASONS; OTHERWISE, THE BECOMING VIRTUE OF PREDICTABILITY WHICH IS EXPECTED FROM THE COURT WOULD BE IMMEASURABLY AFFECTED AND THE PUBLIC'S CONFIDENCE IN THE STABILITY OF THE SOLEMN PRONOUNCEMENTS DIMINISHED.— It should be remembered that the doctrine of *stare decisis et non quieta movere* is embodied in Article 8 of the Civil Code of the Philippines x x x. And, as explained in *Fermin v. People:* The doctrine of *stare decisis* enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. x x x. Verily, the doctrine has assumed such value in our judicial system that the Court has ruled that "**[a]bandonment thereof must be based only on strong and compelling reasons**, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished." Thus, only upon

showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting it aside. In this case, Coca-Cola has not shown any strong and compelling reason to convince the Court that the doctrine of *stare decisis* should not be applied. It failed to successfully demonstrate how or why both the LA and the NLRC committed grave abuse of discretion in sustaining the pleas of the petitioners that they were its regular employees and not of Interserve.

5. LABOR AND SOCIAL LEGISLATION; LABOR CODE; "LABOR-ONLY CONTRACTING"; "PERFORMING ACTIVITIES DIRECTLY RELATED TO THE PRINCIPAL BUSINESS OF THE EMPLOYER" AND "LACK OF SUBSTANTIAL CAPITAL OR INVESTMENT" ARE THE INDICATORS THAT "LABOR-ONLY" CONTRACTING EXISTS.— As to the characterization of Interserve as a contractor, the Court finds that, contrary to the conclusion reached by the CA, the petitioners were made to suffer under the prohibited practice of labor-only contracting. Article 106 of the Labor Code provides the definition of what constitutes labor-only contracting. Expounding on the concept, the Court in *Agito* explained: The law clearly establishes an employer-employee relationship between the principal employer and the contractor's employee upon a finding that the contractor is engaged in "labor-only" contracting. Article 106 of the Labor Code categorically states: "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 persons are performing activities which are directly related to the principal business of such employer." **Thus, performing activities directly related to the principal business of the employer is only one of the two indicators that "labor-only" contracting exists; the other is lack of substantial capital or investment.** The Court finds that both indicators exist in the case at bar.

6. ID.; ID.; ID.; ID.; NO ABSOLUTE FIGURE IS SET FOR WHAT IS CONSIDERED 'SUBSTANTIAL CAPITAL' BECAUSE THE SAME IS MEASURED AGAINST THE

TYPE OF WORK WHICH THE CONTRACTOR IS OBLIGATED TO PERFORM FOR THE PRINCIPAL.— In this case, the appellate court considered the evidence of Interserve that it was registered with the DOLE as independent contractor and that it had a total capitalization of ₱27,509,716.32 and machineries and equipment worth ₱12,538,859.55. As stated above, however, **the possession of substantial capital is only one element**. Labor-only contracting exists when *any* of the two elements is present. Thus, even if the Court would indulge Coca-Cola and admit that Interserve had more than sufficient capital or investment in the form of tools, equipment, machineries, work premises, *still*, it cannot be denied that the petitioners were performing activities which were directly related to the principal business of such employer. Also, it has been ruled that no absolute figure is set for what is considered 'substantial capital' because the same is measured against the type of work which the contractor is obligated to perform for the principal.

7. ID.; ID.; ID.; ID.; THE CONTRACTOR, NOT THE EMPLOYEE, HAS THE BURDEN OF PROOF THAT IT HAS THE SUBSTANTIAL CAPITAL, INVESTMENT, AND TOOL TO ENGAGE IN JOB CONTRACTING.— [E]ven if Interserve were to be considered as a legitimate job contractor, Coca-Cola failed to rebut the allegation that petitioners were transferred from being its employees to become the employees of ISI, Lipercon, PSI, and ROMAC, which were labor-only contractors. Well-settled is the rule that "[t]he contractor, not the employee, has the burden of proof that it has the substantial capital, investment, and tool to engage in job contracting." In this case, the said burden of proof lies with Coca-Cola although it was not the contractor itself, but it was the one invoking the supposed status of these entities as independent job contractors.

8. ID.; ID.; TERMINATION OF EMPLOYMENT; IN ILLEGAL DISMISSAL CASES, THE BURDEN OF PROOF IS UPON THE EMPLOYER TO SHOW THAT THE EMPLOYEES' TERMINATION FROM SERVICE IS FOR A JUST AND VALID CAUSE; AS THE EMPLOYER'S CASE SUCCEEDS OR FAILS ON THE STRENGTH OF ITS EVIDENCE AND NOT THE WEAKNESS OF THAT ADDUCED BY THE EMPLOYEE.— [E]ven granting that the petitioners were last

employed by Interserve, the record is bereft of any evidence that would show that the petitioners voluntarily resigned from their employment with Coca-Cola only to be later hired by Interserve. Other than insisting that the petitioners were last employed by Interserve, Coca-Cola failed not only to show by convincing evidence how it severed its employer relationship with the petitioners, but also to prove that the termination of its relationship with them was made through any of the grounds sanctioned by law. The rule is long and well-settled that, in illegal dismissal cases such as the one at bench, the burden of proof is upon the employer to show that the employees' termination from service is for a just and valid cause. The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee, in keeping with the principle that the scales of justice must be titled in favor of the latter in case doubts exist over the evidence presented by the parties. For failure to overcome this burden, the Court concurs in the observation of the LA that it was highly inconceivable for the petitioners, who were already enjoying a stable job at a multi-national company, to leave and become mere agency workers. Indeed, it is contrary to human experience that one would leave a stable employment in a company like Coca-Cola, only to become a worker of an agency like Interserve, and be assigned back to his original employer – Coca-Cola.

APPEARANCES OF COUNSEL

Legal Advocates for Worker's Interest and *Angara Abello Concepcion Regala & Cruz* for petitioners.

D E C I S I O N

MENDOZA, *J.*:

At bench is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the July 11, 2013 Decision[1] and

[1] Penned by Associate Justice Edwin D. Sorongon with Associate Justices Hakim S. Abdulwahid (now retired) and Marlene Gonzales-Sison, concurring; *rollo*, pp. 1730-1753.

the December 5, 2013 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 115469, which reversed and set aside the March 25, 2010 Decision[3] and the May 28, 2010 Resolution[4] of the National Labor Relations Commission (*NLRC*), affirming the August 29, 2008 Decision of the Labor Arbiter (*LA*), in a case for illegal dismissal, damages and attorney's fees filed by the petitioners against respondent Coca-Cola Bottlers Philippines, Inc. (*Coca-Cola*).

The gist of the subject controversy, as narrated by the LA and adopted by the NLRC and the CA, is as follows:

> Complainants allege that they are former employees directly hired by respondent Coca-Cola on different dates from 1984 up to 2000, assigned as regular Route Helpers under the direct supervision of the Route Sales Supervisors. Their duties consist of distributing bottled Coca-Cola products to the stores and customers in their assigned areas/routes, and they were paid salaries and commissions at the average of ₱3,000.00 per month. After working for quite sometime as directly-hired employees of Coca-Cola, complainants were allegedly transferred successively as agency workers to the following manpower agencies, namely, Lipercon Services, Inc., People's Services, Inc., ROMAC, and the latest being respondent Interserve Management and Manpower Resources, Inc.
>
> Further, complainants allege that the Department of Labor and Employment (DOLE) conducted an inspection of Coca-Cola to determine whether it is complying with the various mandated labor standards, and relative thereto, they were declared to be regular employees of Coca-Cola, which was held liable to pay complainants the underpayment of their 13th month pay, emergency cost of living allowance (ECOLA), and other claims. As soon as respondents learned of the filing of the claims with DOLE, they were dismissed on various dates in January 2004. Their claims were later settled by the respondent company, but the settlement allegedly did not include the issues on reinstatement and payment of CBA benefits. Thus, on November 10, 2006, they filed their complaint for illegal dismissal.

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[2] *Id.* at 1843-1845.

[3] *Id.* at 726-743. Penned by Commissioner Nieves E. Vivar-de Castro.

[4] *Id.* at 552-559. Penned by Labor Arbiter Jose G. De Vera, concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Isabel C. Panganiban-Ortiquerra.

In support of their argument that they were regular employees of Coca-Cola, the complainants relied on the pronouncement of the Supreme Court in the case of *CCBPI vs. NOWM*, G.R. No. 176024, June 18, 2007, as follows:

> "In the case at bar, individual complainants were directly hired by respondent Coca-Cola as Route Helpers. They assist in the loading and unloading of softdrinks. As such they were paid by respondent Coca-Cola their respective salaries plus commission. It is of common knowledge in the sales of softdrinks that salesmen are not alone in making a truckload of softdrinks for delivery to customers. Salesmen are usually provided with route helpers or utility men who does the loading and unloading. The engagement of the individual complainants to such activity is usually necessary in the usual business of respondent Coca-Cola.
>
> Contrary to the Labor Arbiter's conclusion that respondent Coca-Cola is engaged solely in the manufacturing is erroneous as it is also engaged in the sales of the softdrinks it manufactured.
>
> Moreover, having been engaged to perform, such activity for more than a year all the more bolsters individual complainants' status as regular employees notwithstanding the contract, oral or written, or even if their employment was subsequently relegated to a labor contractor."

Respondent Coca-Cola denies employer-employee relationship with the complainants pointing to respondent Interserve with whom it has a service agreement as the complainants' employer. As alleged independent service contractor of respondent Coca-Cola, respondent Interserve "is engaged in the business of rendering substitute or reliever delivery services to its own clients and for CCBPI in particular, the delivery of CCBPI's softdrinks and beverage products." It is allegedly free from the control and direction of CCBPI in all matters connected with the performance of the work, except as to the results thereof, pursuant to the service agreement. Moreover, respondent Interserve is allegedly highly capitalized with a total of ₱21,658,220.26 and with total assets of ₱27,509,716.32.

Further, respondent Coca-Cola argued that all elements of employer-employee relationship exist between respondent Interserve and the complainants. It was allegedly Interserve which solely selected and engaged the services of the complainants, which paid the latter

their salaries, which was responsible with respect to the imposition of appropriate disciplinary sanctions against its erring employees, including the complainants, without any participation from Coca-Cola, which personally monitors the route helpers' performance of their delivery services pointing to Noel Sambilay as the Interserve Coordinator. Expounding on the power of control, respondent Coca-Cola vigorously argued that:

> "12. According to Mr. Sambilay, he designates who among the route helpers, such as complainants herein, will be assigned for each of the delivery trucks. Based on the route helpers' performance and rapport with the truck driver and the other route helpers, he groups together a team of three (3) to five (5) route helpers to undertake the loading and unloading of the softdrink products to the delivery trucks and to their designated delivery point. It is his exclusive discretion to determine who among the route helpers will be grouped together to comprise an effective team to render the most efficient delivery service of CCBPI's products.
>
> "13. Similarly, it is Interserve, through Mr. Sambilay, who takes charge of monitoring the attendance of the route helpers employed by Interserve. At the start of the working day, Mr. Sambilay would position himself at the gate of the CCBPI premises to check the attendance of the route helpers. He also maintains a logbook to record the time route helpers appear for work. In case a route helper is unable to report for duty, Mr. Sambilay reassigns another route helper to take his place."

On its part, respondent Interserve merely filed its position paper, pertaining only to complainants Quintanar and Cabili totally ignoring all the other twenty-eight (28) complainants. It maintains that it is a legitimate job contractor duly registered as such and it undertakes to perform utility, janitorial, packaging, and assist in transporting services by hiring drivers. Complainants Quintanar and Cabili were allegedly hired as clerks who were assigned to CCBPI Mendiola Office, under the supervision of Interserve supervisors. Respondent Coca-Cola does not allegedly interfere with the manner and the methods of the complainants' performance at work as long as the desired results are achieved. While admitting employer-employee relationship with the complainants, nonetheless, respondent Interserve avers that complainants are not its regular employees as they were allegedly mere contractual workers whose employment depends on

the service contracts with the clients and the moment the latter sever said contracts, respondent has allegedly no choice but to either deploy the complainants to other principals, and if the latter are unavailable, respondent cannot allegedly be compelled to retain them.[5]

The Decision of the LA

On August 29, 2008, the LA rendered its decision granting the prayer in the complaint. In its assessment, the LA explained that the documentary evidence submitted by both parties confirmed the petitioners' allegation that they had been working for Coca-Cola for quite some time. It also noted that Coca-Cola never disputed the petitioners' contention that after working for Coca-Cola through the years, they were transferred to the various service contractors engaged by it, namely, Interim Services, Inc. (*ISI*), Lipercon Services, Inc. (*Lipercon*), People Services, Inc. (*PSI*), ROMAC, and lastly, Interserve Management and Manpower Resources, Inc. (Interserve). In view of said facts, the LA concluded that the petitioners were simply employees of Coca-Cola who were "seconded" to Interserve.[6]

The LA opined that it was highly inconceivable for the petitioners, who were already enjoying a stable job at a multi-national company, to leave and become mere agency workers. He dismissed the contention of Coca-Cola that the petitioners were employees of Interserve, stressing that they enjoyed the constitutional right to security of tenure which Coca-Cola could not compromise by entering into a service agreement manpower supply contractors, make petitioners sign employment contracts with them, and convert their employment status from regular to contractual.[7]

Ultimately, the LA ordered Coca-Cola to reinstate the petitioners to their former positions and to pay their full backwages.[8] The dispositive portion of the decision reads:

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[5] *Id.* at 553-555.

[6] *Id.* at 556-557.

[7] *Id.* at 557.

[8] *Id.* at 559.

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering respondent Coca-Cola Bottlers Phils., Inc. to reinstate complainants to their former or substantially equivalent positions, and to pay their full backwages which as of August 29, 2008 already amounts to ₱15,319,005.00, without prejudice to recomputation upon subsequent determination of the applicable salary rates and benefits due a regular route helper or substantially equivalent position on the plantilla of respondent CCBPI.

SO ORDERED.[9]

The Decision of the NLRC

Similar to the conclusion reached by the LA, the NLRC found that the petitioners were regular employees of Coca-Cola. In its decision, dated March 25, 2010, it found that the relationship between the parties in the controversy bore a striking similarity with the facts in the cases of *Coca-Cola Bottlers Philippines, Inc. v. National Organization of Workingmen*[10] (*N.O.W.*) and *Magsalin v. National Organization of Workingmen* (*Magsalin*).[11] The NLRC, thus, echoed the rulings of the Court in the said cases which found the employees involved, like the petitioners in this case, as regular employees of Coca-Cola. It stated that the entities ISI, Lipercon, PSI, ROMAC, and Interserve simply "played to feign that status of an employer so that its alleged principal would be free from any liabilities and responsibilities to its employees."[12] As far as it is concerned, Coca-Cola failed to provide evidence that would place the subject controversy on a different plane from *N.O.W.* and *Magsalin* as to warrant a deviation from the rulings made therein.

As for the quitclaims executed by the petitioners, the NLRC held that the same could not be used by Coca-Cola to shield it from liability. The NLRC noted the Minutes of the National

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[9] *Id.*

[10] Docketed as G.R. 176024; Disposed by the Court via Minute Resolution, dated June 18, 2007; *id.* at 531-532. See also Minute Resolutions, *id.* at 547-548.

[11] 451 Phil. 254 (2003).

[12] *Id.* at 736-737.

Conciliation and Mediation Board (*NCMB*) which stated that the petitioners agreed to settle their claims with Coca-Cola only with respect to their claims for violation of labor standards law, and that their claims for illegal dismissal would be submitted to the NLRC for arbitration.[13]

Coca-Cola sought reconsideration of the NLRC decision but its motion was denied.[14]

The Decision of the CA

Reversing the findings of the LA and the NLRC, the CA opined that the petitioners were not employees of Coca-Cola but of Interserve. In its decision, the appellate court agreed with the contention of Coca-Cola that it was Interserve who exercised the power of selection and engagement over the petitioners considering that the latter applied for their jobs and went through the pre-employment processes of Interserve. It noted that the petitioners' contracts of employment and personal data sheets, which were filed with Interserve, categorically stipulated that Interserve had the sole power to assign them temporarily as relievers for absent employees of their clients. The CA also noted that the petitioners had been working for other agencies before they were hired by Interserve.[15]

The CA also gave credence to the position of Coca-Cola that it was Interserve who paid the petitioners' salaries. This, coupled with the CA's finding that Coca-Cola paid Interserve for the services rendered by the petitioners whenever they substituted for the regular employees of Coca-Cola, led the CA to conclude that it was Interserve who exercised the power of paying the petitioners' wages.

The CA then took into consideration Interserve's admission that they had to sever the petitioners' from their contractual employment because its contract with Coca-Cola expired and

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[13] *Id.* at 741-742.

[14] *Id.* at 778-779.

[15] *Id.* at 1745-1746.

there was no demand for relievers from its other clients. The CA equated this with Interserve's exercise of its power to fire the petitioners.[16]

Finally, the CA was of the considered view that it was Interserve which exercised the power of control. Citing the Affidavit[17] of Noel F. Sambilay (*Sambilay*), Coordinator of Interserve, the CA noted that Interserve exercised the power of control, monitoring the petitioners' attendance, providing them with their assignments to the delivery trucks of Coca-Cola, and making sure that they were able to make their deliveries.[18]

The CA then went on to conclude that Interserve was a legitimate independent contractor. It noted that the said agency was registered with the Department of Labor and Employment (DOLE) as an independent contractor which had provided delivery services for other beverage products of its clients, and had shown that it had substantial capitalization and owned properties and equipment that were used in the conduct of its business operations. The CA was, thus, convinced that Interserve ran its own business, separate and distinct from Coca-Cola.[19]

The petitioners sought reconsideration, but they were rebuffed.[20]

Hence, this petition, raising the following:

GROUNDS FOR THE PETITION/ ASSIGNMENT OF ERRORS

THE COURT OF APPEALS IS GUILTY OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN:

I.

RENDERING A DECISION THAT IS CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE

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[16] *Id.* at 1746-1747.

[17] *Id.* at 351-352.

[18] *Id.* at 1747-1748.

[19] *Id.* at 1750-1751.

[20] *Id.* at 1843-1845.

II.

MISAPPRECIATING FACTS WHICH GRAVELY PREJUDICED THE RIGHTS OF THE PETITIONERS.[21]

In their petition for review on *certiorari*, the petitioners ascribed grave abuse of discretion on the part of the CA when it reassessed the evidence and reversed the findings of fact of the LA and the NLRC that ruled in their favor.[22]

The petitioners also claimed that the CA violated the doctrine of *stare decisis* when it ruled that Interserve was a legitimate job contractor. Citing *Coca-Cola Bottlers, Philippines, Inc. v. Agito* (*Agito*), [23] the petitioners argued that because the parties therein were the same parties in the subject controversy, then the appellate court should have followed precedent and declared Interserve as a labor-only contractor.[24]

In further support of their claim that Interserve was a labor-only contractor and that Coca-Cola, as principal, should be made ultimately liable for their claims, the petitioners asserted that Interserve had no products to manufacture, sell and distribute to customers and did not perform activities in its own manner and method other than that dictated by Coca-Cola. They claimed that it was Coca-Cola that owned the softdrinks, the trucks and the equipment used by Interserve and that Coca-Cola assigned supervisors to ensure that the petitioners perform their duties.[25]

Lastly, the petitioners insisted that both Coca-Cola and Interserve should be made liable for moral and exemplary damages, as well as attorney's fees, for having transgressed the petitioners' right to security of tenure and due process.[26]

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

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

[23] 598 Phil. 909 (2009).

[24] *Rollo*, pp. 14-16.

[25] *Id.* at 16-22.

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

The Court's Ruling

Essentially, the core issue presented by the foregoing petition is whether the petitioners were illegally dismissed from their employment with Coca-Cola. This, in turn, necessitates a determination of the characterization of the relationship between route-helpers such as the petitioners, and softdrink manufacturers such as Coca-Cola, notwithstanding the participation of entities such as ISI, Lipercon, PSI, ROMAC, and Interserve. The petitioners insist that ISI, Lipercon, PSI, ROMAC, and Interserve are labor-only contractors, making Coca-Cola still liable for their claims. The latter, on the other hand, asserts that the said agencies are independent job contractors and, thus, liable to the petitioners on their own.

Procedural Issues

Before the Court proceeds to resolve the case on its merits, it must first be pointed out that the petitioners erred in resorting to this petition for review on *certiorari* under Rule 45 of the Rules of Court and alleging, at the same time, that the CA abused its discretion in rendering the assailed decision.

Well-settled is the rule that grave abuse of discretion or errors of jurisdiction may be corrected only by the special civil action of *certiorari* under Rule 65. Such corrective remedies do not avail in a petition for review on *certiorari* which is confined to correcting errors of judgment only. Considering that the petitioners have availed of the remedy under Rule 45, recourse to Rule 65 cannot be allowed either as an add-on or as a substitute for appeal.[27]

Moreover, it is observed that from a perusal of the petitioners' arguments, it is quite apparent that the petition raises questions of facts, inasmuch as this Court is being asked to revisit and assess anew the factual findings of the CA and the NLRC. The petitioners fundamentally assail the findings of the CA that the

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[27] *Prudential Guarantee and Assurance Employee Labor Union, et al. v. National Labor Relations Commission*, 687 Phil. 351, 360-361 (2012); and *Cebu Woman's Club v. de la Victoria*, 384 Phil. 264, 270 (2000).

evidence on record did not support their claims for illegal dismissal against Coca-Cola. In effect, they would have the Court sift through, calibrate and re-examine the credibility and probative value of the evidence on record so as to ultimately decide whether or not there is sufficient basis to hold the respondents accountable for their alleged illegal dismissal. This clearly involves a factual inquiry, the determination of which is the statutory function of the NLRC.[28]

Basic is the rule that the Court is not a trier of facts and this doctrine applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve.[29] Only errors of law are generally reviewed in petitions for review on certiorari under Rule 45 of the Rules of Court.

In exceptional cases, however, the Court may be urged to probe and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or the court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties or, where the LA and the NLRC came up with conflicting positions.[30] In this case, considering the conflicting findings of the LA and the NLRC on one hand, and the CA on the other, the Court is compelled to resolve the factual issues along with the legal ones.

Substantial Issues

The Court finds for the petitioners. The reasons are:

First. Contrary to the position taken by Coca-Cola, it cannot be said that route-helpers, such as the petitioners no longer enjoy the employee-employer relationship they had with Coca-Cola since they became employees of Interserve. A cursory review of the jurisprudence regarding this matter reveals that the

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[28] *CBL Transit, Inc. v. National Labor Relations Commission*, 469 Phil. 363, 371 (2004).

[29] *Alfaro v. Court of Appeals*, 416 Phil. 310, 318 (2001).

[30] *Nisda v. Sea Serve Maritime Agency*, 611 Phil. 291, 311 (2009).

controversy regarding the characterization of the relationship between route-helpers and Coca-Cola is no longer a novel one.

As early as May 2003, the Court in *Magsalin* struck down the defense of Coca-Cola that the complainants therein, who were route-helpers, were its "temporary" workers. In the said Decision, the Court explained:

> The basic law on the case is Article 280 of the Labor Code. Its pertinent provisions read:
>
> > *Art. 280. Regular and Casual Employment.* — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
> >
> > An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.
>
> Coca-Cola Bottlers Phils., Inc. is one of the leading and largest manufacturers of softdrinks in the country. Respondent workers have long been in the service of petitioner company. Respondent workers, when hired, would go with route salesmen on board delivery trucks and undertake the laborious task of loading and unloading softdrink products of petitioner company to its various delivery points.
>
> Even while the language of law might have been more definitive, the clarity of its spirit and intent, i.e., to ensure a "regular" worker's security of tenure, however, can hardly be doubted. In determining whether an employment should be considered regular or non-regular, the applicable test is the reasonable connection between the particular

activity performed by the employee in relation to the usual business or trade of the employer. The standard, supplied by the law itself, is whether the work undertaken is necessary or desirable in the usual business or trade of the employer, a fact that can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course. It is distinguished from a specific undertaking that is divorced from the normal activities required in carrying on the particular business or trade. But, although the work to be performed is only for a specific project or seasonal, where a person thus engaged has been performing the job for at least one year, even if the performance is not continuous or is merely intermittent, the law deems the repeated and continuing need for its performance as being sufficient to indicate the necessity or desirability of that activity to the business or trade of the employer. The employment of such person is also then deemed to be regular with respect to such activity and while such activity exists.

The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to respondent workers as sales route helpers so involves merely "postproduction activities," one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have then been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not on a confined scope.

The repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of petitioner company. The Court of Appeals has found each of respondents to have worked for at least one year with petitioner company. While this Court, in *Brent School, Inc. vs. Zamora*, has upheld the legality of a fixed-term employment, it has done so, however, with a stern admonition that where from the circumstances it is apparent that the period has been imposed to preclude the acquisition of tenurial security by the employee, then it should be struck down as being contrary to law, morals, good customs, public order and public policy. The pernicious practice of having employees,

workers and laborers, engaged for a fixed period of few months, short of the normal six-month probationary period of employment, and, thereafter, to be hired on a day-to-day basis, mocks the law. Any obvious circumvention of the law cannot be countenanced. The fact that respondent workers have agreed to be employed on such basis and to forego the protection given to them on their security of tenure, demonstrate nothing more than the serious problem of impoverishment of so many of our people and the resulting unevenness between labor and capital. A contract of employment is impressed with public interest. The provisions of applicable statutes are deemed written into the contract, and "the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other."[31]

Shortly thereafter, the Court in *Bantolino v. Coca-Cola*,[32] among others, agreed with the unanimous finding of the LA, the NLRC and the CA that the route-helpers therein were not simply employees of Lipercon, Peoples Specialist Services, Inc. or ISI, which, as Coca-Cola claimed were independent job contractors, but rather, those of Coca-Cola itself. In the said case, the Court sustained the finding of the LA that the testimonies of the complainants therein were more credible as they sufficiently supplied every detail of their employment, specifically identifying their salesmen/drivers were and their places of assignment, aside from the dates of their engagement and dismissal.

Then in 2008, in *Pacquing v. Coca-Cola Philippines, Inc.* (*Pacquing*),[33] the Court applied the ruling in *Magsalin* under the principle of s*tare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled). It was stressed therein that because the petitioners, as route helpers, were performing the same functions as the employees in *Magsalin*, which were necessary and desirable in the usual business or trade of Coca-Cola Philippines, Inc., they were considered regular employees of Coca-Cola entitled to security of tenure.

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[31] *Magsalin v. National Organization of Workingmen*, *supra* note 11, at 260-262.

[32] 451 Phil. 839 (2003).

[33] 567 Phil. 323, 333 (2008).

A year later, the Court in *Agito*[34] similarly struck down Coca-Cola's contention that the salesmen therein were employees of Interserve, notwithstanding the submission by Coca-Cola of their personal data files from the records of Interserve; their Contract of Temporary Employment with Interserve; and the payroll records of Interserve. In categorically declaring Interserve as a labor-only contractor,[35] the Court found that the work of the respondent salesmen therein, constituting distribution and sale of Coca-Cola products, was clearly indispensable to the principal business of petitioner Coca-Cola.[36]

As to the supposed substantial capital and investment required of an independent job contractor, the Court stated that it "does not set an absolute figure for what it considers substantial capital for an independent job contractor, but it measures the same against the type of work which the contractor is obligated to perform for the principal."[37] The Court reiterated that the contractor, not the employee, had the burden of proof that it has the substantial capital, investment and tool to engage in job contracting. As applied to Interserve, the Court ruled:

> The contractor, not the employee, has the burden of proof that it has the substantial capital, investment, and tool to engage in job contracting. Although not the contractor itself (since Interserve no longer appealed the judgment against it by the Labor Arbiter), said burden of proof herein falls upon petitioner who is invoking the supposed status of Interserve as an independent job contractor. Noticeably, petitioner failed to submit evidence to establish that the service vehicles and equipment of Interserve, valued at ₱510,000.00 and ₱200,000.00, respectively, were sufficient to carry out its service contract with petitioner. Certainly, petitioner could have simply provided the courts with records showing the deliveries that were undertaken by Interserve for the Lagro area, the type and number of equipment necessary for such task, and the valuation of such equipment. Absent evidence which a legally compliant company

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[34] *Supra* note 23.

[35] *Id.* at 934.

[36] *Id.* at 925.

[37] *Id.* at 927.

could have easily provided, the Court will not presume that Interserve had sufficient investment in service vehicles and equipment, especially since respondents' allegation that they were using equipment, such as forklifts and pallets belonging to petitioner, to carry out their jobs was uncontroverted.

In sum, Interserve did not have substantial capital or investment in the form of tools, equipment, machineries, and work premises; and respondents, its supposed employees, performed work which was directly related to the principal business of petitioner. It is, thus, evident that Interserve falls under the definition of a labor-only contractor, under Article 106 of the Labor Code; as well as Section 5(i) of the Rules Implementing Articles 106-109 of the Labor Code, as amended.[38]

As for the certification issued by the DOLE stating that Interserve was an independent job contractor, the Court ruled:

The certification issued by the DOLE stating that Interserve is an independent job contractor does not sway this Court to take it at face value, since the primary purpose stated in the Articles of Incorporation of Interserve is misleading. According to its Articles of Incorporation, the principal business of Interserve is to provide janitorial and allied services. The delivery and distribution of Coca-Cola products, the work for which respondents were employed and assigned to petitioner, were in no way allied to janitorial services. While the DOLE may have found that the capital and/or investments in tools and equipment of Interserve were sufficient for an independent contractor for janitorial services, this does not mean that such capital and/or investments were likewise sufficient to maintain an independent contracting business for the delivery and distribution of Coca-Cola products.[39]

Finally, the Court determined the existence of an employer-employee relationship between the parties therein considering that the contract of service between Coca-Cola and Interserve showed that the former indeed exercised the power of control over the complainants therein.[40]

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[38] *Id.* at 929-930.

[39] *Id.* at 934.

[40] *Id.* at 930-934.

The Court once more asserted the findings that route-helpers were indeed employees of *Coca-Cola in Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz*[41] and, recently, in *Basan v. Coca-Cola Bottlers Philippines, Inc.*[42] and that the complainants therein were illegally dismissed for want of just or authorized cause. Similar dispositions by the CA were also upheld by this Court in *N.O.W.*[43] and *Ostani*,[44] through minute resolutions.

It bears mentioning that the arguments raised by Coca-Cola in the case at bench even bear a striking similarity with the arguments it raised before the CA in *N.O.W.*[45] and *Ostani*.[46]

From all these, a pattern emerges by which Coca-Cola consistently resorts to various methods in order to deny its route-helpers the benefits of regular employment. Despite this, the Court, consistent with sound pronouncements above, adopts the rulings made in *Pacquing* that Interserve was a labor-only contractor and that Coca-Cola should be held liable pursuant to the principle of *stare decisis et non quieta movere*.

It should be remembered that the doctrine of *stare decisis et non quieta movere* is embodied in Article 8 of the Civil Code of the Philippines which provides:

ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

And, as explained in *Fermin v. People*:[47]

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[41] 622 Phil. 886 (2009).

[42] G.R. Nos. 174365-66, February 4, 2015, 749 SCRA 541.

[43] Resolutions, G.R. 176024, dated March 14, 2007 and June 18, 2007; See *rollo*, pp. 531-532.

[44] Resolutions, G.R. No. 1771996, dated June 4, 2007 and September 3, 2007; *id.* at 547-548.

[45] See Decision of the Court of Appeals in CA-G.R. SP No. 82457, the subject of the Court's Minute Resolution in G.R. 176024; *id.* at 520-530.

[46] See Decision of the Court of Appeals in CA-G.R. SP No. 84524, the subject of the Court's Minute Resolution in G.R. No. 1771996; *id.* at 533-546.

[47] 573 Phil. 278 (2008).

The doctrine of *stare decisis* enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[48]

[Emphasis Supplied]

The Court's ruling in *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation* is also worth citing, *viz.*:[49]

Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same**, even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be decided alike**. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, **the rule of *stare decisis* is a bar to any attempt to relitigate the same issue**.[50]

[Emphases Supplied]

Verily, the doctrine has assumed such value in our judicial system that the Court has ruled that "**[a]bandonment thereof must be based only on strong and compelling reasons**, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements

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[48] *Id.* at 287, citing *Castillo v. Sandiganbayan*, 427 Phil. 785, 793 (2002).

[49] 573 Phil. 320 (2008).

[50] *Id.* at 337, citing *Ty v. Banco Filipino Savings and Mortgage Bank*, 511 Phil. 510, 520-521 (2005).

diminished."[51] Thus, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting it aside.

In this case, Coca-Cola has not shown any strong and compelling reason to convince the Court that the doctrine of *stare decisis* should not be applied. It failed to successfully demonstrate how or why both the LA and the NLRC committed grave abuse of discretion in sustaining the pleas of the petitioners that they were its regular employees and not of Interserve.

Second. A reading of the decision of the CA and the pleadings submitted by Coca-Cola before this Court reveals that they both lean heavily on the service agreement[52] entered into by Coca-Cola and Interserve; the admission by Interserve that it paid the petitioners' salaries; and the affidavit of Sambilay who attested that it was Interserve which exercised the power of control over the petitioners.

The service agreements entered into by Coca-Cola and Interserve, the earliest being that dated January 1998,[53] (another one dated July 11, 2006)[54] and the most recent one dated March 21, 2007[55] — all reveal that *they were entered into* ***One****, after the petitioners were hired by Coca-Cola* (some of whom were hired as early as 1984); ***Two****, after they were dismissed from their employment sometime in January 2004;* and ***Three****, after the petitioners filed their complaint for illegal dismissal on November 10, 2006 with the LA.*

To quote with approval the observations of the LA:

x x x The most formidable obstacle against the respondent's theory of lack of employer-employee relationship is that complainants have

[51] *Pepsi-Cola Products, Phil., Inc. v. Pagdanganan*, 535 Phil. 540, 554-555 (2006).

[52] Denominated as Contract for Substitute or Reliever Services. *Rollo*, pp. 170-175.

[53] *Id.* at 384-388.

[54] *Id.* at 58-62.

[55] *Id.* at 170-174.

[been] performing the tasks of route-helpers for several years and that practically all of them have been rendering their services as such **even before respondent Interserve entered into a service agreement with Coca-Cola** sometime in 1998. Thus, the complainants in their position paper categorically stated the record of their service with Coca-Cola as having started on the following dates: Emmanuel Quintanar — October 15, 1994; Benjamin Durano — November 16, [1987]; Cecilio Delaving — June 10, 1991; Ricardo Gaborni — September 28, 1992; Romel Gerarman — June 20, 1995; Ramilo Gaviola — October 10, 1988; Joel John Aguilar — June 1, 1992; Restituto Agsalud — September 7, 1989; Martin Celis — August 15, 1995; Patricio Arios — June 2, 1989; Michael Bello — February 15, 1992; Lorenzo Quinlog — May 15, 1992; Junne Blaya — September 15, 1997; Santiago Tolentino, Jr. — May 29, 1989; Nestor Magnaye — February 15, 1996; Arnold Polvorido — February 8, 1996; Allan Agapito — April 15, 1995; Ariel Baumbad — January 15, 1995; Jose Lutiya — February 15, 1995; Edgardo Tapalla — August 15, 1994; Roldan Cadayona — May 14, 1996; Raynaldo Alburo — September 15, 1996; Rudy Ultra — February 28, 1997; Marcelo Cabili — November 15, 1995; Arnold Asiaten — May 2, 1992; Raymundo Macaballug — July 31, 1995; Joel Delena — January 15, 1991; Danilo Oquino — September 15, 1990; Greg Caparas — August 15, 1995; and Romeo Escartin — May 15, 1986.

It should be mentioned that the foregoing allegation of the complainants' onset of their services with respondent Coca-Cola **has been confirmed by the Bio-Data Sheets submitted in evidence by the said respondent [Coca-Cola**]. Thus, in the Bio-Data Sheet of complainant Quintanar (Annex "4"), he stated therein that he was in the service of respondent Coca-Cola continuously from 1993 up to 2002. Likewise, complainant Quinlog indicated in his Bio-data Sheet submitted to respondent Interserve that he was already in the employ of respondent Coca-Cola from 1992 (Annex "12"). Complainant Edgardo Tapalla also indicated in his Bio-Data Sheet that he was already in the employ of Coca-Cola since 1995 until he was seconded to Interserve in 2002 (Annex "20").

As a matter of fact, complainants' allegation that they were directly hired by respondent Coca-Cola and had been working with the latter for quite sometime when they were subsequently referred to successive agencies such as Lipercon, ROMAC, People's Services, and most recently, respondent Interserve, **has not been controverted by the respondents.** Even when respondent Coca-Cola filed its reply to the complainants' position paper, there is nothing therein which disputed complainant's statements of their services directly with

the respondent even before it entered into service agreement with respondent Interserve.[56]

As to the payment of salaries, although the CA made mention that it was Interserve which paid the petitioners' salaries, no reference was made to any evidence to support such a conclusion. The Court, on the other hand, gives credence to the petitioners' contention that they were employees of Coca-Cola. Aside from their collective account that it was Coca-Cola's Route Supervisors who provided their daily schedules for the distribution of the company's products, the petitioners' payslips,[57] tax records,[58] SSS[59] and Pag-Ibig[60] records more than adequately showed that they were being compensated by Coca-Cola. More convincingly, the petitioners even presented their employee Identification Cards,[61] which expressly indicated that they were "[d]irect hire[es]" of Coca-Cola.

As for the affidavit of Sambilay, suffice it to say that the same was bereft of evidentiary weight, considering that he failed to attest not only that he was already with Interserve at the time of the petitioners hiring, but also that he had personal knowledge of the circumstances surrounding the hiring of the petitioners following their alleged resignation from Coca-Cola.

Third. As to the characterization of Interserve as a contractor, the Court finds that, contrary to the conclusion reached by the CA, the petitioners were made to suffer under the prohibited practice of labor-only contracting. Article 106 of the Labor Code provides the definition of what constitutes labor-only contracting. Thus:

Article 106. Contractor or subcontractor. — x x x

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[56] *Id.* at 639-640.

[57] *Id.* at 1315-1318, 1320-1321, 1338-1339, 1342, 1346, 1353-1355.

[58] *Id.* at 1331, 1337, 1351.

[59] *Id.* at 1310, 1326-1327, 1333, 1336, 1343, 1344-1345, 1347.

[60] *Id.* at 1348-1350.

[61] *Id.* at 1312, 1314, 1319, 1322, 1324, 1328, 1329.

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.

Expounding on the concept, the Court in *Agito* explained:

The law clearly establishes an employer-employee relationship between the principal employer and the contractor's employee upon a finding that the contractor is engaged in "labor-only" contracting. Article 106 of the Labor Code categorically states: "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 persons are performing activities which are directly related to the principal business of such employer." **Thus, performing activities directly related to the principal business of the employer is only one of the two indicators that "labor-only" contracting exists; the other is lack of substantial capital or investment. The Court finds that both indicators exist in the case at bar.**

[Emphases and Underscoring Supplied]

In this case, the appellate court considered the evidence of Interserve that it was registered with the DOLE as independent contractor and that it had a total capitalization of ₱27,509,716.32 and machineries and equipment worth ₱12,538,859.55.[62] As stated above, however, **the possession of substantial capital is only one element**. Labor-only contracting exists when *any* of the two elements is present.[63] Thus, even if the Court would indulge Coca-Cola and admit that Interserve had more than sufficient capital or investment in the form of tools, equipment, machineries, work premises, *still*, it cannot be denied that the

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[62] *Id.* at 1751.

[63] *Aliviado v. Procter and Gamble, Inc.*, 665 Phil. 542, 554 (2011).

petitioners were performing activities which were directly related to the principal business of such employer. Also, it has been ruled that no absolute figure is set for what is considered 'substantial capital' because the same is measured against the type of work which the contractor is obligated to perform for the principal.[64]

More importantly, even if Interserve were to be considered as a legitimate job contractor, Coca-Cola failed to rebut the allegation that petitioners were transferred from being its employees to become the employees of ISI, Lipercon, PSI, and ROMAC, which were labor-only contractors. Well-settled is the rule that "[t]he contractor, not the employee, has the burden of proof that it has the substantial capital, investment, and tool to engage in job contracting."[65] In this case, the said burden of proof lies with Coca-Cola although it was not the contractor itself, but it was the one invoking the supposed status of these entities as independent job contractors.

Fourth. In this connection, even granting that the petitioners were last employed by Interserve, the record is bereft of any evidence that would show that the petitioners voluntarily resigned from their employment with Coca-Cola only to be later hired by Interserve. Other than insisting that the petitioners were last employed by Interserve, Coca-Cola failed not only to show by convincing evidence how it severed its employer relationship with the petitioners, but also to prove that the termination of its relationship with them was made through any of the grounds sanctioned by law.

The rule is long and well-settled that, in illegal dismissal cases such as the one at bench, the burden of proof is upon the employer to show that the employees' termination from service is for a just and valid cause.[66] The employer's case succeeds or fails on the strength of its evidence and not the weakness of

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[64] *Coca-Cola Bottlers, Philippines, Inc. v. Agito*, *supra* note 23, at 927.

[65] *Id.* at 929.

[66] *Harborview Restaurant v. Labro*, 605 Phil. 349, 354 (2009).

that adduced by the employee,[67] in keeping with the principle that the scales of justice must be tilted in favor of the latter in case doubts exist over the evidence presented by the parties.[68]

For failure to overcome this burden, the Court concurs in the observation of the LA that it was highly inconceivable for the petitioners, who were already enjoying a stable job at a multi-national company, to leave and become mere agency workers. Indeed, it is contrary to human experience that one would leave a stable employment in a company like Coca-Cola, only to become a worker of an agency like Interserve, and be assigned back to his original employer — Coca-Cola.

Although it has been said that among the four (4) tests to determine the existence of any employer-employee relationship, it is the "control test" that is most persuasive, the courts cannot simply ignore the other circumstances obtaining in each case in order to determine whether an employer-employee relationship exists between the parties.

WHEREFORE, the petition is **GRANTED**. The July 11, 2013 Decision and the December 5, 2013 Resolution of the Court of Appeals, in CA-G.R. SP No. 115469 are **REVERSED** and **SET ASIDE** and the August 29, 2008 Decision of the Labor Arbiter in NLRC Case Nos. 12-13956-07 and 12-14277-07, as affirmed *in toto* by the National Labor Relations Commission, is hereby **REINSTATED**.

SO ORDERED.

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

Jardeleza, J., no part.

Del Castillo, J., on leave.

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[67] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, 511 Phil. 384, 394 (2005).

[68] *Triple Eight Integrated Services, Inc. v. National Labor Relations Commission*, 359 Phil. 955, 964 (1998).

EN BANC

[G.R. No. 210761. June 28, 2016]

KILUSANG MAYO UNO, represented by its Chairperson, ELMER LABOG; NATIONAL FEDERATION OF LABOR UNIONS-KILUSANG MAYO UNO, represented by its Vice-PRESIDENTS, REDEN ALCANTARA and ARNOLD DELA CRUZ, CENTER FOR TRADE UNION AND HUMAN RIGHTS (CTUHR), represented by its Executive Director DAISY ARAGO, VIRGINIA FLORES and VIOLETA ESPIRITU, *petitioners, vs.* **HON. BENIGNO SIMEON C. AQUINO III, and PHILIPPINE HEALTH INSURANCE CORPORATION (PHIC),** *respondents,*

MIGRANTE INTERNATIONAL, represented by its Chairperson GARRY MARTINEZ, CONNIE BRAGAS-REGALADO, PARALUMAN CATUIRA, UNITED FILIPINOS IN HONGKONG (UNIFIL-HK), and SOLEDAD PILLAS, *petitioners-in-intervention.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; A SITTING HEAD OF STATE ENJOYS IMMUNITY FROM SUIT DURING HIS ACTUAL TENURE.— [W]e stress the settled principle that a sitting head of state enjoys immunity from suit during his actual tenure. The events that gave rise to the present action and the filing of the case occurred during the incumbency of President Aquino. Moreover, the petition contains no allegations as to any specific presidential act or omission that amounted to grave abuse of discretion. Therefore, it is only proper to drop the President as a party-respondent.

2. ID.; ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LEGAL STANDING; PETITIONERS HAVE SUFFICIENT LEGAL STANDING TO QUESTION THE INCREASE IN THE PREMIUM CONTRIBUTION RATES FOR THE NATIONAL HEALTH INSURANCE PROGRAM (NHIP).—

Under the NHIA, **all citizens of the Philippines are required to enroll** in the Program; membership is **mandatory**. In other words, the NHIP covers all Filipinos in accordance with the principles of universality and **compulsory coverage**. Ultimately, every Filipino is affected by an increase in the premium rates. Thus, the petitioners have sufficient legal standing to file the present suit.

3. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; AN ADMINISTRATIVE AGENCY'S EXERCISE OF QUASI-LEGISLATIVE POWERS MAY BE QUESTIONED AND PROHIBITED THROUGH AN ORDINARY ACTION FOR INJUNCTION BEFORE THE REGIONAL TRIAL COURT, NOT DIRECTLY TO THE SUPREME COURT VIA PETITION FOR CERTIORARI.— [T]he petitioners availed of the wrong remedy in coming to this Court. *Certiorari* is a remedy of **last resort** available only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. An administrative agency's exercise of *quasi-legislative* powers may be questioned and prohibited through an ordinary action for injunction before the Regional Trial Court (*RTC*). The petitioners failed to explain their premature resort to *certiorari* and their disregard for the hierarchy of courts. These procedural grounds warrant the outright dismissal of their petition.

4. ID.; ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; GRAVE ABUSE OF DISCRETION; WHEN PRESENT; NOT AN AMORPHOUS CONCEPT THAT CAN BE SHAPED OR MANIPULATED TO SUIT A LITIGANT'S PURPOSE; PHILHEALTH'S ISSUANCE OF THE ASSAILED CIRCULAR NOT TAINTED WITH GRAVE ABUSE OF DISCRETION.— [T]he petitions x x x failed to show that PhilHealth gravely abused its discretion in issuing the assailed circulars. On the contrary, PhilHealth acted with reasonable prudence and sensitivity to the public's needs. It postponed the rate increase several times to relieve the public of the burden of simultaneous rate and price increases. It accommodated the stakeholders and heard them through consultation. In the end, it even retained a lower salary bracket ceiling (Php35,000.00 instead of Php50,000.00) and a lower rate (2.5% rather than the planned 3%). The term "grave abuse of discretion" has a

specific and well-defined meaning in established jurisprudence. It is not an amorphous concept that can be shaped or manipulated to suit a litigant's purpose. Grave abuse of discretion is present when there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or where power is exercised arbitrarily or in a despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform a legal duty or act at all in contemplation of law. Other than a sweeping allegation of grave abuse of discretion under its Nature of the Petition section, the petition is devoid of substantial basis.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; THE COURT DOES NOT HAVE ADMINISTRATIVE SUPERVISION OVER ADMINISTRATIVE AGENCIES, NOR IS IT AN ENTITY ENGAGED IN MAKING BUSINESS DECISIONS; THUS IT CANNOT INTERFERE IN PURELY ADMINISTRATIVE MATTERS NOR SUBSTITUTE ADMINISTRATIVE POLICIES AND BUSINESS DECISIONS WITH ITS OWN, AS ITS ONLY CONCERN IS THE LEGALITY, NOT THE WISDOM, OF AN AGENCY'S ACTIONS.— PhilHealth has the mandate of realizing the State's vision of affordable and accessible health services for all Filipinos, especially the poor. To realize this vision and effectively administer the Program, PhilHealth is empowered to promulgate its policies, and to formulate a contribution schedule that can realistically support its programs. PhilHealth justified the increase in annual premium rates with the enhanced benefits and the expanded coverage of medical conditions. This reasonable decision to widen the coverage of the program – which led to increased premium rates – is a business judgment that this Court cannot interfere with. This Court does not have administrative supervision over administrative agencies, nor is it an entity engaged in making business decisions. We cannot interfere in purely administrative matters nor substitute administrative policies and business decisions with our own. This would amount to judicial overreach. The courts' only concern is the legality, not the wisdom, of an agency's actions. Policy matters should be left to policy makers.

6. ID.; ID.; NATIONAL HEALTH INSURANCE ACT (NHIA) (R.A. NO. 7875); THE NEW CONTRIBUTION SCHEDULE

SATISFIES THE STANDARD OF A REASONABLE, EQUITABLE, AND PROGRESSIVE CONTRIBUTION SCHEDULE.— The petitioners argue that the new schedule does not conform to the NHIA's standard of a reasonable, equitable, and progressive schedule. Therefore, PhilHealth acted *ultra vires*. However, the new contribution schedule for the Employed Sector shows otherwise x x x. The new schedule merged the 7,999-and-below salary bracket with the former 8,000-8,999 bracket to create the current lowest salary bracket. While the merger primarily impacts on the members of the former 7,999-and-below bracket, the Corporation explained that the current minimum annual contribution corresponds to the amount necessary to retain coverage for even the poorest of the poor. The Corporation broke down this amount (Php2,400.00) as: Php1,000.00 for drugs and other medicine, Php300.00 for administrative costs, Php500.00 for consultation, and Php600.00 for in-patient services. This new amount is neither unreasonable nor unconscionable. Moreover, the contribution schedule, *as a whole*, remains equitable and progressive. The salary base and the premium contributions increase as a member's actual salary increases. A member who earns Php9,000.00 is required to contribute much leas than a member who earns Php31,000.00 but they both enjoy the same coverage. This satisfies the standard of a reasonable, equitable, and progressive contribution schedule.

7. ID.; ID.; ID.; THE NON-INCREASE IN THE MINIMUM PREMIUM CONTRIBUTION OF OFWS UNDER SECTION 36 OF THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT DOES NOT APPLY TO PREMIUM CONTRIBUTIONS UNDER THE NHIP.— The NHIP is a social insurance program. It is the government's means to allow the healthy to help pay for the care of the sick, and for those who can afford medical care to provide subsidy to those who cannot. The premium collected from members is *neither* a fee nor an expense but an **enforced contribution** to the common insurance fund. From this perspective, the petitioners-in-intervention cannot invoke the non-increase clause under Section 36 of the Migrant Workers and Overseas Filipinos Act. There is no valid distinction between migrant workers and the rest of the population that would justify a lower premium rate of the former. It would unduly burden the other PhilHealth contributors in favor of Overseas Filipino Workers. Any distinctions between OFWs and all the other sectors are not

germane to the NHIA's purpose of ensuring affordable, acceptable, available, and accessible health care services for all citizens of the Philippines. Therefore, the application of Section 36 of the Migrant Workers and Overseas Filipinos Act to obstruct the increase of premiums under the NHIP amounts to an *unreasonable* classification, in violation of the equal protection clause. Furthermore, the premium rate for indigent members was pegged at Php2,400.00 – the lowest in the salary bracket for the Employed Sector. Pursuant to Section 28 of the NHIA, contributions made in behalf of indigent members cannot exceed the minimum contributions for employed members. A non-increase in the minimum premium contribution of OFWs would create a ridiculous situation where the poorest of the poor are required to contribute more than a member employed abroad. This violates the standard of a progressive and equitable contribution scheme.

8. ID.; ID.; ADMINISTRATIVE AGENCY; THE COURT DOES NOT HAVE THE POWER TO AUDIT THE EXPENDITURES OF THE GOVERNMENT OR ANY OF ITS AGENCIES AND INSTRUMENTALITIES, AS THE COMMISSION ON AUDIT (COA) ALONE HAS THE POWER TO DISALLOW UNNECESSARY AND EXTRAVAGANT GOVERNMENT SPENDING.— The petitioners' allegations of unconscionable bonuses to PhilHealth executives and their unethical expenditure of funds, if true, are reprehensible. However, it is equally objectionable for the petitioners to make such allegations *without substantiating them*. That they did not even bother to annex any document to support their factual claims, is very irresponsible. Further, even if the allegations were true, this Court does not have the power to audit the expenditures of the Government or any of its agencies and instrumentalities. The Constitution saw fit to vest this power on an independent Constitutional body: the Commission on Audit *(COA)*. The COA alone has the power to disallow unnecessary and extravagant government spending. The Separation of Powers doctrine, so fundamental in our system of government, precludes this Court from encroaching on the powers and functions of an independent constitutional body. Our participation in the audit process is limited to determining whether the COA committed grave abuse of discretion in rendering its audit decisions. We will not overstep the bounds of our jurisdiction.

APPEARANCES OF COUNSEL

Pro-Labor Assistance Center for petitioners.

The Solicitor General for public respondent Benigno Simeon C. Aquino III.

Office of the Government Corporate Counsel for respondent PHIC.

D E C I S I O N

BRION, *J.*:

This is a petition for *certiorari* assailing **PhilHealth Circular Nos. 0027,**[1] **0025,**[2] **and 0024,**[3] **all series of 2013**. The circulars, which adjusted the premium contribution rates for the National Health Insurance Program, were allegedly issued with grave abuse of discretion.

ANTECEDENTS

In the 1987 Constitution, the State adopted an integrated and comprehensive approach to health development.[4] It also undertook to make essential goods and medical services available to the public at a low cost, and to provide free medical care to paupers.

On February 7, 1995, Congress passed Republic Act No. 7875, the National Health Insurance Act (*NHIA*), establishing the National Health Insurance Program (*NHIP/the Program*) and creating the Philippine Health Insurance Corporation (*the Corporation/PhilHealth*) to administer the Program. The Program

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[1] *CY 2014 PhilHealth Premium Contribution for the Employed Sector,* published October 10, 2013.

[2] *Implementation of the Overseas Workers Program (OWP) Premium and Payment Schemes Effective CY 2014,* published October 10, 2013.

[3] *Premium Rate for the Individually Paying Program (IPP) Effective CY 2014,* published October 10, 2013.

[4] Art. XIII, Sec. 11, CONSTITUTION.

covers all citizens of the Philippines in accordance with the principles of universality and compulsory coverage.[5]

PhilHealth is a government corporation attached to the Department of Health (*DOH*) for policy coordination and guidance.[6] Among its notable powers and functions are:

> SEC. 16. *Powers and Functions*. — The Corporation shall have the following powers and functions:
>
> a. to **administer the National Health Insurance Program**;
>
> b. to formulate and promulgate policies **for the sound administration of the Program**;
>
> c. **to set standards, rules, and regulations necessary to ensure quality of care, appropriate utilization of services, fund viability**, member satisfaction, and overall accomplishment of Program objectives;
>
> d. **to formulate and implement guidelines on contributions and benefits**; portability of benefits, cost containment and quality assurance; and health care provider arrangements, payment methods, and referral systems;[7] x x x (emphasis supplied)

Its President and Chief Executive Officer (*CEO*) is directly appointed by the President of the Republic while its Board of Directors (*the Board*) is composed of several cabinet secretaries (or their permanent representatives) and representatives of different stakeholders.[8]

At the start of respondent President Benigno Simeon Aquino III's administration in 2010, the DOH launched the Aquino Health Agenda (*AHA/the Agenda*).[9] The objective was to implement

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[5] Sec. 6, NATIONAL HEALTH INSURANCE ACT OF 1995.

[6] *Id.*, Sec. 14.

[7] *Id.*, Sec. 16, as amended by Republic Act No. 10606 (2013).

[8] *Id.*, Secs. 18 and 19.

[9] *The Aquino Health Agenda: Achieving Universal Health Care for All Filipinos*, Department of Health Administrative Order No. 2010-0036, promulgated December 16, 2010.

comprehensive reform in the health sector and, ultimately, to provide universal access to health care for all Filipinos including the poor.

In line with the Agenda for a truly Universal Health Care program, PhilHealth adopted a new mission "*to ensure adequate financial access of every Filipino to quality health care services through the effective and efficient administration of the National Health Insurance Program.*"[10]

The Board, through Resolution No. 1571, Series of 2011, approved increases in annual premium contributions for the Calendar Year (*CY*) 2012 to enhance the NHIP benefit packages and to support the implementation of the Universal Health Care program.[11]

The minimum annual contribution of members in the **Individually Paying Program (*IPP*)** and **Overseas Workers Programs (*OWP*)** was increased to Php2,400.00. However, members who paid their contributions within the first semester of CY 2012 or signed a policy contract within the first semester of 2012 and committed to pay their contributions for two consecutive years would have their annual premium contribution computed at only Php1,200.00.

For the **Employed Sector**, the premium rate was to be computed at **3% of the salary base** with the lowest salary bracket[12] pegged at a monthly salary base of Php7,000.00. Thus, the minimum annual contribution was computed at Php2,520.00. Finally, the monthly salary ceiling was pegged at Php50,000.00.

Lastly, the annual contribution of all National Household Targeting System for Poverty Reduction (*NHTS-PR*) poor

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[10] *The New PhilHealth Vision and Mission Statement,* PhilHealth Circular No. 04, s. 2011, published March 8, 2011.

[11] *New Premium Contributions to the National Health Insurance Program in Support of the Attainment of Universal Health Care and Millenium Development Goals,* PhilHealth Circular No. 022, s. 2011, published December 16, 2011.

[12] Those earning a monthly salary of Php7,999.99 and below.

families identified by the Department of Social Welfare and Development (*DSWD*) under the **Sponsored Program** was set at Php2,400.00 effective January 1, 2012.

The new rates for the IPP, and the OWP were scheduled to take effect on July 1, 2012 while the new rate for the Employed Sector was scheduled to take effect on January 1, 2013.

On February 21, 2012, PhilHealth moved the effectivity date of the new rates for the OWP Program to January 1, 2013.[13] The deferral was made at the request of civil society groups and non-government organizations in the light of the global crisis that affected a number of Overseas Filipino Workers (*OFWs*).

On June 27, 2012, PhilHealth also deferred the effectivity date of the new rates for the IPP program to October 1, 2012.[14] The move was made to allow further consultation in response to various sectors' opposition to the increase.

On September 25, 2012, the Corporation further postponed the premium increase to January 1, 2013, after a series of dialogues with informal sector groups.[15]

On November 22, 2012, PhilHealth made a partial deferral of the premium rate increase until the end of CY 2013.[16] From January to December 2013, the minimum annual premium contribution rate for IPP and OWP members was pegged at Php1,800.00, instead of the full Php2,400.00.

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[13] *Amendment to PhilHealth Circular No. 22, series of 2011 on the New Premium Contributions of Overseas Workers Program*, PhilHealth Circular No. 007, s. 2012, published March 6, 2012.

[14] *Deferment of Premium Increase for the Individually Paying Program*, PhilHealth Circular No. 032, s. 2012, published June 29, 2012.

[15] *Extension of the Deferment of Premium Increase for the Individually Paying Program*, PhilHealth Circular No. 47, s. 2012, published October 3, 2012.

[16] *Partial Deferral of the Implementation of PhilHealth Premium Contribution Increases until the End of CY 2013*, PhilHealth Circular No. 057, s. 2012, published December 8, 2012.

For the members enrolled in the Employed Sector, the premium rate was computed at **2.5% of the salary base**. Because the lowest salary base was pegged at Php7,000.00, the minimum annual premium contribution was computed at Php2,100.00. Finally, the monthly salary bracket ceiling was pegged at a salary base of Php35,000.00.

On September 2013, PhilHealth issued the three assailed circulars fully implementing the new premium rates for 2014:

1. **PhilHealth Circular No. 0024, s. 2013**[17] was issued on September 30, 2013, increasing the minimum annual premium rate for the IPP to Php2,400.00 for members with a monthly income of Php25,000.00 and below.

2. **PhilHealth Circular No. 0025, s. 2013**[18] was issued on September 30, 2013, adjusting the annual premium rate for the OWP to Php2,400.00 for all land-based OFWs, whether documented or undocumented.

3. **PhilHealth Circular No. 0027, s. 2013**[19] was also issued on September 30, 2013, for the Employed Sector. It retained 2.5% at the premium rate and the Php35,000.00 salary bracket ceiling. However, it consolidated the two lowest salary brackets[20] resulting in a minimum annual rate of Php2,400.00.

Thus, the Corporation adjusted the minimum rates for members to Php2,400.00 to ensure financial sustainability of the Program.

On January 30, 2014, petitioners Kilusang Mayo Uno (*KMU*), National Federation of Labor Unions-KMU (*NAFLU-KMU*),

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[17] *Premium Rate for the Individually Paying Program effective CY 2014*, published October 5, 2013.

[18] *Implementation of the OWP Premium and Payment Schemes Effective CY 2014*, published October 10, 2013.

[19] *CY 2014 PhilHealth Premium Contribution for the Employed Sector*, published October 10, 2013.

[20] Those earning Php7,999.99 and below and those earning Php8,000-Php8,999.99.

Violeta Espiritu, and Virginia Flores filed the present petition for *certiorari* with an application for a Temporary Restraining Order and/or a Preliminary Injunction against the implementation of the new rates. [21] The petitioners impleaded President Aquino and the Corporation as respondents.

On March 14, 2014, Migrante International, Connie Bragas-Regalado, Paraluman Catuira, United Filipinos in Hong Kong (*UNIFIL-HK*), and Soledad Pillas filed a petition-in-intervention.[22]

THE PETITIONS

The petitioners (*KMU, et al.*) claim that the assailed circulars were issued with grave abuse of discretion, arguing: (1) that PhilHealth breached the limits to its delegated rule-making power because the new contribution schedule is neither reasonable, equitable, nor progressive as prescribed by the NHIA;[23] (2) that the rate increase is unduly oppressive and not reasonably necessary to attain the purpose sought;[24] and (3) that the new rates were determined without an actuarial study as required by the NHIA.[25]

The petitioners allege that according to the Commission on Audit (*COA*), PhilHealth awarded Php1.5 billion in bonuses to its top officials and employees in 2012.[26] They further allege that the Corporation gave hefty bonuses to its contractors and failed to prosecute fraudulent claims. They argue that increasing contribution rates would be completely unnecessary if the Corporation used its funds more judiciously.

The Petitioners-in-Intervention (*Migrante, et al.*) adopt all of the petitioners' arguments. They add that **Circular No. 0025, s. 2013** violated the Migrant Workers and Overseas Filipinos

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[21] *Rollo*, p. 3.

[22] *Id.* at 43.

[23] *Id.* at 12.

[24] *Id.* at 18.

[25] *Id.* at 20.

[26] *Id.* at 18.

Act[27] which prescribed the non-increase of fees charged by any government office on Overseas Filipino Workers (*OFWs*).[28]

THE COUNTER ARGUMENTS

The President, through the Office of the Solicitor General (*OSG*), invokes his immunity from suit as a sitting Head of State and moved that he be dropped as a party-respondent.[29]

PhilHealth, through the Office of the Government Corporate Counsel (*OGCC*), claims that the increases in premium contributions were supported by three actuarial studies conducted in 2010,[30] 2011,[31] and 2012.[32] Moreover, it consulted World Bank representatives[33] and the affected stakeholders before implementing the increase.

The Php2,400.00 minimum annual contribution for *all* members is equivalent to the amount that the Government annually incurs to maintain coverage for the poorest of the poor. Php1,000.00 is allotted for drugs and medicine, Php300.00 for administrative costs, Php500.00 for consultation, and Php600.00 for in-patient services.[34]

As the premium rate for "the poorest of the poor" was set at Php2,400.00, the rates for the Employed Sector, the OWP, and the IPP were likewise increased to avoid a situation where the

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[27] Republic Act No. 8042 [MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT] (1995), as amended by Republic Act No. 10022 (2009).

[28] SEC. 36. *Non-increase of Fees; Abolition of Repatriation Bond*. — Upon approval of this Act, all fees being charged by any government office on migrant workers shall remain at their present levels and the repatriation bond shall be abolished.

[29] *Rollo*, pp. 258, 316.

[30] *Id.* at 107.

[31] *Id.* at 126.

[32] *Id.* at 143.

[33] *Id.* at 88.

[34] *Id.*

poorest would contribute a premium higher than that contributed by an employed member, an OFW, or an individually paying member.[35]

PhilHealth counters that not only did it defer the rate increase to relieve the public of the simultaneous burden of increases in fees, tolls, taxes, and social security contributions, but it even introduced the corresponding enhancements in the benefit packages in 2012 before the premium rates were increased.[36]

With respect to the allegations of outrageously unconscionable bonuses, PhilHealth argues that these have no logical relation to the increase in premiums. In any case, COA's disallowance of these items are presently under appeal and *sub-judice*.[37]

Lastly, PhilHealth prays for the dismissal of the petition arguing: (1) that it was filed out of time;[38] (2) that it failed to state the material dates as required by Rule 46, Section 3 of the Rules of Court;[39] (3) that the petitioners have no legal standing;[40] (4) that the petitioners disregarded the hierarchy of courts because the issue was not of transcendental importance;[41] and (5) that the petition has neither basis nor merit.[42]

OUR RULING

We DISMISS the petition for lack of merit.

At the outset, we stress the settled principle that a sitting head of state enjoys immunity from suit during his actual tenure.[43]

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[35] *Id*.

[36] *Id*.

[37] *Id.* at 89.

[38] *Id.* at 90.

[39] *Id.* at 92.

[40] *Id.* at 93.

[41] *Id.* at 95.

[42] *Id.* at 97.

[43] *David v. Arroyo*, 522 Phil. 705, 763-764 (2006); *Balao v. Macapagal-*

The events that gave rise to the present action and the filing of the case occurred during the incumbency of President Aquino. Moreover, the petition contains no allegations as to any specific presidential act or omission that amounted to grave abuse of discretion. Therefore, it is only proper to drop the President as a party-respondent.

Under the NHIA, **all citizens of the Philippines are required to enroll** in the Program; membership is **mandatory**.[44] In other words, the NHIP covers all Filipinos in accordance with the principles of universality and **compulsory coverage**.[45] Ultimately, every Filipino is affected by an increase in the premium rates. Thus, the petitioners have sufficient legal standing to file the present suit.

Nevertheless, the petitioners availed of the wrong remedy in coming to this Court. *Certiorari* is a remedy of **last resort** available only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[46]

An administrative agency's exercise of *quasi-legislative* powers may be questioned and prohibited through an ordinary action for injunction before the Regional Trial Court (*RTC*).[47] The petitioners failed to explain their premature resort to *certiorari* and their disregard for the hierarchy of courts. These procedural grounds warrant the outright dismissal of their petition.

Even if the procedural issues are disregarded, the petitions still failed to show that PhilHealth gravely abused its discretion in issuing the assailed circulars. On the contrary, PhilHealth acted with reasonable prudence and sensitivity to the public's needs. It postponed the rate increase several times to relieve

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Arroyo, 678 Phil. 532, 570 (2011); *Lozada, Jr. v. President Macapagal-Arroyo*, 686 Phil. 536, 552 (2012).

[44] Sec. 2 (l), NATIONAL HEALTH INSURANCE ACT.

[45] Sec. 6, NATIONAL HEALTH INSURANCE ACT, as amended by R.A. No. 10606.

[46] Rule 65, Section 1, RULES OF COURT.

[47] *Lupangco v. Court of Appeals*, 243 Phil. 993, 1001 (1988).

the public of the burden of simultaneous rate and price increases. It accommodated the stakeholders and heard them through consultation. In the end, it even retained a lower salary bracket ceiling (Php35,000.00 instead of Php50,000.00) and a lower rate (2.5% rather than the planned 3%).

The term "grave abuse of discretion" has a specific and well-defined meaning in established jurisprudence. It is not an amorphous concept that can be shaped or manipulated to suit a litigant's purpose.[48] Grave abuse of discretion is present when there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, [49] or where power is exercised arbitrarily or in a despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform a legal duty or act at all in contemplation of law.[50]

Other than a sweeping allegation of grave abuse of discretion under its Nature of the Petition section,[51] the petition is devoid of substantial basis.

PhilHealth has the mandate of realizing the State's vision of affordable and accessible health services for all Filipinos, especially the poor.[52] To realize this vision and effectively administer the Program, PhilHealth is empowered to promulgate its policies, and to formulate a contribution schedule that can realistically support its programs.

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[48] *Yu v. Judge Reyes-Carpio*, 667 Phil. 474, 481-482 (2011); *Dycoco v. Court of Appeals*, G.R. No. 147257, July 31, 2013, 702 SCRA 566, 580; *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, G.R. No. 155306, August 28, 2013, 704 SCRA 24, 39.

[49] *Abad Santos v. Province of Tarlac*, 67 Phil. 480 (1939); *Tan v. People*, 88 Phil. 609 (1951); *Pajo v. Ago*, 108 Phil. 905 (1960).

[50] *Tavera-Luna, Inc. v. Nable*, 67 Phil. 340 (1939); *Alafriz v. Nable*, 72 Phil. 278 (1941); *Liwanag v. Castillo*, 106 Phil. 375 (1959).

[51] *Rollo*, p. 4.

[52] Sec. 2, NATIONAL HEALTH INSURANCE ACT, as amended by R.A. No. 10606.

PhilHealth justified the increase in annual premium rates with the enhanced benefits and the expanded coverage of medical conditions.[53] This reasonable decision to widen the coverage of the program — which led to increased premium rates — is a business judgment that this Court cannot interfere with.

This Court does not have administrative supervision over administrative agencies, nor is it an entity engaged in making business decisions. We cannot interfere in purely administrative matters nor substitute administrative policies and business decisions with our own. This would amount to judicial overreach. The courts' only concern is the legality, not the wisdom, of an agency's actions. Policy matters should be left to policy makers.

The petitioners argue that the new schedule does not conform to the NHIA's standard of a reasonable, equitable, and progressive schedule.[54] Therefore, PhilHealth acted *ultra vires.* However, the new contribution schedule for the Employed Sector[55] shows otherwise:

Salary Bracket	Monthly Salary Range	Salary Base	Monthly Premium
1	8,999.99 and below	8000	200
2	9,000 - 9,999.99	9000	225
3	10,000-10,999.99	10,000	250
4	11,000-11,999.99	11,000	275
5	12,000-12,999.99	12,000	300
6	13,000-13,999.99	13,000	325
7	14,000-14,999.99	14,000	350
8	15,000-15,999.99	15,000	375
9	16,000-16,999.99	16,000	400
10	17,000-17,999.99	17,000	425

[53] *Rollo,* p. 8.

[54] *Id.* at 13.

[55] PhilHealth Circular No. 0027, s. 2013, *rollo,* p. 28.

11	18,000-18,999.99	18,000	450
12	19,000-19,999.99	19,000	475
13	20,000-20,999.99	20,000	500
14	21,000-21,999.99	21,000	525
15	22,000-22,999.99	22,000	550
16	23,000-23,999.99	23,000	575
17	24,000-24,999.99	24,000	600
18	25,000-25,999.99	25,000	625
19	26,000-26,999.99	26,000	650
20	27,000-27,999.99	27,000	675
21	28,000-28,999.99	28,000	700
22	29,000-29,999.99	29,000	725
23	30,000-30,999.99	30,000	750
24	31,000-31,999.99	31,000	775
25	32,000-32,999.99	32,000	800
26	33,000-33,999.99	33,000	825
27	34,000-34,999.99	34,000	850
28	35,000 and up	35,000	875

The new schedule merged the 7,999-and-below salary bracket with the former 8,000-8,999 bracket to create the current lowest salary bracket. While the merger primarily impacts on the members of the former 7,999-and-below bracket, the Corporation explained that the current minimum annual contribution corresponds to the amount necessary to retain coverage for even the poorest of the poor. The Corporation broke down this amount (Php2,400.00) as: Php1,000.00 for drugs and other medicine, Php300.00 for administrative costs, Php500.00 for consultation, and Php600.00 for in-patient services.[56] This new amount is neither unreasonable nor unconscionable.

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[56] *Id.*

Moreover, the contribution schedule, *as a whole*, remains equitable and progressive. The salary base and the premium contributions increase as a member's actual salary increases. A member who earns Php9,000.00 is required to contribute much less than a member who earns Php31,000.00 but they both enjoy the same coverage. This satisfies the standard of a reasonable, equitable, and progressive contribution schedule.

Section 36 of the Migrant Workers and Overseas Filipinos Act does not apply to premium contributions under the National Health Insurance Program.

The NHIP is a social insurance program. It is the government's means to allow the healthy to help pay for the care of the sick, and for those who can afford medical care to provide subsidy to those who cannot.[57] The premium collected from members is *neither* a fee nor an expense but an **enforced contribution** to the common insurance fund.

From this perspective, the petitioners-in-intervention cannot invoke the non-increase clause under Section 36 of the Migrant Workers and Overseas Filipinos Act. There is no valid distinction between migrant workers and the rest of the population that would justify a lower premium rate for the former. It would unduly burden the other PhilHealth contributors in favor of Overseas Filipino Workers.

Any distinctions between OFWs and all the other sectors are not germane to the NHIA's purpose of ensuring affordable, acceptable, available, and accessible health care services for all citizens of the Philippines.[58] Therefore, the application of Section 36 of the Migrant Workers and Overseas Filipinos Act to obstruct the increase of premiums under the NHIP amounts

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[57] Sec. 5, NATIONAL HEALTH INSURANCE ACT.

[58] *Id.*, Sec. 5.

to an *unreasonable* classification, in violation of the equal protection clause.

Furthermore, the premium rate for indigent members was pegged at Php2,400.00 — the lowest in the salary bracket for the Employed Sector. Pursuant to Section 28 of the NHIA, contributions made in behalf of indigent members cannot exceed the minimum contributions for employed members.[59] A non-increase in the minimum premium contribution of OFWs would create a ridiculous situation where the poorest of the poor are required to contribute more than a member employed abroad. This violates the standard of a progressive and equitable contribution scheme.

This Court cannot encroach on the Commission on Audit's jurisdiction.

The petitioners' allegations of unconscionable bonuses to PhilHealth executives and their unethical expenditure of funds, if true, are reprehensible. However, it is equally objectionable for the petitioners to make such allegations *without substantiating them.* That they did not even bother to annex any document to support their factual claims, is very irresponsible.

Further, even if the allegations were true, this Court does not have the power to audit the expenditures of the Government or any of its agencies and instrumentalities. The Constitution saw fit to vest this power on an independent Constitutional body: the Commission on Audit (*COA*).[60] The COA alone has the power to disallow unnecessary and extravagant government spending.

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[59] Sec. 28 (c), NATIONAL HEALTH INSURANCE ACT, as amended by R.A. No. 10606.

[60] Art. IX-D, Sec. 2 (1), CONSTITUTION:

Sec. 2 (1) The Commission on Audit shall have **the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to**, the Government, or any of its subdivisions, agencies, or instrumentalities, **including government-owned or -controlled corporations with original charters, and on a**

The Separation of Powers doctrine, so fundamental in our system of government, precludes this Court from encroaching on the powers and functions of an independent constitutional body. Our participation in the audit process is limited to determining whether the COA committed grave abuse of discretion in rendering its audit decisions. We will not overstep the bounds of our jurisdiction.

Moreover, the alleged improprieties pertain to PhilHealth's manner of *spending* its funds, not to the assailed act of *raising* the premium rates. While the alleged improprieties may constitute grave abuse of discretion, it does not follow that PhilHealth gravely abused its discretion in issuing the assailed circulars. The argument is a *non sequitur*.

Finally, there is no reason to consider the allegation that the premium rates were increased without conducting an actuarial study. Again, the petitioners simply made bare allegations and did not bother to cite their bases or justifications; while PhilHealth produced the three actuarial studies they used.

In sum, all things being considered, we see no basis to grant the writ of *certiorari* prayed for.

WHEREFORE, we **DISMISS** the petition for lack of merit. Costs against the petitioners.

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 leave.

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post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) **other government-owned or -controlled corporations and their subsidiaries**; and (d) such governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit such audit as a condition of subsidy or equity. x x x

EN BANC

[G.R. No. 210936. June 28, 2016]

TEODORO B. CRUZ, JR., MELCHOR M. ALONZO, and WILFREDO P. ALDAY, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT AUDITING CODE (P.D. NO. 1445); NOTICE OF DISALLOWANCE ISSUES BY THE COMMISSION ON AUDIT (COA), AFFIRMED. — We find that the payment of US$58,800 was correctly disallowed by COA. The auditor already noted the irregularities in the Audit Observation Memorandum No. 2003-001, but petitioners failed to address the issues. The Notice of Disallowance also noted irregularities that they again neglected to address. Hence, respondent correctly held that petitioners had not provided sufficient basis to warrant the lifting of the Notice of Disallowance.

2. ID.; ID.; ID.; THE ISSUANCE OF AN AUDIT OBSERVATION MOMORANDUM (AOM) IS AN INITIATORY STEP IN THE INVESTIGATIVE AUDIT TO DETERMINE THE PROPRIETY OF DISBURSEMENTS MADE; IT IS THE ALLOWANCE IN AUDIT OR THE ISSUANCE OF A NOTICE OF DISALLOWANCE THAT BECOMES FINAL AND EXECUTORY ABSENT ANY MOTION FOR RECONSIDERATION OR APPEAL; IN CASE THE NOTICE OF DISALLOWANCE IS APPEALED, IT IS THE DECISION ON APPEAL THAT BECOMES FINAL AND EXECUTORY THAT WOULD SETTLE THE ACCOUNT.— [A]s correctly pointed out by COA, the issuance of an AOM is just an initiatory step in the investigative audit to determine the propriety of disbursements made. It is the allowance in audit or the issuance of a notice of disallowance that becomes final and executory absent any motion for reconsideration or appeal. In case the notice of disallowance is appealed, it is the decision on appeal that becomes final and executory that would settle the account. *Corales v. Republic* is instructive in this regard: x x x, it is beyond doubt that the issuance of an

AOM is, indeed, an initial step in the conduct of an investigative audit considering that after its issuance there are still several steps to be conducted before a final conclusion can be made or before the proper action can be had against the Auditee. There is, therefore, no basis for petitioner Corales' claim that his comment thereon would be a mere formality. Further, even though the AOM issued to petitioner Corales already contained a recommendation for the issuance of a Notice of Disallowance, still, it cannot be argued that his comment/reply to the AOM would be a futile act since no Notice of Disallowance was yet issued. Again, the records are bereft of any evidence showing that Andal has already taken any affirmative action against petitioner Corales after the issuance of the AOM.

3. ID.; ID.; ID.; PETITIONERS FOUND NOT PERSONALLY LIABLE FOR THE DISALLOWED AMOUNT.— Petitioners — specifically petitioner Cruz, who claims to have relied only on his subordinates — bewail the ruling finding them liable as the final approving authority. We find this argument meritorious.x x x COA Decision No. 2012-142 dated 13 September 2012 makes no mention of the liability of the persons listed as responsible for the amount disallowed. x x x Furthermore, We note that the dispositive portion does not mention the personal liability of the officers x x x. More important, We also note the actions of petitioners relative to the disallowance. At the time of payment, they were not aware of the defects in the repair. When they finally became aware of the default of the contractor, they demanded compliance and required the latter to deliver the unrepaired traction motor armatures and corresponding waste materials. x x x In the absence of a showing of bad faith on the part of petitioners Cruz, Alonzo and Alday, therefore, We find them not liable. As correctly invoked by petitioners, We said in *Arias v. Sandiganbayan*: We would be setting a bad precedent if a head of office plagued by all too common problems-dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing, his signature as the final approving authority.

APPEARANCES OF COUNSEL

Cruz Enverga & Lucero for petitioners.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for *Certiorari*[1] under Rule 64 of the Rules of Court, assailing Decision No. 2012-142[2] and Notice/Resolution[3] rendered by the Commission on Audit (COA).

THE ANTECEDENTS FACTS

Petitioners Teodoro B. Cruz, Jr. and Melchor M. Alonzo were former employees of the Light Rail Transit Authority (LRTA): Cruz was the administrator, and Alonzo the Administrative Department manager. Petitioner Wilfredo P. Alday is the current General Services Division Manager.

The facts culled from the records of the case reveal that the LRTA Bids and Awards Committee (BAC) awarded the contract for the repair/rewinding of 23 units of traction motor armature to TAN-CA[4] International, Inc./Yujin Machinery, Ltd. as the lowest bidder at US$94,800 or PhP4,876,322.40 (at the conversion rate of US$1 = PhP51.438), despite no formal service repair agreement executed for the purpose.[5]

Units of traction motor armature totaling 23 were sent to South Korea for repair under a Letter of Credit issued by the Land Bank of the Philippines.[6] Out of the 23 units, only 13

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[1] *Rollo*, pp. 3-20.

[2] *Id.* at 21-26; dated 13 September 2012 and issued by Chairperson Ma. Gracia M. Pulido-Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

[3] *Id.* at 27-28; dated 6 December 2013.

[4] Also referred to as TANCA in the records.

[5] *Id.* at 21.

[6] *Id.*

were repaired and sent back to Manila in February 2002.[7] Of the 13, three were rejected outright by the LRTA Engineering Division, sent back to Korea, and eventually returned to the LRTA in February 2003.[8] The remaining 10 units were never sent back to the LRTA.[9]

Of the total amount of the Letter of Credit, US$58,800 was already paid the Contractor, while the remaining balance of US$36,000 was cancelled upon the request of the LRTA Finance Department.[10]

A post-audit was conducted by the Auditor who thereafter issued Audit Observation Memorandum (AOM) No. 2003-001 dated 21 May 2003 with the following findings:

1. No service repair agreement and/or contract was executed by and between the LRTA and the Contractor;
2. The payment amounting to US$58,800 was effected on 10 April 2002 without the necessary certification that the traction motor armatures passed the required testing and acceptance requirements by the LRTA Engineering Division. Moreover, the Contractor failed to return the waste materials for the repaired traction motor armatures as provided for in Item No. 2.22 of the Terms of Reference (TOR);
3. The recommendation of the LRTA Technical Evaluation Committee to the BAC for the conduct of site visit or ocular inspection of the Contractor's facilities prior to the award and/or during the undertaking of the repair was ignored by the Management; thus putting the LRTA in a disadvantageous position of having no assurance on the capability of the Contractor to undertake the necessary repair works; and,
4. The 10 remaining units of traction motor armature are still with the Contractor TAN-CA International, Inc./Yujin Machinery, Ltd. in Korea, as of AOM date.[11]

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[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

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

On 27 February 2008, the then Director of the COA Legal and Adjudication Office (LAO)-Corporate, issued Notice of Disallowance No. LRTA 2008-005 (2002) in the amount of US$58,800 as payment to the contractor for the repairs made.[12] Held as persons responsible were the following: Atty. Teodoro B. Cruz, Jr., administrator; Atty. Melchor M. Alonzo, manager, Administrative Department; Mr. Wilfredo P. Alday, manager, General Services Division; Atty. Aurora A. Salvana, manager, Legal Division and BAC chairperson; Ms. Evelyn L. Macalino, chief accountant; and Mr. Edgardo P. Castro, Jr., president of TAN-CA International, Inc.[13] The grounds for the disallowance are enumerated as follows:

1. Lack of supporting documents for the payment, in violation of Section 4(6) of Presidential Decree (P.D.) No. 1445;
2. Failure of LRTA Management to file legal action against the Contractor for not complying with the terms and conditions stipulated in the TOR;
3. Failure of LRTA Management to forfeit the performance bond posted by the Contractor despite the delay in the delivery of the repaired equipment;
4. Failure of the Contractor to complete the repair of all traction motor armatures; and
5. Payment to the Contractor for the cost of repair of 13 units of traction motor armature when only nine units passed the one-year warranty period.[14]

Atty. Teodoro B. Cruz, Jr., Atty. Melchor M. Alonzo, and Mr. Wilfredo P. Alday filed their appeal [15] with COA claiming as follows:

1. The payment made was demanded and justified by the attendant circumstances: first, that the 13 units of traction motor armature

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[12] *Id.* at 22.

[13] *Id.*

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

[15] *Id.* at 29-38.

were already repaired and delivered to LRTA and thoroughly passed the five-month testing period; second, the appellants were never aware that the units delivered must pass the one-year warranty period before payment, as it is unlikely that with such imposition any legitimate contractor/bidder will agree; and third, train operations could be stopped if the payment was not made which could have resulted in greater losses to LRTA;

2. With the successful passing of the nine (9) repaired units of traction motor armature within the one-year warranty period, there can be no question that the same must be paid by LRTA; otherwise, it would unjustly enrich itself at the expense of the appellants. Appellants learned about the failure of the four remaining units to pass the one-year warranty period only from the ND. Moreover, the failure of the four units to pass the one-year warranty period occurred after Appellants Atty. Cruz, Jr. and Atty. Alonzo were separated from the service in December 2003 and August 2003, respectively; and

3. The impugned ND was a result of the re-examination and re-evaluation of the AOM, the issuance of which settled the account. Under Section 52 of P.D. No. 1445, the Commission may *motu propio* review or open settled accounts at any time before the expiration of three (3) years after the settlement and shall in no case be opened or reviewed after said period. Hence, the ND has already prescribed.[16]

THE COA RULING

On the issue of whether there was sufficient ground to warrant the reversal of the Notice of Disallowance, the Commission subsequently issued Decision No. 2012-142,[17] which denied the appeal in this wise:

WHEREFORE, premises considered, this Commission DENIES the herein appeal and AFFIRMS ND No. LRTA 2008-005 (2002) dated February 27, 2008 disallowing the payment of US$58,800.00 to TAN-CA International, Inc./Yujin Machinery Ltd., for repair of traction motor armatures.

The LRTA Management is hereby directed to exert its utmost efforts to demand payment of the liquidated damages as penalty for late delivery in accordance with this Decision and to compel the

[16] *Id.* at 23.

[17] *Id.* at 21-26.

Contractor to comply with its contractual obligations, or to take appropriate legal action against it to redress the violation of its rights under the TOR. Further, the LRTA Management should demand from the Contractor the return of the 10 traction motor armatures which are still in the hands of the Contractor or the payment of their money value.[18]

In a Resolution[19] dated 6 December 2013 received by petitioners on 5 February 2014, the Motion for Reconsideration[20] was also denied for lack of merit.[21]

Petitioners filed the instant Petition on 10 February 2014 imputing grave abuse of discretion to COA for: (1) disallowing the payment of US$58,800 and holding petitioners liable therefor, even if the release of the payment was demanded and justified by the circumstances, even if the units passed the warranty period, and even if petitioners did not know whether or not the units failed to pass that period; (2) holding the obligation indivisible; (3) surreptitiously examining a settled account; and (4) holding Cruz, the final approving authority, liable even if he claimed to have relied only on his subordinates.[22]

After being granted its Motions for Extension,[23] COA filed its Comment[24] through the Office of the Solicitor General on 26 June 2014. Respondent alleged that it did not commit grave abuse of discretion in disallowing the payment of US$58,000 and in holding petitioners liable therefor.[25] It insisted that petitioners had not squarely addressed the issues raised in the Audit Observation Memorandum (AOM) or in the Notice of

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[18] *Id.* at 25.

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

[20] *Id.* at 39-46.

[21] *Id.* at 4.

[22] *Id.* at 6-9.

[23] *Id.* at 63-66; 68-71; 73-76.

[24] *Id.* at 78-93.

[25] *Id.* at 82.

Disallowance.[26] It also insisted that they were not able to present any proof that the account had been settled.[27] Thus, no weight can be given to petitioners' contention that the three-year prescriptive period was violated by the issuance of the Notice of Disallowance based on an AOM issued on 27 February 2008 or almost five years after the settlement of account on 21 May 2003.[28]

Respondent further argued that petitioners Cruz and Alonzo's claim that they have already resigned is of no moment because (1) the Notice of Suspension was issued on 25 September 2003, and (2) the issues of the AOM and the Notice of Disallowance were already brought to their attention.[29] Respondent claimed that petitioners were notified of the insufficiencies, to wit: lack of supporting documents; failure to file a legal action against the contractor for not complying with the terms and conditions of the contract as stated in the Terms of Reference (TOR); failure to forfeit the performance bond in light of the delay in delivery and incomplete repair of the motors; and payment for 13 units even if only 9 passed the one-year warranty period.[30] In fact, when respondent asked for the submission of the Official Receipt, Report of Waste Materials, duly signed Inspection Report, Certificate of Acceptance, and Certificate of Warranty for the three units rejected by the LRTA Engineering Division, petitioners instead submitted the Advice for Settlement, Inspection Report and Certificate of Appearance, none of which was considered sufficient to warrant the lifting of the Notice of Suspension.[31] The transaction, according to respondent, was indeed beset with irregularities. Three failed to pass the test conducted by the LRTA; payment was effected even without the requisite inspection

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[26] *Id.* at 84.

[27] *Id.* at 85.

[28] *Id.* at 89.

[29] *Id.* at 86.

[30] *Id.* at 86-87.

[31] *Id.*

report; the ocular inspection of the contractor's facilities was not conducted prior to the award of the contract; and the contractor failed to perform its obligations according to the TOR, *i.e.*, to return the waste materials.[32]

Petitioners filed their Reply [33] insisting that the amount covered only the 13 motors already repaired and shipped, but not the 10 other motors that had been neither repaired nor returned to the LRTA.[34] They also claimed that they only had limited participation in the transaction, which petitioner Cruz signed as approving officer and petitioners Alonzo and Alday initialed under the administrator's name in the Conforme letter.[35] The request for approval of payment was endorsed and recommended by the Bids and Awards Committee, the General Services Division manager, the Administrative Department manager and the accountant.[36] They all invoked the ruling in *Arias v. Sandiganbayan*[37] and resorted to the defense of good faith, saying they were not aware of the defects in the repair.[38] Meanwhile, they also claimed they sent letters to the contractor upon learning of the default by the latter. When such letters proved futile, they supposedly referred the matter to the legal department for appropriate action. They said that after they left the LRTA, they were no longer privy to how the matter was dealt with.[39]

OUR RULING

We partially grant the Petition.

We find that the payment of US$58,800 was correctly disallowed by COA. The auditor already noted the irregularities

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

[33] *Id.* at 95-107.

[34] *Id.* at 97.

[35] *Id.* at 98.

[36] *Id.*

[37] 269 Phil. 794 (1989).

[38] *Rollo*, p. 99.

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

in the Audit Observation Memorandum No. 2003-001, but petitioners failed to address the issues. The Notice of Disallowance also noted irregularities that they again neglected to address. Hence, respondent correctly held that petitioners had not provided sufficient basis to warrant the lifting of the Notice of Disallowance.

Petitioners cite circumstances that allegedly justify the release of payment, specifically, the following: (1) the payment was effected through a Letter of Credit; (2) the payment was for the cost of the repair of the 13 units of traction motor armatures; (3) these units were already delivered to the LRTA; and (4) the units underwent repair and even passed the testing period of five months. They likewise claim that the 13 units did not have to pass the one-year warranty period before they could be paid for. They claim that passing the warranty period can never be a precondition for the payment, as no legitimate contractor or bidder will agree to have its products used until the expiration of the warranty period before it gets paid. Finally, petitioners claim that because of the delay in the payment of the repair of the 13 units, the contractor already threatened the LRTA that the former would stop the installation and use of the repaired traction motors. This move would allegedly result in the stoppage of the train operation and, consequently, greater losses to LRTA. Like COA, however, We find these arguments to be without merit, as they are unfounded and unsubstantiated. What is clear is that petitioners were remiss in their duty to take the necessary actions noted in the grounds for disallowance.

Meanwhile, despite the absence of a formal contract, COA resorted to the TOR and bid documents submitted by the contractor to determine whether the obligation was indeed divisible as claimed by petitioners. The latter stipulated that payment to the contractor would be made per contract order or for each of the four (4) traction motor armatures. COA correctly determined, however, that the bid and award pertained to just one work package or one contractual undertaking: the repair of all 23 units of traction motor armature. Hence, it correctly concluded that this undertaking was an indivisible obligation. That petitioners

accepted and paid for the delivery of the 13 traction motors only cannot be used by them as an argument to escape liability, since the act in itself constituted an irregularity disallowed by COA.

Petitioners also insist before this Court that COA surreptitiously examined a settled account. They claim that the Notice of Disallowance was issued almost five (5) years after the issuance of the AOM, an interval that was way beyond the prescriptive period of three (3) years under Section 52 of Presidential Decree (P.D.) No. 1445, to wit:

> SECTION 52. Opening and Revision of Settled Accounts. — (1) At any time before the expiration of three years after the settlement of any account by an auditor, the Commission may *motu propio* review and revise the account or settlement and certify a new balance. For that purpose, it may require any account, vouchers, or other papers connected with the matter to be forwarded to it.
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> (2) When any settled account appears to be tainted with fraud, collusion, or error calculation, or when new and material evidence is discovered, the Commission may, within three years after the original settlement, open the account, and after a reasonable time for reply or appearance of the party concerned, may certify thereon a new balance. An auditor may exercise the same power with respect to settled accounts pertaining to the agencies under his audit jurisdiction.
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> (3) Accounts once finally settled shall in no case be opened or reviewed except as herein provided.

However, as correctly pointed out by COA, the issuance of an AOM is just an initiatory step in the investigative audit to determine the propriety of disbursements made. It is the allowance in audit or the issuance of a notice of disallowance that becomes final and executory absent any motion for reconsideration or appeal. In case the notice of disallowance is appealed, it is the decision on appeal that becomes final and executory that would settle the account.

Corales v. Republic[40] is instructive in this regard:

[T]he **issuance of the AOM is just an initiatory step in the investigative audit** being conducted by Andal as Provincial State Auditor to determine the propriety of the disbursements made by the Municipal Government of Laguna. That the issuance of an AOM can be regarded as just an initiatory step in the investigative audit is evident from COA Memorandum No. 2002-053 dated 26 August 2002. A perusal of COA Memorandum No. 2002-053, particularly Roman Numeral III, Letter A, paragraphs 1 to 5 and 9, reveals that **any finding or observation by the Auditor stated in the AOM is not yet conclusive**, as the comment/justification[25] of the head of office or his duly authorized representative is still necessary before the Auditor can make any conclusion. The Auditor may give due course or find the comment/justification to be without merit but in either case, the Auditor shall clearly state the reason for the conclusion reached and recommendation made. Subsequent thereto, the Auditor shall transmit the AOM, together with the comment or justification of the Auditee and the former's recommendation to the Director, Legal and Adjudication Office (DLAO), for the sector concerned in Metro Manila and/or the Regional Legal and Adjudication Cluster Director (RLACD) in the case of regions. The transmittal shall be coursed through the Cluster Director concerned and the Regional Cluster Director, as the case may be, for their own comment and recommendation. The DLAO for the sector concerned in the Central Office and the RLACD shall make the necessary evaluation of the records transmitted with the AOM. When, on the basis thereof, he finds that the transaction should be suspended or disallowed, he will then issue the corresponding Notice of Suspension (NS), Notice of Disallowance (ND) or Notice of Charge (NC), as the case may be, furnishing a copy thereof to the Cluster Director. Otherwise, the Director may dispatch a team to conduct further investigation work to justify the contemplated action. If after in-depth investigation, the DLAO for each sector in Metro Manila and the RLACD for the regions find that the issuance of the NS, ND, and NC is warranted, he shall issue the same and transmit such NS, ND or NC, as the case may be, to the agency head and other persons found liable therefor.

From the foregoing, it is beyond doubt that the issuance of an AOM is, indeed, an initial step in the conduct of an investigative audit

[40] G.R. No. 186613, 27 August 2013, 703 SCRA 623.

considering that after its issuance there are still several steps to be conducted before a final conclusion can be made or before the proper action can be had against the Auditee. There is, therefore, no basis for petitioner Corales' claim that his comment thereon would be a mere formality. Further, even though the AOM issued to petitioner Corales already contained a recommendation for the issuance of a Notice of Disallowance, still, it cannot be argued that his comment/ reply to the AOM would be a futile act since no Notice of Disallowance was yet issued. Again, the records are bereft of any evidence showing that Andal has already taken any affirmative action against petitioner Corales after the issuance of the AOM.[41]

Finally, petitioners — specifically petitioner Cruz, who claims to have relied only on his subordinates — bewail the ruling finding them liable as the final approving authority. We find this argument meritorious.

In Notice of Disallowance No. LRTA 2008-005 (2002) dated 27 February 2008, the persons responsible are listed as follows:

Reference		**PAYEE**	**AMOUNT Disallowed**	**PERSONS RESPONSIBLE**
Check No.	**CV No./Date**			
Letter of Credit	No. DC 202093F	**TANCA INT'L. INC./YUJIN (KOREA)**	US$58,800.00 (₱3,025,104.40)	**Atty. T. B. Cruz Jr.** - For being the approving officer and conforme on the drawdown of U.S.$58,800.00. **Atty. M. M. Alonzo** **Mr. W.P. Alday** - Initialed under the administrator's name in the Conforme

[41] *Id.*

				Letter on the drawdown of U.S.$58,800.00. **Atty. A.A. Salvana** -Recommended the award of repair of traction Motors Armatures to TANCA INT'L INC.,/ YUJIN (KOREA) WITHOUT EXPECTING A Service Repair Agreement. **Evelyn L. Macalino — Chief Accountant** **TANCA INT'L. INC./YUJIN (KOREA)** - For being the payee to the repair service.

Meanwhile, COA Decision No. 2012-142 dated 13 September 2012 makes no mention of the liability of the persons listed as responsible for the amount disallowed. The Decision merely states as follows:

The LRTA management should direct its efforts to compel the Contractor to either repair the remaining units still in Korea or return them at the latter's expense as stipulated under Item No.

2.3.1 of the TOR, with penalty in either case, as provided under Item No. 8.1 thereof.[42]

Furthermore, We note that the dispositive portion does not mention the personal liability of the officers:

> The LRTA Management is hereby directed to exert its utmost efforts to demand payment of the liquidated damages as penalty for late delivery in accordance with this Decision and to compel the Contractor to comply with its contractual obligations, or to take appropriate legal action against it to redress the violation of its rights under the TOR. Further, the LRTA Management should demand from the Contractor the return of the 10 traction motor armatures which are still in the hands of the Contractor or the payment of their money value.[43]

More important, We also note the actions of petitioners relative to the disallowance. At the time of payment, they were not aware of the defects in the repair. When they finally became aware of the default of the contractor, they demanded compliance and required the latter to deliver the unrepaired traction motor armatures and corresponding waste materials. These demands were made through (a) a letter dated 27 November 2002 signed by petitioner Cruz, and addressed to Yujin Machineries, Inc. through TAN-CA International, Inc.; (b) a letter dated 3 December 2002 signed by petitioner Alday, and addressed to TAN-CA International, Inc.; and (c) a letter dated 24 April 2003 signed by petitioner Alday, and addressed to Yujin Machineries.[44] And when these letters proved futile, petitioners referred the matter to the LRTA legal department for appropriate action through letter signed by petitioner Alday, and addressed to Atty. Saldana.[45]

In the absence of a showing of bad faith on the part of petitioners Cruz, Alonzo and Alday, therefore, We find them not liable. As correctly invoked by petitioners, We said in *Arias v. Sandiganbayan*:[46]

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[42] *Id.* at 25.

[43] *Id.*

[44] *Id.* at 99.

[45] *Id.* at 100.

[46] 259 Phil. 794 (1989).

We would be setting a bad precedent if a head of office plagued by all too common problems-dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing, his signature as the final approving authority.

There appears to be no question from the records that documents used in the negotiated sale were falsified. A key tax declaration had a typewritten number instead of being machine-numbered. The registration stampmark was antedated and the land reclassified as residential instead of ricefield. But were the petitioners guilty of conspiracy in the falsification and the subsequent charge of causing undue in injury and damage to the Government?

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could *personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent 'on their subordinates and on the good faith of those prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of document, letters and supporting paper that routinely pass through his hands. The number in bigger offices or departments is even more appalling.[47]

WHEREFORE, the assailed Commission on Audit Decision No. 2012-142 dated 13 September 2012 and Notice/Resolution dated 6 December 2013 are hereby **AFFIRMED** with the

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[47] *Id.*

pronouncement that petitioners Cruz, Alday and Alonzo are not personally liable for the disallowed amount.

SO ORDERED.

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

Jardeleza, J., no part, comment of OSG was filed during his term as Solicitor General.

Del Castillo, J., on leave.

FIRST DIVISION

[G.R. No. 213582. June 28, 2016]

NYMPHA S. ODIAMAR,[1] *petitioner, vs.* **LINDA ODIAMAR VALENCIA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WHAT NEED TO BE PROVED; JUDICIAL ADMISSIONS MADE BY THE PARTIES IN THE PLEADINGS OR IN THE COURSE OF THE TRIAL OR OTHER PROCEEDINGS IN THE SAME CASE ARE LEGALLY BINDING ON THE PARTY MAKING IT, EXCEPT WHEN IT IS SHOWN THAT THEY HAVE BEEN MADE THROUGH PALPABLE MISTAKE OR THAT NO SUCH ADMISSION WAS ACTUALLY MADE.— Having admitted that she obtained loans from respondent without showing that the same had already been paid or otherwise extinguished, petitioner cannot now aver otherwise. It is settled that judicial admissions made by the parties in the pleadings

[1] "Nympha Odiamar-Buencamino" and "Nimfa Odiaman-Buencamino" in some parts of the records.

or in the course of the trial or other proceedings in the same case are conclusive and do not require further evidence to prove them. They are legally binding on the party making it, except when it is shown that they have been made through palpable mistake or that no such admission was actually made, neither of which was shown to exist in this case. Accordingly, petitioner is bound by her admission of liability and the only material question remaining is the extent of such liability.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATION; NOVATION IS NEVER PRESUMED; TO CONSTITUTE NOVATION BY SUBSTITUTION OF DEBTOR, THE FORMER DEBTOR MUST BE EXPRESSLY RELEASED FROM THE OBLIGATION AND THE THIRD PERSON OR NEW DEBTOR MUST ASSUME THE FORMER'S PLACE IN THE CONTRACTUAL RELATIONS; CASE AT BAR.— [W]hile it is observed that petitioner had indeed admitted that she agreed to settle her late parents' debt, which was supposedly evinced by (*a*) the ₱2,100,000.00 check she issued therefor, and (*b*) several installment payments she made to respondent from December 29, 2000 to May 31, 2003, there was **no allegation, much less any proof to show, that the estates of her deceased parents were released from liability thereby**. In *S.C. Megaworld Construction and Development Corporation v. Parada*, the Court held that **to constitute novation by substitution of debtor, the former debtor must be expressly released** from the obligation and the third person or new debtor must assume the former's place in the contractual relations. Moreover, the Court ruled that the "fact that the creditor accepts payments from a third person, who has assumed the obligations, **will result merely in the addition of debtors and not novation**." At its core, novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken. Here, the intent to novate was not satisfactorily proven by respondent. At best, petitioner only manifested her desire to shoulder the debt of her parents, which, as above-discussed, does not amount to novation. Thus, the courts *a quo* erred in holding petitioner liable for the debts obtained by her deceased parents on account of novation by substitution of the debtor.

3. ID.; ID.; INTEREST; THE LACK OF A WRITTEN STIPULATION TO PAY INTEREST ON THE LOANED AMOUNT BARS A CREDITOR FROM CHARGING MONETARY INTEREST AND THE COLLECTION OF INTEREST WITHOUT ANY STIPULATION THEREFOR IN WRITING IS PROHIBITED BY LAW.— It is fundamental that for monetary interest to be due, there must be an express written agreement therefor. Article 1956 of the Civil Code provides that **"[n]o interest shall be due unless it has been expressly stipulated in writing**." In this relation, case law states that the lack of a written stipulation to pay interest on the loaned amount bars a creditor from charging monetary interest and the collection of interest without any stipulation therefor in writing is prohibited by law. Here, respondent herself admitted that there was no written agreement that interest would be due on the sum loaned, only that there was an implicit understanding that the same would be subject to interest since she also borrowed the same from banks which, as a matter of course, charged interest. Respondent also testified on cross examination that the ₱2,100,00.00 corresponds only to the principal and does not include interest.

APPEARANCES OF COUNSEL

Antonio M. Ursua, Jr. for petitioner.
Rosario Airene R. Hinanay-Pasa for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[2] assailing the Decision[3] dated March 16, 2012 and the Resolution[4] dated

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[2] *Rollo*, pp. 9-20.

[3] *Id.* at 22-36. Penned by Associate Justice Noel G. Tijam with Associate Justices Romeo F. Barza and Edwin D. Sorongon concurring.

[4] *Id.* at 38-40.

July 14, 2014 of the Court of Appeals (CA) in C.A. G.R. CV No. 93624, which affirmed the Decision[5] dated May 5, 2009 of the Regional Trial Court of San Jose, Camarines Sur, Branch 58 (RTC) in Civil Case No. T-962 ordering petitioner Nympha S. Odiamar (petitioner) to pay respondent Linda Odiamar Valencia (respondent) the amount of ₱1,710,049.00 plus twelve percent (12%) interest, attorney's fees, litigation expenses, and the costs of suit.

Facts

On August 20, 2003, respondent filed a complaint[6] for sum of money and damages against petitioner, alleging that the latter owed her ₱2,100,000.00. Petitioner purportedly issued China Bank Check No. GH B1147212[7] (the check) for the said amount to guarantee the payment of the debt, but upon presentment, the same was dishonored.[8] Respondent lamented that petitioner refused to pay despite repeated demands, and that had she invested the money loaned to petitioner or deposited the same in a bank, it would have earned interest at the rate of 36% per annum or three percent (3%) per month.[9]

For her part, petitioner sought the dismissal[10] of the complaint on the ground that it was her deceased parents who owed respondent money. Accordingly, respondent's claim should be filed in the proceedings for the settlement of their estates. Petitioner averred that respondent had, in fact, participated in the settlement proceedings and had issued a certification[11] stating that it was petitioner's deceased parents who were indebted to respondent

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[5] *Id.* at 42-46. Penned by Presiding Judge Ma. Angela Acompanado Arroyo.

[6] Dated August 14, 2003. Records, pp. 1-2.

[7] Dated March 3, 2003. *Id.* at 3.

[8] See letter dated July 11, 2003; *id.* at 4.

[9] See *id.* at 1.

[10] See Motion to Dismiss dated September 15, 2003; *id.* at 8-9.

[11] Dated March 10, 1998. *Id.* at 11.

for ₱2,000,000.00. She further maintained that as administratrix of her parents' estates, she agreed to pay such indebtedness on installment but respondent refused to accept her payments.[12]

Respondent countered[13] that petitioner personally borrowed almost half of the ₱2,100,000.00 from her, as evidenced by the check which she issued after agreeing to settle the same in installments.[14] While respondent conceded that petitioner made several installment payments from December 29, 2000 until May 31, 2003, she pointed out that the latter failed to make any succeeding payments.[15] Moreover, respondent denied participating in the proceedings for the settlement of the estates of petitioner's parents, clarifying that petitioner was the one who prepared the certification alluded to and that she (respondent) signed it on the belief that petitioner would make good her promise to pay her (respondent).[16]

In an Order[17] dated October 3, 2003, the RTC denied petitioner's motion to dismiss, thus prompting her to file an answer.[18] She asserted that respondent merely persuaded her to issue the check to guarantee her deceased parents' loan. She further claimed that the check was blank when she issued it and that despite having no authority to fill up the same, respondent wrote the amount and date thereon.[19] She also maintained that from December 29, 2000 to May 31, 2003, she made, in almost daily installments, payments to respondent ranging from ₱500.00 to ₱10,000.00, and that while she tried to make succeeding

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[12] See *id.* at 8-9.

[13] See Opposition to Defendant's Motion to Dismiss dated September 29, 2003; *id.* at 13-15.

[14] See *id.* at 13.

[15] See *id.* at 14. See also *rollo*, p. 42.

[16] See records, pp. 13-14.

[17] *Id.* at 16-17. Penned by Presiding Judge Eufronio K. Maristela.

[18] Erroneously dated as December 13, 2002. *Id.* at 99-104.

[19] See *id.* at 101. See also CA's March 16, 2012 Decision; *rollo*, p. 31.

payments, respondent refused to accept the same, demanding, instead, the payment of the entire balance.[20] As counterclaim, petitioner prayed that moral damages, attorney's fees, litigation expenses, and exemplary and punitive damages be awarded to her.[21]

The RTC Ruling

In a Decision[22] dated May 5, 2009, the RTC ruled in favor of respondent and ordered petitioner to pay: (*a*) ₱1,710,049.00 which represents the unpaid portion of the ₱2,100,000.00 debt; (*b*) twelve percent (12%) interest computed from the time judicial demand was made on August 20, 2003 until fully paid; (*c*) ₱10,000.00 as attorney's fees; (*d*) litigation expenses amounting to ₱19,662.78; and (*e*) the costs of suit.[23]

The RTC refused to give credence to petitioner's contention that it was her deceased parents who borrowed money from respondent, observing that while the latter acknowledged that the former's deceased parents owed her ₱700,000.00 out of the ₱2,100,000.00, petitioner likewise admitted that she obtained personal loans from respondent.[24] Hence, according to the RTC, petitioner cannot deny her liability to respondent. Further, by assuming the liability of her deceased parents and agreeing to pay their debt in installments — which she in fact paid from December 29, 2000 to May 31, 2003 in amounts of ₱500.00 to ₱10,000.00, and which payments respondent did actually accept — a mixed novation took place and petitioner was substituted in their place as debtor. Thus, the liabilities of the estates of petitioner's deceased parents were extinguished and transferred to petitioner.[25]

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[20] See *id.*

[21] See *id.* at 102-103.

[22] *Rollo*, pp. 42-46.

[23] *Id.* at 45-46.

[24] See *id.* at 43-44.

[25] See *id.* 45.

Anent the sum due, the RTC surmised that petitioner and her deceased parents owed respondent the sum of ₱2,000,000.00 as principal and since petitioner undertook to pay the same in installments, ₱100,000.00 was added as interest; hence, petitioner issued the check for ₱2,100,000.00.[26] Based on the receipts submitted by petitioner, the genuineness and due execution of which were not put in issue, petitioner had paid a total of ₱389,951.00 in installments, leaving an unpaid balance of ₱1,710,049.00, subject to interest of twelve percent (12%) per annum from the time judicial demand was made on August 20, 2003, in the absence of any written stipulation on interest.[27]

Aggrieved, petitioner appealed[28] to the CA, arguing that novation did not take place and no interest was due respondent.[29]

The CA Ruling

In a Decision[30] dated March 16, 2012, the CA affirmed the ruling of the RTC.[31] It agreed that petitioner cannot deny her liability to respondent in view of her admission that she borrowed money from the latter several times.[32] The CA also found petitioner's claim that she issued a blank check incredible, pointing out that petitioner testified in court that she personally wrote the amount thereon after she and respondent agreed that the loans she and her deceased parents obtained amounted to ₱2,100,000.00.[33]

Anent the issue of novation, the CA concurred with the RTC that novation took place insofar as petitioner was substituted

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[26] See *id.* at 44.

[27] See *id.* at 45.

[28] See Brief for the Appellant dated June 12, 2010; CA *rollo*, pp. 18-44.

[29] See *id.* at 25-26, 33, and 43-44.

[30] *Rollo*, pp. 22-36.

[31] *Id.* at 36.

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

[33] See *id.* at 31-32.

in place of petitioner's late parents, considering that petitioner undertook to pay her deceased parents' debt. However, the CA opined that there was no novation with respect to the object of the contract, following the rule that an obligation is not novated by an instrument which expressly recognizes the old obligation and changes only the terms of paying the same, as in this case where the parties merely modified the terms of payment of the ₱2,100,000.00.[34]

Dissatisfied, petitioner moved for reconsideration,[35] which was, however, denied in a Resolution[36] dated July 14, 2014; hence, this petition.

The Issue Before the Court

The primary issue for the Court's resolution is whether or not petitioner should be held liable to respondent for the entire debt in the amount of ₱2,100,000.00.

The Court's Ruling

At the outset, it must be emphasized that the fact of petitioner's liability to respondent is well-established. As correctly pointed out by the RTC and the CA, while respondent acknowledged that petitioner's deceased parents owed her money, petitioner also admitted obtaining loans from respondent, *viz.*:

> From [respondent's] recollection, the amount due from [petitioner's] parents is ₱700,000.00. Aside from her parents' loans, however, [petitioner] herself admitted having obtained personal loans from the respondent while her parents were still alive. She testified:
>
> ATTY. PASA:
>
> You also know that [respondent] was also in [lending]?
>
> [PETITIONER]: Yes, Madam.

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[34] See *id.* at 34-35.

[35] See motion for reconsideration dated April 10, 2012; CA *rollo*, pp. 95-101.

[36] *Id.* at 38-40.

Q: Because she was in lending you have borrowed money also? (sic)

A: Yes, Madam.

Q: Separate from your father?

A: Yes, Madam.

x x x x x x x x x

Q: You borrowed money from [respondent] separate from your father prior to his death?

A: Yes, Madam.[37]

Having admitted that she obtained loans from respondent without showing that the same had already been paid or otherwise extinguished, petitioner cannot now aver otherwise. It is settled that judicial admissions made by the parties in the pleadings or in the course of the trial or other proceedings in the same case are conclusive and do not require further evidence to prove them.[38] They are legally binding on the party making it,[39] except when it is shown that they have been made through palpable mistake or that no such admission was actually made,[40] neither of which was shown to exist in this case. Accordingly, petitioner is bound by her admission of liability and the only material question remaining is the extent of such liability.

Based on the records of this case, respondent, for her part, admitted that petitioner's deceased parents owed her ₱700,000.00 of the ₱2,100,000.00 debt and that petitioner owed her ₱1,400,000.00 only:

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[37] *Id.* at 43-44. See also TSN dated July 27, 2007, pp. 10-11.

[38] *Josefa v. Manila Electric Company*, G.R. No. 182705, July 18, 2014, 730 SCRA 126, 144.

[39] *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp.*, G.R. No. 182864, January 12, 2015, 745 SCRA 98, 121.

[40] *Josefa v. Manila Electric Company*, *supra* note 38. See also Section 4, Rule 129 of the Rules of Court.

ATTY. VILLEGAS:

Q When was the first time that the [petitioner] obtained cash advances from you?
A About 1996, sir and then she made several others and she kept on borrowing money from me.

Q Do you mean to say that she obtained part of her loan while her father was still alive?
A Yes, when he was still alive she already borrowed.

Q Are you telling us that this 2.1 Million Pesos was entirely borrowed from you by the [petitioner]?
A There were loans which were obtained by her father, some by her mother and since they died already[,] when we summarized the amount that was the total amount that she owes me, sir.

Q How much is the amount owe[d] to you by the [petitioner's] father?
A I could no longer recall, sir because that was already long time ago but it was part of the summary that we made, sir.

Q Could it be ₱200,000.00?
A More or less, that much, sir.

Q What about the defendant's mother? How much was her obligation to you?
A ₱500,000.00, more or less, but I cannot exactly recall.

Q So, the defendant's parents owed you more than ₱700,000.00 is it not?
A Yes, sir.

x x x x x x x x x

COURT:

Q Is it the impression of the Court that the x x x **amount of ₱700,000.00 is not a personal indebtedness of [petitioner] but that of her parents**? Is that the impression x x x the Court is getting?
A **Yes, Your Honor**.

x x x x x x x x x

ATTY. VILLEGAS:

Q Tell us, how much really to your recollection is the indebtedness of the [petitioner's] parents?
A To the best of my recollection, that is the amount. **More or less [₱]700,000[.00] for both spouses, sir**.[41] (Emphases supplied)

ATTY. PASA:

Q Madam witness, during the last hearing you stated that the [petitioner's] parents were indebted [to] you for about ₱700,000.00?
A Yes, Madam.

Q **How about the [petitioner], how much did she [owe] you?**
A **More or less 1.4 [Million] Madam.**[42] (Emphasis supplied)

Applying the same principle on judicial admissions above, it is therefore incontrovertible that **petitioner's debt to respondent amounted to only ₱1,400,000.00** and not ₱2,100,000.00. Thus, respondent only remains liable to petitioner for such amount. Considering that petitioner had already paid ₱389,951.00 in installments as evidenced by the receipts submitted by petitioner — the genuineness and due execution of which were not put in issue — the unpaid balance of petitioner's ₱1,400,000.00 debt to respondent stands at **₱1,010,049.00**. On the other hand, the remaining ₱700,000.00 of the total ₱2,100,000.00 debt to respondent is properly for the account of the estates of petitioner's deceased parents and, hence, should be claimed in the relevant proceeding therefor.

At this juncture, the Court finds it apt to correct the mistaken notions that: (*a*) **novation by substitution of the debtor took place** so as to release the estates of the petitioner's deceased parents from their obligation, which, thus, rendered petitioner solely liable for the entire ₱2,100,000.00 debt; and (*b*) the ₱100,000.00 of the ₱2,100,000.00 debt was **in the nature of accrued monetary interests.**

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[41] TSN dated April 28, 2005, pp. 6-7 and 10-11.

[42] TSN dated June 21, 2005, p. 2.

On the first matter, while it is observed that petitioner had indeed admitted that she agreed to settle her late parents' debt, which was supposedly evinced by (*a*) the ₱2,100,000.00 check she issued therefor, and (*b*) several installment payments she made to respondent from December 29, 2000 to May 31, 2003, there was **no allegation, much less any proof to show, that the estates of her deceased parents were released from liability thereby.** In *S.C. Megaworld Construction and Development Corporation v. Parada*,[43] the Court held that **to constitute novation by substitution of debtor, the former debtor must be expressly released** from the obligation and the third person or new debtor must assume the former's place in the contractual relations.[44] Moreover, the Court ruled that the "fact that the creditor accepts payments from a third person, who has assumed the obligation, **will result merely in the addition of debtors and not novation**."[45] At its core, novation is never presumed, and the animus novandi, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.[46] Here, the intent to novate was not satisfactorily proven by respondent. At best, petitioner only manifested her desire to shoulder the debt of her parents, which, as above-discussed, does not amount to novation. Thus, the courts *a quo* erred in holding petitioner liable for the debts obtained by her deceased parents on account of novation by substitution of the debtor.

Similarly, both courts faultily concluded that the principal sum loaned by petitioner and her deceased parents amounted to ₱2,000,000.00 and the ₱100,000.00 was added as interest because petitioner undertook to pay the loan in installments.

It is fundamental that for monetary interest to be due, there must be an express written agreement therefor.[47] Article 1956

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[43] 717 Phil. 752 (2013).

[44] See *id.* at 764.

[45] *Id.* at 766-767.

[46] See *id.* at 764-768.

[47] See *Siga-an v. Villanueva*, 596 Phil. 760, 769 and 772.

of the Civil Code provides that "**[n]o interest shall be due unless it has been expressly stipulated in writing**." In this relation, case law states that the lack of a written stipulation to pay interest on the loaned amount bars a creditor from charging monetary interest[48] and the collection of interest without any stipulation therefor in writing is prohibited by law.[49]

Here, respondent herself admitted that there was no written agreement that interest would be due on the sum loaned, only that there was an implicit understanding that the same would be subject to interest since she also borrowed the same from banks which, as a matter of course, charged interest. Respondent also testified on cross examination that the ₱2,100,000.00 corresponds only to the principal and does not include interest, *viz.*:

> [Atty. Villegas]: Now, are these loans interest bearing?
>
> [Respondent]: Yes, sir, because the money I loaned to them I have also obtained as a loan from the bank.
>
> Q: This 2.1 Million Pesos are included (sic) the interest that you charge[d] to the [petitioner's] parents and to the petitioner, is it not?
>
> A: That is the basis of the interest bearing, 2.1 Million Pesos at 3 percent per month.
>
> Q: Are you telling us that when you summarized and computed the entire total obligations of the [petitioner and her parents] you computed the interest and come out (sic) with 2.1 Million Pesos?
>
> A: Interest has not yet been included in the 2.1 Million Pesos.
>
> Q: This agreement of yours to pay interest is not in writing, is it not (sic)?
>
> A: It is not in writing, sir.[50]

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[48] *De la Paz v. L & J Development Company, Inc.*, G.R. No. 183360, September 8, 2014, 734 SCRA 364, 374.

[49] *Id.*, *citing Siga-an v. Villanueva*, *supra* note 47, at 769.

[50] TSN dated April 28, 2005, pp. 7-8.

All told, having established that no novation took place and that no interest was actually due, and factoring in the payments already made for her account, petitioner is, thus, ordered to pay respondent the amount of **₱1,010,049.00,** which is the remaining balance of her principal debt to the latter in the original amount of ₱1,400,000.00.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated March 16, 2012 and the Resolution dated July 14, 2014 of the Court of Appeals (CA) in C.A. G.R. CV No. 93624 are hereby **AFFIRMED** with **MODIFICATION** in that petitioner Nympha S. Odiamar is **ORDERED** to pay respondent Linda Odiamar Valencia the amount of **₱1,010,049.00**, which is the remaining balance of her principal debt to the latter in the original amount of ₱1,400,000.00.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 214399. June 28, 2016]

ARMANDO N. PUNCIA, *petitioner, vs.* **TOYOTA SHAW/ PASIG, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CONSOLIDATION; CONSOLIDATION OF CASES IS A PROCEDURAL DEVICE GRANTED TO THE COURT AS AN AID IN DECIDING HOW CASES IN ITS DOCKET ARE TO BE TRIED SO THAT THE BUSINESS OF THE COURT MAY

BE DISPATCHED EXPEDITIOUSLY AND WITH ECONOMY WHILE PROVIDING JUSTICE TO THE PARTIES; RATIONALE FOR CONSOLIDATION.— [T]he Court notes that consolidation of cases is a procedure sanctioned by the Rules of Court for actions which involve a common question of law or fact before the court. It is a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties. The rationale for consolidation is to have all cases, which are intimately related, acted upon by one branch of the court to avoid the possibility of conflicting decisions being rendered and in effect, prevent confusion, unnecessary costs, and delay. It is an action sought to avoid multiplicity of suits; guard against oppression and abuse; clear congested dockets; and to simplify the work of the trial court in order to attain justice with the least expense and vexation to the parties-litigants.

2. ID.; ID.; ID.; REQUISITES; CONSOLIDATION IS ALLOWED WHERE THERE ARE SIMILAR ACTIONS WHICH ARE PENDING BEFORE THE COURT, FOR THERE IS NOTHING TO CONSOLIDATE WHEN A MATTER HAS ALREADY BEEN RESOLVED AND THE VERY PURPOSE OF CONSOLIDATION, TO AVOID CONFLICTING DECISIONS AND MULTIPLICITY OF SUITS, RENDERED FUTILE.— In order to determine whether consolidation is proper, the test is to check whether the cases involve the **resolution** of common questions of law, related facts, or the same parties. Consolidation is proper whenever the subject matter involved and the relief demanded in the different suits make it expedient for the court to determine all of the issues involved and adjudicate the rights of the parties by hearing the suits together. **However, it must be stressed that an essential requisite of consolidation is that the several actions which should be pending before the court, arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence.** As succinctly stated in the rules, consolidation is allowed when there are **similar actions which are pending before the court** – for there is nothing to consolidate when a matter has already been resolved and the very purpose of consolidation, to avoid conflicting decisions and multiplicity of suits, rendered futile.

3. ID.; ID.; ID.; CONSOLIDATION OF CASES IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT AND THE LATTER'S ACTION IN CONSOLIDATION WILL NOT BE DISTURBED IN THE ABSENCE OF MANIFEST ABUSE OF DISCRETION TANTAMOUNT TO AN EVASION OF A POSITIVE DUTY OR A REFUSAL TO PERFORM A DUTY ENJOINED BY LAW.— [W]hile there were indeed two (2) separate petitions filed before the CA assailing the Decision dated February 14, 2013 and the Resolution dated August 30, 2013 of the NLRC NCR CN. 10-15949-11/NLRC LAC No. 07-001991-12, *i.e.*, CA-G.R. SP No. 132615 and CA-G.R. SP No. 132674, it must nevertheless be stressed that CA-G.R. SP No. 132674 was dismissed by the CA-Eleventh Division as early as November 29, 2013 due to procedural grounds. This fact was even pointed out by the CA-First Division in its Resolution dated January 24, 2014 when it held that CA-G.R. SP No. 132674 could no longer be consolidated with CA-G.R. SP No. 132615 since the former case had already been dismissed. From that point until the CA-First Division's promulgation of the assailed June 9, 2014 Decision in CA-G.R. SP No. 132615, no consolidation between CA-G.R. SP No. 132615 and CA-G.R. SP No. 132674 could take place mainly because the latter case remained dismissed during that time. In other words, when the CA-First Division promulgated its ruling in CA-G.R. SP No. 132615, it was the **one and only** case pending before the CA assailing the aforesaid NLRC rulings. Therefore, the CA-First Division acted within the scope of its jurisdiction when it promulgated its ruling in CA-G.R. SP No. 132615 without having the case consolidated with CA-G.R. SP No. 132674, notwithstanding the latter case's reinstatement **after** said promulgation. It should be emphasized that the consolidation of cases is aimed to simplify the proceedings as it contributes to the swift dispensation of justice. As such, it is addressed to the sound discretion of the court and the latter's action in consolidation will not be disturbed in the absence of manifest abuse of discretion tantamount to an evasion of a positive duty or a refusal to perform a duty enjoined by law, which is absent in this case.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; FOR A DISMISSAL TO BE VALID, THE EMPLOYER MUST COMPLY WITH

BOTH SUBSTANTIVE AND PROCEDURAL DUE PROCESS REQUIREMENTS.— It is settled that "for a dismissal to be valid, the rule is that the employer must comply with both substantive and procedural due process requirements. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Article 297, 298 or 299 (formerly Articles 282, 283, and 284) of the Labor Code. Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected."

5. ID.; ID.; ID.; THE REPEATED FAILURE OF THE EMPLOYEE TO REACH HIS MONTHLY SALES QUOTA CONSTITUTES GROSS INEFFICIENCY.— [P]uncia's repeated failure to perform his duties – *i.e.*, reaching his monthly sales quota – for such a period of time falls under the concept of gross inefficiency. In this regard, case law instructs that "gross inefficiency" is analogous to "gross neglect of duty," a just cause of dismissal under Article 297 of the Labor Code, for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business. In *Aliling v. Feliciano*, the Court held that an employer is entitled to impose productivity standards for its employees, and the latter's non-compliance therewith can lead to his termination from work, *viz.*: [T]he practice of a company in laying off workers because they failed to make the work quota has been recognized in this jurisdiction. x x x. In the case at bar, **the petitioners' failure to meet the sales quota assigned to each of them constitute a just cause of their dismissal**, regardless of the permanent or probationary status of their employment. **Failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results**. Indisputably, Toyota complied with the substantive due process requirement as there was indeed just cause for Puncia's termination.

6. ID.; ID.; ID.; PROCEDURAL DUE PROCESS; TWIN REQUIREMENTS OF NOTICE AND HEARING; NOT

COMPLIED WITH; AN EMPLOYEE DISMISSED FOR A JUST CAUSE IS ENTITLED TO NOMINAL DAMAGES WHERE THE EMPLOYER FAILED TO COMPLY WITH THE PROPER PROCEDURAL REQUIREMENTS.— [S]ection 2 (I), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides for the required standard procedural due process accorded to employees who stand to be terminated from work, x x x. In this case, at first glance it seemed like Toyota afforded Puncia procedural due process, x x x. However, a closer look at the records reveals that in the Notice to Explain, Puncia was being made to explain why no disciplinary action should be imposed upon for repeatedly failing to reach his monthly sales quota, which act, as already adverted to earlier, constitutes gross inefficiency. On the other hand, a reading of the Notice of Termination shows that Puncia was dismissed not for the ground stated in the Notice to Explain, but for gross insubordination on account of his non-appearance in the scheduled October 17, 2011 hearing without justifiable reason. In other words, while Toyota afforded Puncia the opportunity to refute the charge of gross inefficiency against him, the latter was completely deprived of the same when he was dismissed for gross insubordination – a completely different ground from what was stated in the Notice to Explain. As such, Puncia's right to procedural due process was violated. Hence, considering that Toyota had dismissed Puncia for a just cause, albeit failed to comply with the proper procedural requirements, the former should pay the latter nominal damages in the amount of ₱30,000.00 in accordance with recent jurisprudence.

APPEARANCES OF COUNSEL

Domingo Z. Legaspi for petitioner.
Alonso & Associates for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 9, 2014 and the Resolution[3] dated September 23, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 132615, which annulled and set aside the Decision[4] dated February 14, 2013 and the Resolution[5] dated August 30, 2013 of the National Labor Relations Commission (NLRC) in NLRC NCR CN. 10-15949-11/NLRC LAC No. 07-001991-12 and instead, reinstated the Decision[6] dated May 4, 2012 of the Labor Arbiter (LA) finding that respondent Toyota Shaw/Pasig, Inc. (Toyota) validly dismissed petitioner Armando N. Puncia (Puncia) for just cause.

The Facts

Puncia alleged that since 2004, he worked as a messenger/collector for Toyota and was later on appointed on March 2, 2011 as a Marketing Professional[7] tasked to sell seven (7) vehicles as monthly quota.[8] However, Puncia failed to comply and sold only one (1) vehicle for the month of July and none for August,[9]

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[1] *Rollo*, pp. 10-30.

[2] *Id.* at 34-46. Penned by Associate Justice Normandie B. Pizarro with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Manuel M. Barrios concurring.

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

[4] *Id.* at 84-97. Penned by Presiding Commissioner Leonardo L. Leonida with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap concurring.

[5] *Id.* at 100-108. Penned by Commissioner Mercedes R. Posada-Lacap with Commissioner Dolores M. Peralta-Beley concurring, and certified by Presiding Commissioner Herminio V. Suelo.

[6] *Id.* at 58-65. Penned by Labor Arbiter Antonio R. Macam.

[7] *Id.* at 35.

[8] *Id.* at 37.

[9] *Id.*

prompting Toyota to send him a Notice to Explain.[10] In reply,[11] Puncia stated that as a trainee, he was only required to sell three (3) vehicles per month; that the month of May has always been a lean month; and that he was able to sell four (4) vehicles in the month of September.[12] Thereafter, a hearing was conducted but Puncia failed to appear despite notice.[13]

On October 18, 2011, Toyota sent Puncia a Notice of Termination,[14] dismissing him on the ground of insubordination for his failure to attend the scheduled hearing and justify his absence.[15] This prompted Puncia to file a complaint[16] for illegal dismissal with prayer for reinstatement and payment of backwages, unfair labor practice, damages, and attorney's fees against Toyota and its officers, claiming, *inter alia*, that Toyota dismissed him after discovering that he was a director of the Toyota-Shaw Pasig Workers Union-Automotive Industry Worker's Alliance; and that he was terminated on the ground of insubordination and not due to his failure to meet his quota as contained in the Notice to Explain.[17]

In its defense, Toyota denied the harassment charges and claimed that there was a valid cause to dismiss Puncia, considering his failure to comply with the company's strict requirements on sales quota. It likewise stated that Puncia has consistently violated the company rules on attendance and timekeeping as several disciplinary actions were already issued against him.[18]

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[10] Dated October 15, 2011. *Id.* at 328.

[11] See letter-memorandum dated October 17, 2011; *id.* at 198.

[12] *Id.* See also *id.* at 38.

[13] *Id.* at 37.

[14] *Id.* at 199.

[15] *Id.*

[16] Not attached to the *rollo*.

[17] *Rollo*, pp. 85-87.

[18] See Reply to Complainant's Position Paper dated March 14, 2012; *id.* at 222-223 and Opposition to the Memorandum of Appeal dated July 4, 2012; *id.* at 333-335.

The LA Ruling

In a Decision[19] dated May 4, 2012, the LA dismissed Puncia's complaint for lack of merit, but nevertheless, ordered Toyota to pay Puncia his money claims consisting of his earned commissions, 13th month pay for 2011, sick leave, and vacation leave benefits.[20]

The LA found that Puncia was dismissed not because of his involvement in the labor union, but was terminated for a just cause due to his inefficiency brought about by his numerous violations of the company rules on attendance from 2006 to 2010 and his failure to meet the required monthly quota.[21] This notwithstanding, the LA found Puncia entitled to his money claims, considering that Toyota failed to deny or rebut his entitlement thereto. [22]

Aggrieved, Puncia appealed[23] to the NLRC.

The NLRC Ruling

In a Decision[24] dated February 14, 2013, the NLRC reversed the LA ruling and, accordingly, declared Puncia to have been illegally dismissed by Toyota, thus, entitling him to reinstatement and backwages.[25] The NLRC found that Toyota illegally dismissed Puncia from employment as there were no valid grounds to justify his termination. Moreover, the NLRC observed that Toyota failed to comply with the due process requirements as: *first*, the written notice served on the employee did not categorically indicate the specific ground for dismissal sufficient to have given Puncia a reasonable opportunity to explain his side, since the Intra-

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

[20] *Id.* at 65.

[21] *Id.* at 61-63.

[22] *Id.* at 64.

[23] See Memorandum of Appeal dated June 13, 2012; *id.* at 66-82.

[24] *Id.* at 84-97.

[25] *Id.* at 96.

Company Communication[26] providing the company rules failed to explain in detail that Puncia's deficiency merited the penalty of dismissal;[27] and second, Puncia's dismissal was not based on the same grounds cited in the Notice to Explain, since the ground indicated was Puncia's failure to meet the sales quota, which is different from the ground stated in the Notice of Termination, which is his unjustified absence during the scheduled hearing.[28]

Both parties filed their separate motions for reconsideration,[29] which were denied in a Resolution[30] dated August 30, 2013.

Aggrieved, Toyota filed a Petition for *Certiorari*[31] before the CA, which was docketed as CA-G.R. SP No. 132615 and was raffled to the First Division (CA-First Division). In the same vein, Puncia filed his Petition for *Certiorari*[32] before the CA, which was docketed as CA-G.R. SP No. 132674 and was raffled to the Eleventh Division (CA-Eleventh Division).[33]

The CA Proceedings

In a Resolution [34] dated November 29, 2013, the CA-Eleventh Division dismissed outright CA-G.R. SP No. 132674 on procedural grounds. Consequently, Puncia filed an Omnibus Motion (For Consolidation and Reconsideration of Order of November 29, 2013)[35] and a Supplement to the Omnibus

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[26] *Id.* at 319.

[27] *Id.* at 90-91.

[28] *Id.* at 94.

[29] See Puncia's Motion for Partial Reconsideration dated March 6, 2013; *id.* at 152-156. Toyota's motion for reconsideration is not attached to the *rollo*.

[30] *Id.* at 100-108.

[31] Dated October 19, 2013. *Id.* at 376-411.

[32] Dated November 13, 2013. *Id.* at 416-437.

[33] See *id.* at 10-11.

[34] *Id.* at 439. Issued by Division Clerk of Court Atty. Celedonia M. Ogsimer.

[35] Dated December 26, 2013. *Id.* at 255-265.

Motion,[36] seeking the consolidation of CA-G.R. SP No. 132674 with CA-G.R. SP No. 132615.

In a Resolution[37] dated January 24, 2014, the CA-First Division denied the motion for consolidation on the ground that CA-G.R. SP No. 132674 was already dismissed by the CA-Eleventh Division. Thereafter, **and while CA-G.R. SP No. 132674 remained dismissed**, the CA-First Division promulgated the assailed Decision[38] dated June 9, 2014 (June 9, 2014 Decision) in CA-G.R. SP No. 132615 annulling and setting aside the NLRC ruling and reinstating that of the LA. It held that Toyota was able to present substantial evidence in support of its contention that there was just cause in Puncia's dismissal from employment and that it was done in compliance with due process, considering that: (*a*) Puncia's repeated failure to meet his sales quota constitutes gross inefficiency and gross neglect of duties; and (*b*) Puncia was afforded due process as he was able to submit a written explanation within the period given to him by Toyota.[39]

Dissatisfied, Puncia filed a motion for reconsideration,[40] which the CA-First Division denied in the assailed Resolution[41] dated September 23, 2014 (September 23, 2014 Resolution).

Meanwhile, in a Resolution[42] dated July 22, 2014, the CA-Eleventh Division reconsidered its dismissal of CA-G.R. SP No. 132674, and accordingly, reinstated the same and ordered Toyota to file its comment thereto.

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[36] Dated December 27, 2013. *Id.* at 344-345.

[37] *Id.* at 440. Issued by Division Clerk of Court Atty. Anita Jamerlan Rey.

[38] *Id.* at 34-45.

[39] See *id.* at 41-45.

[40] Dated June 23, 2014; *id.* at 454-459.

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

[42] *Id.* at 496-497. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion concurring.

In view of the foregoing, Puncia filed the instant petition[43] mainly contending that the rulings in CA-G.R. SP No. 132615, *i.e.*, the assailed June 9, 2014 Decision and September 23, 2014 Resolution, should be set aside and the case be remanded back to the CA for consolidation with CA-G.R. SP No. 132674 so that both cases will be jointly decided on the merits.[44]

For its part,[45] Toyota maintained that the CA-First Division correctly promulgated its June 9, 2014 Decision in CA-G.R. SP No. 132615, considering that at the time of promulgation, there was no other pending case before the CA involving the same issues and parties as CA-G.R. SP No. 132674 was dismissed by the CA-Eleventh Division on November 29, 2013, and was only reinstated on July 22, 2014.[46]

The Issues Before the Court

The issues for the Court's resolution are (*a*) whether or not the CA-First Division correctly promulgated its June 9, 2014 Decision in CA-G.R. SP No. 132615 without consolidating the same with CA-G.R. SP No. 132674; and (*b*) whether or not Puncia was dismissed from employment for just cause.

The Court's Ruling

The petition is denied.

At the outset, the Court notes that consolidation of cases is a procedure sanctioned by the Rules of Court for actions which involve a common question of law or fact before the court.[47] It is a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of

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[43] *Id.* at 10-30.

[44] See *id.* at 22 and 29.

[45] See Comment dated April 28, 2015; *id.* at 354-373.

[46] *Id.* at 361-363.

[47] Rule 31, Section 1 of the RULES OF COURT states:

Section 1. *Consolidation*. — When actions involving a common question of law or fact are pending before the court, it may order a joint

the court may be dispatched expeditiously and with economy while providing justice to the parties.[48]

The rationale for consolidation is to have all cases, which are intimately related, acted upon by one branch of the court to avoid the possibility of conflicting decisions being rendered[49] and in effect, prevent confusion, unnecessary costs,[50] and delay.[51] It is an action sought to avoid multiplicity of suits; guard against oppression and abuse; clear congested dockets; and to simplify the work of the trial court in order to attain justice with the least expense and vexation to the parties-litigants.[52]

In order to determine whether consolidation is proper, the test is to check whether the cases involve the **resolution** of common questions of law, related facts,[53] or the same parties.[54] Consolidation is proper whenever the subject matter involved and the relief demanded in the different suits make it expedient

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hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

[48] *Producers Bank of the Philippines v. Excelsa Industries, Inc.*, 685 Phil. 694, 700 (2012).

[49] *Deutsche Bank AG v. CA*, 683 Phil. 80, 93 (2012), citing *Benguet Corporation, Inc. v. CA*, 247-A Phil. 356 (1988).

[50] See Herrera, Oscar M., *Remedial Law* (Revised Edition), 1994 Ed., pp. 48-49.

[51] RULES OF COURT, Rule 31, Section 1.

[52] *Deutsche Bank AG v. CA*, *supra* note 49, at 94-95.

[53] See Herrera, Oscar M., *Remedial Law* (Revised Edition), 1994 Ed., p. 48, citing *Active Wood Products Co., Inc. v. CA*, 260 Phil. 825, 830 (1990).

[54] Section 3 (a), Rule III of the 2009 Internal Rules of the Court of Appeals has forthrightly mandated the consolidation of related cases assigned to different Justices, *viz.*:

Section 3. *Consolidation of Cases*. — When related cases are assigned to different Justices, they shall be consolidated and assigned to one Justice.

(a) Upon motion of a party with notice to the other party/ies, or at the instance of the Justice to whom any or the related cases is assigned,

for the court to determine all of the issues involved and adjudicate the rights of the parties by hearing the suits together.[55] **However, it must be stressed that an essential requisite of consolidation is that the several actions which should be pending before the court, arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence.**[56] As succinctly stated in the rules, consolidation is allowed when there are **similar actions which are pending before the court**[57] — for there is nothing to consolidate when a matter has already been resolved and the very purpose of consolidation, to avoid conflicting decisions and multiplicity of suits, rendered futile. The Court's pronouncement in *Honoridez v. Mahinay*,[58] is instructive on this matter, to wit:

> Petitioners attempt to revive the issues in Civil Case No. CEB-16335 by moving for the consolidation of the same with Civil Case No. CEB-23653. **Under Section 1, Rule 31 of the Rules of Court, only pending actions involving a common question of law or fact may be consolidated.** Obviously, petitioners cannot make out a case for consolidation in this case since Civil Case No. CEB-16335, the case which petitioners seek to consolidate with the case *a quo*, has long become final and executory; as such, it cannot be re-litigated in the instant proceedings without virtually impeaching the correctness of the decision in the other case. Public policy abhors such eventuality.[59] (Emphasis and underscoring supplied)

In the instant case, while there were indeed two (2) separate petitions filed before the CA assailing the Decision dated February

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upon notice to the parties, **consolidation shall ensue when the cases involve the same parties and/or related questions of fact and/or law**. (Emphasis supplied)

[55] *Deutsche Bank AG v. CA*, *supra* note 49, at 91.

[56] *Philippine National Bank v. Gotesco Tyan Ming Development, Inc.*, 606 Phil. 806, 812 (2009), citing *Teston v. Development Bank of the Philippines*, 511 Phil. 221, 229 (2005).

[57] RULES OF COURT, Rule 31, Section 1.

[58] 504 Phil. 204 (2005).

[59] *Id.* at 212-213.

14, 2013 and the Resolution dated August 30, 2013 of the NLRC in NLRC NCR CN. 10-15949-11/NLRC LAC No. 07-001991-12, *i.e.*, CA-G.R. SP No. 132615 and CA-G.R. SP No. 132674, it must nevertheless be stressed that CA-G.R. SP No. 132674 was dismissed by the CA-Eleventh Division as early as November 29, 2013 due to procedural grounds. This fact was even pointed out by the CA-First Division in its Resolution[60] dated January 24, 2014 when it held that CA-G.R. SP No. 132674 could no longer be consolidated with CA-G.R. SP No. 132615 since the former case had already been dismissed. From that point until the CA-First Division's promulgation of the assailed June 9, 2014 Decision in CA-G.R. SP No. 132615, no consolidation between CA-G.R. SP No. 132615 and CA-G.R. SP No. 132674 could take place mainly because the latter case remained dismissed during that time. In other words, when the CA-First Division promulgated its ruling in CA-G.R. SP No. 132615, it was the **one and only** case pending before the CA assailing the aforesaid NLRC rulings. Therefore, the CA-First Division acted within the scope of its jurisdiction when it promulgated its ruling in CA-G.R. SP No. 132615 without having the case consolidated with CA-G.R. SP No. 132674, notwithstanding the latter case's reinstatement **after** said promulgation.

It should be emphasized that the consolidation of cases is aimed to simplify the proceedings as it contributes to the swift dispensation of justice.[61] As such, it is addressed to the sound discretion of the court and the latter's action in consolidation will not be disturbed in the absence of manifest abuse of discretion tantamount to an evasion of a positive duty or a refusal to perform a duty enjoined by law,[62] which is absent in this case.

The foregoing notwithstanding, the Court deems it appropriate to look into the issue of the validity of Puncia's dismissal so as to finally resolve the main controversy at hand.

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[60] *Rollo*, p. 440.

[61] See *Domdom v. Sandiganbayan*, 627 Phil. 341, 349 (2010).

[62] See *Deutsche Bank AG v. CA*, *supra* note 49, at 97-98.

In his petition, Puncia insists that the CA gravely erred in upholding his dismissal, considering that the administrative proceeding against him was due to his failure to meet his monthly sales quota, but he was dismissed on the ground of gross insubordination.[63] On the other hand, Toyota maintains that the CA correctly declared Puncia's termination to be valid and in compliance with due process.[64]

It is settled that "for a dismissal to be valid, the rule is that the employer must comply with both substantive and procedural due process requirements. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 297, 298 or 299 (formerly Articles 282, 283, and 284)[65] of the Labor Code. Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected."[66] Thus, to determine the validity of Puncia's dismissal, there is a need to discuss whether there was indeed just cause for his termination.

In the instant case, records reveal that as a Marketing Professional for Toyota, Puncia had a monthly sales quota of seven (7) vehicles from March 2011 to June 2011. As he was having trouble complying with said quota, Toyota even extended him a modicum of leniency by lowering his monthly sales quota to just three (3) vehicles for the months of July and August 2011; but even then, he still failed to comply.[67] In that six (6)-month span, Puncia miserably failed in satisfying his monthly sales quota, only selling a measly five (5) vehicles out of the 34 he was required to sell over the course of said period. Verily,

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[63] See *rollo*, p. 27.

[64] See Comment dated April 28, 2015; *id.* at 355-356 and 363.

[65] 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 April 21, 2015.

[66] *Alps Transportation v. Rodriguez*, 711 Phil. 122, 129 (2013); citations omitted.

[67] See *rollo*, pp. 36-37.

Puncia's repeated failure to perform his duties — *i.e.*, reaching his monthly sales quota — for such a period of time falls under the concept of gross inefficiency. In this regard, case law instructs that "gross inefficiency" is analogous to "gross neglect of duty," a just cause of dismissal under Article 297 of the Labor Code, for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business.[68] In *Aliling v. Feliciano*,[69] the Court held that an employer is entitled to impose productivity standards for its employees, and the latter's non-compliance therewith can lead to his termination from work, *viz.*:

> [T]he practice of a company in laying off workers because they failed to make the work quota has been recognized in this jurisdiction. x x x. In the case at bar, t**he petitioners' failure to meet the sales quota assigned to each of them constitute a just cause of their dismissal,** regardless of the permanent or probationary status of their employment. **Failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results**.[70] (Emphases and underscoring supplied)

Indisputably, Toyota complied with the substantive due process requirement as there was indeed just cause for Puncia's termination.

Anent the issue of procedural due process, Section 2 (I), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code[71] provides for the required standard of procedural due

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[68] See *Aliling v. Feliciano*, 686 Phil. 889, 910 (2012), citing *Lim v. NLRC*, 328 Phil. 843 (1996).

[69] *Id.*

[70] *Id.* at 911, citing *Leonardo v. NLRC*, 389 Phil. 118, 126-127.

[71] As amended by DOLE Department Order No. 009-97 entitled "AMENDING THE RULES IMPLEMENTING BOOK V OF THE LABOR CODE AS AMENDED" approved on May 1, 1997.

process accorded to employees who stand to be terminated from work, to wit:

> Section 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:
>
> I. For termination of employment based on just causes as defined in Article 282 [now Article 297] of the Labor 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.

The foregoing standards were then further refined in *Unilever Philippines, Inc. v. Rivera*[72] as follows:

> To clarify, the following should be considered in terminating the services of employees:
>
> (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**

[72] 710 Phil. 124 (2013).

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.**[73] (Emphases and underscoring supplied)

In this case, at first glance it seemed like Toyota afforded Puncia procedural due process, considering that: (*a*) Puncia was given a Notice to Explain;[74] (*b*) Toyota scheduled a hearing on October 17, 2011 regarding the charge stated in the Notice to Explain;[75] (*c*) on the date of the hearing, Puncia was able to submit a letter[76] addressed to Toyota's vehicle sales manager explaining his side, albeit he failed to attend said hearing; and (*d*) Toyota served a written Notice of Termination[77] informing

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[73] *Id.* at 136-137, citing *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115-116 (2007).

[74] *Rollo*, p. 328.

[75] *Id.*

[76] *Id.* at 198.

[77] *Id.* at 199.

Puncia of his dismissal from work. However, a closer look at the records reveals that in the Notice to Explain, Puncia was being made to explain why no disciplinary action should be imposed upon him for repeatedly failing to reach his monthly sales quota, which act, as already adverted to earlier, constitutes gross inefficiency. On the other hand, a reading of the Notice of Termination shows that Puncia was dismissed not for the ground stated in the Notice to Explain, but for gross insubordination on account of his non-appearance in the scheduled October 17, 2011 hearing without justifiable reason. In other words, while Toyota afforded Puncia the opportunity to refute the charge of gross inefficiency against him, the latter was completely deprived of the same when he was dismissed for gross insubordination — a completely different ground from what was stated in the Notice to Explain. As such, Puncia's right to procedural due process was violated.

Hence, considering that Toyota had dismissed Puncia for a just cause, albeit failed to comply with the proper procedural requirements, the former should pay the latter nominal damages in the amount of ₱30,000.00 in accordance with recent jurisprudence.[78]

WHEREFORE, the petition is **DENIED**. The Decision dated June 9, 2014 and the Resolution dated September 23, 2014 of the Court of Appeals in CA-G.R. SP No. 132615 are hereby **AFFIRMED** with **MODIFICATION** in that respondent Toyota Shaw/Pasig, Inc. is **ORDERED** to indemnify petitioner Armando N. Puncia nominal damages in the amount of ₱30,000.00 for dismissing the latter in violation of his right to procedural due process, but for a just cause.

SO ORDERED.

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

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[78] See *Sang-an v. Equator Knights Detective and Security Agency, Inc.*, 703 Phil. 492, 503 (2013), citing *Agabon v. NLRC*, 485 Phil. 248 (2004).

EN BANC

[G.R. No. 218240. June 28, 2016]

ENGR. PABLITO S. PALUCA, in his capacity as the General Manager of the Dipolog City Water District, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; ABSENT A SHOWING THAT THE CLIENT REGULARLY FOLLOWED UP WITH HIS COUNSEL AS TO THE STATUS OF THE CASE, A MERE ENDORSEMENT DOES NOT RELIEVE A CLIENT OF THE NEGLIGENCE OF HIS COUNSEL; ALTHOUGH HE RIGHTFULLY EXPECTED COUNSEL TO AMPLY PROTECT HIS INTEREST, A CLIENT CANNOT JUST SIT BACK, RELAX AND AWAIT THE OUTCOME OF THE CASE, BUT IN KEEPING WITH THE NORMAL COURSE OF EVENTS, HE SHOULD HAVE TAKEN THE INITIATIVE "OF MAKING THE PROPER INQUIRIES FROM HIS COUNSEL AND THE TRIAL COURT AS TO THE STATUS OF HIS CASE".— Absent a showing that petitioner regularly followed up with his counsel as to the status of the case, a mere endorsement does not relieve a client of the negligence of his counsel. x x x [T]he recent *Almendras, Jr. v. Almendras*, where the Court categorically stated: Settled is the rule that a client is bound by the mistakes of his counsel. The only exception is when the negligence of the counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. In such instance, the remedy is to reopen the case and allow the party who was denied his day in court to adduce evidence. However, perusing the case at bar, we find no reason to depart from the general rule. Petitioner was given several opportunities to present his evidence or to clarify hid medical constraints in court, but he did not do so, despite knowing full well that he had a pending case in court. **For petitioner to feign and repeatedly insist upon a lack of awareness of the progress of an important litigation is to unmask a penchant for the ludicrous. Although he rightfully expected counsel to amply protect his interest, he cannot**

just sit back, relax and await the outcome of the case. In keeping with the normal course of events, he should have taken the initiative "of making the proper inquiries from his counsel and the trial court as to the status of his case." For his failure to do so, he has only himself to blame. x x x.

2. ID.; ID.; ID.; ID.; PETITIONER CANNOT ESCAPE LIABILITY FOR NEGLIGENCE OF HIS COUNSEL.— [T]he only interaction between DCWD and its counsel, Atty. Luna, as stated in the petition itself, was the alleged undated endorsement letter of the NDs. No follow-ups were apparently made as to the progress of the appeals to the NDs during the six (6)-month appeal period—all because petitioner **thought** that Atty. Luna had taken the appropriate action thereon. Worse, it was only after the lapse of twenty-three (23) months from receipt of the NDs that petitioner was able to file its appeal. Verily, petitioner cannot escape liability for negligence of his counsel.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

VELASCO, JR., *J.*:

This is a Petition for Certiorari under Rule 64, in relation to Rule 65, seeking to annul the Commission on Audit's (COA) Decision No. 2015-005 dated January 28, 2015[1] which denied petitioner Engr. Pablito S. Paluca's appeal and affirmed Notices of Disallowance (NDs) 2007-001 to 004 (2006) all dated September 3, 2007; NDs Dipolog City Water District (DCWD) 2008-001 to 004 all dated January 8, 2008; COA Regional Legal and Adjudication, Regional Office IX's (RLAO) Decision No. 2008-04 dated January 20, 2008, affirming ND DCWD 2007-011 dated March 20, 2007, on payment of various benefits to the officials and employees of DCWD in Minoag, Dipolog City.

[1] *Rollo*, pp. 40-43. Issued by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Jose A. Fabia.

The antecedent facts are:

After the RLAO audited the DCWD, the RLAO issued several NDs to wit:

1. ND DCWD 2007-011 dated March 20, 2007[2] on payment of Cost of Living Allowance (COLA) and Amelioration Assistance to the members of the DCWD for calendar years 1993-1996 in the total amount of ₱1,999,999.98. The reason for the disallowance was: "Payment of COLA and Amelioration Allowance is disallowed in audit for lack of legal basis pursuant to Sec. 12, RA No. 6758 and NBC No. 2001-03 dated November 12, 2001." Petitioner was identified as one of the persons liable for the disallowed amounts as a signatory of the voucher involved in his capacity as the general manager of DCWD.

2. ND 2007-001 (2006) dated September 3, 2007 on payment of Philam Care, Health Care System, Inc. of the period January 1, 2006 to December 31, 2006 for the amount of ₱168,569.67 on the ground that "[a]vailing of a separate health care insurance aside from GSIS using government funds is contrary to the principle of prudent spending of government resources. Therefore, no legal basis."[3]

3. ND 2007-002 (2006) dated September 3, 2007 on payment of COLA and amelioration allowance for the period January 1, 2006 to December 31, 2006 for the amount of ₱271,097.82 for the reason that the disbursement "has no legal basis pursuant to RA 6758 and DBM Cir. Nos. 2001-02 and 2005-502 dated November 12, 2001 and October 24, 2005, respectively." [4]

4. ND 2007-003 (2006) dated September 3, 2007 on payment of uniform allowance, anniversary and performance bonus for the period January 1, 2006 to December 31, 2006 for the amount of ₱59,702 on the ground that the same had no

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[2] *Id.* at 65-66.

[3] *Id.* at 55.

[4] *Id.* at 56.

approval from LWUA as required under Section 13 of Republic Act No. (RA) 9286 [5]

5. ND 2007-004 (2006) dated September 3, 2007 on payment of 10% of the salary of the employees of the DCWD as the government's share in their provident fund for the period January 1, 2006 to December 31, 2006 in the amount of ₱433,337.04 contrary to Sec. 5 of Presidential Decree No. (PD) 1597.[6]

6. ND DCWD 2008-001 dated January 8, 2008 on payment of 10% of the salary of the employees of the DCWD as the government's share in their provident fund for calendar year 2003 in the amount of ₱376,489.20 contrary to Sec. 4 (1) of PD 1445 and Sec. 5 of PD 1597.[7]

7. ND DCWD 2008-002 dated January 8, 2008 on payment to Philam Care, Health Care System, Inc. of health insurance membership fees for the officials and employees of DCWD for the period June 1, 2003 to May 31, 2004 in the amount of ₱124,512 for lack of legal basis pursuant to RA 7875.[8]

8. ND DCWD 2008-003 dated January 8, 2008 on payment of uniform or clothing allowance to the officials and employees of DCWD for calendar years 2000, 2001 and 2002 in excess of what is authorized by the law, in the amount of ₱83,000.[9]

9. ND DCWD 2008-004 dated January 8, 2008 on payment of RATA, ERA, uniform allowance, medical allowance, rice allowance, 13th month pay, cash gift, anniversary bonus, Christmas bonus and provident fund share to the Board of Directors of DCWD for calendar years 2000, 2001 and 2002 in the total amount of ₱1,235,280 for lack of legal basis pursuant to Sec. 13 of PD 198.[10]

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[5] *Id.* at 57.

[6] *Id.* at 58.

[7] *Id.* at 59.

[8] *Id.* at 60.

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

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

Petitioner was made liable in all the NDs either in his capacity as signatory of the vouchers or as a member of the Board of Directors authorizing the release of the money.

Sec. 48 of PD 1445 or the *Government Auditing Code of the Philippines* provides the period within which to file an appeal from an ND, to wit:

> Section 48. Appeal from decision of auditors. — Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

According to the COA, DCWD received a copy of the NDs as follows:

Notice of Disallowance	Date Received
ND 2007-001 (2006) to 004 (2006)	September 10, 2007
ND DCWD 2008-001 to 004	January 8, 2008
ND DCWD 2007-011	June 18, 2007

After receiving the above NDs, the DCWD purportedly endorsed the same to a certain Atty. Ric Luna, their private retainer, for appropriate action in an undated latter.[11] However, it appears that Atty. Luna only appealed ND DCWD 2007-011 dated March 20, 2007. Such appeal was later denied by the RLAO in Decision No. 2008-04 dated January 20, 2008. DCWD claims that Atty. Luna also failed to move for the reconsideration of the RLAO Decision. Thus, all the NDs became final and executory, the six (6)-month period for the other NDs having expired.[12]

According to the COA, it was only on August 10, 2009 that DCWD appealed the NDs[13] or twenty-three (23) months after

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[11] *Id.* at 67.

[12] *Id.* at 10.

[13] *Id.* at 40.

receiving a copy of NDs 2007-001 (2006) to 004 and twenty-three (23) months from receipt of NDs DCWD 2008-001 to 004. Notably, the COA issued a Notice of Finality of Decision dated November 16, 2009 covering all the NDs.[14]

The RLAO denied DCWD's appeal and affirmed the questioned NDs in Decision No. 2012-11 dated February 2, 2012.[15]

On appeal, the COA issued the assailed Decision dated January 28, 2015, the dispositive portion of which reads:

> WHEREFORE, the foregoing premises considered, the instant petition is hereby DISMISSED for having been filed out of time. Accordingly, Commission on Audit Regional Office IX Decision No. 2012-11 dated February 2, 2012 sustaining Notice of Disallowance (ND) Nos. 2007-001 (2006) to 2007-004 (2006), all dated September 3, 2007 and DCWD-2008-001 to 2008-004, all dated January 8, 2008; and Regional Legal and Adjudication Office IX Decision No. 2008-04 dated January 20, 2008, sustaining ND dated March 20, 2007, on the payment of various benefits to the officials and employees of Dipolog City Water District Minoag, Dipolog City, in the total amount of ₱4,751,987.71, are final and executory.[16]

Hence, the instant petition.

The pivotal issue in this case is whether the COA correctly dismissed Paluca's petition for failure to appeal the NDs within the six (6)-month reglementary period.

This query must be answered in the affirmative.

Petitioner argues that:

> While it is true that the client is bound by the mistakes of his counsel, the application of this general rule should not be applied if it would result in serious injustice or when negligence of the counsel was so great that the party was prejudiced and prevented from fairly presenting his case.

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[14] *Id.* at 68.

[15] *Id.* at 11.

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

In support of his contention, petitioner cites *Villa Rhecar Bus v. De la Cruz*,[17] where the Court ruled:

It is unfortunate that the lawyer of the petitioner neglected his responsibilities to his client. This negligence ultimately resulted in a judgment adverse to the client. Be that as it may, such mistake binds the client, the herein petitioner. As a general rule, a client is bound by the mistakes of his counsel. Only when the application of the general rule would result in **serious injustice** should an exception thereto be called for. Under the circumstances obtaining in this case, no undue prejudice against the petitioner has been satisfactorily demonstrated. At most, there is only an unsupported claim that the petitioner had been prejudiced by the negligence of its counsel, without an explanation to that effect.

Moreover, the petitioner retained the services of counsel of its choice. It should, as far as this suit is concerned, bear the consequences of its faulty option. After all, in the application of the principle of due process, what is sought to be safeguarded against is not the lack of previous notice but the denial of the opportunity to be heard. The question is not whether the petitioner succeeded in defending its interest but whether the petitioner had the opportunity to present its side. Notice to counsel is notice to the client. The proposal of the petitioner to the effect that the Labor Arbiter should be required to send a separate notice to the client should not be taken seriously. Otherwise, the provisions of the Civil Code on Agency as well as Section 23, Rule 138 of the Rules of Court will be put to naught. (emphasis supplied)

Petitioner also cites *People v. Manzanilla*,[18] wherein it is stated that:

Incompetency or negligence of defendant's counsel. — A new trial may be granted where the incompetency of counsel is so great that defendant is **prejudiced and prevented from fairly presenting his defense,** and a new trial sometimes is granted because of some serious error on the part of such attorney in the conduct of the case. But a new trial does not necessarily follow either the attorney's incompetency or his neglect. This latter rule has been applied to

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[17] G.R. No. 78936, January 7, 1988, 157 SCRA 13, 16.

[18] 43 Phil. 167 (1922).

the failure of defendant's counsel to introduce certain evidence, to his failure to summon witnesses, to his failure to except to a ruling or an instruction, to his negligence resulting in defendant's failure to make a statement to the court, to submission of the case . . . without argument. . . . (16 C. J., 1145.) (emphasis supplied)

Petitioner, thus, posits the view that he cannot be faulted for the negligence of his counsel inasmuch as he had already endorsed the same to him.

The Court disagrees.

Absent a showing that petitioner regularly followed up with his counsel as to the status of the case, a mere endorsement does not relieve a client of the negligence of his counsel.

Thus, the Court stated in *Lagua v. Court of Appeals*: [19]

Nothing is more settled than the rule that the negligence and mistakes of counsel are binding on the client. Otherwise, there would never be an end to a suit, so long as counsel could allege its own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law.

The rationale for this rule is reiterated in the recent case *Bejarasco v. People:*

The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself.

It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough. (Emphasis supplied.)

In *Tan v. Court of Appeals*, the Court explained:

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[19] G.R. No. 173390, June 27, 2012, 675 SCRA 176, 182-183.

As clients, petitioners should have maintained contact with their counsel from time to time, and informed themselves of the progress of their case, thereby exercising that standard of care "which an ordinarily prudent man bestows upon his business." (emphasis supplied)

More succinct is the recent *Almendras, Jr. v. Almendras*, [20] where the Court categorically stated:

> Settled is the rule that a client is bound by the mistakes of his counsel. The only exception is when the negligence of the counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. In such instance, the remedy is to reopen the case and allow the party who was denied his day in court to adduce evidence. However, perusing the case at bar, we find no reason to depart from the general rule.
>
> Petitioner was given several opportunities to present his evidence or to clarify his medical constraints in court, but he did not do so, despite knowing full well that he had a pending case in court. **For petitioner to feign and repeatedly insist upon a lack of awareness of the progress of an important litigation is to unmask a penchant for the ludicrous. Although he rightfully expected counsel to amply protect his interest, he cannot just sit back, relax and await the outcome of the case. In keeping with the normal course of events, he should have taken the initiative "of making the proper inquiries from his counsel and the trial court as to the status of his case." For his failure to do so, he has only himself to blame.** The Court cannot allow petitioner the exception to the general rule just because his counsel admitted having no knowledge of his medical condition. To do so will set a dangerous precedent of never-ending suits, so long as lawyers could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law. (emphasis supplied)

To reiterate, the only interaction between DCWD and its counsel, Atty. Luna, as stated in the petition itself, was the alleged undated endorsement letter of the NDs. No follow-ups were apparently made as to the progress of the appeals to the NDs during the six (6)-month appeal period — all because

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[20] G.R. No. 179491, January 14, 2015.

petitioner **thought** that Atty. Luna had taken the appropriate action thereon. Worse, it was only after the lapse of twenty-three (23) months from receipt of the NDs that petitioner was able to file its appeal. Verily, petitioner cannot escape liability for negligence of his counsel.

WHEREFORE, the instant petition is **DISMISSED**. The Commission on Audit Decision No. 2015-005 dated January 28, 2015 is **AFFIRMED**.

SO ORDERED.

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

Del Castillo, J., on leave.

THIRD DIVISION

[A.C. No. 9871. June 29, 2016]

In Re: A.M. No. 04-7-373-RTC [Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 60, Barili, Cebu] and A.M. No. 04-7-374-RTC [Violation of Judge Ildefonso Suerte, Regional Trial Court, Branch 60, Barili, Cebu of Administrative Order No. 36-2004 dated March 3, 2004], Prosecutor MARY ANN T. CASTRO-ROA, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; DEFINED; WHEN IT EXISTS.— Forum shopping is the act of a party who repetitively availed

of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. In determining whether forum shopping exists, the important factor to consider is the vexation caused to the courts and to the party-litigant by a party who asks different courts 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.

2. ID.; ID.; ID.; ID.; HOW COMMITTED; FORUM SHOPPING CAN OCCUR ALTHOUGH THE ACTIONS SEEM TO BE DIFFERENT, WHEN IT CAN BE SEEN THAT THERE IS A SPLITTING OF A CAUSE OF ACTION.— Forum shopping can be committed in three ways, namely: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); or (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*). We find that Castro-Roa committed forum shopping of the third kind. Forum shopping can occur although the actions seem to be different, when it can be seen that there is a splitting of a cause of action. In fact, and as will be shown below, while the relief prayed for in the First Petition was to declare the marriage "null and void *ab initio*" and the relief in the Second was for the marriage to be "annulled and voided," an examination of the records would reveal that Castro-Roa alleged the same facts and circumstances in both petitions. This leads to the conclusion that the reliefs sought are based on the same cause of action and are founded on the same basis.

3. ID.; ID.; ID.; ID.; CAUSE OF ACTION DEFINED; LITIGANTS ARE PROVIDED WITH THE OPTIONS ON THE COURSE OF ACTION TO TAKE IN ORDER TO OBTAIN JUDICIAL

RELIEF, AND ONCE AN OPTION HAS BEEN TAKEN AND A CASE IS FILED IN COURT, THE PARTIES MUST VENTILATE ALL MATTERS AND RELEVANT ISSUES THEREIN.— [W]e find that Castro-Roa was merely splitting her causes of action. A cause of actin is defined as the delict or wrongful act or omission committed by a party in violation of the primary rights of another. In both petitions, Castro-Roa alleged the same facts and circumstances but still chose to invoke two different grounds to attain essentially one judicial relief, which is the dissolution of her marriage. In *Mallion v. Alcantara*, we ruled that litigants are provided with the options on the course of action to take in order to obtain judicial relief, and once an option has been taken and a case is filed in court, the parties must ventilate all matters and relevant issues therein.

4. **ID.; ID.; ID.; ID.; LITIS PENDENTIA; ELEMENTS.—** [T]here is a possibility that a final judgment in one case would amount to *res judicata* in the other because the elements of *litis pendentia* are present. In *Quinsay v. Court of Appeals,* we held that the elements of *litis pendentia* are: (a) identity of parties, or at least such parties who represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity, with respect to the two preceding particulars in the two cases, is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other. In this case, the first requisite is clearly present. The preceding discussion, where we established identity of facts, rights asserted, and reliefs sought, satisfies the second requisite. Finally, judgment on any of the two petitions would amount to *res judicata* in the other. The cause of action raised and adjudged in the First Petition would have been conclusive between the two petitions, and therefore cannot be raised again in the Second Petition.

5. **ID.; ID.; JUDGMENTS; RES JUDICATA; BAR BY PRIOR JUDGMENT; CONCEPT THEREOF.—** Section 47 (b) of Rule 39 of the Rules of Court embodies the concept of *res judicata* as "bar by prior judgment" or "estoppel by verdict," which is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. The pendency of both petitions would also create an

absurd situation where the proceedings in the Second Petition would be a useless endeavor should the First Petition be granted: the Second Petition cannot anymore dissolve a marriage, which has already been dissolved in the First Petition.

6. CIVIL LAW; THE FAMILY CODE; MARRIAGE; DISSOLVED MARRIAGES UNDER ARTICLE 45 DISTINGUISHED FROM NULLITY OF MARRIAGE UNDER ARTICLE 36.— The dissolution of a voidable marriage under Article 45 of the Family Code, and a void marriage under Article 36 have different consequences in law. Dissolved marriage under Article 45 are governed either by absolute community of property or conjugal partnership of gains, unless the parties agree to a complete separation of property in a marriage settlement entered into before the marriage. Since the property relations of the parties is governed by *absolute community of property or conjugal partnership of gains*, there is a need to liquidate, partition and distribute the properties before a decree of annulment could be issued. This is not the case for the nullity of marriage under Article 36 of the Family Code because the marriage is governed by the ordinary rules on *co-ownership*. Particularly, Articles 147 and 148 of the Family Code govern the property relations of void marriages; while Articles 50 and 51 govern the property relations of voidable marriages under Article 45.

7. LEGAL ETHICS; ATTORNEYS; A LAWYER MAY BE DISCIPLINED FOR ACTS COMMITTED EVEN IN HIS PRIVATE CAPACITY FOR ACTS WHICH TEND TO BRING REPROACH ON THE LEGAL PROFESSION OR TO INJURE IT IN THE FAVORABLE OPINION OF THE PUBLIC.— Castro-Roa cannot insist that she filed the Second Petition as a mother and not as a lawyer. [W]e have reminded lawyers time and again that the practice of law is a privilege burdened with conditions. In *Mendoza v. Deciembre*, we ruled that a lawyer may be disciplined for acts committed even in his private capacity for acts which tend to bring reproach on the legal profession or to injure it in the favorable opinion of the public. There is no distinction as to whether the transgression is committed in a lawyer's private life or in his professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another.

8. ID.; ID.; THE PROFESSION OF LAW EXACTS THE HIGHEST STANDARDS FROM ITS MEMBERS AND ADHERENCE TO THE RIGID STANDARDS OF MENTAL FITNESS, MAINTENANCE OF THE HIGHEST DEGREE OF MORALITY AND FAITHFUL COMPLIANCE WITH THE RULES OF LEGAL PROFESSION ARE THE CONDITIONS REQUIRED FOR REMAINING A MEMBER OF GOOD STANDING OF THE BAR AND FOR ENJOYING THE PRIVILEGE TO PRACTICE LAW.— She may be acting as a mother seeking a peaceful family life for her children, but this does not excuse her from compliance with the rules of the profession that she has chosen for herself to support her family. The profession of law exacts the highest standards from its members and adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of legal profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law. These principles remain applicable to Castro-Roa in whatever capacity she filed the two petitions.

9. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS SHOULD NOT TRIFLE WITH JUDICIAL PROCESSES AND RESORT TO FORUM SHOPPING BECAUSE THEY HAVE THE DUTY TO ASSIST THE COURTS IN THE ADMINISTRATION OF JUSTICE; SIX (6) MONTHS SUSPENSION FROM THE PRACTICE OF LAW IMPOSED FOR VIOLATION OF RULE 12.02 AND RULE 12.04 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [C]astro-Roa violated Rule 12.02 of the Code of Professional Responsibility which states that, "[a] lawyer shall not file multiple actions arising from the same cause," and Rule 12.04 which states "[a] lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes." Lawyers should not trifle with judicial processes and resort to forum shopping because they have the duly to assist the courts in the administration of justice. Filing multiple actions contravenes such duty because it does not only clog the court dockets, but also takes the courts' time and resources from other cases. Premises considered, we adopt the ruling of the IBP Board but find it proper to modify the penalty in line with existing jurisprudence. Thus, instead of

one (1) year suspension from the practice of law, penalty is modified to six (6) months suspension from the practice of law.

D E C I S I O N

Marven B. Panares for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is an administrative case from the findings in the Judicial Audit conducted by the Supreme Court in Regional Trial Court (RTC), Branch 60, Barili, Cebu in the sala of Judge Ildefonso Suerte. In the course of the audit, it was found that respondent Prosecutor Mary Ann T. Castro-Roa (Castro-Roa) filed two separate petitions for annulment of marriage in two different courts, one in the sala of Judge Ildefonso Suerte and the other in the sala of Judge Jesus dela Peña.[1] Thus, in an *En Banc* Resolution[2] dated October 12, 2004, this Court ordered the Integrated Bar of the Philippines (IBP) to look into the fitness of Castro-Roa as a member of the bar in connection with her filing of two separate petitions for annulment of marriage in two different trial courts.

The Facts

Castro-Roa married Mr. Rocky Rommel D. Roa (Mr. Roa) on March 30, 1993 and had two children together.[3] However, on June 5, 2000, Castro-Roa filed a Petition for Declaration of Nullity of Marriage[4] (First Petition) on the ground of psychological incapacity under Article 36 of the Family Code with RTC Branch 56 in Mandaue City, Cebu (RTC Branch 56).

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[1] *Rollo*, pp. 9-11, 52-55.

[2] Docketed as A.M. No. 04-7-373-RTC and A.M. No. 04-374-RTC, *id.* at 2-13.

[3] *Id.* at 52.

[4] Civil Case No. MAN-3855, *id.* at 52-55.

In a Decision[5] dated April 24, 2001 (RTC Decision), RTC Branch 56 granted the First Petition, and declared the marriage between Castro-Roa and her husband null and void by reason of psychological incapacity.

The RTC Decision was, however, appealed by the Office of the Solicitor General (OSG) to the Court of Appeals (CA). The OSG argued, among others, that the trial court erred in declaring the marriage null and void. In a Decision[6] dated October 22, 2003, the CA found certain irregularities in the trial proceedings, and declared the RTC Decision void. Thus, the case was remanded to RTC Branch 56 in order to give Mr. Roa the opportunity to present his evidence.[7] After the remand of the First Petition to the RTC, Castro-Roa filed a Motion to Dismiss (First) Petition,[8] on December 11, 2003. She stated that she no longer wished to continue the trial because "the continuance of the trial would mean extra effort, time and money x x x"[9] that would dwindle her income.

However, despite the pendency of Castro-Roa's Motion to Dismiss (First) Petition, she filed a Petition for Annulment of Marriage[10] (Second Petition) on November 20, 2003 with RTC Branch 60, Barili, Cebu (RTC Branch 60). The Second Petition was grounded on fraud through the concealment of drug addiction and habitual alcoholism under Article 45 (3) in relation to Article 46 of the Family Code.[11] In this Second Petition, Castro-Roa failed to mention the pendency of the First Petition in the Verification and Certification of Non-Forum Shopping.[12]

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[5] *Id.* at 64-68.

[6] Penned by Associate Justice Conrado M. Vasquez, Jr., *id.* at 45-51.

[7] *Id.* at 51.

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

[9] *Id.* at 42.

[10] Civil Case No. CEB-BAR-329, *id.* at 5, 16-19.

[11] *Id.* at 16.

[12] Temporary *rollo*, p. 21.

RTC Branch 60 rendered a Decision[13] dated January 26, 2004 granting the Second Petition, and declaring the marriage between Castro-Roa and her husband null and void. Castro-Roa's Motion to Dismiss the (First) Petition was granted by RTC Branch 56 only on March 10, 2004.[14]

Cases Filed

On August 10, 2004, a letter-complaint with joint affidavit was filed by Jake Yu and Nanak Yu before the Office of the Ombudsman in Visayas (Ombudsman) charging Castro-Roa with Perjury and Falsification of Public Document and Grave Misconduct.[15] The charge of Grave Misconduct was based solely on the alleged perjury and falsification of public document by Castro-Roa in connection with her failure to mention the pendency of the First Petition for nullity of marriage in the Verification and Certification of Non-Forum Shopping portion of her Second Petition filed before RTC Branch 60. For this charge, the Ombudsman found Castro-Roa guilty and meted her the penalty of suspension for three months.[16]

For the charge of Perjury and Falsification of Public Document, the Ombudsman filed an Information[17] in the Municipal Trial Court (MTC) of Barili, Cebu, which eventually dismissed the case, upon demurrer to evidence. Thus, the MTC found Castro-Roa not guilty in an Order[18] dated March 8, 2011.

Castro-Roa appealed the Ombudsman's finding of guilt in the administrative charge of Grave Misconduct with the CA. The CA granted the appeal, and therefore dismissed the administrative case of Grave Misconduct against Castro-Roa

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[13] *Rollo*, pp. 16-19.

[14] *Id.* at 117.

[15] *Temporary rollo*, p. 21.

[16] *Id.* at 22.

[17] The Information was filed on June 24, 2009 and docketed as Criminal Case No. 09-JN-4467, *id.*

[18] *Temporary rollo*, pp. 31-34.

in a Decision[19] dated November 29, 2013. The CA ruled that a final judgment of conviction in the criminal case of perjury was needed before Castro-Roa can be proceeded against administratively. It also explained that the administrative charge of grave misconduct was based solely on the alleged perjury committed, which was not work-related and not an administrative offense *per se*. According to the CA, while a public officer may be suspended or dismissed for malfeasance for a crime which is not related to the functions of the office, the officer may not be proceeded against administratively based thereon until a final judgment of conviction is rendered by a court of justice.[20] Finally, the CA ruled that there was no forum shopping because the two petitions filed by Castro-Roa involved different facts and different causes of actions. [21]

IBP Proceedings

Meanwhile, on October 26, 2006, the IBP, through Director for Bar Discipline, Rogelio A. Vinluan, ordered Castro-Roa to comment on the *En Banc* Resolution directing the IBP to look into her fitness as a member of the Bar.[22] Castro-Roa filed her Comment[23] on February 22, 2007, explaining that she believed that there was "no substantial irregularity when she filed the second annulment of marriage with another court."[24] She argued that the two petitions were rooted from two distinct issues, one being psychological incapacity and the other, fraud.[25] She also claimed that when the Second Petition for annulment was filed, she had already abandoned her First Petition for declaration of nullity when she filed the Motion to Dismiss (First) Petition in RTC Branch 56.[26]

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[19] *Id.* at 20-29.

[20] *Id.* at 24.

[21] *Id.* at 26.

[22] *Rollo*, p. 69.

[23] *Id.* at 70-73.

[24] *Id.* at 70.

[25] *Id.* at 71.

[26] *Id.* at 72-73.

After due proceedings, the Board of Governors of the IBP (IBP Board) in a Resolution[27] dated November 19, 2011, adopted and approved the Report and Recommendation[28] dated February 1, 2011, finding Castro-Roa guilty of violating Canon 1,[29] Canon 10,[30] Rule 1.02,[31] Rule 7.03,[32] Rule 10.01,[33] Rule 10.03[34] and Rule 12.02[35] of the Code of Professional Responsibility. The IBP Board recommended her suspension from the practice of law for a period of one year.[36] The IBP Board also ruled that there was forum shopping because the elements of *litis pendentia* are present. Pertinent portions of the Report and Recommendation states:

> Clearly, the act committed by the respondent lawyer was a deliberate violation of the rule against forum shopping which is punishable administratively.
>
> Furthermore, there is no showing on the records that she reported the filing of the second petition to RTC of Cebu Branch 56. In connection with the second petition, she failed to state the pendency of the first case in the certificate of [non-forum] shopping.

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[27] *Id.* at 114.

[28] *Id.* at 115-121.

[29] Canon 1 — A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

[30] Canon 10 — A lawyer owes candor, fairness and good faith to the court.

[31] Rule 1.02 — A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

[32] Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

[33] Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in court, nor shall he mislead, or allow the Court to be misled by any artifice.

[34] Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

[35] Rule 12.02 — A lawyer shall not file multiple actions arising from the same cause.

[36] *Rollo*, p. 114.

Also, upon closer examination of the two actions, it shows that the respondent misled the courts in stating two different residence addresses in order to suit the jurisdictional requirements of filing the petitions in two different courts. x x x By evidently deceiving the second court, the respondent prosecutor violated Canon 10, Rule 10.01, and Rule 10.03 of the Code of Professional Responsibility x x x.[37]

Thus, the issues for this Court's resolution are the following:

(1) Whether Castro-Roa committed forum shopping; and

(2) Whether such act deserves the penalty of suspension from the practice of law.

Court's Ruling

We agree with the ruling of the IBP Board.

Forum shopping is the act of a party who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[38]

In determining whether forum shopping exists, the important factor to consider is the vexation caused to the courts and to the party-litigant by a party who asks different courts 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.[39]

Castro-Roa argues that she could not have committed forum shopping because the two cases "involved two different set of facts, two distinct issues, two separate grounds and were based

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[37] *Id.* at 119.

[38] *Pentacapital Investment Corporation v. Mahinay*, G.R. Nos. 171736 & 181482, July 5, 2010, 623 SCRA 284, 310.

[39] *Chua v. Metropolitan Bank & Trust Company*, G.R. No. 182311, August 19, 2009, 596 SCRA 524, 535.

on two different causes of action." She therefore claims that there can be no conflicting decisions between the two cases filed.[40]

We disagree.

Forum shopping can be committed in three ways, namely: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); or (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*).[41]

We find that Castro-Roa committed forum shopping of the third kind. Forum shopping can occur although the actions seem to be different, when it can be seen that there is a splitting of a cause of action.[42] In fact, and as will be shown below, while the relief prayed for in the First Petition was to declare the marriage "null and void *ab initio*" and the relief in the Second was for the marriage to be "annulled and voided," an examination of the records would reveal that Castro-Roa alleged the same facts and circumstances in both petitions. This leads to the conclusion that the reliefs sought are based on the same cause of action and are founded on the same basis.

In her First Petition, Castro-Roa alleged that three days from the time their marriage was celebrated, Mr. Roa "manifested sadism wherein if he pleasures to have sex, [Castro-Roa] should abide even if against her will or else she would suffer physical pain x x x as what x x x happened last April 2, 1993 x x x."[43]

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[40] Motion for Reconsideration dated March 28, 2012, *rollo*, p. 131.

[41] *Heirs of Marcelo Sotto v. Palicte*, G.R. No. 159691, February 17, 2014, 716 SCRA 175, 188.

[42] *Chua v. Metropolitan Bank & Trust Company*, G.R. No. 182311, August 19, 2009, 596 SCRA 524, 537.

[43] Petition for Nullity of Marriage, *rollo*, p. 52.

She also alleged that aside from physical abuse, she likewise suffered verbal abuse from her husband by "shouting words only barbaric and uncivilized person could make."[44] She also claimed that her husband failed "to provide love, respect and fidelity to [her] by having relations with other women."[45] She said that her husband showed "irresponsibility by spending his time in liquor drinking, gambling and drug vices."[46] Finally, she stated that when he "abandoned the conjugal dwelling on October 4, 1997, he never spared the children any amount for support."[47] Castro-Roa argued that all of these acts are tantamount to psychological incapacity to comply with the essential marital obligations.

In her testimony in the Second Petition, Castro-Roa alleged that she observed that her husband "is a kind of sadist."[48] She stated that on April 2, 1993, she received physical beatings when she refused sex with her husband as she was not feeling well. She added that she constantly suffered physical and verbal abuse from him, calling her "names only barbaric and uncivilized persons could make."[49] She further alleged that her husband "failed to provide love, respect and fidelity"[50] and had "relations with different women."[51] She said that he showed irresponsibility through habitual alcoholism, gambling, drug vices and womanizing, and that this behavior was attested by friends and neighbors to have existed before the marriage.[52] Castro-Roa said that she would not have married him if she knew of these beforehand.[53]

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[44] *Id.* at 53.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Rollo,* p. 35.

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

[50] *Id.* at 36.

[51] *Id.*

[52] *Rollo,* pp. 37-38.

[53] *Id.* at 38.

Considering the foregoing, we find that Castro-Roa was merely splitting her causes of action. A cause of action is defined as the delict or wrongful act or omission committed by a party in violation of the primary rights of another.[54] In both petitions, Castro-Roa alleged the same facts and circumstances but still chose to invoke two different grounds to attain essentially one judicial relief, which is the dissolution of her marriage. In *Mallion v. Alcantara*,[55] we ruled that litigants are provided with the options on the course of action to take in order to obtain judicial relief, and once an option has been taken and a case is filed in court, the parties must ventilate all matters and relevant issues therein.[56]

More, there is a possibility that a final judgment in one case would amount to *res judicata* in the other because the elements of *litis pendentia* are present. In *Quinsay v. Court of Appeals*,[57] we held that the elements of *litis pendentia* are: (a) identity of parties, or at least such parties who represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity, with respect to the two preceding particulars in the two cases, is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.[58]

In this case, the first requisite is clearly present. The preceding discussion, where we established identity of facts, rights asserted, and reliefs sought, satisfies the second requisite. Finally, judgment on any of the two petitions would amount to *res judicata* in the other. The cause of action raised and adjudged in the First Petition would have been conclusive between the two petitions, and therefore cannot be raised again in the Second Petition.

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[54] *Chua v. Metropolitan Bank & Trust Company*, *supra* note 42.

[55] G.R. No. 141528, October 31, 2006, 506 SCRA 336.

[56] *Id.* at 346.

[57] G.R. No. 127058, August 31, 2000, 339 SCRA 429.

[58] *Id.* at 432.

Section 47 (b) of Rule 39 of the Rules of Court embodies the concept of *res judicata* as "bar by prior judgment" or "estoppel by verdict," which is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action.[59] The pendency of both petitions would also create an absurd situation where the proceedings in the Second Petition would be a useless endeavor should the First Petition be granted: the Second Petition cannot anymore dissolve a marriage, which has already been dissolved in the First Petition.

Castro-Roa cannot argue that the two petitions would not result in conflicting decisions, if both were left to proceed until their conclusion. The dissolution of a voidable marriage under Article 45 of the Family Code, and a void marriage under Article 36 have different consequences in law.

Dissolved marriages under Article 45 are governed either by absolute community of property or conjugal partnership of gains, unless the parties agree to a complete separation of property in a marriage settlement entered into before the marriage. Since the property relations of the parties is governed by *absolute community of property or conjugal partnership of gains*, there is a need to liquidate, partition and distribute the properties before a decree of annulment could be issued. This is not the case for the nullity of marriage under Article 36 of the Family Code because the marriage is governed by the ordinary rules on co-ownership.[60] Particularly, Articles 147 and 148 of the Family Code govern the property relations of void marriages; while Articles 50 and 51 govern the property relations of voidable marriages under Article 45.[61]

Clearly, Castro-Roa committed forum shopping in this case. The fact that she moved to dismiss the First Petition will not excuse her from committing forum shopping. As a lawyer, she should have been aware that the motion did not automatically

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[59] *Mallion v. Alcantara, supra* note 55 at 343.

[60] *Diño v. Diño*, G.R. No. 178044, January 19, 2011, 640 SCRA 178.

[61] *Id.*; *Mercado-Fehr v. Fehr*, G.R. No. 152716, October 23, 2003, 414 SCRA 288.

dismiss the First Petition until ordered by the court. Therefore, when she filed the Second Petition on November 20, 2003 (before the court granted the motion to dismiss on March 10, 2004), she should have declared the pendency of the First Petition in the Verification and Certification of Non-Forum Shopping.

Castro-Roa cannot insist that she filed the Second Petition as a mother and not as a lawyer. On this, we have reminded lawyers time and again that the practice of law is a privilege burdened with conditions. In *Mendoza v. Deciembre*,[62] we ruled that a lawyer may be disciplined for acts committed even in his private capacity for acts which tend to bring reproach on the legal profession or to injure it in the favorable opinion of the public. There is no distinction as to whether the transgression is committed in a lawyer's private life or in his professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another.[63]

She may be acting as a mother seeking a peaceful family life for her children, but this does not excuse her from compliance with the rules of the profession that she has chosen for herself to support her family. The profession of law exacts the highest standards from its members and adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of legal profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law.[64] These principles remain applicable to Castro-Roa in whatever capacity she filed the two petitions.

Also, Castro-Roa violated Rule 12.02 of the Code of Professional Responsibility which states that, "[a] lawyer shall not file multiple actions arising from the same cause," and Rule 12.04 which states "[a] lawyer shall not unduly delay a case,

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[62] A.C. No. 5338, February 23, 2009, 580 SCRA 26.

[63] *Id.* at 36.

[64] *Foronda v. Guerrero*, A.C. No. 5469, January 27, 2006, 480 SCRA 201, 203.

impede the execution of a judgment or misuse Court processes." Lawyers should not trifle with judicial processes and resort to forum shopping because they have the duty to assist the courts in the administration of justice. Filing multiple actions contravenes such duty because it does not only clog the court dockets, but also takes the courts' time and resources from other cases.

Premises considered, we adopt the ruling of the IBP Board but find it proper to modify the penalty in line with existing jurisprudence.[65] Thus, instead of one (1) year suspension from the practice of law, penalty is modified to six (6) months suspension from the practice of law.

WHEREFORE, Resolution No. XX-2011-220, dated November 19, 2011 is **MODIFIED**; Prosecutor Mary Ann T. Castro-Roa is **SUSPENDED** from the practice of law for six (6) months, effective upon the receipt of this Decision. She is warned that a repetition of a similar act will be dealt with more severely.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 183200-01. June 29, 2016]

PHILIPPINE NATIONAL OIL COMPANY-ENERGY DEVELOPMENT CORPORATION and/or PAUL AQUINO and ESTER R. GUERZON, *petitioners, vs.* **AMELYN A. BUENVIAJE,** *respondent.*

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[65] *Alonso v. Relamida, Jr.,* A.C. No. 8481, August 3, 2010, 626 SCRA 281, 290; *Lim v. Montana,* A.C. No. 5653, February 27, 2006, 483 SCRA 192.

[G.R. Nos. 183253 & 183257. June 29, 2016]

AMELYN A. BUENVIAJE, *petitioner, vs.* **PHILIPPINE NATIONAL OIL COMPANY-ENERGY DEVELOPMENT CORPORATION, PAUL A. AQUINO and ESTER R. GUERZON,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYMENT; THE EMPLOYER HAS THE RIGHT TO CHOOSE WHO WILL BE ACCORDED WITH REGULAR OR PERMANENT STATUS AND WHO WILL BE DENIED EMPLOYMENT AFTER THE PERIOD OF PROBATION, AND IT MAY SET OR FIX A PROBATIONARY PERIOD WITHIN WHICH IT MAY TEST AND OBSERVE THE EMPLOYEE'S CONDUCT BEFORE HIRING HIM PERMANENTLY.— Buenviaje was hired as a Marketing Division Manager, a position that performs activities that are usually necessary and desirable to the business of PNOC-EDC and is thusly, regular. As an employer, PNOC-EDC has an exclusive management prerogative to hire someone for the position, either on a permanent status right from the start or place him first on probation. In either case, the employee's right to security of tenure immediately attaches at the time of hiring. As a permanent employee, he may only be validly dismissed for a just or authorized cause. As a probationary employee, he may also be validly dismissed for a just or authorized cause, or when he fails to qualify as a regular employee in accordance with reasonable standards made known to him by the employer at the time of his engagement. Apart from the protection this last ground in the dismissal of a probationary employee affords the employee, it is also in line with the right or privilege of the employer to choose who will be accorded with regular or permanent status and who will be denied employment after the period of probation. It is within the exercise of this right that the employers may set or fix a probationary period within which it may test and observe the employee's conduct before hiring him permanently.

2. ID.; ID.; ID.; IF THE CLAUSE IN THE APPOINTMENT LETTER CAUSED AN AMBIGUITY IN THE EMPLOYMENT STATUS OF THE EMPLOYEE, THE AMBIGUITY SHOULD BE RESOLVED IN HER FAVOR, IN LINE WITH THE POLICY TO AFFORD PROTECTION TO LABOR AND TO CONSTRUE DOUBTS IN FAVOR OF LABOR.— [I]f the clause in the appointment letter did cause an ambiguity in the employment status of Buenviaje, we hold that the ambiguity should be resolved in her favor. This is in line with the policy under our Labor Code to afford protection to labor and to construe doubts in favor of labor. We upheld this policy in *De Castro v. Liberty Broadcasting Network, Inc.*, ruling that between a laborer and his employer, doubts reasonably arising from the evidence or interpretation of agreements and writing should be resolved in the former's favor. Hence, what would be more favorable to Buenviaje would be to accord her a permanent status. But more importantly, apart from the express intention in her appointment letter, there is substantial evidence to prove that Buenviaje was a permanent employee and not a probationary one.

3. ID.; ID.; ID.; PROBATIONARY EMPLOYMENT; PROBATIONARY EMPLOYEE, DEFINED; IT IS INDISPENSABLE IN PROBATIONARY EMPLOYMENT THAT THE EMPLOYER INFORMS THE EMPLOYEE OF THE REASONABLE STANDARDS THAT WILL BE USED AS A BASIS FOR HIS OR HER REGULARIZATION AT THE TIME OF HIS OR HER ENGAGEMENT AND IN CASE THE EMPLOYER FAILS TO COMPLY THEREWITH, THE EMPLOYEE SHALL BE CONSIDERED A REGULAR EMPLOYEE.— A *probationary employee* is defined as one who is on trial by an employer during which the employer determines whether or not he is qualified for permanent employment. In general, probationary employment cannot exceed six (6) months, otherwise the employee concerned shall be considered a regular employee. It is also indispensable in probationary employment that the employer informs the employee of the reasonable standards that will be used as a basis for his or

her regularization at the time of his or her engagement. If the employer fails to comply with this, then the employee is considered a regular employee.

4. ID.; ID.; ID.; ID.; THE PERFORMANCE OF DUTIES AND RESPONSIBILITIES IS A NECESSARY STANDARD FOR QUALIFYING FOR REGULAR EMPLOYMENT, BUT THERE MUST BE A MEASURE AS TO HOW POOR, FAIR, SATISFACTORY, OR EXCELLENT THE PERFORMANCE HAS BEEN.— In their reply to Buenviaje dated July 28, 2004, PNOC-EDC reminded Buenviaje that the standards "were thoroughly discussed with [her] separately soon after [she] signed [her] contract, as well as that which was contained in the job description attached thereto." x x x [T]he job description attached to Buenviaje's appointment letter merely answers the question: "what duties and responsibilities does the position entail?", but fails to provide the answer/s to the question: "how would the employer gauge the performance of the probationary employee?". The job description merely contains her job identification, her immediate superior and subordinates, a list of her job objectives, duties and responsibilities, and the qualification guidelines required of her position (*i.e.*, minimum education, minimum experience, and special skills). There is no question that performance of duties and responsibilities is a necessary standard for qualifying for regular employment. It does not stop on mere performance, however. There must be a measure as to how poor, fair, satisfactory, or excellent the performance has been. PNOC-EDC, in fact, used an appraisal form when it evaluated the performance of Buenviaje twice.

5. ID.; ID.; ID.; ID.; THE USE OF A PERFORMANCE APPRAISAL FORM WITH STANDARDS EXPECTED FROM AN EMPLOYEE NEGATES ANY ASSUMPTION THAT THESE STANDARDS WERE OF BASIC KNOWLEDGE AND COMMON SENSE, OR THAT THE EMPLOYEE'S POSITION WAS SELF-DESCRIPTIVE SUCH THAT THERE WAS NO NEED TO SPELL OUT THE STANDARDS AT THE TIME OF HER ENGAGEMENT.— [T]he appraisal form appraises the elements of performance, which are categorized into results-

based factors, individual effectiveness and co-worker effectiveness. x x x [T]he form specifies the performance standards PNOC-EDC will use, which demonstrates that PNOC-EDC expected a certain manner, level, or extent by which she should perform her job. PNOC-EDC knew the job description and the performance appraisal form are not one and the same, having specifically used the latter when it evaluated Buenviaje and not the job description attached to the appointment letter. The fact, therefore, that PNOC-EDC used a performance appraisal form with standards expected from Buenviaje further negates any assumption that these standards were of basic knowledge and common sense, or that Buenviaje's position was self-descriptive such that there was no need to spell out the standards at the time of her engagement.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; A PERMANENT EMPLOYEE MAY ONLY BE DISMISSED AFTER OBSERVING THE SUBSTANTIVE AND PROCEDURAL REQUIREMENTS.— [B]uenviaje was hired as a permanent employee on February 1, 2004. As a permanent employee, she may only be dismissed by PNOC-EDC after observing the following substantive and procedural requirements: 1. The dismissal must be for a just or authorized cause; 2. The employer must furnish the employee with two (2) written notices before termination of employment can be legally effected. The first notice states the particular acts or omissions for which dismissal is sought while the second notice states the employer's decision to dismiss the employee; and 3. The employee must be given an opportunity to be heard. PNOC-EDC failed to observe these requirements because it operated on the wrong premise that Buenviaje was a probationary employee. But even if we were to assume that she was, she would still be illegally dismissed in light of PNOC-EDC's violation of the provisions of the Labor Code in dismissing a probationary employee.

7. ID.; ID.; ID.; NOTICE AND HEARING IS NOT REQUIRED TO DISMISS A PROBATIONARY EMPLOYEE FOR FAILURE TO QUALIFY IN ACCORDANCE WITH THE STANDARDS OF THE EMPLOYER, BUT THE

EMPLOYER MUST STILL OBSERVE DUE PROCESS OF LAW IN THE FORM OF INFORMING THE EMPLOYEE OF THE REASONABLE STANDARDS EXPECTED OF HIM DURING HIS PROBATIONARY PERIOD AT THE TIME OF HIS ENGAGEMENT, AND SERVING THE EMPLOYEE WITH A WRITTEN NOTICE WITHIN A REASONABLE TIME FROM THE EFFECTIVE DATE OF TERMINATION.— A probationary employee also enjoys security of tenure, although it is not on the same plane as that of a permanent employee. This is so because aside from just and authorized causes, a probationary employee may also be dismissed due to failure to qualify in accordance with the standards of the employer made known to him at the time of his engagement. PNOC-EDC dismissed Buenviaje on this latter ground; that is, Buenviaje allegedly failed to meet the standards set by the company. In dismissing probationary employees on this ground, there is no need for a notice and hearing. The employer, however, must still observe due process of law in the form of: 1) informing the employee of the reasonable standards expected of him during his probationary period at the time of his engagement; and 2) serving the employee with a written notice within a reasonable time from the effective date of termination. By the very nature of a probationary employment, the employee needs to know from the very start that he will be under close observation and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors. It is in apprising him of the standards against which his performance shall be continuously assessed where due process lies. Likewise, probationary employees are entitled to know the reason for their failure to qualify as regular employee.

8. ID.; ID.; ID.; FAILURE TO OBSERVE PRESCRIBED STANDARDS OF WORK OR TO FULFILL REASONABLE WORK ASSIGNMENTS DUE TO INEFFICIENCY MAY CONSTITUTE JUST CAUSE FOR DISMISSAL.— Under Article 297 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. Analogous to this ground, an unsatisfactory performance

may also mean gross inefficiency. "Gross inefficiency" is closely related to "gross neglect," for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business. Failure to observe prescribed standards of work or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. This management prerogative of requiring standards may be availed of so long as they are exercised in good faith for the advancement of the employer's interest.

9. ID.; ID.; ID.; AN EMPLOYEE'S POOR OR UNSATISFACTORY PERFORMANCE DOES NOT NECESSARILY AMOUNT TO GROSS AND HABITUAL NEGLECT OF DUTIES OR GROSS INEFFICIENCY. AS A JUST CAUSE, THE NEGLIGENCE HAS TO BE HABITUAL, WHICH IMPLIES REPEATED FAILURE TO PERFORM ONE'S DUTIES FOR A PERIOD OF TIME, DEPENDING UPON THE CIRCUMSTANCES, AND NOT MERELY A SINGLE OR ISOLATED ACT OF NEGLIGENCE.— The fact that an employee's performance is found to be poor or unsatisfactory does not necessarily mean that the employee is grossly and habitually negligent of or inefficient in his duties. Buenviaje's performance, poor as it might have been, did not amount to gross and habitual neglect of duties or gross inefficiency. x x x. Gross negligence implies a 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. As a just cause, it also has to be habitual, which implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. A single or isolated act of negligence, as was shown here, does not constitute a just cause for the dismissal of the employee.

10. ID.; ID.; ID.; PROCEDURAL DUE PROCESS; TWO-NOTICE REQUIREMENT; NOT COMPLIED WITH.— PNOC-EDC would also be in violation of procedural due

process if Buenviaje were dismissed on the purported ground of gross negligence or inefficiency. For termination of employees based on just causes, the employer must furnish the employee with two (2) written notices before termination of employment can be effected: a first written notice that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a second written notice which informs the employee of the employer's decision to dismiss him. In considering whether the charge in the first notice is sufficient to warrant dismissal under the second notice, the employer must afford the employee ample opportunity to be heard. Although Buenviaje indeed received two (2) letters from PNOC-EDC regarding her termination, these letters fall short of the two (2) notices required under the law. The first letter sent to Buenviaje failed to apprise her of the particular acts or omissions on which her dismissal was based. It was merely a bare statement that Buenviaje's performance failed to meet PNOC-EDC's minimum requirements. True, Buenviaje replied to the first letter, but considering that it did not specify the acts or omissions warranting her dismissal but only served to inform her of her termination, Buenviaje was not afforded a reasonable and meaningful opportunity to explain her side.

11. ID.; ID.; ID.; AN EMPLOYEE WHO IS UNJUSTLY DISMISSED FROM WORK SHALL BE ENTITLED TO REINSTATEMENT, WITH FULL BACKWAGES, AND TO HIS OTHER BENEFITS OR THEIR MONETARY EQUIVALENT COMPUTED FROM THE TIME HIS COMPENSATION WAS WITHHELD FROM HIM UP TO THE TIME OF HIS ACTUAL REINSTATEMENT.— An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. However, there are instances when reinstatement is no longer feasible, such as when the employer-employee relationship has become strained. In these cases, separation pay may be granted in lieu of reinstatement, the payment of which favors both parties.

12. ID.; ID.; ID.; ID.; SEPARATION PAY OR FINANCIAL ASSISTANCE MAY BE GRANTED TO A LEGALLY TERMINATED EMPLOYEE AS AN ACT OF SOCIAL JUSTICE AND EQUITY; AWARD OF SEPARATION PAY WITH FULL BACKWAGES, IN LIEU OF REINSTATEMENT, IS WARRANTED WHERE REINSTATEMENT IS NO LONGER VIABLE DUE TO IRRECONCILABLE DIFFERENCES AND STRAINED RELATIONS BETWEEN THE EMPLOYEE AND THE EMPLOYER.— Separation pay or financial assistance may also be granted to a legally terminated employee as an act of social justice and equity when the circumstances so warrant. In awarding financial assistance, the interests of both the employer and the employee must be tempered, if only to approximate what Justice Laurel calls justice in its secular sense. As the term suggests, its objective is to enable an employee to get by after he has been stripped of his source of income from which he relies mainly, if not, solely. We agree with the CA that the reinstatement of Buenviaje is no longer viable given the irreconcilable differences and strained relations between her and PNOC-EDC. In light of this, separation pay with full backwages, in lieu of Buenviaje's reinstatement, is warranted.

13. ID.; ID.; ID.; ID.; AN EMPLOYEE IS ENTITLED TO ATTORNEY'S FEES WHERE HE WAS FORCED TO LITIGATE IN ORDER TO ASSERT HIS RIGHTS.— [I]t is a well-settled rule that in actions for recovery of wages, or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, attorney's fees may be granted pursuant to Article 111 of the Labor Code. Considering, therefore, that she was forced to litigate in order to assert her rights, Buenviaje is entitled to attorney's fees in the amount of ten percent (10%) of the total award of backwages.

14. ID.; ID.; ID.; TO WARRANT THE GRANT OF MORAL DAMAGES, IT MUST BE PLEADED AND PROVED THAT THE ACT OF DISMISSAL WAS ATTENDED BY BAD FAITH OR FRAUD, OR WAS OPPRESSIVE TO LABOR, OR DONE IN A MANNER CONTRARY TO MORALS, GOOD CUSTOMS, OR PUBLIC POLICY,

AND THAT SOCIAL HUMILIATION, WOUNDED FEELINGS, AND GRAVE ANXIETY, RESULTED THEREFROM; EXEMPLARY DAMAGES MAY BE GRANTED WHEN THE DISMISSAL OF THE EMPLOYEE WAS DONE IN A WANTON, OPPRESSIVE OR MALEVOLENT MANNER.— The claim for moral damages cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, that the act of dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, *etc*., resulted therefrom. Bad faith "implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity." Bad faith must be proven through clear and convincing evidence. This is because bad faith and fraud are serious accusations that can be so conveniently and casually invoked, and that is why they are never presumed. They amount to mere slogans or mudslinging unless convincingly substantiated by whoever is alleging them. Exemplary damages, on the other hand, may be granted when the dismissal of the employee was done in a wanton, oppressive or malevolent manner.

15. ID.; ID.; ID.; AWARD OF MORAL AND EXEMPLARY DAMAGES, REDUCED.— [T]he Labor Arbiter's award of moral and exemplary damages is proper. We are wont, however, to reduce the amounts he fixed by reason alone of the "extent of the damage done to [Buenviaje] who occupies a high managerial position." We find his award excessive in the absence of evidence to prove the degree of moral suffering or injury that Buenviaje suffered. In line with our ruling in *Magsaysay Maritime Corporation v. Chin, Jr.*, we hold that an award of ₱30,000 as moral damages and ₱25,000 as exemplary damages is more fair and reasonable.

16. ID.; ID.; ID.; DIRECTOR OR OFFICER ARE ONLY SOLIDARILY LIABLE WITH THE CORPORATION FOR THE ILLEGAL TERMINATION OF THE SERVICES OF EMPLOYEES IF THEY ACTED WITH MALICE OR BAD

FAITH.— [T]he extent of liability of the respondents should not be solidary. A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith. To hold a director or officer personally liable for corporate obligations, two (2) requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith. While the position paper of Buenviaje alleges that the respondents acted in bad faith and that Aquino and Guerzon, in particular, conspired with each other to terminate her illegally, we find these allegations were not clearly and convincingly proved. [T]here was insufficient evidence that Aquino and Guerzon were personally motivated by ill-will in dismissing Buenviaje.

APPEARANCES OF COUNSEL

Medado Sinsuat & *Associates* for petitioner PNOC-EDC.
Anna Lea Dy-Ubarra for respondent Buenviaje.

D E C I S I O N

JARDELEZA, *J.*:

Before us are consolidated petitions for review on *certiorari*[1] of the Decision[2] dated October 31, 2007 and Resolution[3] dated June 3, 2008 of the Court of Appeals (CA) in CA-G.R. S.P.

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[1] *Rollo* (G.R. Nos. 183200-01), pp. 3-28 and *rollo* (G.R. Nos. 183253 & 183257), pp. 34-50-A.

[2] Penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Amelita G. Tolentino and Agustin S. Dizon of the Fifteenth Division, *rollo* (G.R. Nos. 183200-01), pp. 29-51.

[3] *Id.* at 52-55.

Nos. 94359 and 94458. The CA partially modified the Resolutions[4] of the National Labor Relations Commission (NLRC) dated September 27, 2005 and January 31, 2006, which in turn partially modified the Decision[5] of the Labor Arbiter dated December 10, 2004.

The Facts

Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) hired Amelyn Buenviaje (Buenviaje) as Assistant to the then Chairman/President and Chief Executive Officer Sergio A.F. Apostol (Apostol), her father. Buenviaje's employment contract provided that she will serve until June 30, 2004 or co-terminous with the tenure of Apostol, whichever comes first.[6]

On August 4, 2003, Apostol approved the creation of PNOC-EDC's new Marketing Division composed of thirty (30) positions. Seven (7) of these thirty (30) positions were also newly created,[7] one of which was that of a Marketing Division Manager.[8] Buenviaje assumed this position as early as the time of the creation of the Marketing Division.[9]

On January 5, 2004, Apostol filed his Certificate of Candidacy as Governor for the province of Leyte, yet continued to discharge his functions as President in PNOC-EDC.[10] Buenviaje also continued to perform her duties as Assistant to the Chairman/ President and Marketing Division Manager in PNOC-EDC.[11]

On February 2, 2004, Paul Aquino (Aquino), the new President of PNOC-EDC, appointed Buenviaje to the position of Senior

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[4] *Id.* at 185-200 and 223-225; *per curiam*.

[5] *Id.* at 140-152; penned by Labor Arbiter Elias H. Salinas.

[6] *Id.* at 30.

[7] *Id.*

[8] *Rollo* (G.R. Nos. 183200-01), p. 48.

[9] *Id.*

[10] *Rollo* (G.R. Nos. 183200-01), pp. 30-31.

[11] *Id.* at 49.

Manager for Marketing Division effective February 1, 2004.[12] The appointment letter partly provides:

> By copy of this letter, HRMD [Human Resources Management Division] is instructed to amend your present employment status from your present position as Assistant to the President (co-terminus) to regular status and as such you will be entitled to all the rights and privileges granted to your new position under the company's benefit policies subject to existing rules and regulations. This appointment is subject to confirmation by your immediate superior based on your performance during the next six months. x x x For record purposes, please take note that your regular status is retroactive to July 1, 2001. This date will be used for the computation of your service credits, retirement and other company benefits allowed under company policy.[13]

Pursuant to the instructions in the appointment letter, Buenviaje affixed her signature to the letter, signifying that she has read and understood its contents.[14]

In line with PNOC-EDC's policies, Buenviaje was subjected to a performance appraisal during the first week of May 2004.[15] She received a satisfactory grade of three (3).[16] In her subsequent performance appraisal covering the period of May 1, 2004 to June 30, 2004, she received an unsatisfactory grade of four (4).[17] Thus, Ester Guerzon (Guerzon), Vice President for Corporate Affairs of PNOC-EDC, informed Buenviaje that she did not qualify for regular employment.[18] PNOC-EDC, through Guerzon, communicated in writing to Buenviaje her non-confirmation of appointment as well as her separation from the

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[12] *Id.* at 30-33.

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

[14] *Id.* at 33.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

company effective July 31, 2004.[19] On July 2, 2004, Buenviaje gave her written comments on the results of her second performance appraisal. [20] In reply, PNOC-EDC sent her two (2) more letters reiterating her non-confirmation and separation from the company.[21] Aquino also issued a Memorandum to Buenviaje instructing her to prepare a turnover report before her physical move-out.[22]

Buenviaje responded by filing a complaint before the Labor Arbiter for illegal dismissal, unpaid 13th month pay, illegal deduction with claim for moral as well as exemplary damages, including attorney's fees and backwages.[23]

The Ruling of the Labor Arbiter

The Labor Arbiter rendered a decision in favor of Buenviaje, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant a regular employee. As a consequence thereof, her dismissal without any basis is hereby deemed illegal. Respondents PNOC-Energy Development Corporation, and/or Paul Aquino and Ester R. Guerzon are hereby ordered to reinstate complainant to her former position without loss of seniority rights and other benefits and with full backwages reckoned from August 1, 2004 up to her actual or payroll reinstatement, which as of this date is in the amount of ₱718,260.40.

Further, for having acted with manifest bad faith and given the extent of the damage done to complainant who occupies a high managerial position, respondents are jointly and severally ordered to pay complainant moral damages in the amount of ₱1,000,000.00 and exemplary damages in the amount of ₱500,000.00.

Finally, respondents are hereby ordered to return to complainant the amount of ₱51,692.72, which they illegally deducted from her

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[19] *Id.*

[20] *Rollo* (G.R. Nos. 183200-01), pp. 33-34.

[21] *Id.* at 34.

[22] *Id.*

[23] *Id.*

last salary and to pay the sum equivalent to ten percent of the judgment award as and by way of attorney's fees.

SO ORDERED.[24] (Emphasis in the original.)

The Labor Arbiter held that Buenviaje was a regular employee because her appointment letter clearly says so. Any doubt caused by the statement in the appointment letter that Buenviaje's appointment was subject to confirmation must be resolved against PNOC-EDC. In addition, PNOC-EDC failed to prove that reasonable standards were explained to Buenviaje at the time of her engagement, thusly negating PNOC-EDC's claim that she was merely a probationary employee. The Labor Arbiter noted that PNOC-EDC even admitted that the alleged standards were only set and discussed with Buenviaje more than a month after her actual appointment. [25]

The Labor Arbiter further ruled that PNOC-EDC also failed to explain why Buenviaje was allowed to enjoy benefits that were supposed to be exclusive for regular employees. As a regular employee, therefore, Buenviaje could only be dismissed for any of the just or authorized causes under Articles 282 and 283[26] of the Labor Code. Since the cause for Buenviaje's dismissal was not included in any of the grounds enumerated in either Article, she was considered illegally dismissed. The Labor Arbiter found Guerzon and Aquino to have acted in bad faith due to their failure to explain the standards to Buenviaje, as well as why the evaluation form for regular employees was used in her evaluation. They also failed to respond to Buenviaje's allegation that the second evaluation was done in bad faith to serve as an excuse in dismissing her. The Labor Arbiter noted that the second evaluation appeared irregular because it did not bear the signature and approval of Aquino. Consequently, for lack of the required

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[24] *Rollo* (G.R. Nos. 183200-01), pp. 151-152.

[25] *Id.* at 145-148.

[26] Renumbered to Articles 297 and 298 pursuant to Republic Act No. 10151. (For all Labor Code citations, please refer to Department of Labor and Employment Department Advisory No. 1, Series of 2015.)

approval, the second evaluation could not serve as a valid basis to remove Buenviaje.[27]

Both parties appealed to the NLRC.

The Ruling of the National Labor Relations Commission

In its Resolution[28] dated September 27, 2005, the NLRC ruled:

> WHEREFORE, premises considered, the appeal is partly **GRANTED** and the Decision dated 10 December 2004 is hereby **MODIFIED** ordering respondent-appellant PNOC-Energy Development Corporation to pay complainant-appellee financial assistance in the amount of ₱229,681.35 only and her accrued wages in the amount of ₱1,224,967.28 for the period covering December 2004, the date of the decision ordering her reinstatement until the date of this Resolution. The order to return to complainant-appellee the amount of ₱51,692.72, which represents deduction from her salary and not raised on appeal, **STANDS**. Finally, the award of moral and exemplary damages and attorney's fees, as well as the joint and solidarily (*sic*) liability of individual respondents Paul A. Aquino and Ester R. Guerzon are hereby **DELETED**.
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> SO ORDERED.[29] (Emphasis in the original.)

The NLRC agreed with the Labor Arbiter that Buenviaje was a regular employee of PNOC-EDC, noting that the terms of her appointment expressly grants a regular status of employment.[30] The NLRC also found that PNOC-EDC admitted that Buenviaje has been performing the functions of a Marketing Division Manager for more than six (6) months before she was formally appointed to the said position.[31] Nevertheless, the NLRC ruled that she was not illegally dismissed because she did not enjoy security of tenure.[32] The NLRC noted that the condition

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[27] *Rollo* (G.R. Nos. 183200-01), pp. 148-150.

[28] *Id.* at 185-200.

[29] *Id.* at 199.

[30] *Id.* at 195.

[31] *Id.*

[32] *Id.*

in Buenviaje's appointment letter, which provided that her appointment is subject to confirmation by her immediate superior based on her performance during the next six (6) months, was clear and understood by her when she affixed her signature to the appointment letter.[33] The NLRC concluded that only upon confirmation of her appointment will Buenviaje enjoy the right to security of tenure.[34] As it was, PNOC-EDC found her performance unsatisfactory and Buenviaje failed to disprove these findings. Therefore, Buenviaje failed to complete her appointment as a regular employee and her non-confirmation cannot be considered as an illegal dismissal.[35]

With respect to Buenviaje's prayer for moral and exemplary damages, and attorney's fees, the NLRC found no basis to grant the same. The NLRC also found no basis for the solidary liability of Aquino and Guerzon.[36]

Both parties asked the NLRC to reconsider its Resolution, but the NLRC denied their motions. Thus, both parties filed their petitions for *certiorari* with the CA.

The Ruling of the Court of Appeals

The CA partially modified the Resolution of the NLRC. The dispositive portion of the CA Decision[37] dated October 31, 2007 reads:

WHEREFORE, in view of all the foregoing, the September 27, 2005 and January 31, 2006 Resolutions of the NLRC are **MODIFIED** as follows:

For having been illegally dismissed, petitioner Amelyn Buenviaje is entitled to receive a separation pay equivalent to 1/2 month pay for every year of service (with a fraction of at least 6 months considered one whole year) in lieu of reinstatement. In addition she is also to

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[33] *Rollo* (G.R. Nos. 183200-01), p. 196.

[34] *Id.*

[35] See *rollo* (G.R. Nos. 183200-01), pp. 196-197.

[36] *Id.* at 198-199.

[37] *Supra* note 2.

receive full backwages inclusive of allowances and other benefits or their monetary equivalent, computed from the time the compensation was withheld up to the finality of this decision.

The other awards in the NLRC decision as well as the deletion of the joint and solidary liabilities of Paul A. Aquino and Ester R. Guerzon are hereby AFFIRMED.

SO ORDERED.[38] (Emphasis in the original.)

The CA found no reason to disturb the findings of both the Labor Arbiter and the NLRC that Buenviaje was a regular employee of PNOC-EDC. However, it disagreed with the NLRC's ruling that Buenviaje failed to acquire security of tenure. The CA stated that where an employee has been engaged to perform activities which are usually necessary or desirable in the usual business of the employer, such employee is deemed a regular employee and is entitled to security of tenure notwithstanding the contrary provisions of his contract of employment.[39] As a regular employee, Buenviaje may only be dismissed if there are just or authorized causes. Thus, PNOC-EDC's reasoning that she failed to qualify for the position cannot be countenanced as a valid basis for her dismissal.[40]

Both parties filed their respective motions for reconsideration, which the CA denied. Hence, these consolidated petitions, which present the following issues:

I. Whether Buenviaje was a permanent employee;

II. Whether Buenviaje was illegally dismissed;

III. Whether Buenviaje is entitled to moral and exemplary damages as well as attorney's fees;

IV. Whether Buenviaje should be given separation pay in lieu of reinstatement; and

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[38] *Rollo* (G.R. Nos. 183200-01), pp. 50-51.

[39] *Id.* at 47.

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

V. Whether Aquino and Guerzon should be held jointly and severally liable to Buenviaje.

Our Ruling

Buenviaje was a permanent employee

Buenviaje was hired as a Marketing Division Manager, a position that performs activities that are usually necessary and desirable to the business of PNOC-EDC and is thusly, regular. As an employer, PNOC-EDC has an exclusive management prerogative to hire someone for the position, either on a permanent status right from the start or place him first on probation. In either case, the employee's right to security of tenure immediately attaches at the time of hiring.[41] As a permanent employee, he may only be validly dismissed for a just[42] or authorized[43] cause. As a probationary employee, he may also

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[41] See *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, G.R. No. 177937, January 19, 2011, 640 SCRA 135, 142.

[42] LABOR CODE, 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;

b) Gross and habitual neglect by the employee of his duties;

c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

e) Other causes analogous to the foregoing. (As renumbered by Republic Act No. 10151.)

[43] LABOR CODE, Art. 298. *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)

be validly dismissed for a just or authorized cause, or when he fails to qualify as a regular employee in accordance with reasonable standards made known to him by the employer at the time of his engagement.[44] Apart from the protection this last ground in the dismissal of a probationary employee affords the employee, it is also in line with the right or privilege of the employer to choose who will be accorded with regular or permanent status and who will be denied employment after the period of probation. It is within the exercise of this right that the employers may set or fix a probationary period within which it may test and observe the employee's conduct before hiring him permanently.[45]

Here, PNOC-EDC exercised its prerogative to hire Buenviaje as a permanent employee right from the start or on February 1, 2004, the effectivity date of her appointment. In her appointment letter, PNOC-EDC's President expressly instructed the HRMD to amend Buenviaje's status from co-terminous to regular. He also informed her that her regular status shall be retroactive to July 1, 2001. Nowhere in the appointment letter did PNOC-EDC say that Buenviaje was being hired on probationary status. Upon evaluation on two (2) occasions, PNOC-EDC used a performance appraisal form intended for permanent managerial

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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. (As renumbered by Republic Act No. 10151.)

[44] See *Carvajal v. Luzon Development Bank*, G.R. No. 186169, August 1, 2012, 678 SCRA 132; Article 296, formerly Article 281 of the Labor Code. (As renumbered by Republic Act No. 10151.)

[45] *Manlimos v. National Labor Relations Commission*, G.R. No. 113337, March 2, 1995, 242 SCRA 145, 155.

employees, even if the company had a form for probationary employees. The intention, therefore, all along was to grant Buenviaje regular or permanent employment. As correctly observed by the CA:

> Accordingly, at the time of her formal appointment to the position on February 2, 2004, Amelyn Buenviaje has been performing the functions of a Senior Manager of the Marketing Division for almost six months. After having had the opportunity to observe her performance for almost six months as Senior Marketing Manager, PNOC should not have formally appointed her if she appeared to have been unqualified for the position. But as it is, Amelyn Buenviaje was formally appointed and given a regular status. x x x[46]

This intention was clear notwithstanding the clause in the appointment letter saying that Buenviaje's appointment was subject to confirmation by her immediate superior based on her performance during the next six (6) months. This clause did not make her regularization conditional, but rather, effectively informed Buenviaje that her work performance will be evaluated later on. PNOC-EDC, on the other hand, insists that this clause demonstrates that Buenviaje was merely a probationary employee. Consequently, when she failed to meet the standards set by PNOC-EDC, the latter was well within its rights not to confirm her appointment and to dismiss her.

We are not persuaded.

Firstly, if the clause in the appointment letter did cause an ambiguity in the employment status of Buenviaje, we hold that the ambiguity should be resolved in her favor. This is in line with the policy under our Labor Code to afford protection to labor and to construe doubts in favor of labor.[47] We upheld this policy in *De Castro v. Liberty Broadcasting Network, Inc.*,[48] ruling that between a laborer and his employer, doubts reasonably

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[46] *Rollo* (G.R. Nos. 183200-01), p. 49.

[47] See *Asuncion v. National Labor Relations Commission*, G.R. No. 129329, July 31, 2001, 362 SCRA 56, 68.

[48] G.R. No. 165153, August 25, 2010, 629 SCRA 77.

arising from the evidence or interpretation of agreements and writing should be resolved in the former's favor.[49] Hence, what would be more favorable to Buenviaje would be to accord her a permanent status.

But more importantly, apart from the express intention in her appointment letter, there is substantial evidence to prove that Buenviaje was a permanent employee and not a probationary one.

A *probationary employee* is defined as one who is on trial by an employer during which the employer determines whether or not he is qualified for permanent employment.[50] In general, probationary employment cannot exceed six (6) months, otherwise the employee concerned shall be considered a regular employee.[51] It is also indispensable in probationary employment that the employer informs the employee of the reasonable standards that will be used as a basis for his or her regularization at the time of his or her engagement.[52] If the employer fails to comply with this, then the employee is considered a regular employee.[53]

In their reply to Buenviaje dated July 28, 2004, PNOC-EDC reminded Buenviaje that the standards "were thoroughly discussed with [her] separately soon after [she] signed [her] contract, as well as that which was contained in the job description attached thereto."[54] PNOC-EDC maintained this position in its appeal memorandum,[55] asserting that Buenviaje

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[49] *Id.* at 83.

[50] *Phil. Federation of Credit Cooperatives, Inc. v. NLRC*, G.R. No. 121071, December 11, 1998, 300 SCRA 72, 76.

[51] LABOR CODE, Art. 296. (As renumbered by Republic Act No. 10151.)

[52] *Id.*

[53] *Abbott Laboratories, Philippines v. Alcaraz*, G.R. No. 192571, July 23, 2013, 701 SCRA 682, 706-707.

[54] *Rollo* (G.R. Nos. 183200-01), p. 130.

[55] *Id.* at 155-183.

was apprised of the reasonable standards for regularization by virtue of the job description attached to her appointment.[56] They also alleged that the standards were discussed with Buenviaje prior to her first and second appraisals.[57] We, however, do not find these circumstances sufficient to categorize Buenviaje as a probationary employee.

In *Abbott Laboratories, Philippines v. Alcaraz*,[58] we were confronted with the similar question of whether Alcaraz was sufficiently informed of the reasonable standards that would qualify her as a regular employee. In affirming that she was, we enumerated the details and circumstances prior to, during the time of her engagement, and the incipient stages of her employment that show she was well-apprised of her employer's expectations that would, in turn, determine her regularization. These were:

(a) On June 27, 2004, Abbott caused the publication in a major broadsheet newspaper of its need for a Regulatory Affairs Manager, indicating therein the job description for as well as the duties and responsibilities attendant to the aforesaid position; this prompted Alcaraz to submit her application to Abbott on October 4, 2004;

(b) In Abbott's December 7, 2004 offer sheet, it was stated that Alcaraz was to be employed on a probationary status;

(c) On February 12, 2005, Alcaraz signed an employment contract which specifically stated, *inter alia*, that she was to be placed on probation for a period of six (6) months beginning February 15, 2005 to August 14, 2005;

(d) On the day Alcaraz accepted Abbott's employment offer, Bernardo sent her copies of Abbott's organizational structure and her job description through e-mail;

(e) Alcaraz was made to undergo a pre-employment orientation where Almazar informed her that she had to implement Abbott's

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[56] *Id.* at 174.

[57] *Id.*

[58] G.R. No. 192571, July 23, 2013, 701 SCRA 682 and April 22, 2014, 723 SCRA 25.

Code of Conduct and office policies on human resources and finance and that she would be reporting directly to Walsh;

(f) Alcaraz was also required to undergo a training program as part of her orientation;

(g) Alcaraz received copies of Abbott's Code of Conduct and Performance Modules from Misa who explained to her the procedure for evaluating the performance of probationary employees; she was further notified that Abbott had only one evaluation system for all of its employees; and

(h) Moreover, Alcaraz had previously worked for another pharmaceutical company and had admitted to have an "extensive training and background" to acquire the necessary skills for her job.[59]

We concluded that "[c]onsidering the totality of the above-stated circumstances, it cannot, therefore, be doubted that Alcaraz was well-aware that her regularization would depend on her ability and capacity to fulfill the requirements of her position as Regulatory Affairs Manager and that her failure to perform such would give Abbott a valid cause to terminate her probationary employment."[60]

We stress here that the receipt by Buenviaje of her job description does not make this case on all fours with *Abbott*. The receipt of job description and the company's code of conduct in that case was just one of the attendant circumstances which we found equivalent to being actually informed of the performance standards upon which a probationary employee should be evaluated. What was significant in that case was that both the offer sheet and the employment contract specifically stated that respondent was being employed on a probationary status. Thus, the intention of Abbott was to hire Alcaraz as a probationary employee. This circumstance is not obtaining in this case and the opposite, as we have already discussed, is true.

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[59] G.R. No. 192571, July 23, 2013, 701 SCRA 682, 708-709.

[60] *Id.* at 709.

Of equal significance, the job description attached to Buenviaje's appointment letter merely answers the question: "what duties and responsibilities does the position entail?", but fails to provide the answer/s to the question: "how would the employer gauge the performance of the probationary employee?". The job description merely contains her job identification, her immediate superior and subordinates, a list of her job objectives, duties and responsibilities, and the qualification guidelines required of her position (*i.e.*, minimum education, minimum experience, and special skills). There is no question that performance of duties and responsibilities is a necessary standard for qualifying for regular employment. It does not stop on mere performance, however. There must be a measure as to how poor, fair, satisfactory, or excellent the performance has been. PNOC-EDC, in fact, used an appraisal form when it evaluated the performance of Buenviaje twice. A copy of this appraisal form, unlike in *Abbot*, was not given to Buenviaje at any time prior to, during the time of her engagement, and the incipient stages of her employment. A comparison of the job description and the standards in the appraisal form reveals that they are distinct. The job description is just that, an enumeration of the duties and responsibilities of Buenviaje. To better illustrate, the job objectives, duties and responsibilities of Buenviaje are set out below:

III. JOB OBJECTIVE

1. To set the overall marketing objectives and directions of EDC, in coordination with EDC Operations, through the Department Managers and Corporate Services units.

2. To initiate the preparation of detailed/specific short (annual) and medium to long term (2-5 years) marketing plans and programs.

3. To monitor the implementation of the work performance and execution of the plans and programs of Public & Marketing Relations, Power & Energy Services, and Market Development.

4. To manage the functional and administrative requirements of the managers for Public & Marketing Relations, Power & Energy Services, and Market Development.

IV. DUTIES AND RESPONSIBILITIES

1. Ensures that a survey of potential markets and customers in relation to newly developed or soon-to-be-completed power projects are regularly initiated.

2. Develops marketing plans and strategies with Managers and staff, relevant to new and/or uncommitted power and/or resources for both contracted and through the Wholesale Electricity Spot Market (WESM).

3. Develops marketing plans and strategies with managers on new opportunities for Energy Services (Drilling, Geoscientific, Design and Engineering, etc.).

4. Ensures and oversees the development of a business networking system and database.

5. Establishes business contacts (domestic and overseas) and oversees market development and opportunities through the subordinate managers.

6. Ensures and oversees the development of an effective advertising program, annually and as needed (print, publication, etc.), to propagate and enhance EDC's public image and awareness of its marketable products and services.

7. Develops new marketable products and services, in coordination with Operations and Corporate Services.

8. Represents Top Management in various fora, conventions, etc. for business/marketing opportunities domestically and internationally.

9. Ensures that an effective system of customer after-sales and service monitoring is in place.

10. Approves all expense disbursements, contracts, and other corporate documents in accordance with the approval limits specified in the EDC Approvals Policy.

11. Issues instructions on marketing matters to the subordinate managers in accordance with decisions from Top

Management/Board and/or as coordinated with Operations and Corporate Services.

12. Initiates and conducts check-up meetings and conferences with the subordinate managers and their staff.

13. Functions as budget administrator of the Senior Manager's Office.

14. Oversees the preparation of the consolidated annual capital and operating expense budget for the division.

15. Executes EDC's marketing contracts, in accordance with approvals policy.

16. Oversees the preparation and consolidation of all the personnel performance appraisals of the division and effectively administers the forced-ranking program, consistent with company guidelines.

17. Administers the personnel performance appraisal of office staff and managers.

18. Oversees the preparation of the training requirements of the subordinate managers and their staff.

19. Performs other duties which may be assigned from time to time.[61]

The foregoing, however, invite the question as to what are the specific qualitative and/or quantitative standards of PNOC-EDC. With respect to the first job objective listed above, for instance, one may ask: "how will PNOC-EDC measure the performance of Buenviaje as to whether she has adequately set the overall marketing objectives and directions of PNOC-EDC, in coordination with PNOC-EDC Operations, through the Department Managers and Corporate Service units?". The same is true with the first duty: "how will PNOC-EDC measure the performance of Buenviaje as to whether she has ensured that a survey of potential markets and customers in relation to newly developed or soon-to-be-completed power projects are regularly initiated?".

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[61] *Rollo* (G.R. Nos. 183200-01), pp. 111-112.

On the other hand, the appraisal form appraises the elements of performance, which are categorized into results-based factors, individual effectiveness and co-worker effectiveness.[62] Pertinently, the results-based factors, which are broken down into output indicators of: 1.) quality, 2.) quantity, 3.) timeliness, 4.) cost effectiveness, 5.) safety/housekeeping/environmental consciousness, and 6.) profit objectives, are rated according to expected outputs or key result areas, performance standards, and actual accomplishments. Clearly, the form specifies the performance standards PNOC-EDC will use, which demonstrates that PNOC-EDC expected a certain manner, level, or extent by which she should perform her job. PNOC-EDC knew the job description and the performance appraisal form are not one and the same, having specifically used the latter when it evaluated Buenviaje and not the job description attached to the appointment letter. The fact, therefore, that PNOC-EDC used a performance appraisal form with standards expected from Buenviaje further negates any assumption that these standards were of basic knowledge and common sense,[63] or that Buenviaje's position was self-descriptive such that there was no need to spell out the standards at the time of her engagement.[64]

Buenviaje was illegally dismissed

The foregoing discussion proves Buenviaje was hired as a permanent employee on February 1, 2004. As a permanent employee, she may only be dismissed by PNOC-EDC after observing the following substantive and procedural requirements:

1. The dismissal must be for a just or authorized cause;
2. The employer must furnish the employee with two (2) written notices before termination of employment can be legally effected. The first notice states the particular acts or omissions for which dismissal is sought while

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

[63] See *Aberdeen Court, Inc. v. Agustin, Jr.*, G.R. No. 149371, April 13, 2005, 456 SCRA 32.

[64] See *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, G.R. No. 177937, January 19, 2011, 640 SCRA 135, 145.

the second notice states the employer's decision to dismiss the employee; and

3. The employee must be given an opportunity to be heard.[65]

PNOC-EDC failed to observe these requirements because it operated on the wrong premise that Buenviaje was a probationary employee. But even if we were to assume that she was, she would still be illegally dismissed in light of PNOC-EDC's violation of the provisions of the Labor Code in dismissing a probationary employee.

A probationary employee also enjoys security of tenure, although it is not on the same plane as that of a permanent employee.[66] This is so because aside from just and authorized causes, a probationary employee may also be dismissed due to failure to qualify in accordance with the standards of the employer made known to him at the time of his engagement.[67] PNOC-EDC dismissed Buenviaje on this latter ground; that is, Buenviaje allegedly failed to meet the standards set by the company. In dismissing probationary employees on this ground, there is no need for a notice and hearing.[68] The employer, however, must still observe due process of law in the form of: 1) informing the employee of the reasonable standards expected of him during his probationary period at the time of his engagement;[69] and 2) serving the employee with a written notice within a reasonable

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[65] *Yabut v. Manila Electric Company*, G.R. No. 190436, January 16, 2012, 663 SCRA 92, 107-108.

[66] See *Mercado v. AMA Computer College Parañaque City*, Inc., G.R. No. 183572, April 13, 2010, 618 SCRA 218, 238-241.

[67] *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez, supra* note 41 citing the Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6 (c).

[68] *Philippine Daily Inquirer, Inc. v. Magtibay, Jr.*, G.R. No. 164532, July 27, 2007, 528 SCRA 355, 364.

[69] *Id.*

time from the effective date of termination.[70] By the very nature of a probationary employment, the employee needs to know from the very start that he will be under close observation and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors. It is in apprising him of the standards against which his performance shall be continuously assessed where due process lies[71] Likewise, probationary employees are entitled to know the reason for their failure to qualify as regular employees.[72]

As we have previously settled, PNOC-EDC failed to inform Buenviaje of the reasonable standards for her regularization at the time of her engagement. The unfairness of this failure became apparent with the results of Buenviaje's appraisals. In her first appraisal covering a three-month period from February 1, 2004 to April 30, 2004, Buenviaje received a satisfactory rating. It was in her second appraisal covering a two-month period from May 1, 2004 to June 30, 2004 where she received an unsatisfactory rating that led to her dismissal. There was no proof, however, that per PNOC-EDC's standards, receiving an unsatisfactory rating of four (4) from a satisfactory rating of three (3) will result to failure to qualify for regularization.

Neither would PNOC-EDC's reason for dismissing Buenviaje qualify as a just cause. Under Article 297 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties.[73] Analogous to this ground, an unsatisfactory performance may also mean gross inefficiency. "Gross inefficiency" is closely related to "gross neglect," for both involve specific acts of omission on the part

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[70] Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 2 (d).

[71] *Philippine Daily Inquirer v. Magtibay, Jr., supra.*

[72] See *Colegio del Santisimo Rosario v. Rojo*, G.R. No. 170388, September 4, 2013, 705 SCRA 63, 82.

[73] LABOR CODE, Art. 297, par. (b). (As renumbered by Republic Act No. 10151.)

of the employee resulting in damage to the employer or to his business.[74] Failure to observe prescribed standards of work or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. This management prerogative of requiring standards may be availed of so long as they are exercised in good faith for the advancement of the employer's interest.[75]

The fact that an employee's performance is found to be poor or unsatisfactory does not necessarily mean that the employee is grossly and habitually negligent of or inefficient in his duties.[76] Buenviaje's performance, poor as it might have been, did not amount to gross and habitual neglect of duties or gross inefficiency. The markedly different results of several factors in the appraisals in a span of five (5) months prove this. To illustrate:

February 1, 2004-April 30, 2004	May 1, 2004-June 30, 2004
Quantity — x x x Completed the public relations programs scheduled within the period including those directed on special assignment basis like the Dr. Alcaraz lounge.	Quantity — While several marketing programs have been undertaken, no submissions were made on the projects required by immediate superior x x x.
Timeliness — Timely submission of reports and processed invoices. PR programs were responsive to company's call.	Timeliness — Has not met organizational needs as the required projects on Tongonan I and Bacman deemed important for the formulation of strategies have not been submitted. x x x Priorities have not been set so as to be responsive to company needs.

[74] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 206.

[75] *Buiser v. Leogardo, Jr.*, G.R. No. 63316, July 31, 1984, 131 SCRA 151, 158.

[76] See *INC Shipmanagement, Inc. v. Camporedondo*, G.R. No. 199931, September 7, 2015.

Cost Effectiveness — Observed in general the proper use of operating and capital budgets.	Cost Effectiveness — Some recommendations tended to be expensive and demonstrated non-optimization of funds, methods and manpower.
Judgment — Able to come up with good decisions but has to arrive at more complete and conclusive recommendations. *Examples*: x x x	Judgment — Needed to come up with more sound decisions. *Examples*: x x x
Leadership — She has a strong personality and able to influence others specially the subordinates to accomplish their tasks diligently.[77]	Leadership — x x x Not much supervision and direction is given to her various departments as can be gleaned from the quality of work produced particularly in Market Development where results are mere researchers (sic) without firm recommendations where applicable. [78]

Gross negligence implies a 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. [79] As a just cause, it also has to be habitual, which implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. A single or isolated act of negligence, as was shown here, does not constitute a just cause for the dismissal of the employee. [80]

PNOC-EDC would also be in violation of procedural due process if Buenviaje were dismissed on the purported ground of gross negligence or inefficiency. For termination of employees based on just causes, the employer must furnish the employee with two (2) written notices before termination of employment

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[77] *Rollo* (G.R. Nos. 183200-01), pp. 116-117.

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

[79] *Universal Staffing Services, Inc. v. National Labor Relations Commission*, G.R. No. 177576, July 21, 2008, 559 SCRA 221, 229.

[80] See *St. Luke's Medical Center, Inc. v. Notario*, G.R. No. 152166, October 20, 2010, 634 SCRA 67, 78.

can be effected: a first written notice that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a second written notice which informs the employee of the employer's decision to dismiss him. In considering whether the charge in the first notice is sufficient to warrant dismissal under the second notice, the employer must afford the employee ample opportunity to be heard.[81] Although Buenviaje indeed received two (2) letters from PNOC-EDC regarding her termination, these letters fall short of the two (2) notices required under the law. The first letter sent to Buenviaje failed to apprise her of the particular acts or omissions on which her dismissal was based. It was merely a bare statement that Buenviaje's performance failed to meet PNOC-EDC's minimum requirements. True, Buenviaje replied to the first letter, but considering that it did not specify the acts or omissions warranting her dismissal but only served to inform her of her termination, Buenviaje was not afforded a reasonable and meaningful opportunity to explain her side.

Buenviaje is entitled to separation pay and attorney's fees

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. [82] However, there are instances when reinstatement is no longer feasible, such as when the employer-employee relationship has become strained. In these cases, separation pay may be granted in lieu of reinstatement, the payment of which favors both parties. As we have previously stated in *Bank of Lubao, Inc. v. Manabat*: [83]

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[81] *Sang-an v. Equator Knights Detective and Security Agency, Inc.*, G.R. No. 173189, February 13, 2013, 690 SCRA 534, 544.

[82] LABOR CODE, Art. 294. (As renumbered by Republic Act No. 10151.)

[83] G.R. No. 188722, February 1, 2012, 664 SCRA 772.

x x x On one hand, such payment [of separation pay] liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[84]

Separation pay or financial assistance may also be granted to a legally terminated employee as an act of social justice and equity when the circumstances so warrant.[85] In awarding financial assistance, the interests of both the employer and the employee must be tempered, if only to approximate what Justice Laurel calls justice in its secular sense.[86] As the term suggests, its objective is to enable an employee to get by after he has been stripped of his source of income from which he relies mainly, if not, solely.[87]

We agree with the CA that the reinstatement of Buenviaje is no longer viable given the irreconcilable differences and strained relations between her and PNOC-EDC. In light of this, separation pay with full backwages, in lieu of Buenviaje's reinstatement, is warranted.

Moreover, it is a well-settled rule that in actions for recovery of wages, or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, attorney's fees may be granted pursuant to Article 111 of the Labor Code.[88] Considering, therefore, that she was forced to litigate in order

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[84] *Id.* at 780.

[85] *St. Joseph Academy of Valenzuela Faculty Association (SJAVFA)-FUR Chapter-TUCP v. St. Joseph Academy of Valenzuela*, G.R. No. 182957, June 13, 2013, 698 SCRA 342, 350.

[86] *Eastern Shipping Lines, Inc. v. Sedan*, G.R. No. 159354, April 7, 2006, 486 SCRA 565, 574-575, citing *Calalang v. Williams*, 70 Phil. 726 (1940).

[87] See *Guatson International Travel and Tours, Inc. v. NLRC*, G.R. No. 100322, March 9, 1994, 230 SCRA 815, 824.

[88] *Tangga-an v. Philippine Transmarine Carriers, Inc.*, G.R. No. 180636, March 13, 2013, 693 SCRA 340, 355-356.

to assert her rights,[89] Buenviaje is entitled to attorney's fees in the amount of ten percent (10%) of the total award of backwages.[90]

Buenviaje is entitled to moral and exemplary damages

The claim for moral damages cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, that the act of dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, *etc.*, resulted therefrom.[91] Bad faith "implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity."[92] Bad faith must be proven through clear and convincing evidence. This is because bad faith and fraud are serious accusations that can be so conveniently and casually invoked, and that is why they are never presumed. They amount to mere slogans or mudslinging unless convincingly substantiated by whoever is alleging them.[93]

Exemplary damages, on the other hand, may be granted when the dismissal of the employee was done in a wanton, oppressive or malevolent manner.[94]

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[89] *Id.*

[90] 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.

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[91] *Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, 458, citing *Primero v. Intermediate Appellate Court*, G.R. No. 72644, December 14, 1987, 156 SCRA 435.

[92] *Id.*, citing *Laureano Investment and Development Corporation v. Court of Appeals*, G.R. No. 100468, May 6, 1997, 272 SCRA 253.

[93] *Id.*, citing *Cathay Pacific Airways, Ltd. v. Vazquez*, G.R. No. 150843, March 14, 2003, 399 SCRA 207.

[94] *Pasos v. Philippine National Construction Corporation*, G.R. No. 192394, July 3, 2013, 700 SCRA 608, 631.

Buenviaje argues that she is entitled to an award of these damages because PNOC-EDC, Aquino, and Guerzon acted in bad faith.[95] To Buenviaje's mind, the following acts of PNOC-EDC, Aquino, and Guerzon prove that they acted in bad faith:

1. They used the evaluation form for regular employees in evaluating Buenviaje;
2. Buenviaje was evaluated using the standards for regular employees;
3. Unlike the first evaluation, Aquino did not sign the second evaluation; and
4. The second evaluation was conducted without Buenviaje's knowledge.[96]

We agree that there was manifest bad faith when Buenviaje was evaluated using the standards and performance appraisal form for regular employees, yet, in dismissing her, she was treated as a probationary employee. To reiterate, the clear intention of PNOC-EDC from the start was to grant Buenviaje a permanent status. She was evaluated in a short span of five (5) months, in which her previous satisfactory outputs turned unsatisfactory. There were also factors or variables that showed PNOC-EDC initially found as her strengths but were now inexplicably viewed as negative. For example, PNOC-EDC found Buenviaje's political connections helpful in pushing for marketing programs; yet, PNOC-EDC criticized her for flaunting her strong political connections as an instrument in achieving the company's objectives.[97]

With regard to the third and fourth acts, though, we find no malice or bad faith against PNOC-EDC. PNOC-EDC was able to refute the allegation that Aquino did not sign the second evaluation by annexing a signed one in its appeal memorandum.[98]

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[95] *Rollo* (G.R. Nos. 183253 & 183257), p. 47.

[96] *Id.* at 45-46.

[97] *Rollo* (G.R. Nos. 183200-01), pp. 120 and 123.

[98] *Id.* at 178-179.

As to the allegation that her second evaluation was conducted without her knowledge, we find the same inconsequential. To repeat, Buenviaje's appointment letter apprised her of performance evaluations in the horizon for the next six (6) months. Even if it weren't expressly communicated to her, it would have certainly been reasonable for Buenviaje to expect that her performance would be gauged and appraised at any given time.

Thus, the Labor Arbiter's award of moral and exemplary damages is proper. We are wont, however, to reduce the amounts he fixed by reason alone of the "extent of the damage done to [Buenviaje] who occupies a high managerial position."[99] We find his award excessive in the absence of evidence to prove the degree of moral suffering or injury that Buenviaje suffered.[100] In line with our ruling in *Magsaysay Maritime Corporation v. Chin, Jr.*,[101] we hold that an award of ₱30,000 as moral damages and ₱25,000 as exemplary damages is more fair and reasonable. We explained:

> x x x It has been held that in order to arrive at a judicious approximation of emotional or moral injury, competent and substantial proof of the suffering experienced must be laid before the court. It is worthy to stress that moral damages are awarded as compensation for actual injury suffered and not as a penalty. The Court believes that an award of ₱30,000.00 as moral damages is commensurate to the anxiety and inconvenience that Chin suffered.
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> As for exemplary damages, the award of ₱25,000.00 is already sufficient to discourage petitioner Magsaysay from entering into iniquitous agreements with its employees that violate their right to collect the amounts to which they are entitled under the law. Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[102] (Citations omitted.)

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[99] *Id.* at 152.

[100] See *Magsaysay Maritime Corporation v. Chin, Jr.*, G.R. No. 199022, April 7, 2014, 721 SCRA 46, 51.

[101] G.R. No. 199022, April 7, 2014, 721 SCRA 46.

[102] *Id.* at 51-52.

However, the extent of liability of the respondents should not be solidary.

A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith.[103]

To hold a director or officer personally liable for corporate obligations, two (2) requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.[104]

While the position paper of Buenviaje alleges that the respondents acted in bad faith and that Aquino and Guerzon, in particular, conspired with each other to terminate her illegally, we find these allegations were not clearly and convincingly proved. To our mind, there was insufficient evidence that Aquino and Guerzon were personally motivated by ill-will in dismissing Buenviaje.[105]

WHEREFORE, the petition in **G.R. Nos. 183200-01** is **DENIED** while the petition in **G.R. Nos. 183253** and **183257** is **PARTIALLY GRANTED**. The October 31, 2007 Decision and June 3, 2008 Resolution of the CA in CA-G.R. S.P. Nos. 94359 and 94458 are **AFFIRMED** with the **MODIFICATION**

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[103] *Polymer Rubber Corporation v. Salamuding*, G.R. No. 185160, July 24, 2013, 702 SCRA 153, 160, citing *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, G.R. No. 177114, April 13, 2010, 618 SCRA 208, 216.

[104] *Polymer Rubber Corporation v. Salamuding*, G.R. No. 185160, July 24, 2013, 702 SCRA 153, 161, citing *Francisco v. Mallen, Jr.*, G.R. No. 173169, September 22, 2010, 631 SCRA 118, 123-124.

[105] See *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, G.R. No. 177114, January 21, 2010, 610 SCRA 497.

that PNOC-EDC is ordered to pay Amelyn Buenviaje moral damages in the amount of ₱30,000, exemplary damages in the amount of ₱25,000, and attorney's fees equivalent to ten percent (10%) of the total award of backwages.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 185857-58. June 29, 2016]

TRIFONIA D. GABUTAN, deceased, herein represented by her heirs, namely: Erlinda Llames, Elisa Asok, Primitivo Gabutan, Valentina Yane; BUNA D. ACTUB, FELISIA TROCIO, CRISANTA D. UBAUB, and TIRSO DALONDONAN, deceased, herein represented by his heirs, namely: Madelyn D. Reposar and Jerry Dalondonan, MARY JANE GILIG, ALLAN UBAUB, and SPOUSES NICOLAS & EVELYN DAILO, *petitioners, vs.* **DANTE D. NACALABAN, HELEN N. MAANDIG, SUSAN N. SIAO, and CAGAYAN CAPITOL COLLEGE,** *respondents.*

[G.R. Nos. 194314-15. June 29, 2016]

DANTE D. NACALABAN, HELEN N. MAANDIG, and SUSAN N. SIAO, as HEIRS OF BALDOMERA D. VDA. DE NACALABAN, *petitioners, vs.* **TRIFONIA D. GABUTAN, BUNA D. ACTUB, FELISIA D. TROCIO, CRISANTA D. UBAUB, and TIRSO DALONDONAN, deceased, herein represented by his**

heirs, namely: Madelyn D. Reposar and Jerry Dalondonan, MARY JANE GILIG, ALLAN UBAUB, and SPOUSES NICOLAS & EVELYN DAILO, CAGAYAN CAPITOL COLLEGE, represented by its President, Atty. Casimiro B. Suarez, Jr., *private respondent;*

HON. LEONCIA R. DIMAGIBA (Associate Justice), HON. PAUL L. HERNANDO (Associate Justice), HON. NINA G. ANTONIO-VALENZUELA (Associate Justice), HON. EDGARDO T. LLOREN (Associate Justice), HON. MICHAEL P. ELBINIAS (Associate Justice), and HON. JANE AURORA C. LANTION (Associate Justice, Acting Chairman), COURT OF APPEALS, CAGAYAN DE ORO CITY (Former Special Twenty-Second Division), *public respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI; PROPER REMEDY TO OBTAIN A REVERSAL OF JUDGMENT ON THE MERITS, FINAL ORDER OR RESOLUTION.— Pursuant to Section 1, Rule 45 of the Rules of Court, the proper remedy to obtain a reversal of judgment on the merits, final order or resolution is an appeal. The Resolution dated August 17, 2010 of the CA, which affirmed its Decision dated December 11, 2008, was a final resolution that disposed of the appeal by Nacalaban, *et al.* and left nothing more to be done by the CA in respect to the said case. Thus, Nacalaban, *et al.* should have filed an appeal in the form of a petition for review on *certiorari* and not a petition for *certiorari* under Rule 65, which is a special civil action.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; A REMEDY OF LAST RECOURSE AND IS NOT A SUBSTITUTE FOR AN APPEAL WHERE THE LATTER REMEDY IS AVAILABLE BUT WAS LOST THROUGH FAULT OR NEGLIGENCE.— Rule 65 is a limited form of review and is a remedy of last recourse. This

extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. In *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, we held that appeal would still be the proper remedy from a judgment on the merits, final order or resolution even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is that there should be no appeal. We have always declared that a petition for *certiorari* is not a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. Here, Nacalaban, *et al.* received the assailed Resolution dated August 17, 2010 on September 7, 2010. Under the Rules of Court, they had 15 days or until September 22, 2010 to file an appeal before us. Nacalaban, *et al.* allowed this period to lapse without doing so and, instead, filed a petition for *certiorari* on November 5, 2010. Being the wrong remedy, the petition of Nacalaban, *et al.* is, therefore, dismissible. Although there are exceptions to this general rule, none applies in this case.

3. ID.; ID.; ID.; ID.; THE COURT HAS DISCRETION TO TREAT A RULE 65 PETITION FOR *CERTIORARI* AS A RULE 45 PETITION FOR REVIEW ON *CERTIORARI* IF THE PETITION IS FILED WITHIN THE REGLEMENTARY PERIOD FOR FILING A PETITION FOR REVIEW, WHEN ERRORS OF JUDGMENT ARE AVERRED, AND WHEN THERE IS SUFICIENT REASON TO JUSTIFY THE RELAXATION OF THE RULES.— In spite of the consolidation we have ordered, we cannot treat the petition of Nacalaban, *et al.* as one under Rule 45. We have the discretion to treat Rule 65 petition for *certiorari* as a Rule 45 petition for review on *certiorari* if (1) the petition is filed within the reglementary period for filing a petition for review; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules. The first and third requisites are absent in this case. To reiterate, the petition was filed beyond the 15-day reglementary period of filing a petition for review on *certiorari*. [W]e also find no compelling reason to relax the rules.

4. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE RESOLUTION OF FACTUAL ISSUES IS THE FUNCTION OF THE LOWER COURTS WHOSE FINDINGS, WHEN APTLY SUPPORTED BY EVIDENCE, BIND THE COURT ESPECIALLY WHEN THE COURT OF APPEALS AFFIRMS THE LOWER COURT'S FINDINGS.— We stress at the outset that the question of existence of an implied trust is factual, hence, ordinarily outside the purview of Rule 45. The resolution of factual issues is the function of the lower courts whose findings, when aptly supported by evidence, bind us. This is especially true when the CA affirms the lower court's findings, as in this case. While we, under established exceptional circumstances, had deviated from this rule, we do not find this case to be under any of the exceptions.

5. CIVIL LAW; CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; TRUSTS; IMPLIED TRUST; WHEN PRESENT; ELEMENTS OF PURCHASE MONEY RESULTING TRUST; PRESENT.— Article 1448 of the Civil Code provides in part that there is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. The trust created here, which is also referred to as a purchase money resulting trust, occurs there is (1) an actual payment of money, property or services, or an equivalent, constituting valuable consideration; (2) and such consideration must be furnished by the alleged beneficiary of a resulting trust. These two elements are present here.

6. ID.; ID.; ID.; ID.; ID.; PAROL EVIDENCE MAY BE ADMITTED TO PROVE THE EXISTENCE OF AN IMPLIED TRUST SINCE AN IMPLIED TRUST IS NEITHER DEPENDENT UPON AN EXPRESS AGREEMENT NOR REQUIRED TO BE EVIDENCED BY WRITING, BUT THE PAROL EVIDENCE NECESSARILY HAS TO BE TRUSTWORTHY AND IT CANNOT REST ON LOOSE, EQUIVOCAL OR INDEFINITE DECLARATIONS.— Gabutan, *et al.*, through the testimonies of Felisia, Crisanta, and Trifonia, established that Melecia's money was used in

buying the property, but its title was placed in Godofredo's name. x x x Both the RTC and CA found credence on these pieces of testimonial evidence that an implied resulting trust exists. Reliance on these testimonies will not violate the parol evidence rule, as Nacalaban, *et al.* once raised. In *Tong v. Go Tiat Kun*, we ruled that since an implied trust is neither dependent upon an express agreement nor required to be evidenced by writing, Article 1457 of our Civil Code authorizes the admission of parol evidence to prove their existence. What is crucial is the intention to create a trust. We cautioned, however, that the parol evidence that is required to establish the existence of an implied trust necessarily has to be trustworthy and it cannot rest on loose, equivocal or indefinite declarations. The testimonies of Felisia, Crisanta, and Trifonia satisfy these requirements. They are consistent and agree in all material points in reference to the circumstances behind the arrangement between Melecia and Godofredo.

7. ID.; ID.; ID.; ID.; ID.; IF THE REGISTRATION OF THE LAND IS FRAUDULENT, THE PERSON IN WHOSE NAME THE LAND IS REGISTERED HOLDS IT AS A MERE TRUSTEE, AND THE REAL OWNER IS ENTITLED TO FILE AN ACTION FOR RECONVEYANCE OF THE PROPERTY.— Having established the creation of an implied resulting trust, the action for reconveyance filed by Gabutan, *et al.*, the heirs of Melecia in whose benefit the trust was created, is proper. An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer to reconvey the land to him. It will not amount to a collateral attack on the title, contrary to the allegation of Nacalaban, *et al.* We explained in *Hortizuela v. Tagufa*: x x x There is no quibble that a certificate of title, like in the case at bench, can only be questioned through a direct proceeding. The MCTC and the CA, however, failed to take into account that in a complaint for reconveyance, the decree of registration is respected as incontrovertible and is not being questioned. What is being sought is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to the one with a better right. If the registration of the land is fraudulent, the person in whose name the land is registered

holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property.

8. ID.; ID.; ID.; ID.; ID.; TITLE TO THE PROPERTY IS NOT A HINDRANCE TO AN ACTION FOR RECONVEYANCE BASED ON AN IMPLIED TRUST, FOR THE TITLE DOES NOT OPERATE TO VEST OWNERSHIP UPON THE PROPERTY IN FAVOR OF THE PERSON NAMED IN THE CERTIFICATE, BUT IT IS A MERE EVIDENCE OF OWNERSHIP OVER THE PROPERTY DESCRIBED THEREIN.— The fact that the property was already titled in Godofredo's name, and later transferred to the College, is not a hindrance to an action for reconveyance based on an implied trust. The title did not operate to vest ownership upon the property in favor of the College. As held in *Naval v. Court of Appeals*: x x x Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.

9. ID.; ID.; ID.; ID.; ID.; AN ACTION FOR RECONVEYANCE BASED ON AN IMPLIED OR CONSTRUCTIVE TRUST IS IMPRESCRIPTIBLE IF THE PLAINTIFF OR THE PERSON ENFORCING THE TRUST IS IN POSSESSION OF THE PROPERTY, AS ONE WHO IS IN ACTUAL POSSESSION OF THE LAND CLAIMING TO BE ITS OWNER MAY WAIT UNTIL HIS POSSESSION IS DISTURBED OR HIS TITLE IS ATTACKED BEFORE TAKING STEPS TO VINDICATE HIS RIGHT.— An action for reconveyance based on an implied or a constructive trust prescribes in 10 years from the alleged fraudulent registration or date of issuance of the certificate of title over the property. However, an action for reconveyance based on implied or constructive trust is imprescriptible if the plaintiff or the person

enforcing the trust is in possession of the property. In effect, the action for reconveyance is an action to quiet the property title, which does not prescribe. The reason is that the one who is in actual possession of the land claiming to be its owner may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. His undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession. The fact of actual possession of Gabutan, *et al.* of the property, during the lifetime of Melecia and even after her death, is an undisputed and established fact. The College has even filed an ejectment case against the Heirs of Melecia for this reason. Thus, their complaint for reconveyance is imprescriptible. It follows, with more reason, that Gabutan, *et al.* cannot be held guilty of laches as the said doctrine, which is one in equity, cannot be set up to resist the enforcement of an imprescriptible legal right.

10. ID.; ID.; ID.; ID.; ID.; THE TRUSTEE, IN AN IMPLIED RESULTING TRUST, HAS OBLIGATION TO RECONVEY THE PROPERTY AND ITS TITLE IN FAVOR OF THE TRUE OWNER, AND AFTER THE LATTER'S DEATH, THE PROPERTY SHALL BE RECONVEYED TO HER ESTATE.— Having established the creation of an implied resulting trust between melecia and Godofredo, the law thereby creates the obligation of the trustee to recovery the property and its title in favor of the true owner. The true owner, Melecia, died in 1997 and was succeeded by her children and grandchildren. The property, therefore, must be reconveyed to her estate.

11. ID.; ID.; ID.; ID.; ID.; THE EXTRAJUDICIAL SETTLEMENT WITH SALE BETWEEN THE LEGAL HEIRS OF THE TRUSTEE AND ANOTHER IS VOID, AS THE FORMER DO NOT HAVE THE RIGHT OR AUTHORITY TO SELL THE PROPERTY.— The execution of the Extrajudicial Settlement with Sale between Godofredo's heirs and the College will not defeat the legal obligation to reconvey the property because at the time of its execution in 1996, Melecia was still alive. Hence, Nacalaban, *et al.* did

not have the right or authority to sell the property. *Nemo dat quod non habet.* One can sell only what one owns or is authorized to sell, and the buyer can acquire no more right than what the seller can transfer legally. Nacalaban, *et al*. cannot find refuge in their argument that the property was registered in their father's name and that after his death, his rights passed to them as his legal heirs. To repeat, title to property does not vest ownership but is a mere proof that such property has been registered.

12. ID.; ID.; ID.; SALES; REQUISITES FOR ONE TO BE CONSIDERED A PURCHASER IN GOOD FAITH; THE BUYER WHICH HAS THE BURDEN TO PROVE THE STATUS OF BEING A PURCHASER IN GOOD FAITH, IS REQUIRED TO PROVE THE CONCURRENCE OF THE CONDITIONS, AS THE ONUS PROBANDI CANNOT BE DISCHARGED BY MERE INVOCATION OF THE LEGAL PRESUMPTION OF GOOD FAITH.— In *Bautista v. Silva*, we reiterated the requisites for one to be considered a purchaser in good faith: a buyer for value in good faith is one who buys property of another, without notice that some other person has a right to, or interest in, such property and pays full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property. He buys the property with the well-founded belief that the person from whom he receives the thing had little to the property and capacity to convey it. To prove good faith, a buyer of registered and titled land need only show that he relied on the face of the title to the property. He need not prove that he made further inquiry for he is not obliged to explore beyond the four corners of the title. **Such degree of proof of good faith, however, is sufficient only when the following conditions concur: *first,* the seller is the registered owner of the land; *second,* the latter is in possession thereof; and *third,* at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property.** xxx [T]he College, which has the burden to prove the status of being a purchaser in good faith, is required to prove the **concurrence** of the above conditions. This *onus probandi* cannot be discharged by mere invocation of the legal

presumption of good faith. We find that the College failed to discharge this burden.

13. ID.: ID.; ID.; ID.; ID.; ONE WHO BUYS FROM ONE WHO IS NOT THE REGISTERED OWNER IS EXPECTED TO EXAMINE NOT ONLY THE CERTIFICATE OF TITLE BUT ALL FACTUAL CIRCUMSTANCES NECESSARY FOR HIM TO DETERMINE IF THERE ARE ANY FLAWS IN THE TITLE OF THE TRANSFEROR, OR IN HIS CAPACITY TO TRANSFER THE LAND.— [A]s correctly pointed out by Gabutan, *et al.*, Nacalaban, *et al.* are not the registered owners of the property, but Godofredo. In *Bautista v. Court of Appeals*, we held: x x x Where a purchaser buys from one who is not the registered owner himself, the law requires a higher degree of prudence even if the land object of the transaction is registered. One who buys from one who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land.

14. ID.; ID.; ID.; ID.; ID.; A PURCHASER WHO MERELY RELIED ON THE REPRESENTATIONS OF THE SELLERS AND THE DOCUMENTS THEY PRESENTED IS NOT A BUYER IN GOOD FAITH, FOR IF THE LAND PURCHASED IS IN THE POSSESSION OF A PERSON OTHER THAN THE VENDOR, THE PURCHASER MUST BE WARY AND MUST INVESTIGATE THE RIGHTS OF THE ACTUAL POSSESSOR.— [T]he College was aware that aside from Nacalaban, *et al.*, the Heirs of Melecia, were also in possession of the property. x x x. Although the College in its Answer alleged that it made an exhaustive investigation and verification from all reliable sources and found that the possession of Melecia and her heirs was merely tolerated, it failed to specify who or what these sources were. There is no evidence that the College did inquire from Melecia or her heirs themselves, who were occupying the property, the nature and authority of their possession. It is not far-fetched to conclude, therefore, that the College merely relied on the representations of the sellers and the documents they presented. In this regard, the College is not a buyer in good faith. The "honesty of intention" which constitutes good faith implies a **freedom from**

knowledge of circumstances which ought to put a person on inquiry. If the land purchased in the possession of a person other than the vendor, the purchaser must be wary and must investigate the rights of the actual possessor. Without such inquiry, the purchaser cannot be said to be in good faith and cannot have any right over the property.

15. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE SOLE ISSUE FOR RESOLUTION IS PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED, INDEPENDENT OF ANY CLAIM OF OWNERSHIP BY ANY OF THE PARTIES.— We are aware that in the ejectment case, the MTCC and RTC ruled in favor of the College. We emphasize, though, that the ruling on the College's better right of possession was without prejudice to the eventual outcome of the reconveyance case where the issue of ownership was fully threshed out. We have held that the sole for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. When the defendant, however, raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. Thus, the ruling on the ejectment case is not conclusive as to the issue of ownership.

APPEARANCES OF COUNSEL

Mutia Trinidad Venadas & Pantanocas for petitioner heirs of Trifonia D. Gayunan, *et al.*

Teofredo C. Rojas for respondent Dante Nacalaban, *et al.*

Ma. Caridad N. San Jose and *Lizzamae Grace A. Lavina* for respondent Cagayan Capitol College.

D E C I S I O N

JARDELEZA, *J.*:

Before us are consolidated petitions questioning the Court of Appeals' (CA) Decision[1] dated December 11, 2008 and Resolution[2] dated August 17, 2010 in CA-G.R. CV No. 68960-MIN and CA-G.R. SP No. 53598-MIN.[3] In G.R. Nos. 185857-58, the heirs of Trifonia D. Gabutan and Tirso Dalondonan, Buna D. Actub, Felisia Trocio and Crisanta D. Ubaub (Gabutan, *et al.*) filed a partial appeal by way of a petition for review on *certiorari*,[4] seeking to reverse the portion of the CA Decision declaring Cagayan Capital College (the College) as a buyer in good faith. The other petition, G.R. Nos. 194314-15, is one for *certiorari*[5] filed by Dante D. Nacalaban, Helen N. Maandig, and Susan N. Siao as heirs of Baldomera D. Vda. De Nacalaban (Nacalaban, *et al.*). It seeks to annul the CA Decision and Resolution which sustained the action for reconveyance filed by Gabutan, *et al.*

The Antecedents

On January 25, 1957, Godofredo Nacalaban (Godofredo) purchased an 800-square meter parcel of prime land (property) in Poblacion, Cagayan de Oro City from Petra, Fortunata, Francisco and Dolores, all surnamed Daamo.[6] Pursuant to the

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[1] *Rollo* (G.R. Nos. 185857-58), pp. 78-96. Penned by Associate Justice Edgardo T. Lloren with Associate Justices Jane Aurora C. Lantion and Michael P. Elbinias concurring.

[2] *Rollo* (G.R. Nos. 194314-14), pp. 40-42. Penned by Associate Justice Leoncia R. Dimagiba with Associate Justices Ramon Paul L. Hernando and Nina G. Antonio-Valenzuela concurring.

[3] Consolidated via CA Resolution dated October 7, 2004, *rollo* (G.R. Nos. 185857-58), p. 84.

[4] *Rollo* (G.R. Nos. 185857-58), pp. 33-75.

[5] *Rollo* (G.R. Nos. 194314-15), pp. 3-17.

[6] Evidenced by a Deed of Conditional Sale, *rollo* (G.R. Nos. 185857-58), pp. 79-80, 215.

sale, Transfer Certificate of Title (TCT) No. T-2259[7] covering the property was issued in the name of Godofredo. He thereafter built a house on it.[8]

Godofredo died on January 7, 1974.[9] He was survived by his wife, Baldomera, and their children, Dante, Helen, and Susan. On March 19, 1979, Baldomera issued a Certification[10] in favor of her mother, Melecia. It provided, in effect, that Baldomera was allowing her mother to build and occupy a house on the portion of the property.[11] Accordingly, the house was declared for taxation purposes. The tax declaration[12] presented in evidence showed that Melecia owned the building on the land owned by Godofredo.[13]

Baldomera died on September 11, 1994.[14] On July 3, 1996, her children executed an Extrajudicial Settlement of Estate of Deceased Person with Sale[15] (Extrajudicial Settlement with Sale) where they adjudicated unto themselves the property and sold it to the College. On August 22, 1996, TCT No. T-2259 was cancelled and TCT No. T-111846[16] covering the property was issued in the name of the College.[17]

Melecia died on April 20, 1997[18] and was survived by her children, Trifonia, Buna, Felisia, Crisanta, and Tirso.

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[7] *Id.* at 209.

[8] *Id.* at 80.

[9] *Id.*

[10] *Rollo* (G.R. Nos. 185857-58), p. 541.

[11] *Id.* at 80.

[12] *Id.* at 542.

[13] *Id.* at 80.

[14] *Id.*

[15] *Rollo* (G.R. Nos. 185857-58), pp. 110-111.

[16] *Id.* at 205.

[17] *Id.* at 80-81.

[18] *Id.* at 97, 191.

In a letter[19] dated May 5, 1997, the College demanded Trifonia D. Gabutan, Mary Jane Gilig, Allan Ubaub, and Evelyn Dailo, the heirs of Melecia who were occupying the house on the property, to vacate the premises.[20]

On July 7, 1997, Gabutan, *et al.* filed a Complaint for Reconveyance of Real Property, Declaration of Nullity of Contracts, Partition and Damages with Writ of Preliminary Attachment and Injunction[21] against Nacalaban, *et al.* and the College. They alleged that: (1) Melecia bought the property using her own money but Godofredo had the Deed of Absolute Sale executed in his name instead of his mother-in-law;[22] (2) Godofredo and Baldomera were only trustees of the property in favor of the real owner and beneficiary, Melecia;[23] (3) they only knew about the Extrajudicial Settlement with Sale upon verification with the Registry of Deeds;[24] and (4) the College was a buyer in bad faith, being aware they were co-owners of the property.[25]

In its Answer with Affirmative Defenses,[26] the College claimed that it is a buyer in good faith and for value, having "made exhaustive investigations and verifications from all reliable sources" that Melecia and her heirs were staying in the property by mere tolerance.[27] It alleged that: (1) in the tax declaration [28] of the residential house, Melecia admitted that the lot owner is

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[19] *Id.* at 112.

[20] *Id.* at 81.

[21] *Id.* at 97-107.

[22] *Id.* at 98.

[23] *Id.* at 99.

[24] *Id.* at 101.

[25] *Id.* at 100.

[26] *Id.* at 132-138.

[27] *Id.* at 133.

[28] *Id.* at 139.

Godofredo;[29] (2) the occupancy permit of Melecia was issued only after Godofredo issued a certification[30] to the effect that Melecia was allowed to occupy a portion of the property;[31] and (3) the Extrajudicial Settlement with Sale was published in three consecutive issues of Mindanao Post, a newspaper of general circulation.[32]

In their Answer with Counterclaim,[33] Nacalaban, *et al.* denied the allegations of Gabutan, *et al.* They claimed to have acquired the property by intestate succession from their parents, who in their lifetime, exercised unequivocal and absolute ownership over the property.[34] Nacalaban, *et al.* also set up the defenses of laches and prescription, and asserted that the action for reconveyance was improper because the property had already been sold to an innocent purchaser for value.[35]

On September 10, 1997, the College filed a separate Complaint for Unlawful Detainer and Damages[36] with the Municipal Trial Court in Cities (MTCC) against Trifonia, Mary Jane, Allan, Evelyn and Nicolas Dailo (Heirs of Melecia). In their Answer with Affirmative and/or Negative Defenses with Compulsory Counterclaim,[37] the Heirs of Melecia claimed that they own and possess the property in co-ownership with Nacalaban, *et al.* and Gabutan, *et al.* because it was purchased by Melecia, their common predecessor.[38] They also claimed that the house

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[29] *Id.* at 134.

[30] *Id.* at 140.

[31] *Id.* at 133-134.

[32] *Id.* at 134, 141.

[33] *Id.* at 123-131.

[34] *Id.* at 127.

[35] *Id.* at 128.

[36] *Id.* at 175-178.

[37] *Id.* at 184-188.

[38] *Id.* at 184-185.

in which they reside was constructed at her expense.[39] The College had prior knowledge of this co-ownership, and hence, was a purchaser in bad faith.[40] The Heirs of Melecia also raised the defense of forum-shopping in view of the pendency of the action for reconveyance.[41] They then concluded that in view of the issues and the value of the property, as well, the MTCC had no jurisdiction over the case.[42]

The MTCC found it had jurisdiction to hear the case and ruled in favor of the College:[43]

WHEREFORE, JUDGMENT is hereby rendered ordering each of the defendants to:

a.) Immediately vacate the property of the plaintiff;
b.) Pay the plaintiff the monthly use compensation for the continued use of the property at the rate of ₱500.00 per month from MAY 5, 1997 until the property is actually vacated;
c.) Pay the plaintiff Attorney's fees amounting to ₱5,000.00 per defendant;
d.) Pay for litigation expenses at the rate of ₱1,000.00 per defendant.

SO ORDERED.[44]

On appeal, the Regional Trial Court (RTC) affirmed the MTCC's Decision[45] in all respects, except that the Heirs of Melecia were given 30 days from notice to vacate the property. [46]

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[39] *Id.* at 185.

[40] *Id.*

[41] *Id.*

[42] *Rollo* (G.R. Nos. 185857-58), pp. 185-186.

[43] *Id.* at 231-237.

[44] *Id.* at 237.

[45] *Id.* at 293-302.

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

They filed a motion for reconsideration, but it was denied.[47] Thus, the Heirs of Melecia filed a petition for review[48] before the CA, docketed as CA-G.R. SP No. 53598.[49]

Meanwhile, in the reconveyance case, the RTC rendered a Decision[50] in favor of Gabutan, *et al.* The RTC found the testimonies of their witnesses credible, in that the money of Melecia was used in buying the property but the name of Godofredo was used when the title was obtained because Godofredo lived in Cagayan de Oro City while Melecia lived in Bornay, Gitagum, Misamis Oriental.[51] Thus, the RTC held that a trust was established by operation of law pursuant to Article 1448 of the Civil Code.[52] The dispositive portion of the RTC's Decision reads:

> WHEREFORE, judgment is hereby rendered, and this Court hereby:
>
> 1. Declares that the Spouses Godofredo and Baldomera Nacalaban held the land covered by Transfer Certificate of Title No. T-2259 issued in the name of Godofredo Nacalaban married to Baldomera Dalondonan issued on January 13, 1959 in trust for Melecia Vda. de Dalondonan with the Spouses as the trustees and Melecia Vda. de Dalondonan as the cestui que trust;
>
> 2. Declares that upon the death of Melecia Vda. de Dalondonan on August 20, 1997, the ownership and beneficial interest of the foregoing Land passed to the plaintiffs and individual defendants by operation of law as legal heirs of Melecia Vda. de Dalondonan;

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[47] *Id.* at 321-322.

[48] *Id.* at 326-346.

[49] *Id.* at 82.

[50] *Id.* at 557-568.

[51] *Id.* at 558.

[52] *Id.* at 561-565.

3. Nullifies the Extrajudicial Settlement of Estate of Deceased Person with Sale executed by the individual defendants on July 30, 1996 and known as Doc. No. 326; Page No. 67; Book No. XX; Series of 1996 in the Notarial Register of Notary Public Victoriano M. Jacot with respect to the Extrajudicial settlement by the individual defendants of the land referred to above;

4. Declares that defendant Cagayan Capitol College was a buyer in good faith and for value of the land referred to above, and, accordingly, declares that said defendant now owns the land;

5. Orders defendant Cagayan Capitol College to inform this Court in writing within thirty (30) days from receipt of this decision the amount of the purchase price of the land referred to above bought by it from the individual defendants the amount of which should approximate the prevailing market value of the land at the time of the purchase;

6. Orders the individual defendants namely, Dante D. Nacalaban, Helen N. Maandig, and Susan N. Siao, jointly and severally, to deliver and turn over to the plaintiffs, within thirty (30) days from receipt of this decision, plaintiffs' shares of the proceeds of the sale of the land referred to above the amount of which is equivalent to five-sixth (5/6) of said proceeds with the remaining one-sixth (1/6) to be retained by the individual defendants as their share by virtue of their being the legal heirs of Baldomera D. Nacalaban;

SO ORDERED.[53]

Both parties filed separate appeals from this Decision before the CA.[54] In a Resolution[55] dated October 7, 2004, the CA consolidated both appeals.

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[53] *Id.* at 567-568.

[54] *Id.* at 79.

[55] *Id.* at 614-615.

The CA rendered its Decision[56] on December 11, 2008 dismissing the consolidated appeals and affirming *in toto* the RTC Decisions in the unlawful detainer case and the action for reconveyance. The CA held that: (1) the defense of co-ownership based on an implied trust by a defendant in an unlawful detainer case shall not divest the MTCC of jurisdiction over the case;[57] (2) the dead man's statute does not apply because Gabutan, *et al.*'s counsel did not interpose any objection when the testimony of Crisanta Ubaub was offered and Gabutan, *et al.*'s counsel even examined her;[58] (3) Nacalaban, *et al.*'s claim that Gabutan, *et al.*'s witnesses are not competent to testify on matters which took place before the death of Godofredo and Melecia is without merit because Gabutan, *et al.* have not specified these witnesses and such hearsay evidence alluded to;[59] (4) the parole evidence rule does not apply because Melecia and Nacalaban, *et al.* were not parties to the Deed of Conditional Sale;[60] (5) the action for reconveyance has not yet prescribed because Gabutan, *et al.* are in possession of the property;[61] and (6) the College is a buyer in good faith.[62]

Nacalaban, *et al.* filed their motion for reconsideration of the CA Decision, but it was denied in a Resolution[63] dated August 17, 2010. Hence, they filed the present petition for *certiorari*[64] under Rule 65, where they allege that: (1) the action for reconveyance already expired;[65] (2) for an action for reconveyance to prosper, the property should not have passed into the hands

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[56] *Id.* at 78-96.

[57] *Id.* at 88.

[58] *Id.* at 90.

[59] *Id.* at 90-91.

[60] *Id.* at 91.

[61] *Id.* at 93-94.

[62] *Id.* at 95.

[63] *Rollo* (G.R. Nos. 194314-15), pp. 40-42.

[64] *Id.* at 3-17.

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

of another who bought the property in good faith and for value;[66] and (3) the title of Godofredo under TCT No. T-2259 which was issued on January 13, 1959 could not be attacked collaterally.[67]

On the other hand, Gabutan, *et al.* filed the present petition for review on *certiorari*[68] under Rule 45, seeking a partial appeal of the CA Decision. In their petition, Gabutan, *et al.* allege that the College is not a buyer in good faith because it did not buy the property from the registered owner.[69] Since Godofredo was the registered owner of the property and not Nacalaban, *et al.*, the College should have exercised a higher degree of prudence in establishing their capacity to sell it.[70] Further, despite knowing that other persons possessed the property, the College did not inquire with Gabutan, *et al.* the nature of their stay on the property.[71] Under Section 1, paragraph 2, Rule 74 of the Rules of Court, the publication of the Extrajudicial Settlement with Sale was also without prejudice to claims of other persons who had no notice or participation thereof.[72] Finally, Gabutan, *et al.* argue that they cannot be ejected from the property because there is no evidence to show that their stay was by mere tolerance, and that Melecia was a builder in good faith.[73]

Considering that the petitions assail the same CA Decision and involve the same parties, we issued a Resolution[74] dated December 13, 2010 consolidating them.

The Issues

The issues for resolution are:

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66 *Id.*

67 *Rollo* (G.R. Nos. 194314-15), pp. 10-11.

68 *Rollo* (G.R. Nos. 185857-58), pp. 33-75.

69 *Id.* at 56-57.

70 *Id.* at 57-58.

71 *Id.* at 58.

72 *Id.* at 62-63.

73 *Id.* at 65, 68-69.

74 *Id.* at 816-817.

1. Whether the petition for *certiorari* of Nacalaban, *et al.* shall prosper;
2. Whether the action for reconveyance was proper; and
3. Whether the College is a buyer in good faith.

Our Ruling

I. The petition for certiorari of Nacalaban, et al. is a wrong remedy

Pursuant to Section 1, Rule 45 of the Rules of Court,[75] the proper remedy to obtain a reversal of judgment on the merits, final order or resolution is an appeal. The Resolution dated August 17, 2010 of the CA, which affirmed its Decision dated December 11, 2008, was a final resolution that disposed of the appeal by Nacalaban, *et al.* and left nothing more to be done by the CA in respect to the said case. Thus, Nacalaban, *et al.* should have filed an appeal in the form of a petition for review on *certiorari* and not a petition for *certiorari* under Rule 65, which is a special civil action.

Rule 65 is a limited form of review and is a remedy of last recourse. This extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law.[76] In *Malayang Manggagawa ng Stayfast Phils.*,

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[75] Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[76] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, G.R. No. 155306, August 28, 2013, 704 SCRA 24, 36, citing *Balayan v. Acorda*, G.R. No. 153537, May 5, 2006, 489 SCRA 637, 641-642.

Inc. v. National Labor Relations Commission,[77] we held that appeal would still be the proper remedy from a judgment on the merits, final order or resolution even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is that there should be no appeal.[78] We have always declared that a petition for *certiorari* is not a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.[79]

Here, Nacalaban, *et al.* received the assailed Resolution dated August 17, 2010 on September 7, 2010.[80] Under the Rules of Court, they had 15 days or until September 22, 2010 to file an appeal before us. Nacalaban, *et al.* allowed this period to lapse without doing so and, instead, filed a petition for *certiorari* on November 5, 2010.[81] Being the wrong remedy, the petition of Nacalaban, *et al.* is, therefore, dismissible. Although there are exceptions[82] to this general rule, none applies in this case.

In spite of the consolidation we have ordered, we cannot treat the petition of Nacalaban, *et al.* as one under Rule 45. We have

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[77] G.R. No. 155306, August 28, 2013, 704 SCRA 24.

[78] *Id.* at 35-36, citing *Bugarin v. Palisoc*, G.R. No. 157985, December 2, 2005, 476 SCRA 587, 595-596.

[79] *Id.* at 36.

[80] *Rollo* (G.R. Nos. 194314-15), p. 4.

[81] *Id.* at 3.

[82] The exceptions are the following:

(a) when public welfare and the advancement of public policy dictates;
(b) when the broader interest of justice so requires;
(c) when the writs issued are null and void; or
(d) when the questioned order amounts to an oppressive exercise of judicial authority.

Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals, G.R. No. 165910, April 10, 2006, 487 SCRA 78, 100.

the discretion to treat a Rule 65 petition for *certiorari* as a Rule 45 petition for review on *certiorari* if (1) the petition is filed within the reglementary period for filing a petition for review; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.[83] The first and third requisites are absent in this case. To reiterate, the petition was filed beyond the 15-day reglementary period of filing a petition for review on *certiorari*. As will be discussed, we also find no compelling reason to relax the rules.

II. The action for reconveyance filed by Gabutan, et al. is proper

a. An implied resulting trust was created between Melecia and Godofredo

We stress at the outset that the question of existence of an implied trust is factual, hence, ordinarily outside the purview of Rule 45.[84] The resolution of factual issues is the function of the lower courts whose findings, when aptly supported by evidence, bind us. This is especially true when the CA affirms the lower court's findings, as in this case. While we, under established exceptional circumstances, had deviated from this rule, we do not find this case to be under any of the exceptions.[85] Even if we were to disregard these established doctrinal rules, we would still affirm the assailed CA rulings.

Article 1448 of the Civil Code provides in part that there is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the

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[83] *Tankeh v. Development Bank of the Philippines*, G.R. No. 171428, November 11, 2013, 709 SCRA 19, 44, citing *China Banking Corporation v. Cebu Printing and Packaging Corporation*, G.R. No. 172880, August 11, 2010, 628 SCRA 154, 168, citing *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424.

[84] *Tong v. Go Tiat Kun*, G.R. No. 196023, April 21, 2014, 722 SCRA 623, 633.

[85] *Chu, Jr. v. Caparas*, G.R. No. 175428, April 15, 2013, 696 SCRA 324, 333.

purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. The trust created here, which is also referred to as a purchase money resulting trust,[86] occurs when there is (1) an actual payment of money, property or services, or an equivalent, constituting valuable consideration; (2) and such consideration must be furnished by the alleged beneficiary of a resulting trust.[87] These two elements are present here.

Gabutan, *et al.*, through the testimonies of Felisia, Crisanta, and Trifonia, established that Melecia's money was used in buying the property, but its title was placed in Godofredo's name. She purchased the property because Felisia wanted to build a pharmacy on it.[88] On one occasion in Melecia's house, and when the entire family was present, Melecia gave Godofredo the money to purchase the property.[89] Melecia entrusted the money to Godofredo because he was in Cagayan de Oro, and per Melecia's instruction, the deed of sale covering the property was placed in his name.[90] It was allegedly her practice to buy properties and place them in her children's name, but it was understood that she and her children co-own the properties.[91]

Melecia built a residential building on the property, where her daughter Crisanta and some of her grandchildren resided.[92] Godofredo also thereafter built a house on the property. Twice, he also mortgaged the property to secure loans. Melecia allowed him to do so because she trusted him.[93] After Godofredo's death,

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[86] *Tong v. Go Tiat Kun, supra* at 635-636, citing *Comilang v. Burcena*, G.R. No. 146853, February 13, 2006, 482 SCRA 342, 350.

[87] *Pigao v. Rabanillo*, G.R. No. 150712, May 2, 2006, 488 SCRA 546, 561, citing *Morales v. Court of Appeals*, G.R. No. 117228, June 19, 1997, 274 SCRA 282.

[88] *Rollo* (G.R. Nos. 185867-58), p. 560.

[89] *Id.* at 559.

[90] *Id.* at 558.

[91] *Id.* at 560.

[92] *Id.*

[93] *Id.*

and when Baldomera fell ill, there were family discussions to transfer the title in Melecia's name so Melecia's children can divide it together with the rest of Melecia's properties. The plans, however, always fell through.[94]

Both the RTC and CA found credence on these pieces of testimonial evidence that an implied resulting trust exists. Reliance on these testimonies will not violate the parol evidence rule, as Nacalaban, *et al.* once raised. In *Tong v. Go Tiat Kun*,[95] we ruled that since an implied trust is neither dependent upon an express agreement nor required to be evidenced by writing, Article 1457 of our Civil Code authorizes the admission of parol evidence to prove their existence. What is crucial is the intention to create a trust.[96] We cautioned, however, that the parol evidence that is required to establish the existence of an implied trust necessarily has to be trustworthy and it cannot rest on loose, equivocal or indefinite declarations.[97] The testimonies of Felisia, Crisanta, and Trifonia satisfy these requirements. They are consistent and agree in all material points in reference to the circumstances behind the arrangement between Melecia and Godofredo. We agree with the RTC when it said that this arrangement among family members is not unusual, especially in the 1950s.[98]

Nacalaban, *et al.*, on the other hand, denied the arrangement between Melecia and Godofredo, and maintained that it was really the latter who purchased the property from its original owners, as evidenced by their possession of the Deed of Conditional Sale and the title being in Godofredo's name.[99] It is telling, however, that Nacalaban, *et al.* failed to provide the details of the sale, specifically with regard to how Godofredo

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[94] *Rollo* (G.R. Nos. 185867-58), p. 559.

[95] G.R. No. 196023, April 21, 2014, 722 SCRA 623.

[96] *Id.* at 636-637.

[97] *Id.* at 637, citing *Estate of Margarita D. Cabacungan v. Laigo*, G.R. No. 175073, August 15, 2011, 655 SCRA 366, 380.

[98] *Rollo* (G.R. Nos. 185867-58), pp. 561-562.

[99] *Id.* at 123-124.

could have been able to afford the purchase price himself, which would have directly refuted the allegation that Melecia's money was used in the purchase. As the RTC aptly observed, if Godofredo really bought the property with his own money, it was surprising that Baldomera did not transfer the title of the property to her name when Godofredo died in 1974. Baldomera did not do so until her death in 1994 despite being pressed by her siblings to partition the property. The RTC correctly deduced that this only meant that Baldomera acknowledged that the property belongs to Melecia.[100]

Having established the creation of an implied resulting trust, the action for reconveyance filed by Gabutan, *et al.*, the heirs of Melecia in whose benefit the trust was created, is proper. An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him.[101] It will not amount to a collateral attack on the title, contrary to the allegation of Nacalaban, *et al.*[102] We explained in *Hortizuela v. Tagufa*:[103]

> x x x As a matter of fact, an action for reconveyance is a recognized remedy, an action *in personam*, available to a person whose property has been wrongfully registered under the Torrens system in another's name. In an action for reconveyance, the decree is not sought to be set aside. It does not seek to set aside the decree but, respecting it as incontrovertible and no longer open to review, seeks to transfer or reconvey the land from the registered owner to the rightful owner. Reconveyance is always available as long as the property has not passed to an innocent third person for value.
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> There is no quibble that a certificate of title, like in the case at bench, can only be questioned through a direct proceeding. The

[100] *Id.* at 561-562.

[101] *Hortizuela v. Tagufa*, G.R. No. 205867, February 23, 2015, 751 SCRA 371, 386-387 citing *Leoveras v. Valdez*, G.R. No. 169985, June 15, 2011, 652 SCRA 61, 71.

[102] *Rollo* (G.R. Nos. 194314-15), pp. 10-11.

[103] G.R. No. 205867, February 23, 2015, 751 SCRA 371.

MCTC and the CA, however, failed to take into account that in a complaint for reconveyance, the decree of registration is respected as incontrovertible and is not being questioned. What is being sought is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to the one with a better right. If the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property.[104]

The fact that the property was already titled in Godofredo's name, and later transferred to the College, is not a hindrance to an action for reconveyance based on an implied trust. The title did not operate to vest ownership upon the property in favor of the College. As held in *Naval v. Court of Appeals*:[105]

> x x x Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[106]

Moreover, the body of the Complaint filed by Gabutan, *et al.* shows that it is not only for the reconveyance of the property but also for the annulment of TCT No. T-111846 issued in the name of the College.[107] Gabutan, *et al.* questioned the validity of the sale to the College and claimed co-ownership over the property. Thus, we can rule on the validity of TCT No. T-111846 since the Complaint is a direct attack on the title of the College.

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[104] *Id.* at 381-382, citing *Campos v. Ortega, Sr.*, G.R. No. 171286, June 2, 2014, 724 SCRA 240, 257; emphasis omitted.

[105] G.R. No. 167412, February 22, 2006, 483 SCRA 102.

[106] *Id.* at 113.

[107] *Rollo* (G.R. Nos. 185857-58), pp. 378-380.

b. The action for reconveyance is imprescriptible because the plaintiffs are in possession of the property

An action for reconveyance based on an implied or a constructive trust prescribes 10 years from the alleged fraudulent registration or date of issuance of the certificate of title over the property. However, an action for reconveyance based on implied or constructive trust is imprescriptible if the plaintiff or the person enforcing the trust is in possession of the property. In effect, the action for reconveyance is an action to quiet the property title, which does not prescribe.[108] The reason is that the one who is in actual possession of the land claiming to be its owner may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. His undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession.[109]

The fact of actual possession of Gabutan, *et al.* of the property, during the lifetime of Melecia and even after her death, is an undisputed and established fact. The College has even filed an ejectment case against the Heirs of Melecia for this reason.[110] Thus, their complaint for reconveyance is imprescriptible. It follows, with more reason, that Gabutan, *et al.* cannot be held guilty of laches as the said doctrine, which is one in equity, cannot be set up to resist the enforcement of an imprescriptible legal right.[111]

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[108] *Francisco v. Rojas*, G.R. No. 167120, April 23, 2014, 723 SCRA 423, 455, citing *Vda. de Cabrera v. Court of Appeals*, G.R. No. 108547, February 3, 1997, 267 SCRA 339.

[109] *Ney v. Quijano*, G.R. No. 178609, August 4, 2010, 626 SCRA 800, 808, citing *Mendizabel v. Apao*, G.R. No. 143185, February 20, 2006, 482 SCRA 587, 609.

[110] *Rollo* (G.R. Nos. 185857-58), pp. 175-178.

[111] See *Brito, Sr. v. Dianala*, G.R. No. 171717, December 15, 2010, 638 SCRA 529, 539.

III. The property shall be reconveyed to the estate of Melecia

a. The Extrajudicial Settlement with Sale executed between Nacalaban, et al., and the College is void

Having established the creation of an implied resulting trust between Melecia and Godofredo, the law thereby creates the obligation of the trustee to reconvey the property and its title in favor of the true owner.[112] The true owner, Melecia, died in 1997 and was succeeded by her children and grandchildren. The property, therefore, must be reconveyed to her estate.

The execution of the Extrajudicial Settlement with Sale between Godofredo's heirs and the College will not defeat the legal obligation to reconvey the property because at the time of its execution in 1996, Melecia was still alive. Hence, Nacalaban, *et al.* did not have the right or authority to sell the property. *Nemo dat quod non habet*. One can sell only what one owns or is authorized to sell, and the buyer can acquire no more right than what the seller can transfer legally.[113] Nacalaban, *et al.* cannot find refuge in their argument that the property was registered in their father's name and that after his death, his rights passed to them as his legal heirs. To repeat, title to property does not vest ownership but is a mere proof that such property has been registered.[114]

b. The College is a buyer in bad faith

Despite the finding that the property was owned by Melecia and upon her death, by her heirs, the lower courts still sustained the ownership of the College of the property on the ground that

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[112] *Brito, Sr. v. Dianala, supra* at 537.

[113] *Midway Maritime and Technological Foundation v. Castro*, G.R. No. 189061, August 6, 2014, 732 SCRA 193, 200, citing *Rufloe v. Burgos*, G.R. No. 143573, January 30, 2009, 577 SCRA 264, 272.

[114] *Tong v. Go Tiat Kun, supra* note 98 at 637.

it is an innocent purchaser for value. [115] The lower courts' findings are grounded on the following: (i) Gabutan, *et al.*'s claim was never annotated on Godofredo's title; (ii) the Extrajudicial Settlement with Sale was duly published and the College was able to effect the transfer of the title in its name; (iii) Baldomera issued a certification in favor of Melecia allowing her to occupy a portion of the lot; and (iv) the tax declaration showed that Melecia owned only the building on the land owned by Godofredo.[116]

The RTC reiterated the rule that the buyer of a land registered under the Torrens System may rely upon the face of the certificate of title and does not have to look beyond it.[117] The CA, on the other hand, held that when taken together, these facts would reasonably constitute enough reason for the College or any buyer to conclude that the property is free from any adverse claim, thereby making any further investigation unnecessary. Absent any showing that the College knew of the actual arrangement between Godofredo and Melecia, it must be deemed a buyer in good faith.[118]

Gabutan, *et al.* alleged that the lower courts erred in ruling that the College is a buyer in good faith, raising the following: (1) Nacalaban, *et al.* are not the registered owners of the property; Godofredo is the registered owner who died on January 7, 1974;[119] (2) not being the registered owners, the College, as buyer, is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the property;[120] and (3) the College knew that other persons

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[115] *Rollo* (G.R. Nos. 185857-58), p. 567.

[116] *Id.* at 95.

[117] *Id.* at 567.

[118] *Id.* at 95.

[119] *Id.* at 57.

[120] *Id.*

possessed the property so it should have first established the capacity of the Nacalaban children to sell the property.[121]

Whether one is a buyer in good faith and whether due diligence and prudence were exercised are questions of fact.[122] As we have already mentioned, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. We see an exception, however, to this general rule relative to the finding that the College is a buyer in good faith. We hold that the RTC's finding that the College is a buyer in good faith, which finding was upheld by the CA, was based on an obvious misapprehension of facts and was clearly not supported by law and jurisprudence.

In *Bautista v. Silva*,[123] we reiterated the requisites for one to be considered a purchaser in good faith:

> A buyer for value in good faith is one who buys property of another, without notice that some other person has a right to, or interest in, such property and pays full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property. He buys the property with the well-founded belief that the person from whom he receives the thing had title to the property and capacity to convey it.
>
> To prove good faith, a buyer of registered and titled land need only show that he relied on the face of the title to the property. He need not prove that he made further inquiry for he is not obliged to explore beyond the four corners of the title. **Such degree of proof of good faith, however, is sufficient only when the following conditions concur: *first*, the seller is the registered owner of the land; *second*, the latter is in possession thereof; and *third*, at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property.**

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[121] *Rollo* (G.R. Nos. 185857-58), p. 58.

[122] *Philippine National Bank v. Heirs of Estanislao Militar*, G.R. Nos. 164801 & 165165, June 30, 2006, 494 SCRA 308, 319.

[123] G.R. No. 157434, September 19, 2006, 502 SCRA 334.

Absent one or two of the foregoing conditions, then the law itself puts the buyer on notice and obliges the latter to exercise a higher degree of diligence by scrutinizing the certificate of title and examining all factual circumstances in order to determine the seller's title and capacity to transfer any interest in the property. Under such circumstance, it is no longer sufficient for said buyer to merely show that he relied on the face of the title; he must now also show that he exercised reasonable precaution by inquiring beyond the title. Failure to exercise such degree of precaution makes him a buyer in bad faith.[124] (Emphasis supplied.)

Thus, the College, which has the burden to prove the status of being a purchaser in good faith, is required to prove the **concurrence** of the above conditions. This *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith.[125] We find that the College failed to discharge this burden.

Firstly, as correctly pointed out by Gabutan, *et al.*, Nacalaban, *et al.* are not the registered owners of the property, but Godofredo. In *Bautista v. Court of Appeals*,[126] we held:

However, it is important to note that petitioners did not buy the land from the registered owner, Dionisio Santiago. They bought it from his heirs, Maria dela Cruz and Jose Santiago.

Where a purchaser buys from one who is not the registered owner himself, the law requires a higher degree of prudence even if the land object of the transaction is registered. One who buys from one who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land.[127]

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[124] *Id.* at 346-348; cited in *Uy v. Fule*, G.R. No. 164961, June 30, 2014, 727 SCRA 456, 473-474.

[125] See *Sigaya v. Mayuga*, G.R. No. 143254, August 18, 2005, 467 SCRA 341, 354, citing *Potenciano v. Reynoso*, G.R. No. 140707, April 22, 2003, 401 SCRA 391, 401.

[126] G.R. No. 106042, February 28, 1994, 230 SCRA 446.

[127] *Id.* at 456, citing *Revilla and Fajardo v. Galindez*, 107 Phil. 480, 484 (1960).

Secondly, the College was aware that aside from Nacalaban, *et al.*, the Heirs of Melecia, were also in possession of the property. The College cited the tax declaration which bore an annotation that Melecia owned a residential building and Godofredo owned the lot.[128] Also, apart from filing an ejectment case against the Heirs of Melecia, the College retained part of the purchase price for the demolition of Melecia's building as well.[129]

In *Occeña v. Esponilla*,[130] we held that petitioner-spouses were not purchasers in good faith when they merely relied on the representation of the seller regarding the nature of possession of the occupants of the land:

> In the case at bar, we find that petitioner-spouses failed to prove good faith in their purchase and registration of the land. x x x At the trial, Tomas Occeña admitted that he found houses built on the land during its ocular inspection prior to his purchase. **He relied on the representation of vendor Arnold that these houses were owned by squatters and that he was merely tolerating their presence on the land. Tomas should have verified from the occupants of the land the nature and authority of their possession instead of merely relying on the representation of the vendor that they were squatters, having seen for himself that the land was occupied by persons other than the vendor who was not in possession of the land at that time**. x x x[131] (Emphasis supplied.)

Although the College in its Answer alleged that it made an exhaustive investigation and verification from all reliable sources and found that the possession of Melecia and her heirs was merely tolerated,[132] it failed to specify who or what these sources were. There is no evidence that the College did inquire from Melecia or her heirs themselves, who were occupying the property, the nature and authority of their possession. It is not far-fetched

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[128] *Rollo* (G.R. Nos. 185857-58), pp. 192; 722-723.

[129] TSN, September 16, 1998, pp. 12-15.

[130] G.R. No. 156973, June 4, 2004, 431 SCRA 116.

[131] *Id.* at 124.

[132] *Rollo* (G.R. Nos. 185857-58), p. 133.

to conclude, therefore, that the College merely relied on the representations of the sellers and the documents they presented. In this regard, the College is not a buyer in good faith.

The "honesty of intention" which constitutes good faith implies a **freedom from knowledge of circumstances which ought to put a person on inquiry.**[133] If the land purchased is in the possession of a person other than the vendor, the purchaser must be wary and must investigate the rights of the actual possessor.[134] Without such inquiry, the purchaser cannot be said to be in good faith and cannot have any right over the property.[135]

We are aware that in the ejectment case, the MTCC and RTC ruled in favor of the College. We emphasize, though, that the ruling on the College's better right of possession was without prejudice to the eventual outcome of the reconveyance case where the issue of ownership was fully threshed out. We have held that the sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. When the defendant, however, raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.[136] Thus, the ruling on the ejectment case is not conclusive as to the issue of ownership.[137]

WHEREFORE, in view of the foregoing, the petition for *certiorari* in G.R. Nos. 194314-15 is **DENIED** and the petition for review on *certiorari* in G.R. Nos. 185857-58 is **GRANTED.**

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[133] *Occeña v. Esponilla*, *supra*.

[134] *Santiago v. Villamor*, G.R. No. 168499, November 26, 2012, 686 SCRA 313, 321.

[135] *Id.*, citing *Tio v. Abayata*, G.R. No. 160898, June 27, 2008, 556 SCRA 175, 188-189 and *Philippine National Bank v. Heirs of Estanislao Militar*, G.R. Nos. 164801 & 165165, 494 SCRA 308, 315.

[136] *Go v. Looyuko*, G.R. No. 196529, July 1, 2013, 700 SCRA 313, 319.

[137] *Rodriguez v. Rodriguez*, G.R. No. 175720, September 11, 2007, 532 SCRA 642, 653.

The Decision of the Court of Appeals dated December 11, 2008 and its Resolution dated August 17, 2010 are **AFFIRMED** with the following **MODIFICATIONS**:

1. Cagayan Capitol College is hereby declared a buyer in bad faith, who has no right to possession and ownership of the property;

2. Nacalaban, *et al.* are ordered to return the purchase price paid on the property to the College, plus interest at the rate of six percent (6%) per annum computed from July 23, 1997[138] until the date of finality of this judgment. The total amount shall thereafter earn interest at the rate of six percent (6%) per annum from the finality of judgment until its satisfaction;[139] and

3. The Register of Deeds is ordered to cancel TCT No. T-111846 in the name of the College.

4. The property should be reconveyed to the Estate of the late Melecia Dalondonan with the institution of the proper proceedings for its partition and titling.

SO ORDERED.

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

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[138] Date of filing of the College's Answer with Affirmative Defenses, *rollo* (G.R. Nos. 185857-58), p. 43.

[139] *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457-458.

THIRD DIVISION

[G.R. No. 191087. June 29, 2016]

DELIA L. BELITA, SALVADOR ILARDE, JR., GENEVIEVE BELITA, MA. CHERYL DAVA, BRAULIO LEDESMA, JR., FLORENCE B. OLSEN, KATHY GERMENTIL, ROSITA ESTUART, ARDELIZA LIM, ELSA RAFANAN, ERLINDA V. GAERLAN, PERLA FERNANDEZ, DELBEN "NOY" BELITA and JOSEPH AVACILLA, *petitioners, vs.* **ANTONIO S. SY, ROBERTO CARONAN, WILFREDO CIRIACO, NORMA S. WONG, SONIA C. BENERO, MARIA L. PINEDA and CRISTINA V. CARAMOL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; A FINDING OF PROBABLE CAUSE NEEDS ONLY TO REST ON EVIDENCE SHOWING THAT, MORE LIKELY THAN NOT, A CRIME HAS BEEN COMMITTED BY THE SUSPECTS.— For the purpose of filing a criminal information, probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.

2. CRIMINAL LAW; PRESIDENTIAL DECREE 1689 (INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA); SYNDICATED ESTAFA;

ELEMENTS.— To determine whether there is probable cause in this case, the elements of the crime charged, syndicated *estafa* in this case, must be present. Under Section 1 of P.D. 1689, there is syndicated *estafa* if the following elements are present: 1) *estafa* or other forms of swindling as defined in Articles 315 and 316 of the RPC was committed; 2) the *estafa* or swindling was committed by a syndicate of five or more persons; and 3) the fraud resulted in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon[s]*," or farmers associations or of funds solicited by corporations/associations form the general public. x x x [W]e find that there is probable cause to indict petitioners for the crime of syndicated *estafa* under P.D. 1689, in relation to Article 315, 4th par., [2][a] of the RPC.

3. ID.; ID.; ID.; COVERS DEFRAUDATIONS OR MISAPPROPRIATION OF FUNDS SOLICITED BY CORPORATIONS FROM THE GENERAL PUBLIC.— We agree with the Justice Secretary's holding in his 19 June 2008 Resolution wherein he ruled that PD 1689 applies to corporations operating on funds solicited from the public. x x x. The law is explicit that it covers defraudations or misappropriation of funds solicited by corporations from the general public. IBL is such corporation. The operative phrase is "funds of corporations should come from the general public." IBL is apparently engaged in the real estate business. Its funds come from buyers of the properties it sells. In *Galvez, et al. v. Court of Appeals, et al.*, we held that P.D. 1689 also covers commercial banks "whose fund comes from the general public. P.D. 1689 does not distinguish the nature of the corporation. It requires, rather, that the funds of such corporation should come from the general public."

4. REMEDIAL LAW; CRIMINAL PROCEDUE; PROBABLE CAUSE; THE FINDINGS OF THE SECRETARY OF THE DEPARTMENT OF JUSTICE ARE NOT SUBJECT TO INTERFERENCE BY THE COURTS, SAVE ONLY WHEN HE ACTS WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, OR WHEN HE GROSSLY MISAPPREHENDS FACTS, OR ACTS IN A MANNER SO PATENT AND GROSS AS TO AMOUNT TO AN EVASION OF POSITIVE DUTY OR A

VIRTUAL REFUSAL TO PERFORM THE DUTY ENJOINED BY LAW, OR WHEN HE ACTS OUTSIDE THE CONTEMPLATION OF LAW.— The determination of probable cause is essentially an executive function, lodged in the first place on the prosecutor who conducted the preliminary investigation on the offended party's complaint. The prosecutor's ruling is reviewable by the Secretary who, as the final determinative authority on the matter, has the power to reverse, modify or affirm the prosecutor's determination. As a rule, the Secretary's findings are not subject to interference by the courts, save only when he acts with grave abuse of discretion amounting to lack or excess of jurisdiction; or when he grossly misapprehends facts; or acts in a manner so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law; or when he acts outside the contemplation of law. We agree with the Court of Appeals that the Justice Secretary committed grave abuse of discretion in promulgating the resolution dated 15 January 2009.

APPEARANCES OF COUNSEL

Jose A. Suing for petitioners.
Topacio Law Office for respondents.
Ocampo Arciage-Santos Nuñez Lomangaya & Guerrero co-counsel for respondents.

D E C I S I O N

PEREZ, *J.*:

Before us is a Petition for Review on *Certiorari* filed by petitioners Delia L. Belita (Delia), Salvador Ilarde, Jr. (Salvador), Genevieve Belita (Genevieve), Ma. Cheryl Dava (Cheryl), Braulio Ledesma, Jr. (Braulio), Florence B. Olsen (Florence), Kathy Germentil (Kathy), Rosita Estuart (Rosita), Ardeliza Lim (Ardeliza), Elsa Rafanan (Elsa), Erlina V. Gaerlan (Erlina), Perla Fernandez (Perla), Delben "Noy" Belita (Delben) and Joseph

Avacilla (Joseph) seeking to nullify the Decision[1] dated 30 June 2009 and Resolution[2] dated 25 January 2010 of the Court of Appeals in CA-G.R. SP No. 107234 which reinstated the Resolution of the Secretary of Justice directing the filing of Informations for the crime of Syndicated *Estafa* against petitioners.

Petitioners Delia, Salvador, Genevieve, Cheryl and Braulio are the incorporators and directors of IBL Realty Development Corporation (IBL), a domestic family corporation engaged in the buying and selling of real properties. Respondent Antonio S. Sy (Sy), Roberto Caronan (Caronan), Wilfredo Ciriaco (Ciriaco), Norma S. Wong (Wong), Sonia C. Benero (Benero), Maria L. Pineda (Pineda) and Cristina V. Caramol (Caramol) filed their respective complaints against petitioners before the National Bureau of Investigation (NBI). The complaints were filed by the NBI with the Department of Justice (DOJ) where they were consolidated and docketed as I.S. No. 2007-030.

In Sy's first Complaint-Affidavit, he narrated that he purchased four (4) parcels of land for ₱3,271,500.00 sometime in 1992 upon the representation of Delia that a certain Felicitas Javier owned the properties and authorized Delia to sell the same. Delia allegedly presented a Deed of Conditional Sale purportedly signed by Felicitas Javier as vendor. Sy paid an aggregate sum of ₱2,150,000.00 from October 1992 to August 2000 to Delia or to her representatives, Rosita and Cheryl. Sy presented the corresponding cash vouchers as proof of payment. In 2000, Sy had paid in full but the titles over the properties were not delivered to him. Upon verification, Sy discovered that the subject properties are not owned by Felicitas Javier but by four (4) other individuals. Sy made repeated demands against Delia for the return of the amount that he paid but Delia refused to do so.[3]

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[1] *Rollo*, pp. 48-67; Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Bienvenido L. Reyes (Now Supreme Court Associate Justice) and Marlene Gonzales-Sison.

[2] *Id.* at 68-69.

[3] *Id.* at 49-50.

In his second Complaint-Affidavit, Sy recounted that he and his two friends, Caronan and Ciriaco bought rights to occupy and use market stalls in Commonwealth Public Market through Delia, who claimed authorization by the market administration. Sy, Caronan and Ciriaco paid a total sum of ₱1,353,000.00. The installment payments were received by Kathy, Florence and Cheryl. Upon full payment, Delia failed to deliver the stalls. Upon verification, Sy discovered that Delia was not authorized to sell the market stalls. Furthermore, these stalls were already sold to and occupied by other buyers. Caronan and Ciriaco also filed their separate complaints.[4]

In the Complaint of Wong, she alleged that she bought a parcel of land in North Fairview, Quezon City worth ₱540,000.00 from Delia. Delia claimed that she is authorized by the owner, Teresita Echavaria to sell the property. Delia then presented a Contract to Sell signed by Teresita Echavaria as vendor and eventually, a new copy of a dated and notarized Contract to Sell. This prompted Wong to deliver the remaining balance and fully pay the purchase price. When Delia refused to deliver the title to said property, Wong inquired with the Registry of Deeds of Quezon City and found that said property had already been sold on foreclosure.[5]

Benero, Pineda and Caramol were market vendors in Subic, Zambales. In their Complaint, they alleged that Ardeliza approached them individually and offered to sell parcels of land and/or house and lot belonging to Delia in a subdivision in Subic. Ardeliza apparently worked for Delia. Benero paid an aggregate sum of ₱1,565,000.00. Delia likewise bought ₱100,891.00 worth of meat products from Benero's store, which amount would have been credited to the purchase price of the land. Pineda paid ₱450,000.00 while Caramol parted with a total of ₱269,924.00. Thereafter, they were notified of a Notice of Levy annotated on their tax declarations that the properties were subject

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[4] *Id.* at 50-51.

[5] *Id.* at 51.

a writ of preliminary attachment. Ardeliza admitted to them that the lands were already sold to Sy.[6]

The seven complaints contain similar asseverations: that Delia sold real properties to respondents; that respondents relied on Delia's representation that she was authorized to sell the same; that petitioners paid Delia or her representatives the purchase price; that the title was not delivered; and the properties turned out to be owned by persons different from those claimed by Delia.

Delia claimed that Sy had been her long-time client. She brokered Sy's lending business, as well as his Subic properties. Delia argued that the sales transaction over properties in Quezon City was between Sy and Felicitas Javier; and that it took Sy 14 years before he filed a complaint. Thus, his action is barred by prescription and laches. Delia proferred that Sy filed the instant complaints to avoid paying her broker's commission. Delia likewise contend that the other sales transaction was between one Teresita Echevaria and Wong and that it took her 14 years from the time of sale to file a complaint. Said cause of action had similarly prescribed. With respect to Benero, Pineda and Caramol, Delia admitted that these three (3) complainants are buyers of her house and lot but Sy was also claiming ownership of the properties based on a criminal and civil complaint involving a sum of money against Delia. Delia assured the three that she would honor her agreement with them. Delia also claimed that Benero, Pineda and Caramol defaulted in their subsequent payments. Finally, in regard to the complaints of Caronan and Ciriaco, Delia asserted that their payments were coursed to Sy and not to her, hence, they do not have any cause of action against her.[7]

Salvador, Genevieve, Cheryl and Braulio maintained that their participation in the land transactions of the corporation is limited to receipt of payments and accounting the same.[8] Perla denied

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[6] *Id.* at 79-87.

[7] *Id.* at 100-101.

[8] *Id.*

that she is an incorporator of IBL or that she is associated with IBL or Delia. She claimed that Sy's complaint is suspicious and ill-motivated because it was filed 14 years after the sales transaction.[9] Delben alleged that he, being the son of Delia, sometimes ran errands for his mother, including acknowledging receipts of certain land transaction payments.[10] Joseph admitted that he is Cheryl's partner and that he sometimes received payments for the land transactions.[11] The rest of the accused did not appear or submit any affidavit before the DOJ.

On 7 August 2007, State Prosecutor II Juan Pedro C. Navera issued a Resolution[12] finding the existence of a probable cause for Syndicated *Estafa* against respondents. The dispositive portion of the Resolution reads:

> **WHEREFORE**, premises considered, it is respectfully recommended that informations be filed against respondents Delia Ledesma Belita, Salvador Ilarde. Jr., Genevieve Belita, Maria Cheryl Dava, Braulio Ledesma, Jr., Florence Belita Olsen, Kathy Germentil, Rosita Estuart, Ardeliza Lim, Elsa Rafanan, Erlinda V. Gearlan, Perla Fernandez, Delben "Noy" Belita, and Joseph Avacilla for syndicated estafa under Art. 315 of the Revised Penal Code, in relation to P.D. No. 1689.[13]

Accordingly, six (6) Informations[14] were filed on the same day against respondents before the Regional Trial Court of Quezon City.

Aggrieved, respondents filed a petition for review with the DOJ. On 14 April 2008,[15] then DOJ Secretary Raul M. Gonzalez modified the resolution and directed the withdrawal of the

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[9] *Id.* 103.

[10] *Id.*

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

[12] *Id.* at 90-113.

[13] *Id.* at 113.

[14] *Id.* at 116-133.

[15] *Id.* at 144-153.

Informations for syndicated *estafa* and in lieu thereof, six (6) Informations of *estafa* under Article 315, paragraph 2 (a) of the Revised Penal Code (RPC).

The ensuing flip-flopping of the DOJ Secretary is highlighted below.

The withdrawal of the Informations for Syndicated *Estafa* prompted respondents to file a motion for reconsideration. On 19 June 2008,[16] the DOJ Secretary reinstated the 7 August 2007 Resolution recommending the filing of Informations for syndicated *estafa*.

It was petitioners' turn to file a motion for reconsideration which the DOJ Secretary granted in a Resolution dated 15 January 2009[17] directing the refiling of the appropriate Informations for *Estafa* under Article 315, paragraph 2 (a) of the Revised Penal Code.

Considering that the filing of another motion for reconsideration, to respondents' mind, is futile, they filed before the Court of Appeals a petition for certiorari.

On 30 June 2009,[18] the Court of Appeals granted the petition and reinstated the 19 June 2008 Resolution of the DOJ Secretary which directed the filing of Informations for syndicated *estafa* against petitioners.

The Court of Appeals ruled that the DOJ Secretary committed grave abuse of discretion in promulgating the Resolution dated 15 January 2009. The appellate court found that all elements of the crime of syndicated *estafa* under Presidential Decree (P.D.) 1689 are present. The appellate court held that P.D. 1689 also applies to "other corporations/associations operating on funds solicited from the public" and that petitioners' corporation falls squarely within the coverage of the law.

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[16] *Id.* at 154-162.

[17] *Id.* at 163-169.

[18] *Id.* at 48-67.

In the instant petition, petitioners insist that they are not organized as anyone of the group enumerated in P.D. 1689. Petitioners claim that they were not soliciting funds from the general public. Petitioners add that the Court of Appeals erred in applying the case of *People v. Balasa*[19] to indict petitioners for syndicated *estafa* because IBL could hardly fall in the category of the foundation as specified in the aforecited case.[20]

For the purpose of filing a criminal information, probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[21]

To determine whether there is probable cause in this case, the elements of the crime charged, syndicated *estafa* in this case, must be present. Under Section 1 of P.D. 1689,[22] there is

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[19] 356 Phil. 362 (1998).

[20] *Rollo*, p. 22.

[21] *Fenequito v. Vergara*, 691 Phil. 335, 345-346 (2012) citing *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 518-519 (2008).

[22] Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal

syndicated *estafa* if the following elements are present: 1) *estafa* or other forms of swindling as defined in Articles 315 and 316 of the RPC was committed; 2) the *estafa* or swindling was committed by a syndicate of five or more persons; and 3) the fraud resulted in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon*[*s*]," or farmers associations or of funds solicited by corporations/associations from the general public.[23]

Indeed, based on the documentary evidence presented so far, petitioners were swindled into parting with their money for the purchase of real estate properties upon the representation that petitioners were authorized to sell said properties. Consequently, respondents suffered, among others, pecuniary losses in the form of the money they paid to petitioners. All fourteen (14) petitioners are connected to IBL, either as officers, stockholders or agents. They knowingly received payments from respondents.

We quote with approval the findings and ruling of State Prosecutor II Juan Pedro C. Navera, to wit:

> After a careful evaluation of the [petitioners'] affidavits, none of them deny the existence, authenticity and due execution of the vouchers and receipts evidencing receipt by the [petitioners] of the monies allegedly paid by [respondents]. The existence, authenticity and due execution of these vouchers and receipts, therefore, should be deemed as having been impliedly admitted by [petitioners]. As a consequence, such admission is also an admission that [petitioners], whose signatures appear in said receipts and vouchers, indeed received the monies mentioned therein.

Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)", or farmers association, or of funds solicited by corporations/associations from the general public.

[23] *Hao v. People*, G.R. No. 183345, 17 September 2014, 735 SCRA 312, 327.

Moreover, the IBL receipts attached to the complaint of Wong, uncontroverted by [petitioners], show that IBL has been transacting business as a corporation since July 1992 prior to its incorporation on February 22, 1994. It is also noteworthy that such receipts do not contain a TIN number.

We find probable cause to indict the respective [petitioners] in all the complaints.

A careful reading of the [respondents'] affidavits reveals that among the kinds of estafa charged of [petitioners], one is the defraudation of [respondents] through [respondents'] false pretenses of possession power, qualifications, agency and through other similar deceits. (RPC, Art. 315, 4th par., [2][a]). The elements of this crime are as follows:

a. That there must be false pretense, fraudulent act or fraudulent means

(1) by using fictitious name;

(2) falsely pretending to possess (a) power, (b) influence, c) qualifications, (d) property, (e) credit, (f) agency, (g) business or imaginary transactions, or

(3) means of other similar deceits.

b. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud.

c. That the offended party must be relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means.

d. That as a result thereof, the offended party suffered damage." (L.B. Reyes, The Revised Penal Code, Book II, 14th ed. [1998]. 763-764.)

As to Antonio Sy's complaint involving the Javier property, he has established that IBL, which was not even incorporated then, through Delia Belita, falsely pretended to possess power, influence, qualification, agency, business or imaginary transactions in representing to be authorized by Felicitas Javier to sell the latter's properties. This misrepresentation, made before or simultaneously

with the defraudatiion, and relied upon by Sy when he parted with his money, turned out to be false as shown by TCT's marked as Annexes "H," "I," "J," and "K," whose authenticity [petitioners] do not deny, showing that the subject properties were not owned by Felicitas Javier but by other persons.

The cash vouchers marked as Annexes "C," "D" and "E," showing receipt by Delia Belita and Rosita Estuart of the amount of ₱2,150,000.00, which were not denied by [petitioners], clearly show that Sy sustained pecuniary damages in such amount.

The same is true with respect to the complaints of Antonio Sy (representing Spencer), Roberto Caronan and Wilfredo Ciriaco involving market stalls in the Commonwealth Public Market in Quezon City. These complaints establish that IBL, which was not even incorporated then, through Delia Belita, falsely pretended to possess power, influence, qualification, agency, business or imaginary transaction in representing to be authorized by the administrator of Commonwealth Public Market to sell the latter's market stalls. This misrepresentation, made before and simultaneously with the defraudation, and relied upon by [respondents] when they parted with their monies, turned out to be false as [petitioners] failed to deliver said stalls to [respondents] up to this moment despite repeated demands, and as [petitioners] do not deny that said stalls have been assigned by the administrator thereof to other persons.

The corresponding vouchers (Annexes "C," "D," "E," "F," "G," "H," and "I" to Sy's complaint; "A," "B," "C" and "D" to Caronan's complaint; "A," "B," "C" and "D" to Ciriaco's complaint), which were not denied by [petitioners], clearly show that Spencer, Caronan and Ciriaco sustained pecuniary damages amounting to ₱1,353,000.00.

As to Norma S. Wong's complaint, she has established that IBL, which was not even incorporated then, through Delia Belita, falsely pretended to possess power, influence, qualification, agency, business or imaginary transactions in representing to be authorized by one Teresita R. Echavaria to sell the latter's property. This misrepresentation, made before or simultaneously with the defraudation, and relied upon by Wong when she parted with her money, turned out to be false as shown by TCT marked as Annexes "I," which [petitioners] do not deny, showing that the subject property was not owned by Teresita Echevaria but by one Jose M. Natividad.

The IBL official receipts (Annexes "C," "D," "E," and "F") and pay vouchers ("G" and "H"), the authenticity of which were not denied by [petitioners], clearly show that Wong sustained pecuniary damages amounting to ₱5,000,000.00.

[Respondents] Sonia C. Benero, Maria L. Pineda, and Cristina V. Caramol uniformly established that sometime in 2002, Liza Lim and Delia L. Belita convinced them to buy certain parcels of land and/or house and lots in a subdivision in Mangan-vaca, Subic, Zambales, known as "La Ingga Ville." The representation included that said lands were owned by Delia Belita. Such representation, according to [respondents Benero, Pineda and Caramol] were too convincing, consisting as it did, of presentation of tax declarations, vicinity maps, and an invitation to an Open House conducted on October 20, 2002.[24]

With respect to the third and last element of syndicated *estafa*, petitioners claim that P.D. 1689 only applies if the defrauded parties are rural banks, cooperatives, *samahang nayons*, or farmers' associations. We agree with the Justice Secretary's holding in his 19 June 2008 Resolution wherein he ruled that PD 1689 applies to corporations operating on funds solicited from the public.

P.D. 1689 in its entirety is reproduced below:

PRESIDENTIAL DECREE No. 1689 April 6, 1980

INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA

WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, "samahang nayon(s)", and farmers' associations or corporations/associations operating on funds solicited from the general public;

WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives, "samahang nayon(s)", or farmers' associations, or of funds solicited by corporations/associations from the general public, erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

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[24] *Rollo*, pp. 104-107.

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, "samahang nayon(s)", farmers' associations or corporations/associations operating on funds solicited from the general public;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order as follows:

Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)", or farmers association, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to reclusion perpetua if the amount of the fraud exceeds 100,000 pesos.

Section 2. This decree shall take effect immediately.

DONE in the City of Manila, this 6th day of April, in the year of Our Lord, nineteen hundred and eighty.

The law is explicit that it covers defraudations or misappropriation of funds solicited by corporations from the general public. IBL is such corporation. The operative phrase is "funds of corporations should come from the general public." IBL is apparently engaged in the real estate business. Its funds come from buyers of the properties it sells.

In *Galvez, et al. v. Court of Appeals, et al.*,[25] we held that P.D. 1689 also covers commercial banks "whose fund comes from the general public. P.D. 1689 does not distinguish the

[25] 686 Phil. 924, 942 (2012).

nature of the corporation. It requires, rather, that the funds of such corporation should come from the general public."

This interpretation has in fact been espoused in the case of *People v. Balasa*[26] where the Court ruled, viz.:

> Similarly, the fact that the entity involved was not a rural bank, cooperative, *samahang nayon* or farmers' association does not take the case out of the coverage of P.D. No. 1689. Its third "whereas clause" states that it also applies to other "corporations/associations operating on funds solicited from the general public." The foundation fits into these category as it "operated on funds solicited from the general public." To construe the law otherwise would sanction the proliferation of minor-league schemers who operate in the countryside. To allow these crimes to go unabated could spell disaster for people from the lower income bracket, the primary target of swindlers.[27]

In sum, we find that there is probable cause to indict petitioners for the crime of syndicated *estafa* under P.D. 1689, in relation to Article 315, 4th par., [2] [a] of the RPC.

The determination of probable cause is essentially an executive function, lodged in the first place on the prosecutor who conducted the preliminary investigation on the offended party's complaint. The prosecutor's ruling is reviewable by the Secretary who, as the final determinative authority on the matter, has the power to reverse, modify or affirm the prosecutor's determination. As a rule, the Secretary's findings are not subject to interference by the courts, save only when he acts with grave abuse of discretion amounting to lack or excess of jurisdiction; or when he grossly misapprehends facts; or acts in a manner so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law; or when he acts outside the contemplation of law.[28]

We agree with the Court of Appeals that the Justice Secretary committed grave abuse of discretion in promulgating the resolution

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[26] *Supra* note 19.

[27] *Id.* at 396-397.

[28] *Villanueva v. Caparas*, G.R. No. 190969, 30 January 2013, 689 SCRA 679, 685-686.

dated 15 January 2009. The pertinent portion of the Decision reads:

> We are of the view that Justice Secretary Raul M. Gonzalez acted with grave abuse of discretion in promulgating the resolution dated January 15, 2009. For one, his act of flip-flopping or turning around at least twice in his ruling on the applicability of Presidential Decree No. 1689 to the case filed by the [respondents] against the [petitioners] indeed appears to be arbitrary and whimsical. Why did he keep on flip-flopping? In a way, he was blowing cold and then hot and then cold. There's no adequate showing of justification for doing so. For another, his second twist of his ruling as embodied in the resolution promulgated on January 15, 2009 that the private [petitioners] cannot be charged with the crime of syndicated estafa, contravenes the prevailing law and jurisprudence. Once again, it bears repeating at this point that the Supreme Court of the Philippines had explicitly held in People v. Balasa, supra, that the first "whereas clause" of the preamble of Presidential Decree No. 1689 is not exactly an essential part of such decree, and that, even assuming arguendo that the said clause is part of the decree, still the fact that the entity involved is not a rural bank, cooperative, samahang nayon or farmers' association does not take the case out of the coverage of Presidential Decree No. 1689 because the third "whereas clause" of the preamble of such decree states that it also applies to other "corporations/ associations operating on funds solicited from the public." There is no gainsaying the fact that IBL Realty Development Corporation has been a corporation operating on funds or investments solicited from the public.[29]

Finding no reversible error, we affirm the Court of Appeals' Decision dated 30 June 2009.

WHEREFORE, the instant petition is **DENIED** and the 30 June 2009 Decision and 25 January 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 107234 are **AFFIRMED**. Costs against petitioners.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza,[*] and *Jardeleza, JJ.,* concur.

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[29] *Rollo,* p. 65.

[*] Additional Member per Raffle dated 13 June 2016.

SECOND DIVISION

[G.R. No. 203924. June 29, 2016]

ROGER CABUHAT AND CONCHITA CABUHAT, *petitioners, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES, represented by Manager Perla L. Favila,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTION OF FACT IS BEYOND THE SCOPE THEREOF.— [W]e note that, as DBP observed, the petition does not raise pure questions of law. Despite the Cabuhat's insistence, DBP maintains that the foreclosure was based on the 1998 mortgage – a valid and existing agreement. The Cabuhat's contention that the foreclosure was made pursuant to a void/canceled/ inexistent mortgage is a question of fact beyond the scope of this review. This alone warrants the outright dismissal of the petition for being the wrong remedy.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135), SECTION 8 THEREOF; A PETITION TO SET ASIDE THE SALE/ OR CANCEL THE WRIT POSSESSION CAN NOT BE FILED BEYOND THIRTY DAYS FROM THE PURCHASER'S POSSESSION OF THE PROPERTY; RATIONALE.— We agree with the Cabuhate that the RTC misinterpreted the reglementary period under Section 8 of Act No. 3135. It held that a petition to set aside the sale and cancel the writ of possession cannot be filed until the purchaser is placed in possession of the property. However, this finds no support in the law: Section 8. The debtor may, **in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession**, petition that the sale be set aside and the writ of possession cancelled x x x. The provision does not prohibit a purchaser from filing the petition before the purchaser enters into

possession. The limitation merely prohibits the filing of the petition *beyond* thirty days from the purchaser's possession of the property. The rationale for the 30-day period and the reckoning point of the purchaser's possession is the character of the proceedings. A petition to set aside the sale and/or cancel the writ of possession is filed *in the same proceedings in which possession is requested.* Under Section 7 of Act No. 3135, this proceeding is *ex parte* and non-litigious; there is no need to notify or hear the mortgagor.

3. ID.; ID.; ID.; ID.; THE PETITION TO SET ASIDE THE FORECLOSURE SALE IS NOT PREMATURE IF THE SALE HAS ALREADY TAKEN PLACE BECAUSE THE CAUSE OF ACTION HAD ALREADY RIPENED.— Considering that Act No. 3135 does not require the creditor to notify the debtor or the mortgagor of the extrajudicial foreclosure, it is possible that a mortgagor will not discover the proceedings until the writ of possession is implemented. Section 8 provides a 30-day cutoff period to set aside the sale reckoned from the date when the mortgagor is presumed to have received notice. Nevertheless, it does not prohibit the mortgagor from filing the petitioner earlier in case he learns of the proceedings beforehand. The petition to set aside the foreclosure sale is not premature if the sale has already taken place because the cause of action had already ripened.

4. ID.; ID.; ID.; ID.; PETITION TO SET ASIDE THE SALE AND/OR CANCEL THE WRIT OF POSSESSION; LIMITED TO TWO GROUNDS: THAT THE MORTGAGE WAS NOT VIOLATED, OR THAT THE FORECLOSURE SALE DID NOT COMPLY WITH THE PROCEDURAL REQUIREMENTS UNDER SECTIONS 1-4 OF ACT NO. 3135.— [E]ven though the Cabuhats' petition before the RTC was not premature, it was still subject to dismissal for going beyond the scope of Section 8. x x x. A petition under Section 8 is limited to two grounds: (1) that the mortgage was not violated, meaning the debtor has not missed any payments of his loan; or (2) that the foreclosure sale did not comply with the procedural requirements under Sections 1-4 of Act No. 3135. These grounds are exclusive. More importantly, both grounds implicitly *admit the existence and validity of the mortgage* – a fact that the Cabuhats' petition denies.

Accordingly, the Cabuhats' October 27, 2011 Urgent Motion/ Petition went beyond the permissible scope of Section 8.

5. ID.; ID.; ID.; ID.; ID.; ID.; PROPER REMEDY OF A LITIGANT TO CHALLENGE THE VALIDITY OF THE FORECLOSURE OR OF THE MORTGAGE IS A SEPARATE ACTION TO ANNUL THEM.— A petition under Section 8 of Act No. 3135 is *filed in the same proceedings where possession is requested.* This is a summary proceeding under Section 7 because the issuance of a writ of possession is a *ministerial function* of the RTC. This possessory proceeding is ***not*** a judgment on the merits, but simply ***an incident in the transfer of title.*** Consequently, the judgment cannot produce the effect of *res judicata.* A Section 8 proceeding is narrowly designed only to **set aside the sale** and/or **the order granting possession** under Section 7. It cannot annul the validity of the foreclosure or of the mortgage. Due to its very limited scope, it cannot entertain issues beyond the procedural irregularities in the sale. The remedy of a litigant who challenges the existence of the mortgage or the validity – not the regularity – of the foreclosure is a separate action to annul them. These grounds outside Section 8 have to be threshed out in a full-blown trial.

APPEARANCES OF COUNSEL

Saguisag & Associates for petitioners.
Michael Vernon De Gorio for respondent.

D E C I S I O N

BRION, *J.*:

This is a petition for review on *certiorari* assailing the Regional Trial Court's (*RTC*) June 27, 2012 and October 23, 2012 orders dismissing Roger and Conchita Cabuhat's Petition to Set Aside the Foreclosure Sale in **Civil Case No. 1741.**[1]

[1] Both penned by Acting Presiding Judge Bienvenido C. Blancaflor, RTC of Palawan and Puerto Princesa City, Branch 48.

Antecedents

The subject of this case is a 292 square-meter property (*subject lot*) in Barangay Poblacion, Municipality of Narra, Palawan, formerly covered by **Original Certificate of Title (*OCT*) No. C-2372** registered in the name of petitioner Roger Cabuhat.

On August 30, 1993, Roger — together with his parents Rodolfo and Conchita Cabuhat — mortgaged the subject lot to respondent Development Bank of the Philippines (*DBP*) to secure a two (2) million peso loan. The mortgage was annotated on August 31, 1993 as Entry No. 6501.[2]

DBP allegedly released/cancelled this mortgage on October 26, 1998.[3]

Four days later on October 30, 1998, Conchita and Roger mortgaged the subject lot to DBP again to secure their outstanding **six (6) million peso loan**. The mortgage was annotated on November 27, 1998 as Entry No. 11815.[4]

The Cabuhats failed to pay their loan, prompting DBP to extra-judicially foreclose the property. DBP won the public auction at a bid of ₱2,001,900. DBP received a Certificate of Sale dated June 28, 1999.[5]

On July 6, 1999, the Certificate of Sale was annotated on OCT No. C-2372.[6]

The Cabuhats failed to redeem the subject lot. Consequently, DBP consolidated the title in its name. Thus, on December 10, 2003, TCT No. T-17115 was issued cancelling OCT No. C-2372.

On July 25, 2005, DBP filed an *ex parte* petition for the issuance of a writ of possession before the RTC.[7] The petition

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[2] *Rollo*, pp. 10, 187.

[3] *Id.* at 10.

[4] *Id.* at 10, 188.

[5] *Id.*

[6] *Id.*

[7] *Id.* at 11, 114, 134, 188.

was raffled to RTC, Puerto Princesa City, Branch 48 and docketed as **Civil Case No. 1741.**

The RTC notified the Cabuhats who filed an opposition. The RTC nevertheless issued the writ of possession on May 15, 2007,[8] because it was its ministerial duty to issue the writ upon the purchaser's consolidation of title following the non-redemption of the property.[9]

The Cabuhats appealed the RTC's May 15, 2007 Order in **CA-G.R. CV. No. 92449**,[10] arguing that their opposition was meritorious. However, the Court of Appeals (*CA*) denied the appeal on January 21, 2010, emphasizing the summary and non-litigious character of the *ex parte* proceedings for a writ of possession.

The Cabuhats appealed the denial to this Court in **G.R. No. 193367**. On November 15, 2010, we denied the petition for failure to sufficiently show any reversible errors in the CA's decision.[11]

On October 27, 2011, the Cabuhats filed an *Urgent Motion/ Petition to Set Aside the Foreclosure Sale and to Cancel the Writ of Possession.*[12] Citing the June 29, 1999 Certificate of Sale, they claimed that the foreclosure was executed pursuant to the cancelled **August 31, 1993 mortgage instead of the existing October 30, 1998 mortgage.**[13] Hence, the foreclosure and the writ of possession were void because they stemmed from an inexistent contract.[14]

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[8] *Id.* at 44.

[9] *Id.* at 48.

[10] *Id.* at 132.

[11] *Id.* at 151.

[12] *Id.* at 49.

[13] *Id.* at 50-51.

[14] *Id.* at 50.

They further invoked the RTC's equity jurisdiction to suspend the implementation of the writ of possession.[15]

On October 28, 2011, the RTC refused to suspend the implementation of the writ due to its ministerial character. However, it required DBP to comment on the motion/petition.[16]

On November 22, 2011, the writ of possession was finally implemented.

In its December 9, 2011 Comment,[17] DBP pointed out that it already sold and turned-over the subject lot to a buyer on November 22, 2011. Therefore, it no longer had any legal interest in the case.

DBP further pointed out that the Cabuhats were forum shopping because they had already filed a complaint to set aside the same foreclosure proceedings and to nullify the 1998 mortgage.[18] The case was pending before the RTC, Puerto Princesa, Branch 95, and docketed as **Civil Case No. 4546**.

In their Reply,[19] the Cabuhats emphasized that DBP only raised two issues: (1) its lack of legal interest in the suit; and (2) the Cabuhats' alleged forum shopping. They insisted that unlike Land Case No. 1741, Civil Case No. 4546 involves the 1998 mortgage, not the cancelled 1993 mortgage.

On April 4, 2012, the Cabuhats filed an Omnibus Motion praying for RTC to immediately resolve: (1) DBP's opposition[20] and (2) the validity of an extrajudicial foreclosure of an inexistent/cancelled mortgage.[21]

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[15] *Id.* at 53.

[16] *Id.* at 61.

[17] *Id.* at 69.

[18] *Id.* at 69-70.

[19] *Id.* at 72.

[20] *Id.* at 77.

[21] *Id.* at 80.

On June 27, 2012, the RTC issued the assailed Order. The RTC held that DBP remains a real party-in-interest despite the sale because there had been no motion for substitution of the parties.[22] It also denied the DBP's forum shopping argument because an *ex parte* proceeding for the issuance of a writ of possession is not a judgment on the merits that can amount to *res judicata*.[23]

However, the RTC dismissed the Cabuhats' petition. It reasoned that under Section 8 of Act No. 3135, a petition to set aside the foreclosure sale and cancel the writ of possession can only be filed within the 30-day period immediately *after* the purchaser acquires possession. Considering that it filed before the DBP entered possession, the petition was premature.

The Cabuhats moved for reconsideration[24] but the RTC denied the motion. Hence, the present petition.

The Arguments

The Cabuhats justify their direct resort to this Court by asserting that they only raise pure questions of law.[25] They argue that the RTC misinterpreted Section 8 of Act No. 3135 because the law does not prohibit the mortgagor from filing the petition to set aside the foreclosure before the purchaser actually acquires possession.

They argue that the dismissal of their petition based on a ground that DBP did not raise is invalid.[26] Lastly, they insist that the foreclosure was void because: (1) DBP did not have a special power of authority to foreclose the property; and (2) the foreclosure was made pursuant to the cancelled/inexistent 1993 mortgage.[27]

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[22] *Id.* at 24.

[23] *Id.*

[24] *Id.* at 28.

[25] *Id.* at 9.

[26] *Id.* at 15.

[27] *Id.* at 18.

DBP counters that it foreclosed the property pursuant to the October 30, 1998 mortgage after the Cabuhats failed to pay their loan.[28] It also reiterates that it already lost legal interest over the property and moves to be substituted by the buyer.[29]

Citing *Sps. Ong v. Court of Appeals*,[30] DBP also adopts the RTC's interpretation of Section 8 of Act No. 3135.[31]

Further, DBP points out that the Cabuhats already have a pending case to set aside the foreclosure sale in Civil Case No. 4546. DBP emphasizes that in their complaint, the Cabuhats admitted that the foreclosure was made pursuant to the 1998 mortgage.[32]

Lastly, DBP protests that the existence or validity of the mortgage and the foreclosure sale is a factual matter and an improper subject of a review on *certiorari*.[33]

Our Ruling

We **DENY** the petition for lack of merit.

At the outset, we note that, as DBP observed, the petition does not raise pure questions of law. Despite the Cabuhats' insistence, DBP maintains that the foreclosure was based on the 1998 mortgage — a valid and existing agreement. The Cabuhats' contention that the foreclosure was made pursuant to a void/cancelled/inexistent mortgage is a question of fact beyond the scope of this review. This alone warrants the outright dismissal of the petition for being the wrong remedy.

Even if the rules of procedure were relaxed to accommodate the petition, it should still be denied for lack of merit.

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[28] *Id.* at 113.

[29] *Id.* at 121-122.

[30] 388 Phil. 857 (2000).

[31] *Rollo*, p. 123.

[32] *Id.* at 125.

[33] *Id.* at 128.

We agree with the Cabuhats that the RTC misinterpreted the reglementary period under Section 8 of Act No. 3135. It held that a petition to set aside the sale and cancel the writ of possession cannot be filed until the purchaser is placed in possession of the property. However, this finds no support in the law:

> Section 8. The debtor may, **in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession**, petition that the sale be set aside and the writ of possession cancelled x x x. (emphasis supplied)

The provision does not prohibit a debtor from filing the petition before the purchaser enters into possession. The limitation merely prohibits the filing of the petition *beyond* thirty days from the purchaser's possession of the property.

The rationale for the 30-day period and the reckoning point of the purchaser's possession is the character of the proceedings. A petition to set aside the sale and/or cancel the writ of possession is filed *in the same proceedings in which possession is requested.* Under Section 7 of Act No. 3135, this proceeding is *ex parte* and non-litigious; there is no need to notify or hear the mortgagor.

Considering that Act No. 3135 does not require the creditor to notify the debtor or the mortgagor of the extrajudicial foreclosure, it is possible that a mortgagor will not discover the proceedings until the writ of possession is implemented.

Section 8 provides a 30-day cutoff period to set aside the sale reckoned from the date when the mortgagor is presumed to have received notice. Nevertheless, it does not prohibit the mortgagor from filing the petition earlier in case he learns of the proceedings beforehand. The petition to set aside the foreclosure sale is not premature if the sale has already taken place because the cause of action had already ripened.

DBP's reliance on *Ong v. Court of Appeals* is misplaced. The thrust of *Ong* is that the mortgagor cannot restrain the issuance or the implementation of a writ of possession under Section 7 because it is ministerial upon the RTC to put the purchaser in possession of the property upon: (1) the mortgagor's failure to redeem; and (2) consolidation of the title in the

purchaser's name. Consistent with the law, *Ong* does not prohibit the mortgagor from filing the petition before the purchaser actually enters possession.

However, even though the Cabuhats' petition before the RTC was not premature, it was still subject to dismissal for going beyond the scope of Section 8. For emphasis, Section 8 reads:

> Section 8. The debtor may, **in the proceedings in which possession was requested**, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because **the mortgage was not violated** or **the sale was not made in accordance with the provisions hereof**, and the court shall take cognizance of this petition in accordance with the summary procedure x x x. (emphasis supplied)

A petition under Section 8 is limited to two grounds: (1) that the mortgage was not violated, meaning the debtor has not missed any payments of his loan; or (2) that the foreclosure sale did not comply with the procedural requirements under Sections 1-4 of Act No. 3135.[34]

These grounds are exclusive. More importantly, both grounds implicitly *admit the existence and validity of the mortgage —*

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[34] Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

Sec. 2. Said sale cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

a fact that the Cabuhats' petition denies. Accordingly, the Cabuhats' October 27, 2011 Urgent Motion/Petition went beyond the permissible scope of Section 8.

A petition under Section 8 of Act No. 3135 is *filed in the same proceedings where possession is requested*. This is a summary proceeding under Section 7 because the issuance of a writ of possession is a ministerial function of the RTC. This possessory proceeding is ***not*** a judgment on the merits, but simply ***an incident in the transfer of title***.[35] Consequently, the judgment cannot produce the effect of *res judicata*.

A Section 8 proceeding is narrowly designed only to **set aside the sale and/or the order granting possession** under Section 7. It cannot annul the validity of the foreclosure or of the mortgage. Due to its very limited scope, it cannot entertain issues beyond the procedural irregularities in the sale.

The remedy of a litigant who challenges the existence of the mortgage or the validity — not the regularity — of the foreclosure is a separate action to annul them. These grounds outside Section 8 have to be threshed out in a full-blown trial.

Lastly, this Court notes the pendency of **Civil Case No. 4546** where the parties are already litigating the validity of both the foreclosure sale and the mortgage that led to the sale. This present petition only contributes to the multiplicity of suits that only serve to clog our dockets.

WHEREFORE, we **DENY** the petition for lack of merit.

SO ORDERED.

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

Del Castillo, J., on leave.

Sec. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.

[35] *Ong vs. Court of Appeals*, *supra* note 30, at 867-868.

SECOND DIVISION

[G.R. No. 204264. June 29, 2016]

JENNEFER FIGUERA, as substituted by ENHANCE VISA SERVICES, INC., represented by MA. EDEN R. DUMONT, *petitioner, vs.* **MARIA REMEDIOS ANG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE PARTIES' DESCRIPTION OF THE QUESTIONS RAISED DOES NOT DETERMINE WHETHER THESE QUESTIONS ARE OF FACT OR LAW; THE TRUE TEST IS WHETHER THE APPELLATE COURT CAN RESOLVE THE ISSUE WITHOUT REVIEWING OR EVALUATING THE EVIDENCE, IN WHICH CASE, IT IS A QUESTION OF LAW; OTHERWISE, IT IS A QUESTION OF FACT.— It is a settled rule that the Court cannot review questions of fact on a petition for review under Rule 45 of the Rules of Court. A question of fact exists when the truth or falsity of the parties' factual allegations is in dispute. A question of law, on the other hand, exists when the application of the law on the stated facts is in controversy. The parties' description of the questions raised does not determine whether these questions are of fact or of law. The true test is whether the appellate court can resolve the issue without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. Contrary to Ang's allegation, the question involved in the present case is a question of law which the Court can properly pass upon.

2. ID.; ID.; ID.; POINTS OF LAW, THEORIES, AND ARGUMENTS NOT BROUGHT BEFORE THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL AND WILL NOT BE CONSIDERED BY THE COURT, OTHERWISE, A DENIAL OF THE RESPONDENT'S RIGHT TO DUE PROCESS WILL RESULT.— [T]he Court grants to consider and resolve the

issues on the application of legal subrogation and compensation, even though it was raised for the first time on appeal. As a general rule, points of law, theories, and arguments not brought before the trial court cannot be raised for the first time on appeal and will not be considered by this Court; otherwise, a denial of the respondent's right to due process will result.

3. ID.; ID.; ID.; ID.; EXCEPTIONS; PRESENT.— [A]n appellate court is clothed with authority to review rulings even if they are not assigned as errors in the appeal in the following instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent. Figuera's position falls under two of these exceptions, namely – that **the determination of the question newly raised is necessary in arriving at a just decision and complete resolution of the case,** and **that the resolution of a question properly assigned is dependent on those which were not assigned as errors on appeal.**

4. CIVIL LAW; CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; SUBROGATION; TRANSFERS TO THE PERSON SUBROGATED THE CREDIT, WITH ALL THE RIGHTS APPERTAINING THERETO, EITHER AGAINST THE DEBTOR OR AGAINST THIRD PERSONS.— Article 1291 of the New Civil Code provides that the subrogation of a third person to the rights of the creditor is one of the means to modify obligations. Subrogation, sometimes referred to as substitution, is "an arm of equity that may guide or even force one to pay a debt for which an

obligation was incurred but which was in whole or in part paid by another." It transfers to the person subrogated the credit, with all the rights appertaining thereto, either against the debtor or against third persons.

5. ID.; ID.; ID.; ID.; LEGAL SUBROGATION; WHEN PRESENT; A PERSON INTERESTED IN THE FULFILMENT OF THE OBLIGATION IS ONE WHO STANDS TO BE BENEFITED OR INJURED IN THE ENFORCEMENT OF THE OBLIGATION.— Subrogation of a third person in the rights of a creditor may either be legal or conventional. There is legal subrogation when: (a) a creditor pays another preferred creditor, even without the debtor's knowledge; (b) a third person who is not interested in the obligation pays with the express or tacit approval of the debtor; and (c) a person interested in the fulfilment of the obligation pays, even without the knowledge of the debtor. In the present case, Figuera based her claim on the third type of subrogation. She claims that as the EIDC's new owner, she is interested in fulfilling Ang's obligation to pay the utility bills. Since the payment of the bills was long overdue prior to the assignment of business rights to Figuera, the failure to settle the bills would eventually result in "the disconnection of the electricity and telephone services, ejectment from the office premises, and resignation by some, if not all, of the company's employees with the possibility of subsequent labor claims for sums of money." **These utilities are obviously necessary for the continuation of Figuera's business transactions.** A person interested in the fulfilment of the obligation is one who stands to be benefited or injured in the enforcement of the obligation. The Court agrees with Figuera that **it became absolutely necessary for her to pay the bills since Ang did not do so when the obligation became due.**

6. ID.; ID.; ID.; ID.; ID.; THE CONSENT OR APPROVAL OF THE DEBTOR IS REQUIRED ONLY IF A THIRD PERSON WHO IS NOT INTERESTED IN THE FULFILMENT OF THE OBLIGATIONS PAYS SUCH, BUT NO SUCH REQUIREMENT EXISTS IN CASES OF PAYMENT BY A CREDITOR TO ANOTHER CREDITOR WHO IS PREFERRED, AND BY A PERSON INTERESTED IN THE FULFILMENT OF THE OBLIGATION.— We note

that both the RTC and the CA held that Figuera failed to prove that Ang had consented to the payment of EIDC bill, therefore, Figuera cannot deduct the amount she paid for the utility bills from the ₱150,000.00 consideration. A clear reading, however, of Article 1302 of the New Civil Code would lead to a different conclusion. **The consent or approval of the debtor is required only if a third person who is not interested in the fulfillment of the obligation pays such. On the other hand, no such requirement exists in cases of payment by a creditor to another creditor who is preferred, and by a person interested in the fulfillment of the obligation.** Notably, Article 1302 (1) and (3) does not require the debtor's knowledge. Therefore, legal subrogation took place despite the absence of Ang's consent to Figuera's payment of the EIDC bills. Figuera is now deemed as Ang's creditor by operation of law.

7. ID.; ID.; ID.; ID.; LEGAL COMPENSATION; ELEMENTS; WHEN ALL THE ELEMENTS ARE PRESENT, LEGAL COMPENSATION OPERATES EVEN AGAINST THE WILL OF THE INTERESTED PARTIES AND EVEN WITHOUT THEIR CONSENT.— Article 1278 of the New Civil Code states that there is compensation when two persons, in their own right, are creditors and debtors of one another. These elements must concur for legal compensation to apply: (1) each one of the debtors is bound principally, and that the debtor is at the same time a principal creditor of the other; (2) both debts consist of a sum of money, or if the things due be consumable, they be of the same kind and also of the same quality if the latter has been stated; (3) both debts are due; (4) both debts are liquidated and demandable; and (5) there be no retention or controversy over both debts commenced by third persons and communicated in due time to the debtor. When all these elements are present, compensation takes effect by operation of law and extinguishes both debts to the corresponding amount, even both parties are without knowledge of the compensation. it operates even against the will of the interested parties and even without their consent. **We find that all the elements of legal compensation are present in this case.**

8. ID.; ID.; ID.; ID.; ID.; ALTHOUGH NOT EXPRESSLY WRITTEN, LAWS ARE DEEMED INCORPORATED IN EVERY CONTRACT ENTERED WITHIN OUR

TERRITORY.— While the RTC and the CA correctly held that there was nothing in the Deed that grants Figuera an option to pay the utility bills and to deduct the amount from the consideration, we stress that although not expressly written, laws are deemed incorporated in every contract entered within our territories. Thus, the Court reads into the Deed the provisions of law on subrogation and compensation.

9. ID.; ID.; ID.; ID.; TENDER OF PAYMENT; TO BE VALID, THE TENDER OF PAYMENT MUST BE A FUSION OF INTENT, ABILITY, AND CAPABILITY TO MAKE GOOD SUCH OFFER, WHICH MUST BE ABSOLUTE AND MUST COVER THE AMOUNT DUE; THE DEBTOR IS RELEASED FROM HER OBLIGATION BY THE CONSIGNATION OF THE THING OR SUM DUE, WHERE THE CREDITOR REFUSED WITHOUT ANY JUST CAUSE, TO THE VALID TENDER OF PAYMENT.— Tender of payment is the act of offering to the creditor what is due him, together with the demand for the creditor to accept it. To be valid, the tender of payment must be a "fusion of intent, ability, and capability to make good such offer, which must be absolute and must cover the amount due." [T]he remaining amount due in Figuera's obligation is ₱42,096.79. **Thus, Figuera's tender of the remaining amount to Ang is valid and Ang offered no valid justification in refusing to accept the tender of payment. Due to the creditor's refusal, without any just cause, to the valid tender of payment, the debtor is released from her obligation by the consignation of the thing or sum due.**

APPEARANCES OF COUNSEL

Cabrido & Associates for petitioner.

Gica Del Socorro Espinoza Villarmia Fernandez & Tan for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Jennefer Figuera[2] (*Figuera*) assailing the **June 29, 2012** decision[3] and the **September 28, 2012** resolution[4] of the Court of Appeals (*CA*) of Cebu City in CA-G.R. CV. No. 02480.

The Facts

Maria Remedios Ang (*Ang)* is the registered owner of a single proprietorship business named "Enhance Immigration and Documentation Consultants" (EIDC).

On December 16, 2004, Ang executed a "Deed of Assignment of Business Rights" (*Deed*) transferring all of her business rights over the EIDC to Figuera for One Hundred Fifty Thousand Pesos (₱150,000.00).

In addition to the assignment of rights, the parties also agreed that Ang shall pay the bills for electricity, telephone, office rentals, and the employees' salaries up to the month of December 2004.[5]

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[1] *Rollo*, pp. 3-33.

[2] Substituted by Enhance Visa Services, Inc. represented by Ma. Eden R. Dumont.

[3] *Rollo*, pp. 38-48. Penned by CA Executive Justice Pampio A. Abarintos and concurred in by Associate Justices Gabriel T. Ingles and Melchor Q. C. Sadang.

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

[5] Deed of Assignment of Business Rights, par. 3:

"3. X X X It is the essence therefore, that upon execution of this document, the ASSIGNOR is freed by the ASSIGNEE, from all obligations whatsoever in relation to [EIDC], any of its clientele, the government, and all other parties. **However, the ASSIGNOR shall pay for the following bills up to the month of December, 2004: electricity, telephone, office rentals and salaries for the employees**."

Without Ang's consent, Figuera paid all the utility bills amounting to ₱107,903.21 as of December 2004. On January 17, 2005, Figuera tendered only the amount of ₱42,096.79 to Ang, after deducting the amount paid for the utility bills from the ₱150,000.00 consideration of the Deed.

Ang refused to accept Figuera's payment. Figuera mailed the Formal Tender of Payment and gave Ang five (5) days to accept the amount. Despite the lapse of the 5-day period, however, Ang still refused to accept the payment.

Thus, Figuera filed a **complaint** for specific performance before the Regional Trial Court (*RTC*), Branch 9 of Cebu City against Ang. Figuera consigned the amount of ₱42,096.79 to the RTC.

In her answer, Ang maintained that the amount due pursuant to the Deed is ₱150,000.00 and not just ₱42,096.79. She argued that she cannot be compelled to accept the amount because it is not what was agreed upon.

On May 19, 2005, Figuera conveyed all her rights, assets, interests, liabilities, and causes of action over EIDC in favor of the Enhance Visa Services, Inc. (EVSI) through a "Deed of Assignment Coupled with Interest." Thus, on June 14, 2005, EVSI substituted Figuera, on motion, as plaintiff.

The RTC Ruling

The RTC ruled in Ang's favor in its decision dated December 28, 2007.

The RTC held that the unambiguous language of the Deed mandates Ang, as the Assignor, to pay the December 2004 utility bills. Figuera, however, paid the utility bills without Ang's consent.

The RTC explained that for the tender of payment and consignation to be valid, Figuera must tender the full amount of ₱150,000.00 rather than just ₱42,096.79. Ang is not obliged to accept an amount less than what is agreed upon in the Deed.

Figuera appealed the RTC decision to the CA and argued that by operation of law, legal subrogation and compensation

had taken place. Consequently, Figuera's obligation to the extent of the amount of ₱107,903.21 is extinguished.

The CA Ruling

In its June 29, 2012 decision, the CA affirmed the RTC's ruling.

The CA held that there is nothing in the Deed that grants Figuera the option to pay the utility bills and to deduct the payment from the agreed consideration in the Deed; thus, the amount of ₱150,000.00 remains as the due consideration from Figuera. Moreover, Figuera failed to prove that Ang consented to the payment of the bills.

The CA added that Figuera's payment of ₱42,096.79 cannot be considered as a valid tender of payment or a valid consignation because it is insufficient to cover the consideration due to Ang.

As for the other issues and arguments which Figuera failed to raise before the RTC, the CA held that these issues cannot be raised for the first time on appeal.

Figuera sought reconsideration of the CA's decision which the CA denied for lack of merit in its September 28, 2012 resolution.

The Parties' Arguments

In the present petition for review, Figuera challenges the CA's decision and resolution affirming the RTC ruling.

Figuera argues that the CA committed errors of law based on the following grounds: *First*, Figuera was eager to pay the utility bills being the EIDC's new owner.

Second, Figuera had been subrogated to the rights of Ang's creditor's (*i.e.*, the Telephone Company, electric company, office space lessor, and company employees) upon payment of the utility bills even if the payment was made without Ang's knowledge. Consequently, Ang became Figuera's debtor.

Third, Figuera and Ang became debtors and creditors of one another for a sum of money that is liquidated, due, demandable, and without controversy.

Fourth, Figuera and Ang's obligations amounting to ₱107,903.21 were compensated against each other by operation of law.

Fifth, Figuera's tender of the amount of ₱42,096.79 to Ang is a valid tender of payment.

Sixth, Figuera validly consigned the amount of ₱42,096.79.

Finally, Figuera presented the foregoing issues before the RTC and did not raise them for the first time on appeal.

In her comment,[6] Ang argued that: *first*, a petition for review under Rule 45 of the Rules of Court only allows questions of law. Figuera's contention that legal subrogation and compensation took place requires proof that should have been established during the trial.

Second, Figuera admitted that the RTC was correct in ruling that there was nothing in the Deed that grants her the option to pay the utilities nor allows any deduction from the agreed consideration upon her payment of the utility bills.

Third, legal subrogation cannot take place because the situation of the parties under the Deed is not among the instances provided by law for subrogation to take place.

Fourth and last, Figuera should not be allowed to raise issues regarding legal subrogation and compensation because these were raised for the first time on appeal.

The Issue

The main issue to be resolved in this case is whether or not there was a valid tender of payment and consignation.

Our Ruling

We grant the petition and reverse the CA's ruling.

[6] *Rollo*, pp. 79-89.

The questions raised in this petition are one of law which the Court can properly review.

It is a settled rule that the Court cannot review questions of fact on a petition for review under Rule 45 of the Rules of Court. A question of fact exists when the truth or falsity of the parties' factual allegations is in dispute. A question of law, on the other hand, exists when the application of the law on the stated facts is in controversy.[7]

The parties' description of the questions raised does not determine whether these questions are of fact or of law. The true test is whether the appellate court can resolve the issue without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[8]

Contrary to Ang's allegation, the question involved in the present case is a question of law which the Court can properly pass upon. There is no dispute regarding the existence of the Deed and its consideration, and the provision that mandates Ang to pay the EIDC's bills until December 2004. Ang also did not refute Figuera's payment amounting to ₱107,903.21 to Ang's creditors and Figuera's tender of payment to Ang amounting to ₱42,096.79.

The CA can assess Figuera's contention that legal subrogation and compensation had taken place even without requiring Figuera to present further evidence. The issue on the validity of Figuera's tender of payment and consignation can be resolved through the application of the relevant laws.

The Court may properly address the questions raised even though they are raised for the first time on appeal.

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[7] *Bognot v. RRI Lending Corp.*, G.R. No. 180144, September 24, 2004, sc.judiciary.gov.ph.

[8] *Century Iron Works, Inc. v. Bañas*, G.R. No. 184116, June 19, 2013, 699 SCRA 157.

Ang contends that the CA correctly dismissed Figuera's argument that her debt amounting to ₱107,903.21 is extinguished through legal subrogation and compensation. Figuera's argument, Ang insists, was not raised before the trial court and cannot be raised for the first time on appeal.

We disagree. The Court grants to consider and resolve the issues on the application of legal subrogation and compensation, even though it was raised for the first time on appeal.

As a general rule, points of law, theories, and arguments not brought before the trial court cannot be raised for the first time on appeal and will not be considered by this Court; otherwise, a denial of the respondent's right to due process will result.[9]

In the interest of justice, however, the Court may consider and resolve issues not raised before the trial court if it is necessary for the complete adjudication of the rights and obligations of the parties, and it falls within the issues found by the parties.[10]

Thus, an appellate court is clothed with authority to review rulings even if they are not assigned as errors in the appeal in the following instances:

(a) grounds not assigned as errors but affecting jurisdiction over the subject matter;

(b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;

(c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice;

(d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;

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[9] *Tolosa v. NLRC*, 449 Phil. 271 (2003).

[10] *Trinidad v. Acapulco*, G.R. No. 147477, June 27, 2006, 493 SCRA 179.

(e) matters not assigned as errors on appeal but closely related to an error assigned; and

(f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[11]

Figuera's position falls under two of these exceptions, namely — that **the determination of the question newly raised is necessary in arriving at a just decision and complete resolution of the case,** and **that the resolution of a question properly assigned is dependent on those which were not assigned as errors on appeal.**

For the CA to rule on whether there was a valid tender of payment and consignation, it must first determine the amount that Figuera should have tendered. To do so, the appellate court must examine whether the principles of legal subrogation and compensation, as Figuera argued, should be applied.

To recall, Figuera claims that the consideration for the assignment worth ₱150,000.00 should be reduced by ₱107,903.21, representing the amount that she paid for the EIDC's utility bills. Figuera argues that her payment of the utility bills subrogated her to the rights of Ang's creditors against Ang.

Article 1291 of the New Civil Code[12] provides that the subrogation of a third person to the rights of the creditor is one of the means to modify obligations. Subrogation, sometimes referred to as substitution, is "an arm of equity that may guide or even force one to pay a debt for which an obligation was incurred but which was in whole or in part paid by another."[13]

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[11] *Mendoza v. Bautista*, G.R. No. 143666, March 18, 2005, 453 SCRA 692. See also Sec. 8, Rule 51 of the Rules of Court.

[12] Article 1291. Obligations may be modified by (1) Changing their object or principal conditions; (2) Substituting the person of the debtor; and (3) Subrogating a third person in the rights of the creditor.

[13] *Fireman's Fund Insurance Company v. Jamila & Company, Inc.*, G.R. No. L-27427, April 7, 1976, citing *Fireman's Fund Indemnity Co. vs. State Compensation Insurance Fund*, 209 Pac. 2d 55, 70 SCRA 323.

It transfers to the person subrogated the credit, with all the rights appertaining thereto, either against the debtor or against third persons.[14]

Subrogation of a third person in the rights of a creditor may either be legal or conventional.[15] There is legal subrogation when: (a) a creditor pays another preferred creditor, even without the debtor's knowledge; (b) a third person who is not interested in the obligation pays with the express or tacit approval of the debtor; and (c) a person interested in the fulfilment of the obligation pays, even without the knowledge of the debtor.[16]

In the present case, Figuera based her claim on the third type of subrogation. She claims that as the EIDC's new owner, she is interested in fulfilling Ang's obligation to pay the utility bills. Since the payment of the bills was long overdue prior to the assignment of business rights to Figuera, the failure to settle the bills would eventually result in "the disconnection of the electricity and telephone services, ejectment from the office premises, and resignation by some, if not all, of the company's employees with the possibility of subsequent labor claims for sums of money."[17] **These utilities are obviously necessary for the continuation of Figuera's business transactions.**

A person interested in the fulfilment of the obligation is one who stands to be benefited or injured in the enforcement of the obligation. The Court agrees with Figuera that **it became absolutely necessary for her to pay the bills since Ang did not do so when the obligation became due.**

We note that both the RTC and the CA held that Figuera failed to prove that Ang had consented to the payment of the EIDC bills; therefore, Figuera cannot deduct the amount she paid for the utility bills from the ₱150,000.00 consideration.

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[14] Art. 1303, NCC.

[15] Art. 1300, *id.*

[16] Art. 1302, *id.*

[17] *Rollo*, p. 14.

A clear reading, however, of Article 1302 of the New Civil Code would lead to a different conclusion. **The consent or approval of the debtor is required only if a third person who is not interested in the fulfilment of the obligation pays such. On the other hand, no such requirement exists in cases of payment by a creditor to another creditor who is preferred, and by a person interested in the fulfilment of the obligation.** Notably, Article 1302 (1) and (3) does not require the debtor's knowledge.

Therefore, legal subrogation took place despite the absence of Ang's consent to Figuera's payment of the EIDC bills. Figuera is now deemed as Ang's creditor by operation of law.

On Figuera's argument that legal compensation took place, and in effect, extinguished her obligation to Ang to the extent of the amount Figuera paid for the EIDC bills, Article 1278 of the New Civil Code is instructive.

Article 1278 of the New Civil Code states that there is compensation when two persons, in their own right, are creditors and debtors of one another. These elements must concur for legal compensation to apply: (1) each one of the debtors is bound principally, and that the debtor is at the same time a principal creditor of the other; (2) both debts consist of a sum of money, or if the things due be consumable, they be of the same kind and also of the same quality if the latter has been stated; (3) both debts are due; (4) both debts are liquidated and demandable; and (5) there be no retention or controversy over both debts commenced by third persons and communicated in due time to the debtor.[18] When all these elements are present, compensation takes effect by operation of law and extinguishes both debts to the corresponding amount, even though both parties are without knowledge of the compensation.[19] It operates even against the will of the interested parties and even without their consent.[20]

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[18] Art. 1279, NCC.

[19] Art. 1290, *id.*

[20] *BPI v. CA*, G.R. No. 116792, March 29, 1996, 255 SCRA 571.

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

First, in the assignment of business rights, Figuera stood as Ang's debtor for the consideration amounting to ₱150,000.00. Figuera, on the other hand, became Ang's creditor for the amount of ₱107,903.21 through Figuera's subrogation to the rights of Ang's creditors against the latter.

Second, both debts consist of a sum of money, which are both due, liquidated, and demandable.

Finally, neither party alleged that there was any claim raised by third persons against said obligation.

In effect, **even without the knowledge and consent of Ang or Figuera, their obligation as to the amount of ₱107,903.21 had already been extinguished**. Consequently, Figuera owes Ang the remaining due amount of ₱42,096.79.

While the RTC and the CA correctly held that there was nothing in the Deed that grants Figuera an option to pay the utility bills and to deduct the amount from the consideration, we stress that although not expressly written, laws are deemed incorporated in every contract entered within our territories. Thus, the Court reads into the Deed the provisions of law on subrogation and compensation.

With the determination of the amount of Figuera's obligation to Ang, the question left to be resolved is: *Was there a valid tender of payment and consignation?*

Tender of payment is the act of offering to the creditor what is due him, together with the demand for the creditor to accept it. To be valid, the tender of payment must be a "fusion of intent, ability, and capability to make good such offer, which must be absolute and must cover the amount due."[21]

As earlier discussed, the remaining amount due in Figuera's obligation is ₱42,096.79. **Thus, Figuera's tender of the**

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[21] *Far Eastern Bank v. Diaz Realty, Inc.*, G.R. No. 138588, August 23, 2001, 363 SCRA 659.

remaining amount to Ang is valid and Ang offered no valid justification in refusing to accept the tender of payment. Due to the creditor's refusal, without any just cause, to the valid tender of payment, the debtor is released from her obligation by the consignation of the thing or sum due. [22]

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*. The decision dated June 29, 2012 and resolution dated September 28, 2012 of the Court of Appeals in CA-G.R. CV. No. 02480 are hereby **REVERSED**.

SO ORDERED.

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

Del Castillo, J., on leave.

THIRD DIVISION

[G.R. No. 205544. June 29, 2016]

MUNICIPALITY OF CORDOVA, PROVINCE OF CEBU; THE SANGGUNIANG BAYAN OF CORDOVA; and THE MAYOR OF THE MUNICIPALITY of CORDOVA, *petitioners, vs.* **PATHFINDER DEVELOPMENT CORPORATION and TOPANGA DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER WHEN AN APPEAL, OR ANY PLAIN, SPEEDY AND ADEQUATE

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[22] Art. 1256, NCC.

REMEDY IN THE COURSE OF LAW IS AVAILABLE; EXCEPTIONS.— While there exists a settled rule precluding *certiorari* as a remedy against the final order when appeal is available, a petition for *certiorari* may be allowed when: (a) the broader interest of justice demands that *certiorari* be given due course to avoid any grossly unjust result that would otherwise befall the petitioners; and (b) the order of the RTC evidently constitutes grave abuse of discretion amounting to excess of jurisdiction. In the past, the Court has considered *certiorari* as the proper remedy despite the availability of appeal, or other remedy in the ordinary course of law. In *Francisco Motors Corporation v. Court of Appeals,* the Court has declared that "the requirement that there must be no appeal, or any plain, speedy and adequate remedy in the ordinary course of law admits of exceptions, such as: (a) when it is necessary to prevent irreparable damages and injury to a party; (b) where the trial judge capriciously and whimsically exercised his judgment; (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate, and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in case of urgency."

2. ID.; ID.; ID.; ID.: IT IS MERE INADEQUACY, NOT THE ABSENCE OF ALL OTHER LEGAL REMEDIES AND THE DANGER OF FAILURE OF JUSTICE WITHOUT THE WRIT, THAT MUST DETERMINE THE PROPRIETY OF *CERTIORARI*.— If appeal is not an adequate remedy, or an equally beneficial, or speedy remedy, the availability of appeal as a remedy cannot constitute sufficient ground to prevent or preclude a party from making use of *certiorari*. It is mere inadequacy, not the absence of all other legal remedies, and the danger of failure of justice without the writ, that must determine the propriety of *certiorari.* A remedy is said to be plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment, order, or resolution of the lower court or agency. It is understood, then, that a litigant need not resort to the less speedy remedy of appeal in order to have an order annulled and set aside for being patently void. And even assuming that *certiorari* is not the proper remedy against an assailed order, the petitioner should still not be denied the recourse because it is better to look beyond procedural requirements and to overcome the ordinary disinclination to

exercise supervisory powers in order that a void order of a lower court may be made conformable to law and justice.

3. ID.; ID.; ID.; ID.; A WRIT OF *CERTIORARI* WILL BE GRANTED WHEN THERE IS AN URGENT NEED TO PREVENT A SUBSTANTIAL WRONG OR TO DO SUBSTANTIAL JUSTICE.— [T]he instances in which *certiorari* will issue cannot be strictly defined, because to do so is to destroy the comprehensiveness and usefulness of the extraordinary writ. The wide breadth and range of the discretion of the Court are such that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*, and that in the exercise of superintending control over inferior courts, a superior court is to be guided by all the circumstances of each particular case as the ends of justice may require. Therefore, when, as in this case, there is an urgent need to prevent a substantial wrong or to do substantial justice, the writ will be granted.

4. POLITICAL LAW; CONSTITUTIONAL LAW; STATE; POWER OF EMINENT DOMAIN; REQUIREMENTS FOR A VALID EXERCISE THEREOF.— Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare. It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare. The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. Its exercise is proscribed by only two Constitutional requirements: *first*, that there must be just compensation, and *second*, that no person shall be deprived of life, liberty or property without due process of law.

5. ID.; ID.; ID.; ID.; ESSENTIALLY LEGISLATIVE IN NATURE BUT MAY BE VALIDLY DELEGATED TO LOCAL GOVERNMENT UNITS.— The power of eminent domain is essentially legislative in nature but may be validly delegated to local government units. The basis for its exercise by the Municipality of Cordova, being a local government unit, is granted under Section 19 of Republic Act 7160.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUDICIAL REVIEW OF THE EXERCISE OF THE POWER

OF EMINENT DOMAIN IS LIMITED TO THE ADEQUACY OF THE COMPENSATION, THE NECESSITY OF THE TAKING, AND THE PUBLIC USE CHARACTER OF THE PURPOSE OF THE TAKING; STAGES OF EXPROPRIATION PROCEEDINGS.— Judicial review of the exercise of the power of eminent domain is limited to the following areas of concern: (a) the adequacy of the compensation, (b) the necessity of the taking, and (c) the public use character of the purpose of the taking. Under Rule 67 of the Rules of Court, expropriation proceedings are comprised of two stages: (1) the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the surrounding facts, and (2) the determination of the just compensation for the propriety sought to be taken. The first stage ends, if not in a dismissal of the action, with an order of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for public use or purpose.

7. ID.; ID.; ID.; NO HEARING IS REQUIRED FOR THE ISSUANCE OF WRIT OF POSSESSION.— Pathfinder and Topanga contend that the trial court issued an Order of Condemnation of the properties without previously conducting a proper hearing for the reception of evidence of the parties. However, no hearing is actually required for the issuance of a writ of possession, which demands only two requirements: (a) the sufficiency in form and substance of the complaint, and (b) the required provisional deposit. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations of the complaint. Here, there is indeed a necessity for the taking of the subject properties as these would provide access towards the RORO port being constructed in the municipality. The construction of the new road will highly benefit the public as it will enable shippers and passengers to gain access to the port form the main public road or highway.

8. ID.; ID.; ID.; ID.; THE PARTY IN AN EXPROPRIATION CASE IS ENTITLED TO A WRIT OF POSSESSION AS A MATTER OF RIGHT AND THE ISSUANCE OF THE WRIT BECOMES MINISTERIAL, UPON COMPLIANCE WITH THE REQUIREMENTS OF FILING A COMPLAINT FOR

EXPROPRIATION SUFFICIENT IN FORM AND SUBSTANCE, AND THE DEPOSIT OF THE AMOUNT EQUIVALENT TO FIFTEEN PERCENT (15%) OF THE FAIR MARKET VALUE OF THE PROPERTY TO BE EXPROPRIATED BASED ON ITS CURRENT TAX DECLARATION.— The requisites for authorizing immediate entry are the filing of a complaint for expropriation sufficient in form and substance, and the deposit of the amount equivalent to fifteen percent (15%) of the fair market value of the property to be expropriated based on its current tax declaration. Upon compliance with these requirements, the petitioner in an expropriation case is entitled to a writ of possession as a matter of right and the issuance of the writ becomes ministerial. Indubitably, since the complaint was found to have been sufficient in form and substance and the required deposit had been duly complied with, the issuance of the writ had aptly become ministerial on the part of the RTC. It cannot be said, therefore, that the RTC committed grave abuse of discretion when it found the taking of the properties of Topanga and Pathfinder proper.

APPEARANCES OF COUNSEL

Ritchie P. Capahi for petitioners.
Goering A. Paderanga, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* which petitioners Municipality of Cordova, Province of Cebu, the Sangguniang Bayan of Cordova, and the Mayor of the Municipality of Cordova filed seeking to reverse the Court of Appeals (*CA*) Decision[1] dated March 28, 2012 in CA-G.R. SP No. 06193 and to order the trial court to proceed to the second stage of the proceedings for the determination of the proper valuation of the expropriated properties.

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[1] Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Pampio A. Abarintos, and Ramon Paul L. Hernando, concurring; *rollo*, pp. 11-21.

The procedural and factual antecedents of the case, as borne by the records, are as follows:

Respondent Pathfinder Development Corporation (*Pathfinder*) is the owner of real properties in Alegria, Cordova, Cebu: (1) Lot No. 692 covered by Tax Declaration (*TD*) No. 190002-02765 with an area of 1,819 square meters (*sq.m.*), and (2) part of Lot No. 697 covered by Transfer Certificate of Title (*TCT*) No. T-95706 and TD No. 190002-02902 with an area of 50,000 sq.m., while respondent Topanga Development Corporation (*Topanga*) owns Lot No. 691 covered by TCT No. 109337 and TD No. 190002-02761 with an area of 29,057 sq.m., and part of Lot No. 697 covered by TD No. 190002-02901 with an area of 15,846 sq.m.

On February 8, 2011, petitioner Sangguniang Bayan of the Municipality of Cordova enacted Ordinance No. 003-2011 expropriating 836 sq.m. of Lot No. 692, 9,728 sq.m. of Lot No. 697, 3,898 sq.m. of Lot No. 691, and 1,467 sq.m. of Lot No. 693 owned by one Eric Ng Mendoza, for the construction of a road access from the national highway to the municipal roll-on/roll-off (*RORO*) port. It likewise authorized petitioner Mayor of Cordova (*the Mayor*) to initiate and execute the necessary expropriation proceedings.

On February 17, 2011, the Mayor of Cordova filed an expropriation complaint against the owners of the properties. Later, the Mayor filed a motion to place the municipality in possession of the properties sought to be expropriated.

On March 4, 2011, Pathfinder and Topanga filed an action for Declaration of Nullity of the Expropriation Ordinance before the Regional Trial Court (*RTC*) of Mandaue City, Branch 56, claiming that no offer to buy addressed to them was shown or attached to the expropriation complaint, thereby rendering the Ordinance constitutionally infirm for being in violation of their right to due process and equal protection. On July 13, 2011, they likewise filed an Urgent Motion to Suspend Proceedings based on prejudicial question in the case for the declaration of nullity of the Ordinance.

On August 12, 2011, the Lapu-Lapu RTC, Branch 27 issued an Order[2] denying the corporations' motion for suspension of the proceedings and granting the issuance of a Writ of Possession in favor of the municipality. Pathfinder and Topanga moved for reconsideration, but the same was denied. Hence, they elevated the case to the CA via a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court.

On March 28, 2012, the CA reversed the RTC, thus:

> **WHEREFORE**, the petition is hereby **GRANTED**. The Orders issued by the Regional Trial Court, 7th Judicial Region, Branch 53 and Branch 27, Lapu-Lapu City in Civil Case No. R-LLP-11-05959-CV, dated May 26, 2011, August 12, 2011 and August 22, 2011, are **REVERSED, [ANNULLED] and SET ASIDE.**
>
> The case is remanded to the Regional Trial Court, Branch 27, Lapu-Lapu City for the reception of evidence *de novo* on the determination of the authority of the respondent municipality to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. No pronouncement as to costs.
>
> **SO ORDERED**.[3]

Petitioners Municipality, Sangguniang Bayan, and Mayor of Cordova then filed a Motion for Reconsideration, but the same proved to be futile.

Hence, this petition.

The main issue before the Court is whether or not the CA committed a reversible error in giving due course to the petition under Rule 65.

The petition deserves merit.

The municipality argues that the CA seriously erred when it allowed the companies' Petition for *Certiorari* despite the available remedy of appeal under Rule 67 of the Rules of Court.

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[2] *Id.* at 143-145.

[3] *Id.* at 20-21.

While there exists a settled rule precluding *certiorari* as a remedy against the final order when appeal is available, a petition for *certiorari* may be allowed when: (a) the broader interest of justice demands that *certiorari* be given due course to avoid any grossly unjust result that would otherwise befall the petitioners; and (b) the order of the RTC evidently constitutes grave abuse of discretion amounting to excess of jurisdiction. In the past, the Court has considered *certiorari* as the proper remedy despite the availability of appeal, or other remedy in the ordinary course of law. In *Francisco Motors Corporation v. Court of Appeals*,[4] the Court has declared that "the requirement that there must be no appeal, or any plain, speedy and adequate remedy in the ordinary course of law admits of exceptions, such as: (a) when it is necessary to prevent irreparable damages and injury to a party; (b) where the trial judge capriciously and whimsically exercised his judgment; (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate, and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in case of urgency."[5]

If appeal is not an adequate remedy, or an equally beneficial, or speedy remedy, the availability of appeal as a remedy cannot constitute sufficient ground to prevent or preclude a party from making use of *certiorari*. It is mere inadequacy, not the absence of all other legal remedies, and the danger of failure of justice without the writ, that must determine the propriety of *certiorari*. A remedy is said to be plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment, order, or resolution of the lower court or agency. It is understood, then, that a litigant need not resort to the less speedy remedy of appeal in order to have an order annulled and set aside for being patently void. And even assuming that *certiorari* is not the proper remedy against an assailed order, the petitioner should still not be denied the recourse because

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[4] 736 Phil. 736, 748 (2006).

[5] *Heirs of Spouses Reterta, et al. v. Spouses Mores and Lopez,* 671 Phil. 346, 358-359 (2011).

it is better to look beyond procedural requirements and to overcome the ordinary disinclination to exercise supervisory powers in order that a void order of a lower court may be made conformable to law and justice.[6]

Verily, the instances in which *certiorari* will issue cannot be strictly defined, because to do so is to destroy the comprehensiveness and usefulness of the extraordinary writ. The wide breadth and range of the discretion of the Court are such that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*, and that in the exercise of superintending control over inferior courts, a superior court is to be guided by all the circumstances of each particular case as the ends of justice may require. Therefore, when, as in this case, there is an urgent need to prevent a substantial wrong or to do substantial justice, the writ will be granted.[7]

The foregoing notwithstanding, the CA erred when it held that the RTC acted with grave abuse of discretion.

Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare. It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare.[8] The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. Its exercise is proscribed by only two Constitutional requirements: *first*, that there must be just compensation, and *second*, that no person shall be deprived of life, liberty or property without due process of law.[9]

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[6] *Id.* at 359-360.

[7] *Id.* at 360.

[8] *Heirs of Suguitan v. City of Mandaluyong*, 384 Phil. 677, 687 (2000).

[9] *Metropolitan Cebu Water District (MCWD) v. J. King and Sons Company, Inc.*, 603 Phil. 471, 480 (2009).

The power of eminent domain is essentially legislative in nature but may be validly delegated to local government units. The basis for its exercise by the Municipality of Cordova, being a local government unit, is granted under Section 19 of Republic Act 7160, to wit:

> Sec. 19. *Eminent Domain*. — A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

Judicial review of the exercise of the power of eminent domain is limited to the following areas of concern: (a) the adequacy of the compensation, (b) the necessity of the taking, and (c) the public use character of the purpose of the taking.[10]

Under Rule 67 of the Rules of Court, expropriation proceedings are comprised of two stages: (1) the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the surrounding facts, and (2) the determination of the just compensation for the property sought to be taken. The first stage ends, if not in a dismissal of the action, with an order of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for public use or purpose.[11]

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[10] *De la Paz Masikip v. The City of Pasig*, 515 Phil. 364, 374 (2006).

[11] *Heirs of Suguitan v. City of Mandaluyong*, *supra* note 8, at 691.

Pathfinder and Topanga contend that the trial court issued an Order of Condemnation of the properties without previously conducting a proper hearing for the reception of evidence of the parties. However, no hearing is actually required for the issuance of a writ of possession, which demands only two requirements: (a) the sufficiency in form and substance of the complaint, and (b) the required provisional deposit. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations of the complaint.[12] Here, there is indeed a necessity for the taking of the subject properties as these would provide access towards the RORO port being constructed in the municipality. The construction of the new road will highly benefit the public as it will enable shippers and passengers to gain access to the port from the main public road or highway.

The requisites for authorizing immediate entry are the filing of a complaint for expropriation sufficient in form and substance, and the deposit of the amount equivalent to fifteen percent (15%) of the fair market value of the property to be expropriated based on its current tax declaration. Upon compliance with these requirements, the petitioner in an expropriation case is entitled to a writ of possession as a matter of right[13] and the issuance of the writ becomes ministerial.[14] Indubitably, since the complaint was found to have been sufficient in form and substance and the required deposit had been duly complied with, the issuance of the writ had aptly become ministerial on the part of the RTC. It cannot be said, therefore, that the RTC committed grave abuse of discretion when it found the taking of the properties of Topanga and Pathfinder proper.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is **GRANTED**. The Decision of the Court of Appeals

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[12] *The City of Iloilo v. Judge Legaspi*, 486 Phil. 474, 490 (2004).

[13] *Metropolitan Cebu Water District (MCWD) v. J. King and Sons Company, Inc.*, *supra* note 9, at 488.

[14] *The City of Iloilo v. Judge Legaspi, supra* note 12, at 487.

dated March 28, 2012 in CA-G.R. SP No. 06193 is hereby **REVERSED** and **SET ASIDE**. The Orders of the Regional Trial Court of Lapu-Lapu, Branches 53 and 27, in Civil Case No. R-LLP-11-05959-CV, dated May 26, 2011, August 12, 2011, and August 22, 2011, are hereby **REINSTATED**. The case is **REMANDED** to the trial court for further proceedings.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 206294. June 29, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CERILO "ILOY" ILOGON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS; PROVED.— The law, in Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, defines and punishes rape x x x. 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. The absence of free consent is conclusively presumed when the victim is below the age of twelve (12). Sexual congress with a girl under twelve (12) years old is always rape. 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 should prove: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse

between the accused and the complainant. x x x. The prosecution presented proof of the required elements of statutory rape.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; 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.— Of primary importance in rape cases 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. 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.

3. ID.; CRIMINAL PROCEDURE; PRESENTATION OF EVIDENCE; CHILDREN OF TENDER YEARS MAY BE ASKED LEADING QUESTIONS TO ALLOW THEM TO GIVE RELIABLE AND COMPLETE EVIDENCE, MINIMIZE TRAUMA TO CHILDREN, ENCOURAGE THEM TO TESTIFY IN LEGAL PROCEEDINGS AND FACILITATE THE ASCERTAINMENT OF TRUTH.— Some leading questions were warranted given the circumstances. A child of tender years may be asked leading questions under Section 10(c), Rule 132 of the Rules of Court. Section 20 of the 2000 Rules on Examination of a Child Witness also provides that the court may allow leading questions in all stages of examination of a child if the same will further the interests of justice. This rule was formulated to allow children to give reliable and complete evidence, minimize trauma to children, encourage them to testify in legal proceedings and facilitate the ascertainment of truth.

4. ID.; ID.; PROSECUTION OF RAPE CASES; FAILURE TO PRESENT THE PHYSICIAN IN COURT NOT FATAL, AS MEDICAL EXAMINATIONS ARE MERELY CORROBORATIVE IN CHARACTER AND NOT AN INDISPENSABLE ELEMENT FOR CONVICTION IN RAPE.— The medical report of the physician confirms the truthfulness of the charge.

While indeed the physician was not presented in court, it bears underscoring however that medical examinations are merely corroborative in character and not an indispensable element for conviction in rape. Primordial is the clear, unequivocal and credible testimony of private complainant which the Court, together with both the trial and appellate courts, so finds.

5. ID.; EVIDENCE; DEFENSE OF DENIAL; IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, THE DEFENSE OF DENIAL MERITS NO WEIGHT IN LAW AND CANNOT BE GIVEN GREATER EVIDENTIARY VALUE THAN THE TESTIMONY OF CREDIBLE WITNESSES WHO TESTIFIED ON AFFIRMATIVE MATTERS.— The Court rejects appellant's defense of denial. Being a negative defense, if the defense of denial is not substantiated by clear and convincing evidence, as is the case herein, it merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters. It has been ruled that between categorical testimonies that ring of truth on one hand and bare denial on the other, the former must prevail. Positive identification of the appellant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial. Significantly, one of the defense witnesses, Merlinda Gongob, confessed her dislike of and ill feelings towards BBB, reason to consider her not an unbiased witness.

6. ID.; ID.; CREDIBILITY OF WITNESSES; DELAY IN REPORTING THE RAPE INCIDENT DOES NOT AFFECT THE TRUTHFULNESS OF THE CHARGE IN THE ABSENCE OF OTHER CIRCUMSTANCES THAT SHOW THE SAME TO BE A MERE CONCOCTION OR IMPELLED BY SOME ILL MOTIVE.— [A]lthough the rape incident in the case at bar was reported to the police eighteen (18) days after, such delay does not affect the truthfulness of the charge in the absence of other circumstances that show the same to be a mere concoction or impelled by some ill motive.

7. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; PROPER PENALTY.— Statutory rape, penalized under Article 266 A(1), paragraph (d) of the Revised Penal Code, as amended by Republic Act 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. In the instant case, as the victim, AAA is below seven (7) years old, specifically six (6) years old at the time of the crime, the imposable penalty is death. The passage of Republic Act No. 9346 debars the imposition of the death penalty without declassifying the crime of qualified rape as heinous. Thus, we affirm the penalties imposed by the RTC and the Court of Appeals. However, in view of Republic Act No. 9346, the penalty of *reclusion perpetua* should be imposed without the eligibility of parole.

8. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The award of damages on the other hand should be modified and increase as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence. Further, the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

Before us is an appeal from the Decision[1] of the Court of Appeals, Cagayan de Oro City, Twenty-Second Division, in CA-G.R. CR-HC No. 00837-MIN dated 24 February 2012, which dismissed the appeal of appellant Cerilo "Iloy" Ilogon and affirmed with modification the Judgment[2] dated 12 May 2010 of the Regional Trial Court (RTC) of Cagayan de Oro City,

[1] *Rollo*, pp. 3-19; Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Edgardo A. Camello and Pedro B. Corales concurring.

[2] Records, pp. 112-117; Presided by Presiding Judge Jose L. Escobido.

Branch 37, in Criminal Case No. 2003-324, finding appellant guilty beyond reasonable doubt of the crime of Qualified Rape.

The real name and identity of the rape victim, as well as the members of her immediate family, including other identifying information, shall not be disclosed pursuant to the Court's ruling in *People v. Cabalquinto*.[3] We shall refer to the rape victim as AAA, her mother as BBB. The rest of AAA's relatives shall be called by their initials.

The prosecution established that in the afternoon of 15 December 2002, six (6) year-old AAA was at her aunt L's house, playing with her cousins J and P. They climbed up the roof of the house where AAA was left behind crying because she could not go down after the others. Appellant, nicknamed "Iloy" and her aunt's neighbor, helped AAA by carrying her down but towards his own house. There, appellant removed his clothes, covered AAA's mouth, kissed her and had carnal knowledge of her. AAA felt pain and cried. Afterwards, nearing nighttime, AAA ran away and went home.[4]

Around nine o'clock in the evening of the same day, AAA complained to her mother of bodily ache and pain and that she could not urinate as her female organ was painful. BBB examined and found it to be reddish in appearance. The next day, BBB found out about the incident from AAA's cousins J and P which AAA confirmed. BBB searched for appellant to no avail. BBB thus reported the incident to the police and thereafter, BBB brought AAA to the Northern Mindanao Medical Center (NMMC) for physical examination.[5]

AAA was physically examined by Dr. Harry L. Rodriguez, Medical Officer III of NMMC who reported in the Living Case Report that AAA's hymen had healed lacerations at three o'clock and six o'clock positions.[6]

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[3] 533 Phil. 703 (2006).

[4] TSN, 11 May 2006, pp. 1-9 and 15-16.

[5] TSN, 1 February 2006, pp. 9-15; TSN, 11 May 2006, p. 9.

[6] Records, p. 75.

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

> That on or about December 15, 2002, at x x x, x x x, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously committed an act of sexual assault upon AAA, a 6-year old minor, by inserting his penis into her genital, against her will, thereby causing the following on the genital of AAA, to wit:
>
> *Hymen — with healed laceration at 3 & 6 o'clock positions*;
>
> Contrary to and in violation of Article 266-A of the Revised Penal Code.[7]

Upon arraignment, appellant pleaded not guilty to the crime charged. During pre-trial, the parties stipulated, among others, that: (1) the nickname of the accused is Iloy; (2) AAA and appellant are neighbors; (3) AAA is the daughter of BBB and that (4) AAA is a minor.[8]

Appellant interposed the defense of denial. He admitted having helped carry AAA down the roof but denied the rape charge.[9] Three (3) neighbors were presented as witnesses to corroborate appellant's story.[10] Appellant's wife likewise took the witness stand to support her husband's version of the incident.[11]

After trial, the RTC on 12 May 2010 found appellant guilty beyond reasonable doubt of qualified rape. The RTC found no reason not to lend credence to the positive and consistent testimony of AAA. The dispositive portion of the RTC Decision reads:

> WHEREFORE, the [c]ourt finds accused Cerilo "Iloy" Ilogon guilty beyond reasonable doubt of the crime of rape defined and penalized

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[7] *Id.* at 3.

[8] *Id.* at 28.

[9] TSN, 5 May 2008, pp. 4-6.

[10] TSNs, 16 October 2006, 14 December 2006 and 5 March 2008.

[11] TSN, 24 June 2008.

under Article 266-A and 266-B of the Revised Penal Code, as amended, and the said accused is hereby sentenced to suffer the penalty of reclusion perpetua. Moreover, the accused is sentenced to pay the victim the sum of FIFTY THOUSAND PESOS (P50,000.00) by way of moral damages and another sum of FIFTY THOUSAND PESOS (₱50,000.00) by way of civil indemnity.[12]

The Court of Appeals affirmed the RTC's evaluation of AAA's credibility and found no misapprehension or misappreciation of facts. The Court of Appeals however modified the section on damages, to wit:

WHEREFORE, the May 12, 2010 Judgment rendered by the Regional Trial Court[,] Branch 37, Cagayan de Oro City in Criminal Case No. 2003-324 finding accused-appellant Cerilo Ilogon guilty beyond reasonable doubt of Rape and sentencing him to suffer the penalty of reclusion perpetua with all the accessory penalties is **AFFIRMED** with **MODIFICATION** as to damages.

Accused-appellant is **ORDERED** to pay the victim the sum of:

1. PhP75,000 as moral damages;
2. Civil Indemnity of ₱75,000.00; and
3. Exemplary damages of ₱30,000.00 with simple interest on the above damages accruing at the rate of six percent (6%) per annum from the finality of this decision until fully paid.[13]

Now before the Court for final review, we affirm appellant's conviction.

The law, in Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353,[14] defines and punishes rape as follows:

Article 266-A. *Rape; When and How committed.* — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

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[12] Records, p. 117.

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

[14] Effective 22 October 1997.

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 death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

x x x x x x x x x

5) When the victim is a child below seven (7) years old;

x x x x x x x x x

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. The absence of free consent is conclusively presumed when the victim is below the age of twelve (12). Sexual congress with a girl under twelve (12) years old is always rape. 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 should prove: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.[15]

Of primary importance in rape cases is the credibility of the victim's testimony because the accused may be convicted solely on said testimony provided it is credible, natural, convincing

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[15] *People v. Mingming*, 594 Phil. 170, 185-186 (2008); See also *People v. Sabal*, 734 Phil. 742, 745 (2014).

and consistent with human nature and the normal course of things.[16] 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.[17]

The prosecution presented proof of the required elements of statutory rape. AAA's age, only six (6) years old at the time of the crime, was evidenced by her *Birth Certificate*;[18] she was born on 19 May 1996, while the alleged rape was committed on 15 December 2002. AAA, as a ten (10) year old, positively identified in court appellant as the perpetrator of the crime.[19] AAA, in open court, also related the painful ordeal of her sexual abuse by appellant down to the sordid details. The trial court, which had the better position to evaluate and appreciate testimonial evidence found AAA's testimony to be more credible than that of the defense.[20] We quote the pertinent portions of AAA's testimony:

Q: By the way do you know Cerilo Ilogon or Iloy?
A: Yes, Ma'am.

Q: And are you neighbors with "Iloy"?
A: Yes, Ma'am.

x x x x x x x x x

Q: Where were you when Iloy removed his clothes in his house?
A: I was on the floor.

Q: On the floor of Iloy's house?
A: Yes, Ma'am.

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[16] *People v. Pascua*, 462 Phil. 245, 252 (2003).

[17] *People v. Aguilar*, 643 Phil. 643, 654 (2010) citing *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

[18] Records, p. 74; TSN, 1 February 2006, pp. 3-4.

[19] TSN, 11 May 2006, pp. 9-10.

[20] Records, pp. 116-117.

Q: And when Iloy removed his clothes and you were on the floor, what did he do to you if any?
A: He covered my mouth.

Q: After he covered your mouth, what did he do next?
A: He kissed my mouth.

x x x x x x x x x

Q: What did he use to prick your vagina AAA?
A: His penis.

Q: Did you see Iloy used (sic) his penis to prick your vagina [AAA]?
A: Yes, Ma'am.

x x x x x x x x x

Q: When Iloy pricked your vagina with his penis what did you feel?
A: I felt pain.

Q: And considering that you felt pain, didn't you shout?
A: But he covered my mouth.

Q: And after he pricked your vagina with his penis, what if any did Iloy do?
A: He also inserted his finger into my vagina.

Q: What did you feel when Iloy directed his finger into your vagina?
A: It's Painful.

Q: And did you cry because of the pain?
A: Yes, Ma'am.[21]

Some leading questions were warranted given the circumstances. A child of tender years may be asked leading questions under Section 10 (c), Rule 132 of the Rules of Court. Section 20 of the 2000 Rule on Examination of a Child Witness also provides that the court may allow leading questions in all stages of examination of a child if the same will further the interests of justice. This rule was formulated to allow children

[21] TSN, 11 May 2006, pp. 6-8.

to give reliable and complete evidence, minimize trauma to children, encourage them to testify in legal proceedings and facilitate the ascertainment of truth.[22]

The medical report of the physician confirms the truthfulness of the charge.[23] While indeed the physician was not presented in court, it bears underscoring however that medical examinations are merely corroborative in character and not an indispensable element for conviction in rape. Primordial is the clear, unequivocal and credible testimony of private complainant which the Court, together with both the trial and appellate courts, so finds.[24]

The Court rejects appellant's defense of denial. Being a negative defense, if the defense of denial is not substantiated by clear and convincing evidence, as is the case herein, it merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[25] It has been ruled that between categorical testimonies that ring of truth on one hand and bare denial on the other, the former must prevail. Positive identification of the appellant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[26] Significantly, one of the defense witnesses, Merlinda Gongob, confessed her dislike of and ill feelings towards BBB, reason to consider her not an unbiased witness.[27]

Further, although the rape incident in the case at bar was reported to the police eighteen (18) days after, such delay does not affect the truthfulness of the charge in the absence of other

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[22] *People v. Ugos*, 586 Phil. 765, 772-773 (2008).

[23] Records, p. 75.

[24] See *People v. Lerio*, 381 Phil. 80, 88 (2000).

[25] See *People v. Tagana*, 468 Phil. 784, 807 (2004).

[26] *Id.* at 807-808.

[27] TSN, 14 December 2006, pp. 12-13.

circumstances that show the same to be a mere concoction or impelled by some ill motive.[28]

In sum, the prosecution was able to establish appellant's guilt of the crime charged beyond reasonable doubt.

Statutory rape, penalized under Article 266 A (1), paragraph (d) of the Revised Penal Code, as amended by Republic Act 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. In the instant case, as the victim, AAA is below seven (7) years old, specifically six (6) years old at the time of the crime, the imposable penalty is death. The passage of Republic Act No. 9346 debars the imposition of the death penalty without declassifying the crime of qualified rape as heinous. Thus, we affirm the penalties imposed by the RTC and the Court of Appeals.[29] However, in view of Republic Act No. 9346, the penalty of *reclusion perpetua* should be imposed without the eligibility of parole.

The award of damages on the other hand should be modified and increased as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence.[30] Further, the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.[31]

WHEREFORE, premises considered, the Decision dated 24 February 2012 of the Court of Appeals of Cagayan de Oro

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[28] *People v. Sarcia*, 615 Phil. 97, 117 (2009).

[29] Pursuant to Section 3 of R.A. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) which states that:

SEC. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[30] *People v. Gambao*, 718 Phil. 507 (2013).

[31] *People v. Vitero*, 708 Phil. 49, 65 (2013).

City, Twenty-Second Division, in CA-G.R. CR-HC No. 00837-MIN, finding appellant Cerilo "Iloy" Ilogon guilty beyond reasonable doubt of the crime of qualified rape in Criminal Case No. 2003-324, is hereby **AFFIRMED with MODIFICATIONS** that appellant is not eligible for parole. Appellant is also **ORDERED** to pay the private offended party as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206484. June 29, 2016]

DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), *petitioner, vs.* **SPOUSES VICENTE ABECINA and MARIA CLEOFE ABECINA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; GENERAL PROVISIONS; DOCTRINE OF STATE IMMUNITY; THE STATE MAY NOT BE SUED WITHOUT ITS CONSENT, AS THERE CAN BE NO LEGAL RIGHT AGAINST THE

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[*] Additional Member per Raffle dated 13 June 2016.

AUTHORITY WHICH MAKES THE LAW ON WHICH THE RIGHT DEPENDS, BUT THE STATE IMMUNITY RESTRICTIVELY EXTENDS ONLY TO THE STATE'S SOVEREIGN AND GOVERNMENTAL ACTS.— The State may not be sued without its consent. This fundamental doctrine stems from the principle that there can be no legal right against the authority which makes the law on which the right depends. This generally accepted principle of law has been explicitly expressed in both the 1973 and the present Constitutions. But as the principle itself implies, the doctrine of state immunity is not absolute. The State may waive its cloak of immunity and the waiver may be made expressly or by implication. Over the years, the State's participation in economic and commercial activities gradually expanded beyond its sovereign function as regulator and governor. The evolution of the State's activities and degree of participation in commerce demanded a parallel evolution in the traditional rule of state immunity. Thus, it became necessary to distinguish between the State's sovereign and governmental acts (*jure imperii*) and its private, commercial, and propriety acts (*jure gestionis*). Presently, state immunity restrictively extends only to acts *jure imperii* while acts *jure gestionis* are considered as a waiver of immunity.

2. ID.; ID.; ID.; LIMITATIONS; THE DOCTRINE OF STATE IMMUNITY CANNOT SERVE AS AN INSTRUMENT FOR PERPETRATING AN INJUSTICE TO A CITIZEN.— The DOTC encroached on the respondents' properties when it constructed the local telephone exchange in Daet, Camarines Norte. The exchange was part of the RTDP pursuant to the National Telephone Program. We have no doubt that when the DOTC constructed the encroaching structures and subsequently entered into the FLA with Digitel for their maintenance, it was carrying out a sovereign function. Therefore, we agree with the DOTC's contention that these are acts *jure imperii* that fall within the cloak of state immunity. However, as the respondents repeatedly pointed out, this Court has long established in *Ministerio v. CFI, Amigable v. Cuenca,* the 2010 case *Heirs of Pidacan v. ATO,* and more recently in *Vigilar v. Aquino* that the doctrine of state immunity cannot serve as an instrument for perpetrating an injustice to a citizen. The Constitution identifies the limitations to the awesome and near-limitless powers of the State. Chief among these limitations are the

principles that no person shall be deprived of life, liberty, or property without due process of law and that private property shall not be taken for public use without just compensation. These limitations are enshrined in no less than the Bill of Rights that guarantees the citizen protection from abuse by the State.

3. ID.; ID.; ID.; THE GOVERNMENT AGENCY'S ENTRY INTO AND TAKING OF POSSESSION OF PRIVATE PROPERTY FOR PUBLIC USE AMOUNTS TO AN IMPLIED WAIVER OF ITS GOVERNMENTAL IMMUNITY FROM SUIT.— [O]ur laws require that the State's power of eminent domain shall be exercised through expropriation proceedings in court. Whenever private property is taken for public use, it becomes the ministerial duty of the concerned office or agency to initiate expropriation proceedings. By necessary implication, the filing of a complaint for expropriation is a waiver of State immunity. If the DOTC had correctly followed the regular procedure upon discovering that it had encroached on the respondents' property, it would have initiated expropriation proceedings instead of insisting on its immunity from suit. The petitioners would not have had to resort to filing its complaint for reconveyance. As this Court said in *Ministerio*: It is unthinkable then that precisely because there was a failure to abide by what the law requires, the government would stand to benefit. It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were to be maintained. It is not too much to say that **when the government takes any property for public use, which is conditioned upon the payment of just compensation, to be judicially ascertained, it makes manifest that it submits to the jurisdiction of a court.** There is no thought then that the doctrine of immunity from suit could still be appropriately invoked. We hold, therefore, that the Department's entry into and taking of possession of the respondents' property amounted to an implied waiver of its governmental immunity from suit.

4. CIVIL LAW; CIVIL CODE OF THE PHILIPPINES; OWNERSHIP; BUILDER IN GOOD FAITH; ABSENT PROOF THAT THE PETITIONER'S MISTAKE WAS MADE IN BAD FAITH, ITS CONSTRUCTION IS PRESUMED TO HAVE BEEN MADE IN GOOD FAITH; THUS UNWARRANTING THE FORFEITURE OF THE

IMPROVEMENTS IN FAVOR OF THE RESPONDENTS.— [W]e find that the CA erred when it affirmed the RTC's decision without deleting the forfeiture of the improvements made by the DOTC through Digitel. Contrary to the RTC's findings, the DOTC was not a builder in bad faith when the improvements were constructed. The CA itself found that the Department's encroachment over the respondents' properties was a result of a mistaken implementation of the donation from the municipality of Jose Panganiban. Good faith consists in the belief of the builder that the land he is building on is his and [of] his ignorance of any defect or flaw in his title. While the DOTC later realized its error and admitted its encroachment over the respondents' property, there is no evidence that it acted maliciously or in bad faith when the construction was done. Article 527 of the Civil Code presumes good faith. Without proof that the Department's mistake was made in bad faith, its construction is presumed to have been made in good faith. Therefore, the forfeiture of the improvements in favor of the respondent spouses is unwarranted.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Rolando A. Vergara and *Dominador I. Ferrer, Jr.* for respondents.

D E C I S I O N

BRION, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the **March 20, 2013** decision of the Court of Appeals (*CA*) in **CA-G.R. CV No. 93795**[1] affirming the decision of the Regional Trial Court (*RTC*) of Daet, Camarines Norte, Branch 39, in **Civil Case No. 7355.**[2] The RTC ordered the Department of Transportation and Communications (*DOTC*) to vacate the

[1] Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Rebecca De Guia-Salvador and Samuel H. Gaerlan.

[2] Penned by Judge Winston S. Racoma.

respondents' properties and to pay them actual and moral damages.

ANTECEDENTS

Respondent spouses Vicente and Maria Cleofe Abecina (*respondents/spouses Abecina*) are the registered owners of five parcels of land in Sitio Paltik, Barrio Sta. Rosa, Jose Panganiban, Camarines Norte. The properties are covered by Transfer Certificates of Title (*TCT*) Nos. T-25094, T-25095, T-25096, T-25097, and T-25098.[3]

In February 1993, the DOTC awarded Digitel Telecommunications Philippines, Inc. (*Digitel*) a contract for the management, operation, maintenance, and development of a Regional Telecommunications Development Project (*RTDP*) under the National Telephone Program, Phase I, Tranche 1 (*NTPI-1*).[4]

The DOTC and Digitel subsequently entered into several Facilities Management Agreements (*FMA*) for Digitel to manage, operate, maintain, and develop the RTDP and NTPI-1 facilities comprising local telephone exchange lines in various municipalities in Luzon. The FMAs were later converted into Financial Lease Agreements (*FLA*) in 1995.

Later on, the municipality of Jose Panganiban, Camarines Norte, donated a one thousand two hundred (*1,200*) square-meter parcel of land to the DOTC for the implementation of the RDTP in the municipality. However, the municipality erroneously included portions of the respondents' property in the donation. Pursuant to the FLAs, Digitel constructed a telephone exchange on the property which encroached on the properties of the respondent spouses.[5]

Sometime in the mid-1990s, the spouses Abecina discovered Digitel's occupation over portions of their properties. They

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[3] *Rollo*, p. 47.

[4] *Id.* at 10.

[5] *Id.* at 12, 34.

required Digitel to vacate their properties and pay damages, but the latter refused, insisting that it was occupying the property of the DOTC pursuant to their FLA.

On April 29, 2003, the respondent spouses sent a final demand letter to both the DOTC and Digitel to vacate the premises and to pay unpaid rent/damages in the amount of one million two hundred thousand pesos (₱1,200,000.00). Neither the DOTC nor Digitel complied with the demand.

On September 3, 2003, the respondent spouses filed an *accion publiciana* complaint[6] against the DOTC and Digitel for recovery of possession and damages. The complaint was docketed as **Civil Case No. 7355.**

In its answer, the DOTC claimed immunity from suit and ownership over the subject properties.[7] Nevertheless, during the pre-trial conference, the DOTC admitted that the Abecinas were the rightful owners of the properties and opted to rely instead on state immunity from suit.[8]

On March 12, 2007, the respondent spouses and Digitel executed a Compromise Agreement and entered into a Contract of Lease. The RTC rendered a partial decision and approved the Compromise Agreement on March 22, 2007.[9]

On May 20, 2009, the RTC rendered its decision against the DOTC.[10] It brushed aside the defense of state immunity. Citing *Ministerio v. Court of First Instance*[11] and *Amigable v. Cuenca*,[12] it held that government immunity from suit could not be used as an instrument to perpetuate an injustice on a citizen.[13]

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6 *Id.* at 61.

7 *Id.* at 46.

8 *Id.* at 47.

9 *Id.* at 67.

10 *Id.* at 46.

11 148-B Phil. 474, 480 (1971).

12 150 Phil. 422, 425 (1972).

13 *Rollo*, p. 48.

The RTC held that as the lawful owners of the properties, the respondent spouses enjoyed the right to use and to possess them — rights that were violated by the DOTC's unauthorized entry, construction, and refusal to vacate. The RTC (1) ordered the Department — as a builder in bad faith — to forfeit the improvements and vacate the properties; and (2) awarded the spouses with ₱1,200,000.00 as actual damages, ₱200,000.00 as moral damages, and ₱200,000.00 as exemplary damages plus attorney's fees and costs of suit.

The DOTC elevated the case to the CA arguing: (1) that the RTC never acquired jurisdiction over it due to state immunity from suit; (2) that the suit against it should have been dismissed after the spouses Abecina and Digitel executed a compromise agreement; and (3) that the RTC erred in awarding actual, moral, and exemplary damages against it.[14] The appeal was docketed as **CA-G.R. CV No. 93795.**

On March 20, 2013, the CA affirmed the RTC's decision but deleted the award of exemplary damages. The CA upheld the RTC's jurisdiction over cases for *accion publiciana* where the assessed value exceeds ₱20,000.00.[15] It likewise denied the DOTC's claim of state immunity from suit, reasoning that the DOTC removed its cloak of immunity after entering into a proprietary contract — the Financial Lease Agreement with Digitel.[16] It also adopted the RTC's position that state immunity cannot be used to defeat a valid claim for compensation arising from an unlawful taking without the proper expropriation proceedings.[17] The CA affirmed the award of actual and moral damages due to the DOTC's neglect to verify the perimeter of the telephone exchange construction but found no valid justification for the award of exemplary damages.[18]

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[14] *Id.* at 37.

[15] ₱50,000.00 if filed in Metro Manila.

[16] *Rollo,* p. 40.

[17] *Id.* at 41.

[18] *Id.* at 43.

On April 16, 2013, the DOTC filed the present petition for review on *certiorari.*

THE PARTIES' ARGUMENTS

The DOTC asserts that its Financial Lease Agreement with Digitel was entered into in pursuit of its governmental functions to promote and develop networks of communication systems.[19] Therefore, it cannot be interpreted as a waiver of state immunity.

The DOTC also maintains that while it was regrettable that the construction of the telephone exchange erroneously encroached on portions of the respondent's properties, the RTC erred in ordering the return of the property.[20] It argues that while the DOTC, in good faith and in the performance of its mandate, took private property without formal expropriation proceedings, the taking was nevertheless an exercise of eminent domain.[21]

Citing the 2007 case of *Heirs of Mateo Pidacan v. Air Transportation Office (ATO)*,[22] the Department prays that instead of allowing recovery of the property, the case should be remanded to the RTC for determination of just compensation.

On the other hand, the respondents counter that the state immunity cannot be invoked to perpetrate an injustice against its citizens.[23] They also maintain that because the subject properties are titled, the DOTC is a builder in bad faith who is deemed to have lost the improvements it introduced.[24] Finally, they differentiate their case from *Heirs of Mateo Pidacan v. ATO* because *Pidacan* originated from a complaint for payment of the value of the property and rentals while their case originated from a complaint for recovery of possession and damages.[25]

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[19] *Id.* at 18-20.

[20] *Id.* at 24.

[21] *Id.* at 24.

[22] 552 Phil. 48 (2007).

[23] *Id.* at 49.

[24] *Rollo*, p. 82.

[25] *Id.* at 84.

OUR RULING

We find no merit in the petition.

The State may not be sued without its consent.[26] This fundamental doctrine stems from the principle that there can be no legal right against the authority which makes the law on which the right depends.[27] This generally accepted principle of law has been explicitly expressed in both the 1973[28] and the present Constitutions.

But as the principle itself implies, the doctrine of state immunity is not absolute. The State may waive its cloak of immunity and the waiver may be made expressly or by implication.

Over the years, the State's participation in economic and commercial activities gradually expanded beyond its sovereign function as regulator and governor. The evolution of the State's activities and degree of participation in commerce demanded a parallel evolution in the traditional rule of state immunity. Thus, it became necessary to distinguish between the State's sovereign and governmental acts *(jure imperii)* and its private, commercial, and proprietary acts *(jure gestionis)*. Presently, state immunity restrictively extends only to acts *jure imperii* while acts *jure gestionis* are considered as a waiver of immunity.[29]

The Philippines recognizes the vital role of information and communication in nation building.[30] As a consequence, we have adopted a policy environment that aspires for the full development of communications infrastructure to facilitate the flow of

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[26] Art. XVI, Sec. 3, CONSTITUTION.

[27] *Republic v. Villasor*, 153 Phil. 356, 360 (1973) and *United States of America v. Hon. Guinto*, 261 Phil. 777, 791 (1990) both citing *Justice Oliver Wendell Holmes in Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907).

[28] Art. XV, Sec. 16, 1973 CONSTITUTION.

[29] *United States v. Ruiz*, 221 Phil. 179, 183 (1985).

[30] Art. II, Sec. 24, CONSTITUTION.

information into, out of, and across the country.[31] To this end, the DOTC has been mandated with the promotion, development, and regulation of dependable and coordinated networks of communication.[32]

The DOTC encroached on the respondents' properties when it constructed the local telephone exchange in Daet, Camarines Norte. The exchange was part of the RTDP pursuant to the National Telephone Program. We have no doubt that when the DOTC constructed the encroaching structures and subsequently entered into the FLA with Digitel for their maintenance, it was carrying out a sovereign function. Therefore, we agree with the DOTC's contention that these are acts *jure imperii* that fall within the cloak of state immunity.

However, as the respondents repeatedly pointed out, this Court has long established in *Ministerio v. CFI*,[33] *Amigable v. Cuenca*, [34] the 2010 case *Heirs of Pidacan v. ATO*,[35] and more recently in *Vigilar v. Aquino*[36] that the doctrine of state immunity cannot serve as an instrument for perpetrating an injustice to a citizen.

The Constitution identifies the limitations to the awesome and near-limitless powers of the State. Chief among these limitations are the principles that no person shall be deprived of life, liberty, or property without due process of law and that private property shall not be taken for public use without just compensation.[37] These limitations are enshrined in no less than

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[31] Art. XVI, Sec. 10, CONSTITUTION.

[32] Executive Order No. 292 [ADMINISTRATIVE CODE OF 1987], Title XV, Chap. 1, Sec. 1.

[33] *Supra* note 11.

[34] *Supra* note 12.

[35] 643 Phil. 657, 665 (2010) citing *EPG Construction v. Vigilar*, 407 Phil. 53, 64-66 (2001).

[36] 654 Phil. 755, 763 (2011).

[37] Art. III, Secs. 1 and 9, CONSTITUTION.

the Bill of Rights that guarantees the citizen protection from abuse by the State.

Consequently, our laws[38] require that the State's power of eminent domain shall be exercised through expropriation proceedings in court. Whenever private property is taken for public use, it becomes the ministerial duty of the concerned office or agency to initiate expropriation proceedings. By necessary implication, the filing of a complaint for expropriation is a waiver of State immunity.

If the DOTC had correctly followed the regular procedure upon discovering that it had encroached on the respondents' property, it would have initiated expropriation proceedings instead of insisting on its immunity from suit. The petitioners would not have had to resort to filing its complaint for reconveyance. As this Court said in *Ministerio*:

> It is unthinkable then that precisely because there was a failure to abide by what the law requires, the government would stand to benefit. It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were to be maintained. It is not too much to say that **when the government takes any property for public use, which is conditioned upon the payment of just compensation, to be judicially ascertained, it makes manifest that it submits to the jurisdiction of a court.** There is no thought then that the doctrine of immunity from suit could still be appropriately invoked.[39] [emphasis supplied]

We hold, therefore, that the Department's entry into and taking of possession of the respondents' property amounted to an implied waiver of its governmental immunity from suit.

We also find no merit in the DOTC's contention that the RTC should not have ordered the reconveyance of the respondent spouses' property because the property is being used for a vital governmental function, that is, the operation and maintenance of a safe and efficient communication system.[40]

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[38] Book III, Title I, Chap. 4, Sec. 12, ADMINISTRATIVE CODE OF 1987; Republic Act No. 8974, Sec. 4; Rule 67, Sec. 1, RULES OF COURT.

[39] *Supra* note 11, at 480-481.

[40] *Rollo*, p. 24.

The exercise of eminent domain requires a genuine necessity to take the property for public use and the consequent payment of just compensation. The property is evidently being used for a public purpose. However, we also note that the respondent spouses willingly entered into a lease agreement with Digitel for the use of the subject properties.

If in the future the factual circumstances should change and the respondents refuse to continue the lease, then the DOTC may initiate expropriation proceedings. But as matters now stand, the respondents are clearly willing to lease the property. Therefore, we find no genuine necessity for the DOTC to actually take the property at this point.

Lastly, we find that the CA erred when it affirmed the RTC's decision without deleting the forfeiture of the improvements made by the DOTC through Digitel. Contrary to the RTC's findings, the DOTC was not a builder in bad faith when the improvements were constructed. The CA itself found that the Department's encroachment over the respondents' properties was a result of a mistaken implementation of the donation from the municipality of Jose Panganiban.[41]

Good faith consists in the belief of the builder that the land he is building on is his and [of] his ignorance of any defect or flaw in his title.[42] While the DOTC later realized its error and admitted its encroachment over the respondents' property, there is no evidence that it acted maliciously or in bad faith when the construction was done.

Article 527[43] of the Civil Code presumes good faith. Without proof that the Department's mistake was made in bad faith, its construction is presumed to have been made in good faith. Therefore, the forfeiture of the improvements in favor of the respondent spouses is unwarranted.

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[41] *Id.* at 43.

[42] *Pleasantville Development Corp. v. Court of Appeals*, 323 Phil. 12, 22 (1996); Art. 526, CIVIL CODE.

[43] Art. 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

WHEREFORE, we hereby **DENY** the petition for lack of merit. The May 20, 2009 decision of the Regional Trial Court in **Civil Case No. 7355**, as modified by the March 20, 2013 decision of the Court of Appeals in **CA-G.R. CV No. 93795,** is **AFFIRMED** with further **MODIFICATION** that the forfeiture of the improvements made by the DOTC in favor of the respondents is **DELETED.** No costs.

SO ORDERED.

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

Del Castillo, J., on leave.

THIRD DIVISION

[G.R. No. 206880. June 29, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ENRIQUE MIRANDA, JR. *y* PAÑA @ "ERIKA" AND ALVIN ALGA *y* MIRANDA @ "ALVIN,"** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; IF THE PROSECUTION FAILS TO MEET THE REQUIRED QUANTUM OF EVIDENCE, THE DEFENSE DOES NOT NEED TO PRESENT EVIDENCE ON ITS BEHALF, THE PRESUMPTION OF INNOCENCE PREVAILS AND THE ACCUSED SHOULD BE ACQUITTED.— Our Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies with the prosecution

to overcome this presumption of innocence by presenting the required quantum of evidence; the prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required evidence, the defense does not need to present evidence on its behalf, the presumption prevails and the accused should be acquitted.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); IN ILLEGAL DRUGS CASES, THE IDENTITY OF THE DRUGS SEIZED MUST BE ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUIRED ARRIVING AT A FINDING OF GUILT, AS THE CASE AGAINST APPELLANTS HINGES ON THE ABILITY OF THE PROSECUTION TO PROVE THAT THE ILLEGAL DRUGS PRESENTED IN COURT ARE THE SAME ONES THAT WERE RECOVERED FROM THE APPELLANTS UPON THEIR ARREST.— We find that the RTC and the Court of Appeals failed to consider the serious infirmity of the buy-bust team's non-observance of the rules of procedure for handling illegal drug items, particularly the requirement of an inventory and photographs of the same. In illegal drugs cases, the identity of the drugs seized must be established with the same unwavering exactitude as that required arriving at a finding of guilt. The case against appellants hinges on the ability of the prosecution to prove that the illegal drugs presented in court are the same ones that were recovered from the appellants upon their arrest. This requirement arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.

3. ID.; ID.; SECTION 21 THEREOF; PROCEDURE ON THE SEIZURE AND CUSTODY OF DANGEROUS DRUGS; MUST BE STRICTLY COMPLIED WITH AS ONLY BY SUCH STRICT COMPLIANCE MAY THE GRAVE MISCHIEFS OF PLANTING OR SUBSTITUTION OF EVIDENCE AND THE UNLAWFUL AND MALICIOUS PROSECUTION OF THE WEAK AND UNWARY THAT THE LAW INTENDED TO PREVENT MAY BE ELIMINATED.— The required procedure on the seizure and custody of drugs embodied in Section 21 of R.A. No. 9165

ensures the identity and integrity of dangerous drugs seized. The provision requires that upon seizure of the illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof. The Court has emphasized the import of Section 21 as a matter of substantive law that mandates strict compliance. The Congress laid it down as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs. Only by such strict compliance may the grave mischiefs of planting or substitution of evidence and the unlawful and malicious prosecution of the weak and unwary that the law intended to prevent may be eliminated. Under the principle that penal laws are strictly construed against the government and liberally in favor of the accused, stringent compliance therewith is fully justified.

4. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS OF PHYSICAL INVENTORY AND PHOTOGRAPH-TAKING OF THE SEIZED DRUGS RAISES DOUBTS WHETHER THE ILLEGAL DRUG ITEMS USED AS EVIDENCE IN BOTH THE CASES FOR ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS WERE THE SAME ONES THAT WERE ALLEGEDLY SEIZED FROM APPELLANTS.— Herein, the requirements of physical inventory and photograph-taking of the seized drugs were not observed. This noncompliance raises doubts whether the illegal drug items used as evidence in both the cases for violation of Section 5 and Section 11 of R.A. No. 9165 were the same ones that were allegedly seized from appellants. x x x Patently, the apprehending team never conducted an inventory nor did they photograph the seized drugs in the presence of the appellants or their counsel, a representative from the media and the Department of Justice, or an elective official either at the place of the seizure, or at the police station. In *People v. Gonzales*, this Court acquitted the accused based on reasonable doubt for failure of the police

to conduct an inventory and to photograph the seized plastic sachet. We explained therein that "the omission of the inventory and the photographing exposed another weakness of the evidence of guilt, considering that the inventory and photographing-to be made in the presence of the accused or his representative, or within the presence of any representative from the media, Department of Justice or any elected official, who must sign the inventory, or be given a copy of the inventory, were really significant stages of the procedure outlined by the law and its IRR."

5. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURES WOULD NOT NECESSARILY INVALIDATE THE SEIZURE AND CUSTODY OF THE DANGEROUS DRUGS PROVIDED THERE WERE JUSTIFIABLE GROUNDS FOR THE NON-COMPLIANCE AND THAT THE INTEGRITY OF THE EVIDENCE OF THE CORPUS DELICTI WAS PRESERVED; NON-COMPLIANCE WITH THE REQUIRED PROCEDURES, UNJUSTIFIED IN CASE AT BAR.— R.A. No. 9165 and its implementing rules and regulations both state that non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved. Herein, the proffered excuses were that it was night-time, there was no available camera and that the police officer who had initial custody of the seized drugs was new in the service and was not familiar with the inventory requirement. The Court finds that these explanations do not justify non-compliance with the required procedures of R.A. No. 9165.

6. ID.; ID.; ID.; ID.; WHEN THE COURTS ARE GIVEN REASON TO ENTERTAIN RESERVATIONS ABOUT THE IDENTITY OF THE ILLEGAL DRUG ITEM ALLEGEDLY SEIZED FROM THE ACCUSED, THE ACTUAL CRIME CHARGED IS PUT INTO SERIOUS QUESTION AND THE COURTS HAVE NO ALTERNATIVE BUT TO ACQUIT ON THE GROUND OF REASONABLE DOUBT.— Considering that the non-compliance with the requirements of Section 21 in the case at bar is inexcusable, the identity

and integrity of the drugs used as evidence against appellants are necessarily tainted. *Corpus delicti* is the actual commission by someone of the particular crime charged. In illegal drugs cases, it refers to illegal drug itself. When the courts are given reason to entertain reservations about the identity of the illegal drug item alleged seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt. Unexplained non-compliance with the procedures for preserving the chain of custody of the dangerous drugs has frequently caused the Court to absolve those found guilty by the lower courts.

APPEARANCES OF COUNSEL

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

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-H.C. No. 04266 dated 27 June 2012, which denied the appeal of appellants Enrique Miranda, Jr. y Paña (*Miranda*) *alias* Erika and Alvin Alga y Miranda (Alga) *alias* Alvin and affirmed the Judgment[2] dated 7 December 2009 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 76, in Criminal Case Nos. 3937-M-2003 and 3938-M-2003, finding appellants guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The facts according to the prosecution are as follows:

On 7 October 2003, around nine o'clock in the morning, Police Chief Inspector Celedonio I. Morales (PCI Morales) received

[1] *Rollo*, pp. 2-24; Penned by Associate Justice Rodil V. Zalameda with Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro concurring.

[2] Records, pp. 114-165; Penned by Presiding Judge Albert R. Fonacier.

a word from a confidential informant that Miranda is engaged in illegal drug trade in *Barangay* Tabang, Plaridel Bulacan, and instructed said informant to make a transaction with the latter. The informant returned at five o'clock in the afternoon with the news that he had made such transaction with appellant Miranda to be executed at the latter's apartment between half past the hour of seven to eight o'clock in the evening. PCI Morales immediately conducted a pre-operational briefing and formed a buy-bust team composed of Police Officer 1 Niño Yang (PO1 Yang), PO1 Danilo de Guzman (PO1 De Guzman), four (4) other police officers and the confidential informant. PO1 Yang was to act as the *poseur buyer*, PO1 De Guzman as the immediate back-up officer and the rest as perimeter security. The buy-bust money was two (2) One Hundred Peso (P100.00) bills marked with the initials "NY."[3]

The buy-bust team proceeded to Miranda's place. The informant and PO1 Yang knocked on the door which appellant Alga opened. Alga then called Miranda who appeared dressed in a woman's clothing. The informant introduced PO1 Yang to Alga as the prospective buyer and PO1 Yang conveyed his intention to purchase Two Hundred Pesos (₱200.00) worth of *shabu*. After Alga directed Miranda to give the *shabu*, the latter brought out and opened his make-up kit which contained five (5) plastic sachets containing white crystalline substance and gave one (1) sachet to PO1 Yang. Upon giving Miranda the two (2) One Hundred Peso (₱100.00) bills as payment, PO1 Yang ignited his lighter, the pre-arranged signal for the buy-bust team to rush to the scene. PO1 Yang then introduced himself as police officer. Both appellants were placed under arrest, informed of their constitutional rights and the reason for their arrest. Miranda was bodily searched and four (4) plastic sachets containing white crystalline substance were recovered. Alga was likewise frisked by PO1 De Guzman which search yielded the buy-bust money. Both appellants were brought to the police station for investigation and thereafter to the crime laboratory for drug tests. Miranda's urine sample tested positive for the

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[3] TSN, 23 January 2006, pp. 3-6; TSN, 28 November 2006, pp. 2-5.

presence of Methylamphetamine hydrochloride and marijuana while Alga's was found positive for Methylamphetamine hydrochloride.[4]

The seized drugs were marked and turned over to PO2 Nachor who prepared a request for their laboratory examination. Four (4) of the five (5) heat-sealed plastic sachets containing white crystalline substance were confirmed to be positive for *shabu*.[5]

Miranda and Alga were jointly charged with violation of Section 5 of Article II of R.A. No. 9165, to wit:

CRIMINAL CASE NO. 3937-M-2003

That on or about the 7th day of October 2003, in the [M]unicipality of Plaridel, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine hydrochloride weighing 0.044 gram in conspiracy with each other.[6]

Miranda was likewise charged with violation of Section 11 of Article II of R.A. No. 9165, to wit:

CRIMINAL CASE NO. 3938-M-2003

That on or about the 7th day of October 2003, in the [M]unicipality of Plaridel, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in his possession and control dangerous drug consisting of three (3) heat-sealed transparent plastic sachet of Methylamphetamine hydrochloride weighing 0.059 gram.[7]

Upon arraignment, appellants pleaded not guilty to the offenses charged. Joint trial ensued.

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

[5] *Id.* at 10-11; Records, p. 8.

[6] Records, p. 2.

[7] *Id.* at 15.

The defense presented a different version of the incident. According to both appellants, corroborated by Miranda's brother, no actual buy-bust operation transpired. Instead on the date of the alleged entrapment operation, around six o'clock in the evening Alga had just arrived at Miranda's house where he had been living and was about to enter the gate, while Miranda was cooking inside, when seven (7) armed then barged in and placed both of them in handcuffs. After the men searched the house, they transported appellants to the police station and then subjected them to a drug test. Miranda claimed that at the time of specimen-taking for said drug test, he noticed that the urine specimen receptacle was not empty and had some liquid inside it.[8]

After trial on the merits, the RTC rendered a Decision on 7 December 2009, the dispositive portion of which states:

WHEREFORE, the court renders judgment as follows:

(1) In Criminal Case No. 3937-M-2003, for having established the guilt of accused **ENRIQUE MIRANDA, JR. y PAÑA @ Erika** and **ALVIN ALGA y MIRANDA @ Alvin** beyond reasonable doubt, said accused are hereby **CONVICTED** for the charge with sale of dangerous drugs in violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" and are each sentenced to the penalty of **LIFE IMPRISONMENT** and for each to pay the fine of [F]ive [H]undred [T]housand pesos (PhP500,000.00);

(2) In Criminal Case No. 3938-M-2003, for having established the guilt of the accused **ENRIQUE MIRANDA, JR. y PAÑA @ Erika** beyond reasonable doubt, said accused is hereby **CONVICTED** for the charge with possession and control of dangerous drugs in violation of Section 11, Article II of the same law and is hereby sentenced to serve the penalty of, applying the Indeterminate Sentence Law, **IMPRISONMENT of TWELVE (12) YEARS AND ONE (1) DAY, AS THE MINIMUM PERIOD, TO THIRTEEN (13) YEARS AS THE MAXIMUM PERIOD,** and to pay the **FINE** of Five Hundred Thousand Pesos (PhP500,000.00);

As to the specimen subject matter of the two (2) above-entitled criminal cases and which are all listed in Chemistry Report No.

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[8] TSN, 24 March 2009, pp. 3-12; TSN, 12 May 2009, pp. 2-10; TSN, 16 June 2009, pp. 3-11.

D-757-2003, the same are hereby confiscated in favor of the government. The Branch Clerk of Court is hereby directed to dispose of the said specimen in accordance with the existing procedure, rules and regulations.

Furnish both the public prosecutor and defense counsel of this joint judgment including both the accused.[9]

The RTC ruled that through the testimony of PO1 Yang, the prosecution was able to establish the concurrence of all the elements of illegal sale and possession of dangerous drugs. The RTC found no evil motive on the part of the police officers to falsely testify against appellants. Despite the defenses of denial, vigorous assertions of frame-up and evidence planting interposed by appellants, the failure of the police officers to conduct an inventory of the seized drugs and to take photographs of the same, requirements of Section 21 of R.A. No. 9165, the RTC held that their guilt was proven beyond reasonable doubt.

Before the Court of Appeals, appellants again decried the non-observance of the requirements of Section 21, R.A. No. 9165. The Court of Appeals ruled that despite this non-compliance, the integrity and the evidentiary value of the seized drugs have been preserved. The Court of Appeals however reduced the fine required of Miranda in the case for illegal possession of dangerous drugs from ₱500,000.00 to ₱300,000.00.[10]

Now, before this Court on final review, after due consideration, we resolve to ACQUIT appellants on the ground of reasonable doubt.

Our Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies with the prosecution to overcome this presumption of innocence by presenting the required quantum of evidence; the prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required evidence, the defense does not need to present evidence

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[9] Records, p. 165.

[10] *Rollo,* pp. 17-23.

on its behalf, the presumption prevails and the accused should be acquitted.[11]

We find that the RTC and the Court of Appeals failed to consider the serious infirmity of the buy-bust team's non-observance of the rules of procedure for handling illegal drug items, particularly the requirement of an inventory and photographs of the same. In illegal drugs cases, the identity of the drugs seized must be established with the same unwavering exactitude as that required arriving at a finding of guilt.[12] The case against appellants hinges on the ability of the prosecution to prove that the illegal drugs presented in court are the same ones that were recovered from the appellants upon their arrest.[13] This requirement arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[14]

The required procedure on the seizure and custody of drugs embodied in Section 21 of R.A. No. 9165 ensures the identity and integrity of dangerous drugs seized. The provision requires that upon seizure of the illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof.

The Court has emphasized the import of Section 21 as a matter of substantive law that mandates strict compliance. The Congress laid it down as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity

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[11] *People v. Sabdula*, G.R. No. 184758, 21 April 2014, 722 SCRA 90, 98.

[12] *Mallillin v. People*, 576 Phil. 576, 586 (2008).

[13] *People v. Torres*, 710 Phil. 398, 408 (2013).

[14] *People v. Sabdula*, *supra* note 11.

of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs. Only by such strict compliance may the grave mischiefs of planting or substitution of evidence and the unlawful and malicious prosecution of the weak and unwary that the law intended to prevent may be eliminated. Under the principle that penal laws are strictly construed against the government and liberally in favor of the accused, stringent compliance therewith is fully justified.[15]

Herein, the requirements of physical inventory and photograph-taking of the seized drugs were not observed. This noncompliance raises doubts whether the illegal drug items used as evidence in both the cases for violation of Section 5 and Section 11 of R.A. No. 9165 were the same ones that were allegedly seized from appellants. PO1 Yang significantly testified as follows:

Q: Have you issued any receipt regarding what was allegedly seized from the accused?
A: The inventory sheet? Only the request which we brought there at the Crime Laboratory Office, sir.

Q: So you have not prepared any inventory?
A: None, Sir.

Q: For how long have you been a police officer Mr. witness?
A: For almost five (5) years now.

x x x x x x x x x

Q: So, was there any elected officials present during that operation Mr. witness?
A: None, Sir.

Q: So, there were also no media present at that time?
A: None.

Q: You have not also photographed what you have seized from the accused?
A: No, Sir.

x x x x x x x x x

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[15] *Rontos v. People*, 710 Phil. 328, 335 (2013); *People v. Gonzales*, 708 Phil. 121 (2013).

Q: x x x

Why were you not able to make photograph during the inventory and you failed to make any inventory?

A: Because it was already nighttime and there is no available camera and during that time I was just new in the service and I am not familiar with the inventory.[16]

Patently, the apprehending team never conducted an inventory nor did they photograph the seized drugs in the presence of the appellants or their counsel, a representative from the media and the Department of Justice, or an elective official either at the place of the seizure, or at the police station. In *People v. Gonzales*,[17] this Court acquitted the accused based on reasonable doubt for failure of the police to conduct an inventory and to photograph the seized plastic sachet. We explained therein that "the omission of the inventory and the photographing exposed another weakness of the evidence of guilt, considering that the inventory and photographing-to be made in the presence of the accused or his representative, or within the presence of any representative from the media, Department of Justice or any elected official, who must sign the inventory, or be given a copy of the inventory, were really significant stages of the procedures outlined by the law and its IRR."[18]

R.A. No. 9165 and its implementing rules and regulations both state that non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved. Herein, the proffered excuses were that it was night-time, there was no available camera and that the police officer who had initial custody of the seized drugs was new in the service and was not familiar with the inventory requirement. The Court finds that these explanations do not justify non-compliance with the required

[16] TSN, 2 October 2007, pp. 5-6.

[17] 708 Phil. 121 (2013).

[18] *Id.* at 132.

procedures of R.A. No. 9165. These will not do. It is well to recall that the informant first reported about appellant Miranda's illegal drug activities in the morning of the day of the alleged buy-bust operation and came back around five o'clock in the afternoon. The operation was set around 7:30-8:00 p.m. There were seven (7) men in the team, including the informant. There was sufficient time to obtain a camera and they had the human resources to scout for one. That PO1 Yang was new in the service does not excuse non-compliance as there were other members of the team who could have initiated the conduct of the inventory and photograph-taking. Besides, the team had been briefed before the entrapment operation which would reasonably include a run-through of the procedures outlined in the law for the handling of the seized drugs. The excuses are lame if not downright unacceptable.

Considering that the non-compliance with the requirements of Section 21 in the case at bar is inexcusable, the identity and integrity of the drugs used as evidence against appellants are necessarily tainted. *Corpus delicti* is the actual commission by someone of the particular crime charged. In illegal drugs cases, it refers to illegal drug itself. When the courts are given reason to entertain reservations about the identity of the illegal drug item alleged seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt.[19] Unexplained non-compliance with the procedures for preserving the chain of custody of the dangerous drugs has frequently caused the Court to absolve those found guilty by the lower courts.[20]

WHEREFORE, the Decision dated 27 June 2012 of the Court of Appeals in CA-G.R. CR-H.C. NO. 04266 is **REVERSED and SET ASIDE.** Enrique Miranda, Jr. y Paña *alias* Erika and Alvin Alga y Miranda *alias* Alvin are hereby **ACQUITTED** of

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[19] *Rontos v. People*, *supra* note 15 at 336-337.

[20] *People v. Gonzales*, *supra* note 17 at 133 citing *People v. Robles*, 604 Phil. 536 (2009); *People v. Alejandro*, 671 Phil. 33 (2011); *People v. Salonga*, 617 Phil. 997 (2009); *People v. Gutierrez*, 614 Phil. 285 (2009); *People v. Cantalejo*, 604 Phil. 658 (2009).

the crime of violation of Section 5, Article II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) on the ground of reasonable doubt. Enrique Miranda, Jr. y Paña *alias* Erika is also **ACQUITTED** of the crime of violation of Section 11, Article II of Republic Act No. 9165 on the ground of reasonable doubt.

The Director of the Bureau of Corrections is hereby **ORDERED** to immediately **RELEASE** appellants from custody unless they are detained for some other lawful cause.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 207231. June 29, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROGER GALAGATI *y* GARDOCE,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION AND CONCLUSION ON THE CREDIBILITY OF WITNESSES IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, AND AT TIMES EVEN FINALITY; EXCEPTIONS; CASE AT BAR.— The settled rule is that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that

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[*] Additional Member per Raffle dated 13 June 2016.

its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying. x x x After a careful review of the records and the parties' submissions, this Court finds no cogent reason to reverse the judgment of conviction in Criminal Case No. 2003-3215. There is no showing that either the trial court or the appellate court committed any error in law and in its findings of fact.

2. ID.; CRIMINAL PROCEDURE; PROSECUTION OF RAPE CASES; GUIDING PRINCIPLES.— To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony. When the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party. A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, as in the case of a daughter against her father.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.— The statutory provisions relevant to the case are Article 266-A and Article 266-B of the Revised Penal Code. x x x The elements of the offense charged are that: (*a*) the victim is a female over 12 years but under 18 years of age; (*b*) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (*c*) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.

4. ID.; ID.; ID.; ELEMENT OF FORCE OR INTIMIDATION; NEITHER THE PRESENCE NOR USE OF A DEADLY WEAPON NOR THE EMPLOYMENT OF PHYSICAL VIOLENCE BY THE ACCUSED UPON THE VICTIM ARE ESSENTIAL TO A FINDING THAT FORCE OR INTIMIDATION EXISTED AT THE TIME THE RAPE WAS COMMITTED.— Neither the presence nor use of a deadly weapon nor the employment of physical violence by the accused upon the victim are essential to a finding that force or intimidation existed at the time the rape was committed. In *People v. Flores*, we ruled that in rape through force or intimidation, the force employed by the guilty party need not be irresistible. It is only necessary that such force is sufficient to consummate the purpose for which it was inflicted. Similarly, intimidation should be evaluated in light of the victim's perception at the time of the commission of the crime. It is enough that it produced the fear in the mind of the victim that if she did not yield to the bestial demands of her ravisher, some evil would happen top her at that moment or even thereafter. However, what is important is that because of force and intimidation, the victim was made to submit to the will of the appellant.

5. ID.; ID.; ID.; ID.; PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED IN RAPE WHEN INTIMIDATION IS EXERCISED UPON THE VICTIM AND SHE SUBMITS HERSELF AGAINST HER WILL TO THE RAPIST'S LUST BECAUSE OF FEAR FOR HER LOVED ONE'S

LIVES AND SAFETY.— [T]he fact that Galagati used force, threat, and intimidation in order to have sexual intercourse with AAA is demonstrated by the latter's continuous crying while the dastardly act was being committed against her. She was helpless and afraid. The victim's act of crying during the rape was sufficient indication that the offender's act was against her will. The law, at any rate, does not impose upon a rape victim the burden of proving resistance. Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for her loved one's lives and safety. Moreover, had it not been for the chance that AAA was invited by the police in relation to the quarrel between her uncle and Galagati, nobody would have known about the sexual molestation due to the existing threat to kill her mother and siblings.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE RAPE VICTIM'S SILENCE AFTER THE RAPE INCIDENT DOES NOT AFFECT HER CREDIBILITY, AS THE DELAY IN REPORTING AN INCIDENT OF RAPE DUE TO DEATH THREAT CANNOT BE TAKEN AGAINST THE VICTIM BECAUSE THE CHARGE OF RAPE IS RENDERED DOUBTFUL ONLY IF THE DELAY IS UNREASONABLE AND UNEXPLAINED.— AAA's silence after the rape incident does not affect her credibility. x x x The Court had consistently found that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempted to move on with their lives. This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. The perpetrator of the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness. x x x Delay in reporting an incident of rape due to death threat cannot be taken against the victim because the charge of rape is rendered doubtful only if the delay is unreasonable and unexplained. In this case, it cannot be said that AAA's apprehension to make known her horrific

experience in the hands of Galagati is unjustifiable considering that she had to deal with such frightful event in her tender age.

7. ID.; ID.; ID.; THE DIRECT, POSITIVE AND CATEGORICAL TESTIMONY OF THE RAPE VICTIM, ABSENT ANY SHOWING OF ILL-MOTIVE, PREVAILS OVER THE DEFENSE OF DENIAL, AS DENIAL IS A SELF-SERVING NEGATIVE EVIDENCE THAT CANNOT BE GIVEN GREATER WEIGHT THAN THE STRONGER AND MORE TRUSTWORTHY AFFIRMATIVE TESTIMONY OF A CREDIBLE WITNESS.— The direct, positive and categorical testimony of AAA, absent any showing of ill-motive, prevails over the defense of denial. The medico-legal report, the existence of which was even admitted by the defense, is corroborative of the finding of rape. Like alibi, denial is an inherently weak and easily fabricated defense. It is a self-serving negative evidence that cannot be given greater weight than the stronger and more trustworthy affirmative testimony of a credible witness. Alleged motives of family feuds, resentment, or revenge are not uncommon defenses, and have never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her testimony. Besides, no woman would cry rape, allow an examination of her private parts, subject herself (and even her entire family) to humiliation, go through the rigors of public trial, and taint her good name if her claim were not true.

8. ID.; ID.; ID.; NON-FLIGHT *PER SE* IS NOT CONCLUSIVE PROOF OF INNOCENCE.— As the lower courts found, Galagati's defenses are weak and unconvincing. While he denied the charges against him, he failed to produce any material and competent evidence to controvert the same and justify an acquittal. He neither established his presence in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime nor presented a single witness to stand in his favor. Further, We cannot give weight to the alleged fact that he did not hide. Although it is settled that unexplained flight is indicative of guilt, no law or jurisprudence holds that non-flight *per se* is a conclusive proof of innocence. It simply does not follow as a matter of logic.

His pretended innocence is clearly *non-sequitur* to hid decision not to flee.

9. CRIMINAL LAW; REVISED PENAL CODE; RAPE; PROPER PENALTY; DEATH PENALTY CANNOT BE IMPOSED WHERE BOTH THE AGE OF THE VICTIM AND HER RELATIONSHIP WITH THE OFFNDER ARE NOT SPECIFICALLY ALLEGED IN THE INFORMATION AND PROVEN BEYOND REASONABLE DOUBT DURING THE TRIAL.— As to the sentence imposed, the RTC and the CA correctly prescribed the penalty of *reclusion perpetua* for the simple rape committed by Galagati in Criminal Case No. 2003-3215. Although the rape of a person under 18 years of age by the common-law spouse of the victim's mother is punishable by death, this penalty cannot be imposed if the relationship was not alleged in the Information. In *People v. Arcillas*, the Court held: Rape is qualified and punished with death when committed by the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or by the common-law spouse of the victim's parent. However, an accused cannot be found guilty of qualified rape unless the information alleges the circumstances of the victim's over 12 years but under 18 years of age and her relationship with him. the reason is that such circumstances alter the nature of the crime of rape and increase the penalty; hence, they are special qualifying circumstances. As such, both the age of the victim and her relationship with the offender must be specifically alleged in the information and proven beyond reasonable doubt during the trial; otherwise, the death penalty cannot be imposed. Here, the minority of AAA was sufficiently alleged in the Information, which stated that she was "a minor about fifteen (15) years old." The Prosecution established that age when the rape was committed on September 13, 2002 by presenting her birth certificate, which revealed her date of birth as September 11, 1987. Anent her relationship with Galagati, however, while the Prosecution established that he is the common-law husband of AAA's mother, the Information did not aver such relationship. His being the "live-in" partner of Susie at the time of the commission of the rape, even if established during the trial, could not be appreciated because the Information did not specifically allege it as a qualifying circumstance.

10. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— With regard to the civil liability of Galagati, We modify the CA ruling. Consistent with the latest case of *People v. Ireneo Jugueta*, he is now ordered to pay AAA civil indemnity *ex delicto*, moral damages, and exemplary damages in the amount of ₱75,000.00 each. Civil indemnity is mandatory upon the finding of the fact of rape. Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma or mental, physical, and psychological sufferings constituting the basis thereof. When a crime is committed with a qualifying or generic aggravating circumstance, an award of exemplary damages is justified under Article 2230 of the New Civil Code. Exemplary damages is awarded to set a public example and to protect hapless individuals from sexual molestation. Lastly, interest at the rate of six percent (6%) *per annum* is imposed on all the amount awarded in this case, from the date of finality of this judgment until the damages are fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the July 31, 2012 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CEB-CR-H.C. No. 00383, the dispositive portion of which states:

IN LIGHT OF ALL THE FOREGOING, the Court hereby AFFIRMS with MODIFICATION the assailed Decision dated March 8, 2005 of the Regional Trial Court, Branch [61], Kabankalan City, Negros Occidental in Criminal Case No. 2003-3215. The accused-appellant Roger Gardoce Galagati is found GUILTY of the crime

[1] Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Edgardo L. Delos Santos and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 3-23.

of Rape committed on September 13, 2002 and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to indemnify AAA the amounts of Php50,000 as civil indemnity, Php50,000 as moral damages, and Php30,000 as exemplary damages, plus legal interest on all damages awarded at the rate of six percent (6%) [*per annum*] from the date of the finality of this decision.

As to accused-appellant Galagati's appeal in Criminal Case Nos. 2003-3216, 2003-3218, 2003-3219, 2003-3220 and 2003-3221, the same is GRANTED. The decision of the trial court is REVERSED and SET ASIDE. Accused-appellant Galagati is, for failure of the prosecution to prove his guilt beyond reasonable doubt, ACQUITTED for five counts of rape through sexual assault.

SO ORDERED.[2]

On May 13, 2003, seven (7) Informations were filed against accused-appellant Roger Gardoce Galagati (*Galagati)* for rape. The accusatory portion of Criminal Case No. 2003-3215 reads:

That on or about September 13, 2002, in the City of Kabankalan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, said accused, by means of or employing force and intimidation and exerting his moral influence and ascendancy as an adult, did then and there wilfully, unlawfully and feloniously have sexual intercourse with [AAA], a minor about fifteen (15) years old, without the consent and against the will of the latter.

CONTRARY TO LAW.[3]

The Information for the six other cases stated the same allegations, except for the dates of commission, particularly on October 8,[4] 10,[5] 11,[6] 15,[7] 22,[8] and 25,[9] 2002.

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[2] *Rollo*, p. 22.

[3] Records, Criminal Case No. 2003-3215, p. 1.

[4] Records, Criminal Case No. 2003-3216, p. 1.

[5] Records, Criminal Case No. 2003-3215, p. 67.

[6] Records, Criminal Case No. 2003-3218, p. 1.

[7] Records, Criminal Case No. 2003-3219, p. 1.

[8] Records, Criminal Case No. 2003-3220, p. 1.

[9] Records, Criminal Case No. 2003-3221, p. 1.

In his arraignment on June 4, 2003, Galagati pleaded not guilty.[10] Joint trial ensued while he was under detention. Only private complainant AAA testified for the prosecution. Her version of facts, which was not subject to cross-examination, are as follows:

AAA was born on September 11, 1987 from parents Susie Valensona and Luciano Monasque, who are not legally married.[11] Galagati is the common-law spouse ("live-in" partner) of Susie.[12] At the time of the incidents, AAA was a 15-year-old second year student at Binicuil National High School and residing at her grandfather's house, together with Galagati, and her mother, uncle, and three siblings.[13]

On September 13, 2002, at around 2:00 p.m., while AAA was alone in the changing room of their house, Galagati forced her to have sexual intercourse with him. Acting on a threat that he would kill her mother and siblings, he laid her down, took off her panty, and inserted his penis into her vagina. She continuously cried and noticed a lot of blood coming from her vagina. He then told her to stop crying and take a bath, which she did. Her mother did not know what happened due to the threat. As to the other rape incidents that occurred, AAA testified:

Q: After September 13, 2002, were there other occasions that the accused raped you?
A: Yes, sir.

Q: Can you tell us the dates?
A: Yes, sir.

Q: What were those dates?
A: October 8, 10, 11, 15, 22 and 25, 2002.

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[10] Records, Criminal Case No. 2003-3215, p. 4.

[11] TSN, November 19, 2003, pp. 4, 7, 18-19; Per birth certificate, however, the names of her parents are Susie Valenzona and Ronilo Monasque (Records, Criminal Case No. 2003-3215, p. 50).

[12] TSN, November 19, 2003, p. 6; In his testimony, Galagati admitted that he is a "live-in" partner of Susie (TSN, February 23, 2005, pp. 8, 11-12).

[13] TSN, November 19, 2003, pp. 3, 5-6.

Q: How could you recall those dates you mentioned [when] you were raped by the accused?
A: Because at that time I have no class and at the time no one [was] in the house.

Q: On October 8, 2002, what time did the accused raped you?
A: After eating my lunch and [I] was about to undress myself preparing to go to school.

Q: What time was that if you can recall?
A: 1:00 o'clock in the afternoon.

Q: On October 8, 2002, can you tell where did the accused rape you?
A: At the room where we changed our clothes.

Q: Was there penetration also of the penis on October 8, 2002?
A: No, sir.

Q: What happened when you were raped on October 8, 2002?
A: He fingered me.

Q: How about his penis?
A: In my vagina.

Q: What did he do to his penis?
A: He just [rubbed] it in my vagina.

Q: What finger did he use when he raped you on October 8, 2002, Madam Witness?
A: Index finger.

Q: Did the index finger penetrate your vagina?
A: Yes, sir.

Q: How about on October 10, 2002, where did the rape incident happen?
A: At the same place.

Q: What time?
A: About that time.

Q: Was there penetration of the penis or index finger?
A: Index finger.

Q: His penis was also rubbed against your vagina?
A: Yes.

Q: How about on October 11, 2002, where was the rape incident happened?
A: The same place.

Q: And what time?
A: The same time.

Q: On this date, October 11, 2002, was there penetration of the penis or index finger?
A: Still finger.

Q: How about the date you mentioned, October 15, 2002, where was the rape incident happened?
A: The same place.

Q: The same time also?
A: Yes.

Q: At your house?
A: Yes.

Q: Was there penetration in your vagina?
A: Yes.

Q: Penis or index finger?
A: Finger.

Q: How about on October 22, 2002, where the rape incident happened?
A: The same place.

Q: The same time?
A: Yes.

Q: Was there penetration in your vagina?
A: Yes, sir.

Q: Penis or finger?
A: Finger.

Q: How about on October 25, 2002, where [did] the rape incident happened?
A: The same place.

Q: Was there penetration?
A: Yes, sir.

Q: Penis or index finger.
A: Index finger.

Q: After all those penetration of index finger on October 8, 10, 11, 15, 22 and 25, 2002, were you still able to go to school on those dates?
A: Yes, sir.

Q: Did you ever inform your mother about those incidents?
A: No, sir.

Q: How about the police?
A: No.

Q: Why did you not inform your mother about those repeated rape incidents?
A: Because he threatened me (sic) to kill my siblings and my mother.[14]

On November 4, 2002, AAA was brought to the Kabankalan Police Station to shed some light regarding the fight that transpired between Galagati and Susie's brother. In the course of the interview, she was able to disclose the rape incidents to SPO1 Marilou Amantoy and Chona Paglumotan of the Department of Social Welfare and Development (*DSWD*).

Galagati, on the other hand, denied having sexual congress with AAA. He asserted that on September 13, 2002, AAA went back to school at 1 p.m. after eating lunch at the house;[15] on October 8, 2002, there was no class but AAA told him that she would go to school;[16] on October 15, 2002, AAA did not go home;[17] and on October 25, 2002, he was not in the house but in Bacolod.[18] He stressed that he did not touch AAA as he loves her like his own child.[19] Galagati claimed that all the charges

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[14] TSN, November 19, 2003, pp. 10-15.

[15] TSN, February 23, 2005, pp. 4-5.

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

[17] *Id.* at 6.

[18] *Id.*

[19] *Id.* at 6, 14-15.

filed against him were mere concoction because AAA was being threatened by her family. He revealed that there was a fight between him and AAA's uncle, who is the brother of her mother, because Susie's siblings would usually eat at their house without washing the dishes.[20]

After trial, the RTC found that AAA's testimony was natural, candid, straightforward and credible, while Galagati's defense of denial was unsupported by competent evidence. It convicted Galagati of the crime charged in Criminal Case Nos. 2003-3215 to 2003-3216 and 2003-3218 to 2003-3221. The *fallo* of the March 8, 2005 Decision[21] states:

> WHEREFORE, the Court finds accused Roger Galagati y Gardoce GUILTY beyond reasonable doubt of one (1) count of rape under Paragraph 1 of Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, as charged in Criminal Case No. 2003-3215 for having carnal knowledge with the victim on September 13, 2002 and five (5) counts of rape under Paragraph 2 of said Article 266-A as charged in Criminal [Case] Nos. 2003-3216, 2003-3218, 2003-3219, 2003-3220 and 2003-3221 for inserting his finger in the genital orifice of the victim and hereby sentences him to suffer the penalty of RECLUSION PERPETUA in Criminal Case No. 2003-3215[,] to pay the victim [AAA] ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages[,] and applying the Indeterminate Sentence Law, sentences him to suffer the penalty of imprisonment of six (6) years, as minimum, to ten (10) years, as maximum, for each of the five (5) counts of rape under Paragraph 2 of Article 266-A of the Revised Penal Code as charged in Criminal [Case] Nos. 2003-3216, 2003-3218, 2003-3219, 2003-3220 and 2003-3221, [and] to pay the victim ₱50,000.00 as civil indemnity in each of the said five (5) counts of rape and the costs.
>
> For lack of evidence due to the failure of the prosecution to present evidence, Criminal Case No. 2003-3217 is DISMISSED.
>
> It is ordered that the said accused be immediately remitted to the National Penitentiary.

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

[21] Records, Criminal Case No. 2003-3215, pp. 66-78.

SO ORDERED.[22]

On appeal, however, the CA acquitted Galagati in Criminal Case Nos. 2003-3216 and 2003-3218 to 2003-3221 as it considered AAA's testimony "shallow, trifling, and half-hearted" with regard to the alleged five incidents of sexual assaults. For the appellate court, AAA's testimony with regard to the acts committed on October 8, 11, 15, 22 and 25, 2002 were mere vague generalizations and conclusions of law because she merely answered "yes" when asked by her counsel if Galagati had "raped" her on said dates. There was a complete failure of the prosecution to extract a vivid and detailed testimony from AAA, whose narration only contained inadequate recital of evidentiary facts consisting of statements of "same time," "same place," and confirmation that there was penetration of the index finger, in answer to the public prosecutor's leading question. There was no testimony as to how Galagati approached her, what, if any, he said to her, what she was doing before she was fingered, what happened after, and other details which would validate her charge that he fingered her on those occasions. Also, the CA noted that there was a complete silence in AAA's testimony that force, threat or intimidation was applied to successfully consummate the sexual assaults. What AAA merely declared was that she did not report all the incidents of rape as Galagati allegedly threatened to kill her mother and siblings. However, this explanation failed to properly show whether the threat was given before, during, or after the commission of the sexual assaults. Finally, the appellate court opined that although moral influence or ascendancy substitutes actual force and intimidation if the malefactor is a common-law spouse of the victim's mother, it does not remove the exacting requirement that the occurrence of sexual assault must be established beyond reasonable doubt.

Now before Us, Galagati seeks to appeal the decision of the CA with respect to Criminal Case No. 2003-3215.

We dismiss.

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[22] *Id.* at 77-78.

The settled rule is that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case.[23] Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility.[24] Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.[25]

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[26] Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony.[27] When the victim's

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[23] *People v. Villamor*, G.R. No. 202187, February 10, 2016; *People v. Padilla*, 617 Phil. 170, 183 (2009); and *People v. Lopez*, 617 Phil. 733, 744 (2009).

[24] *People v. Padilla, supra*.

[25] *People v. Villamor*, G.R. No. 202187, February 10, 2016; *People v. Madsali, et al.*, 625 Phil. 431, 451 (2010); and *People v. Lopez, supra* note 23.

[26] *People v. Padilla, supra* note 23, at 182-183.

[27] *Id.* at 183; *People v. Villamor*, G.R. No. 202187, February 10, 2016; and *People v. Madsali, et al., supra* note 25.

testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party.[28] A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, as in the case of a daughter against her father.[29]

After a careful review of the records and the parties' submissions, this Court finds no cogent reason to reverse the judgment of conviction in Criminal Case No. 2003-3215. There is no showing that either the trial court or the appellate court committed any error in law and in its findings of fact.

The statutory provisions relevant to the case are Article 266-A and Article 266-B of the Revised Penal Code,[30] which provide:

Article 266-A. *Rape, When and How Committed.* — Rape is committed — 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. **Through force, threat or intimidation;**

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. xxx

Article 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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[28] *People v. Madsali, et al., supra* note 25, at 447.

[29] *People v. Padilla, supra* note 23, at 184.

[30] As amended by Republic Act No. 7659 and Republic Act No. 8353.

1. **when the victim is under eighteen (18) years of age and the offender is** a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, **or the common-law-spouse of the parent of the victim.** x x x

The elements of the offense charged are that: (*a*) the victim is a female over 12 years but under 18 years of age; (*b*) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (*c*) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.[31]

Neither the presence nor use of a deadly weapon nor the employment of physical violence by the accused upon the victim are essential to a finding that force or intimidation existed at the time the rape was committed.

In *People v. Flores*, we ruled that in rape through force or intimidation, the force employed by the guilty party need not be irresistible. It is only necessary that such force is sufficient to consummate the purpose for which it was inflicted. Similarly, intimidation should be evaluated in light of the victim's perception at the time of the commission of the crime. It is enough that it produced the fear in the mind of the victim that if she did not yield to the bestial demands of her ravisher, some evil would happen to her at that moment or even thereafter. Hence, what is important is that because of force and intimidation, the victim was made to submit to the will of the appellant.[32]

Here, the fact that Galagati used force, threat, and intimidation in order to have sexual intercourse with AAA is demonstrated by the latter's continuous crying while the dastardly act was being committed against her. She was helpless and afraid. The victim's act of crying during the rape was sufficient indication

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[31] See *People v. Arcillas*, 692 Phil. 40, 50 (2012).

[32] *People v. Victoria*, G.R. No. 201110, July 6, 2015.

that the offender's act was against her will.[33] The law, at any rate, does not impose upon a rape victim the burden of proving resistance.[34] Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for her loved one's lives and safety. Moreover, had it not been for the chance that AAA was invited by the police in relation to the quarrel between her uncle and Galagati, nobody would have known about the sexual molestation due to the existing threat to kill her mother and siblings.

AAA's silence after the rape incident does not affect her credibility.

> x x x The Court had consistently found that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempted to move on with their lives. This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. The perpetrator of the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness. x x x[35]

Delay in reporting an incident of rape due to death threat cannot be taken against the victim because the charge of rape is rendered doubtful only if the delay is unreasonable and unexplained.[36] In this case, it cannot be said that AAA's apprehension to make known her horrific experience in the hands of Galagati is unjustifiable considering that she had to deal with such frightful event in her tender age.

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[33] *People v. Samson*, G.R. No. 207297, June 9, 2014 (1st Division Resolution) and *People v. Hilarion*, G.R. No. 201105, November 25, 2013, 710 SCRA 562, 566.

[34] *People v. Miralles*, G.R. No. 208717, February 24, 2014 (3rd Division Resolution), citing *People v. Estoya*, 700 Phil. 490, 499 (2012).

[35] *People v. Villamor*, G.R. No. 202187, February 10, 2016.

[36] *People v. Madsali, et al.*, *supra* note 25, at 443.

The direct, positive and categorical testimony of AAA, absent any showing of ill-motive, prevails over the defense of denial.[37] The medico-legal report,[38] the existence of which was even admitted by the defense,[39] is corroborative of the finding of rape.[40]

Like alibi, denial is an inherently weak and easily fabricated defense.[41] It is a self-serving negative evidence that cannot be given greater weight than the stronger and more trustworthy affirmative testimony of a credible witness.[42] Alleged motives of family feuds, resentment, or revenge are not uncommon defenses, and have never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her testimony.[43] Besides, no woman would cry rape, allow an examination of her private parts, subject herself (and even her entire family) to humiliation, go through the rigors of public trial, and taint her good name if her claim were not true.[44]

As the lower courts found, Galagati's defenses are weak and unconvincing. While he denied the charges against him, he failed to produce any material and competent evidence to controvert the same and justify an acquittal. He neither established his presence in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene

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[37] *Id.* at 446; *People v. Villamor*, G.R. No. 202187, February 10, 2016. See *People v. Padilla, supra* note 23, at 185.

[38] Records, Criminal Case No. 2003-3215, p. 49.

[39] TSN, November 18, 2003, p. 3.

[40] *People v. Llanas, Jr.*, 636 Phil. 611, 624 (2010).

[41] *People v. Villamor*, G.R. No. 202187, February 10, 2016 and *People v. Madsali, et al., supra* note 25, at 446.

[42] *People v. Madsali, et al., supra* note 25, at 446 and *People v. Lopez, supra* note 23, at 745.

[43] See *People v. Prodenciado*, G.R. No. 192232, December 10, 2014, 744 SCRA 429, 451.

[44] *People v. Padilla, supra* note 23, at 184.

of the crime nor presented a single witness to stand in his favor.[45] Further, We cannot give weight to the alleged fact that he did not hide. Although it is settled that unexplained flight is indicative of guilt, no law or jurisprudence holds that non-flight *per se* is a conclusive proof of innocence.[46] It simply does not follow as a matter of logic.[47] His pretended innocence is clearly *non-sequitur* to his decision not to flee.[48]

As to the sentence imposed, the RTC and the CA correctly prescribed the penalty of *reclusion perpetua* for the simple rape committed by Galagati in Criminal Case No. 2003-3215. Although the rape of a person under 18 years of age by the common-law spouse of the victim's mother is punishable by death,[49] this penalty cannot be imposed if the relationship was not alleged in the Information.[50] In *People v. Arcillas*,[51] the Court held:

> Rape is qualified and punished with death when committed by the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or by the common-law spouse of the victim's parent. However, an accused cannot be found guilty of qualified rape unless the information alleges the circumstances of the victim's over 12 years but under 18 years of age and her relationship with him. The reason is that such circumstances alter the nature of the crime of rape and increase the penalty; hence, they are special qualifying circumstances. As such, both the age of the victim and her relationship with the offender

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[45] See *People v. Villamor*, G.R. No. 202187, February 10, 2016.

[46] *People v. Arafiles*, 382 Phil. 59, 74 (2000); *People v. San Juan*, 391 Phil. 479, 493 (2000); and *People v. Bantayan*, 401 Phil. 322, 334 (2000).

[47] *People v. San Juan*, *supra* note 46.

[48] See *People v. Precioso*, G.R. No. 95890, May 12, 1993, 221 SCRA 748, 757.

[49] The imposition of death penalty is now prohibited. Republic Act No. 9346, which was approved on June 24, 2006, provides that the penalty of *reclusion perpetua* shall be imposed in lieu of the death penalty.

[50] See *People v. Tejero*, 688 Phil. 543, 558 (2012).

[51] 692 Phil. 40 (2012).

must be specifically alleged in the information and proven beyond reasonable doubt during the trial; otherwise, the death penalty cannot be imposed.[52]

Here, the minority of AAA was sufficiently alleged in the Information, which stated that she was "a minor about fifteen (15) years old." The Prosecution established that age when the rape was committed on September 13, 2002 by presenting her birth certificate, which revealed her date of birth as September 11, 1987. Anent her relationship with Galagati, however, while the Prosecution established that he is the common-law husband of AAA's mother, the Information did not aver such relationship. His being the "live-in" partner of Susie at the time of the commission of the rape, even if established during the trial, could not be appreciated because the Information did not specifically allege it as a qualifying circumstance.

With regard to the civil liability of Galagati, We modify the CA ruling. Consistent with the latest case of *People v. Ireneo Jugueta*,[53] he is now ordered to pay AAA civil indemnity *ex delicto*, moral damages, and exemplary damages in the amount of ₱75,000.00 each. Civil indemnity is mandatory upon the finding of the fact of rape.[54] Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma or mental, physical, and psychological sufferings constituting the basis thereof.[55] When a crime is committed with a qualifying or generic aggravating circumstance, an award of exemplary damages is justified under Article 2230 of the New Civil Code.[56] Exemplary damages is awarded to set a public example and to

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[52] *People v. Arcillas*, *supra* note 31, at 52. (Citations omitted).

[53] G.R. No. 202124, April 5, 2016.

[54] *People v. Cedenio*, G.R. No. 201103, September 25, 2013, 706 SCRA 382, 386-387 and *People v. Tejero*, *supra* note 50.

[55] *People v. Cabungan*, 702 Phil. 177, 189 (2013).

[56] *Id.* at 190; *People v. Cruz*, 714 Phil. 390, 400 (2013); *People v. Tejero, supra* note 50, at 559.

protect hapless individuals from sexual molestation.[57] Lastly, interest at the rate of six percent (6%) *per annum* is imposed on all the amounts awarded in this case, from the date of finality of this judgment until the damages are fully paid.[58]

On a final note, it is well to remind the public prosecutors to discharge their duties and responsibilities with zeal and fervor. In this case, had the prosecution properly alleged in the Information the qualifying circumstance of relationship between the accused and the victim and proved the same during the trial, the rape committed would have warranted the imposition of the penalty of *reclusion perpetua* without eligibility for parole.[59] Further, higher amount of damages would have been imposed. Again, *People v. Ireneo Jugueta*[60] held that where the penalty imposed is death but reduced to *reclusion perpetua* because of R.A. No. 9346, the civil indemnity *ex delicto*, moral damages, and exemplary damages shall be in the amount of ₱100,000.00 each.

WHEREFORE, premises considered, the instant appeal is **DISMISSED.** The July 31, 2012 Decision of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00383, which affirmed the March 8, 2005 Decision of Regional Trial Court, Branch 61, Kabankalan City, Negros Occidental, in Criminal Case No. 2003-3215, is **AFFIRMED WITH MODIFICATION**. Appellant Roger Gardoce Galagati is **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Further, six percent interest (6%) *per annum* is imposed on all the amounts awarded reckoned from the date of finality of this judgment until the damages are fully paid.

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[57] *People v. Umanito*, G.R. No. 208648, April 13, 2016 (3rd Division Resolution).

[58] Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013, effective July 1, 2013, in *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

[59] See Republic Act 9346; *People v. Lopez*, 617 Phil. 733, 746 (2009).

[60] G.R. No. 202124, April 5, 2016.

Let a copy of this Decision be furnished to the Honorable Secretary of Justice for his information and for whatever action he may deem appropriate.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 210673. June 29, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff and appellee, vs.* **GILBERT CABALLERO *y* GARSOLA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FINDINGS OF TRIAL JUDGES WILL NOT BE DISTURBED ON APPEAL IN THE ABSENCE OF ANY CLEAR SHOWING THAT THEY HAVE OVERLOOKED, MISUNDERSTOOD OR MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND SUBSTANCE THAT COULD HAVE ALTERED THE CONVICTION OF APPELLANTS.— It is an oft-repeated doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect. Having observed their deportment in court, the trial judge is in a better position to determine the issue of credibility. For this reason, the findings of trial judges will not be disturbed on appeal in the absence of any clear showing

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 22, 2014.

that they have overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that could have altered the conviction of appellants. In this case, we adopt the findings of the trial court, as affirmed by the Court of Appeals.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE IDENTIFICATION WHERE CATEGORICAL AND CONSISTENT AND WITHOUT ANY SHOWING OF ILL MOTIVE ON THE PART OF THE EYEWITNESS TESTIFYING ON THE MATTER, PREVAILS OVER A DENIAL WHICH, IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, IS NEGATIVE AND SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW.— We agree with the Court of Appeals' ruling that there was no "suggestive identification" in this case. x x x Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. They cannot be given grater evidentiary value over the testimony of credible witnesses who testify on affirmative matters. In this case, Bernadette had no motive to falsely accuse appellant. Bernadette would be naturally interested to find out the real killers of her husband. And it so happened that she saw the face of appellant when the latter shot her husband.

3. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS; PROVED.— The elements of murder that the prosecution must establish are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide. In the case at bar, it was proven that Judge Velasco was killed and that it was appellant who killed him.

4. ID.; ID.; ID.; PROPER PENALTY.— Under Article 248 of the RPC, the crime of murder is punishable by *reclusion perpetua* to death if committed with treachery. As correctly imposed by the trial court and as affirmed by the Court of Appeals, appellant must suffer the prison term of *reclusion perpetua*, the lower

of the said two indivisible penalties, due to the absence of an aggravating circumstance attending the commission of the crime. Appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346.

5. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The awards of civil indemnity, moral damages and exemplary damages must however be increased to ₱100,000.00 each in line with prevailing jurisprudence. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Resolution until fully paid. The award of actual damages in the amount of ₱561,599.48 and loss of earning in the amount of ₱6,536,131.68 are affirmed.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

For Resolution is the appeal from the 29 August 2013 Decision[1] of the Court of Appeals in CA-G.R. CEB-CR HC No. 01195 affirming the conviction of appellant Gilbert Caballero y Garsola for the crime of murder by the Regional Trial Court (RTC) of Dumaguete City.

Appellant is charged of murder in an Information, which reads:

That on or about the 25th day of July 2007, in the City of Bayawan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, accused John Doe, driving a motorcycle conspiring together, confederating and mutually helping accused, Gilbert Caballero y Garsola armed with a gun, with treachery and evident

[1] *Rollo*, pp. 3-23; Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino concurring.

premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously attack, shoot several times, wound and kill JUDGE ORLANDO C. VELASCO, without giving him a chance to defend himself to ensure the execution of the act, without risk to both accused out of any defense which the victim could have made, thereby inflicting upon his person these injuries, to wit:

Multiple gunshot wounds x x x

— Multiple organ failure;

— Sever[e] hypovolemia sec. to exsanguinations;

— Multiple gunshot wounds abdominal pelvic area with through and through injury to the bladder complete transection ® distal ureter, through and through injury to the rectum, 88A plate transection of the ® internal iliac artery and vein through and through injury to the sacrum, through and through injury to the penile shaft, multiple muscles bleeders bilateral inguinal area and which injuries caused his death to the damage and prejudice to the heirs of the victim.[2]

The antecedent facts are as follow:

On 25 July 2007, Judge Orlando Velasco (Judge Velasco) was riding in a motorcycle on his way home from a party when two men riding in two separate motorcycles shot him at the back and in front numerous times. Judge Velasco was first brought to Bayawan District Hospital. Upon advice of the doctors, he was then brought to Silliman University Medical Center where he underwent surgery. He survived for another twelve hours before he expired. In Judge Velasco's death certificate, the following are the findings:

1. Multiple organ failure
2. Severe hypovolemia secondary to exanguinations severe blood loss
3. Multiple gunshot wounds abdominal pelvic area with through and through injury to the bladder complete transection ® distal ureter, through and through injury to the rectum, 88A plate transaction of the ® internal that artery and vein through

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[2] Records, pp. 2-3.

> and through injury to the sacrum through and through injury to the penile shaft, multiple muscles bleeders bilateral inguinal area.[3]

Judge Velasco's wife, Bernadette, witnessed the shooting. She and her husband had just left the party and rode in two separate motorcycles. Bernadette reached home first and she waited for Judge Velasco at the shoulder of the road. Bernadette then noticed two motorcycles heading towards her house so she stepped backward. When one of the motorcycles neared Bernadette, she heard two gunshots. She saw another motorcycle running side by side with the motorcycle where Judge Velasco was. Then, she saw her husband being shot at three times at his lower hip. One of the gunmen shot at Judge Velasco again, and then looked at Bernadette while returning his gun to his waist. Bernadette, in turn, shouted for help.[4]

Two landscapers employed by Judge Velasco narrated that more or less, a month before the shooting, a neighbor of Judge Velasco came and asked them to inform Judge Velasco that someone on a motorcycle was tailing him. They saw the man allegedly following Judge Velasco in front of a school that is directly across Judge Velasco's house. They told Judge Velasco about it but the latter dismissed the warning.[5]

The police received information that the gunman is appellant. But it was only on 2 January 2008 that they received a report that appellant was seen riding a motorcycle towards Bayawan. On the following day, the police established a checkpoint where appellant was apprehended after being seen carrying a shotgun. He was arrested and brought to the police station. That evening, Bernadette was called to come to the police station. She positively identified appellant in a police line-up.[6]

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[3] *Id.* at 101.

[4] *Id.* at 186; RTC Decision.

[5] *Id.* at 184-185.

[6] *Id.* at 193-194.

Appellant, for his defense, alleged that he was in the Municipality of Jimalalud in Negros Oriental on 25 July 2007. On 3 January 2008, he was going towards Bayawan when he was arrested at a checkpoint. He claimed that the shotgun belonged to his father and that he wanted to sell it to be able to buy his child's milk. He denied knowing and shooting Judge Velasco. He would assert that Bernadette visited him in jail.[7]

On 5 April 2010 the RTC rendered a Decision[8] finding appellant guilty beyond reasonable doubt of murder. The *fallo* of the Decision reads:

> WHEREFORE, premises considered, the [c]ourt finds accused Gilbert Caballero y Garsola guilty beyond reasonable doubt of the crime of murder defined and punished under Article 248 of the Revised Penal Code, and the [c]ourt hereby punished him by *reclusion perpetua* and to pay the following amounts:
>
> 1. Fifty Thousand (₱50,000.00) pesos for death indemnity;
>
> 2. Fifty Thousand (₱50,000.00) pesos for moral damages;
>
> 3. Six Million five hundred thirty-six thousand, one hundred thirty-one pesos and sixty-eight centavos (₱6,536,131.68) for loss of earnings; and
>
> 4. Five hundred sixty one thousand five hundred ninety-nine pesos and forty-eight centavos (₱561,599.48) for medicines, doctors' fees and hospital expenses.[9]

The trial court held that all elements of the crime of murder are attendant in the case. Treachery was present when Judge Velasco was shot in the back and he was in a position where he could not defend himself. The trial court dismissed as trivial the alleged inconsistencies in the prosecution's evidence. It found appellant's alibi or denial as weak which cannot prevail over positive identification of the accused.

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[7] *Id.* at 196-197.

[8] *Id.* at 182-210; Presided by Judge Jesus B. Tinagan.

[9] *Id.* at 210.

Appellant elevated the case to the Court of Appeals. The appellate court affirmed with modification the ruling of the trial court in the following dispositive portion of the Decision:

> **WHEREFORE**, the instant appeal is hereby **DENIED.** The Judgment dated April 5, 2010 rendered by Branch 35, Regional Trial Court of Dumaguete City in Criminal Case No. 725 is hereby **AFFIRMED WITH MODIFICATION** as to the award of damages.
>
> The RTC's award of moral damages in the sum of ₱50,000.00 is affirmed. We likewise affirm the award of actual damages in the amount of ₱561,599.48. The award for loss of earnings in the amount of ₱6,536,131.68 is also affirmed.
>
> The RTC's award for civil indemnity in the amount of ₱50,000.00 is increased to ₱75,000.00. Further, accused-appellant is ordered to pay exemplary damage in the amount of ₱30,000.00.
>
> The foregoing damages shall be with legal interest at the legal rate of 6% per annum from the date of finality of this judgment until such amounts shall have been duly paid.[10]

Aggrieved by the appellate court's ruling, appellant filed a Notice of Appeal.

Appellant argues that the circumstances under which he was identified indicate that impermissible suggestions were exerted by the police on the wife of Judge Velasco. Thus, appellant claims that he should be exonerated in view of the failure of the prosecution to sufficiently identify him as the perpetrator.

The appeal is bereft of merit.

The prosecution was able to prove that it was appellant who shot and killed Judge Velasco. The victim's wife, Bernadette, gave a clear and categorical testimony in identifying appellant as the perpetrator, thus:

> Q: What happened if any upon reaching your house?
> A: Upon my arrival in our residence [,] I disembarked from my motorcycle and stand (sic) at the shoulder of the road and waited for my husband to arrive, the late Judge Orlando Velasco[.]

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[10] *Rollo,* pp. 21-22.

Q: What happened next?
A: I was just watching motorcycles passing. It took me (sic) before I noticed two motor cycles signaled going towards my place. So I stepped backward.

Q: What else happened thereafter?
A: After I looked from one direction to another direction I noticed a motorcycle getting nearer to me and I heard two gunshots and then I looked to one direction to another direction (sic). The next (sic) when I almost stepped near the motorcycle into my husband and I saw another motorcycle side by side with my husband shot (sic) three times the lower hip of my husband.

Q: How far were you when you first heard these gunshots (sic).
A: 8 to 10 meters away from my husband when I hear two gunshots.

Q: What else happened to you after you heard these gunshots being fired?
A: After he shot my husband three times to (sic) the lower hip he fired on air again and after he fired gunshots on air[,] he looked at me then the motorcycle changed gear before he left. {pagchange gear niya nisagunto iyang motor nilingi dayon nako ang gapusil ni Judge Velasco nga gatindog ko daplin sa dalan dungan sa iyang paglingi gihipus iyang pusil} I even glanced sideways and he even looked at me.

Q: After seeing that the gunmen fired shots in the air and glanced at you before returning to his firearm[,] what happened?
A: After the vehicle stopped[,] he glanced at me while returning his gun on (sic) his waist. I looked at my husband who was then on a stop position.

Q: After the gunshots was fired by the gunman, what else, if any, did you observe?
A: I got near my husband an[d] shouted for help and a few seconds the service of the Mayor of Bayawan City arrived. He was in a speaking condition and told me Ma, please help me. I was hit.

x x x x x x x x x

Q: Can you please tell the Honorable Court what happened?
A: More or less before 11 of [sic] after 11:00 o'clock Col. Abella texted me that he is coming so I response [sic] okay sir. So I even told my daughter.

Q: What was the purpose of Col. Abella calling you at that late hour of the night?
A: Some important matters to be discussed.

Q: Did he tell you what this important matter was?
A: No[,] he did not tell me.

Q: What happened?
A: He arrived to (sic) my residence and he asked me if I can come [sic] with him because there is something very important to identity at the police station.

Q: So what else happened after that?
A: I go [sic] with him at the police station with my daughter and my son.

Q: At the police station what[,] if any[,] transpired?
A: We passed at the back gate of the City Hall. Upon reaching at the station[,] I peeped at the window, Col. Abella told me to go inside his office and I peeped at the open door and put (sic) off the light so nothing can be seen inside and I looked outside. I saw another (sic) people around

Q: How many people?
A: More than 10 I think.

Q: And what else happened?
A: When I arrived at the police station and even inclined at the wall and I saw a person seated. I was shocked and I cannot composed (sic) myself. I dont (sic) understand how I feel (sic) and I told Col. Abella he is the one who shoot [sic] my husband. And I even inclined to the wall. I dont know how I feel the first time I saw [him] after he shot my husband.

Q: You earlier said something in the vernacular, ["]sya gud ang gapusil ni Judge["]. What do you mean by that?
A: He was the one who shoot (sic) my husband.

Q: [To] [w]hom were you referring to them (sic)?
A: To the person they were (sic) detained in the police station.

Q: Is that detainee the one you identified in the police station on January 3, 2008?
A: Yes Sir.

Q: Just for clarity, kindly point out to the Honorable Court who was (sic) that detainee is?
A: The witness is pointing to the accused. (witness is pointing to a man in white T-Shirt who already answered that his name is Gilbert Caballero).[11]

It is an oft-repeated doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect. Having observed their deportment in court, the trial judge is in a better position to determine the issue of credibility. For this reason, the findings of trial judges will not be disturbed on appeal in the absence of any clear showing that they have overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that could have altered the conviction of appellants.[12]

In this case, we adopt the findings of the trial court, as affirmed by the Court of Appeals.

We agree with the Court of Appeals' ruling that there was no "suggestive identification" in this case, to wit:

x x x The allegation that the identification of Gilbert constituted suggestive identification is unsubstantiated. The record of the case bears that Bernadette was able to categorically identify Gilbert in a police line-up with police officers and other guests of the police station. Gilbert was neither pointed out to Bernadette nor singled out as the person who was suspected to have committed the crime charged. In fact, the only information that was given to Bernadette when she was invited to the police station was that Gilbert had been taken into custody. P/Supt. Abella then requested that Bernadette

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[11] TSN, 22 October 2008, pp. 4-6 and 15-16.

[12] *Ocampo v. People*, G.R. No. 194129, 15 June 2015.

take a look at the line-up which included Gilbert and inform the police authorities if she could identify the man who shot Judge Velasco on July 25, 2007.[13]

Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[14]

In this case, Bernadette had no motive to falsely accuse appellant. Bernadette would be naturally interested to find out the real killers of her husband. And it so happened that she saw the face of appellant when the latter shot her husband.

The elements of murder that the prosecution must establish are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide.[15]

In the case at bar, it was proven that Judge Velasco was killed and that it was appellant who killed him.

As found by the Court of Appeals, treachery attended the shooting against Judge Velasco, thus:

Gilbert was shown to have shot the deceased, Judge Velasco. The victim was hit three (3) times while on board a motorcycle at around 7:00 o'clock in the evening. Judge Velasco was approaching his house while coming from a birthday party when he was shot. He was unarmed and accompanied by Garabato, his wife, and Christopher Iway. Clearly, Judge Velasco was unaware of any attack that Gilbert planned against him.

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[13] *Rollo*, p. 15.

[14] *People v. Gani*, 710 Phil. 466, 474 (2013).

[15] *People v. Lagman*, 685 Phil. 733, 743 (2012).

To ensure the success of his criminal design, Gilbert, with the aid of an unidentified person, fired at the victim three (3) times. What existed in this case was such a sudden and unexpected attack and without warning on an unsuspecting victim, depriving Judge Velasco of any real chance to defend himself, and thereby ensuring, without risk, of its commission. What is decisive is that the execution of the attack, without the slightest provocation from the victim, who was unarmed, made it impossible for the victim to defend himself or to retaliate.[16]

Under Article 248 of the RPC, the crime of murder is punishable by *reclusion perpetua* to death if committed with treachery. As correctly imposed by the trial court and as affirmed by the Court of Appeals, appellant must suffer the prison term of *reclusion perpetua*, the lower of the said two indivisible penalties, due to the absence of an aggravating circumstance attending the commission of the crime.[17] Appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346.

The awards of civil indemnity, moral damages and exemplary damages must however be increased to ₱100,000.00 each in line with prevailing jurisprudence.[18] In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Resolution until fully paid. The award of actual damages in the amount of ₱561,599.48 and loss of earning in the amount of ₱6,536,131.68 are affirmed.

WHEREFORE, the assailed 29 August 2013 Decision of the Court of Appeals in CA-G.R. CEB-CR HC No. 01195 finding appellant Gilbert Caballero y Garsola guilty beyond reasonable doubt of the crime of murder is **AFFIRMED** with the following **MODIFICATIONS:**

1. The awards of civil indemnity, moral damages and exemplary damages are increased to ₱100,000.00 each;

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[16] *Rollo*, pp. 10-11.

[17] *People v. Jalbonian*, 713 Phil. 93, 106 (2013).

[18] *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

2. That appellant is not eligible for parole; and

3. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Resolution until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 210858. June 29, 2016]

DEPARTMENT OF FOREIGN AFFAIRS, *petitioner, vs.* **BCA INTERNATIONAL CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; ARBITRATION; THE ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004 (RA NO. 9285), ITS IMPLEMENTING RULES AND REGULATIONS (IRR), AND THE SPECIAL ALTERNATIVE DISPUTE RESOLUTION (ADR) RULES APPLY TO ALL PENDING ARBITRATION PROCEEDINGS PROVIDED NO VESTED RIGHTS ARE IMPAIRED BY THE APPLICATION THEREOF.— Arbitration is deemed a special proceeding and governed by the special provisions of RA 9285, its IRR, and the Special ADR Rules. RA 9285 is the general law applicable to all matters and controversies to be resolved through alternative dispute resolution methods. While enacted only in 2004, we held that RA 9285 applies to pending arbitration proceedings since it is a procedural law, which has retroactive effect x x x. The IRR of RA 9285 reiterate that RA 9285 is procedural in

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[*] Additional Member per Raffle dated 13 June 2016.

character and applicable to all pending arbitration proceedings. Consistent with Article 2046 of the Civil Code, the Special ADR Rules were formulated and were also applied to all pending arbitration proceedings covered by RA 9285, provided no vested rights are impaired. Thus, contrary to DFA's contention, RA 9285, its IRR, and the Special ADR Rules are applicable to the present arbitration proceeding. The arbitration between the DFA and BCA is still pending, since no arbitral award has yet been rendered. Moreover, DFA did not allege any vested rights impaired by the application of those procedural rules.

2. ID.; ID.; ID.; THE REGIONAL TRIAL COURT'S GRANT OF THE PETITION FOR ASSISTANCE IN TAKING EVIDENCE SHALL BE IMMEDIATELY EXECUTORY AND NOT SUBJECT TO RECONSIDERATION OR APPEAL, AND THE DENIAL THEREOF IS APPEALABLE BEFORE THE COURT OF APPEALS, NOT TO THE SUPREME COURT; AN APPEAL TO THE SUPREME COURT FROM THE COURT OF APPEALS IS ALLOWED ONLY UNDER ANY OF THE GROUNDS SPECIFIED IN THE SPECIAL ADR RULES.— RA 9285, its IRR, and the Special ADR Rules provide that any party to an arbitration, whether domestic or foreign, may request the court to provide assistance in taking evidence such as the issuance of subpoena *ad testificandum* and subpoena *duces tecum*. The Special ADR Rules specifically provide that they shall apply to assistance in taking evidence, and the RTC order granting assistance in taking evidence shall be immediately executory and not subject to reconsideration or appeal. An appeal with the Court of Appeals (CA) is only possible where the RTC denied a petition for assistance in taking evidence. An appeal to the Supreme Court from the CA is allowed only under any of the grounds specified in the Special ADR Rules. We rule that the DFA failed to follow the procedure and the hierarchy of courts provided in RA 9285, its IRR, and the Special ADR Rules, when DFA directly appealed before this Court the RTC Resolution and Orders granting assistance in taking evidence.

3. ID.; ID.; "THE ARBITRATION LAW" OR REPUBLIC ACT NO. 876 APPLIES TO THE CASE AT BAR.— DFA contends that the RTC issued the subpoenas on the premise that RA 9285 and the Special ADR Rules apply to this case. However,

we find that even without applying RA 9285 and the Special ADR Rules, the RTC still has the authority to issue the subpoenas to assist the parties in taking evidence. The 1976 UNCITRAL Arbitration Rules, agreed upon by the parties to govern them, state that the "arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable." Established in this jurisdiction is the rule that the law of the place where the contract is made governs, or *lex loci contractus*. Since there is no law designated by the parties as applicable and the Agreement was perfected in the Philippines. "The Arbitration Law," or Republic Act No. 876 (RA 876), applies. RA 876 empowered arbitrators to subpoena witnesses and documents when the materiality of the testimony has been demonstrated to them. In *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, we held that Section 14 of RA 876 recognizes the right of any party to petition the court to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO INFORMATION; ONLY WHEN THERE IS AN OFFICIAL RECOMMENDATION CAN A "DEFINITE PROPOSITION" ARISE AND ACCORDINGLY, THE PUBLIC'S RIGHT TO INFORMATION ATTACHES, BUT THE RIGHT TO INFORMATION DOES NOT COVER PRIVILEGED INFORMATION TO PROTECT THE INDEPENDENCE OF DECISION-MAKING BY THE GOVERNMENT.— Contrary to the RTC's ruling, there is nothing in our *Chavez v. Public Estates Authority* ruling which states that once a "definite proposition" is reached by an agency, the privileged character of a document no longer exists. On the other hand, we hold that before a "definite proposition" is reached by an agency, there are no "official acts, transactions, or decisions" yet which can be accessed by the public under the right to information. Only when there is an official recommendation can a "definite proposition" arise and, accordingly, the public's right to information attaches. However, this right to information has certain limitations and **does not cover privileged information** to protect the independence of decision-making by the government. *Chavez v. Public Estates Authority* expressly

and unequivocally states that the right to information "**should not cover recognized exceptions like privileged information**, military and diplomatic secrets and similar matters affecting national security and public order." Clearly, *Chavez v. Public Estates Authority* expressly mandates that "**privileged information**" should be outside the scope of the constitutional right to information, just like military and diplomatic secrets and similar matters affecting national security and public order. In these exceptional cases, even the occurrence of a "definite proposition" will not give rise to the public's right to information.

5. ID.; ID.; ID.; DELIBERATIVE PROCESS PRIVILEGE IS WITHIN THE EXCEPTIONS OF THE CONSTITUTIONAL RIGHT TO INFORMATION.— Deliberative process privilege is one kind of privileged information, which is within the exceptions of the constitutional right to information. In *In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses*, we held that: **Court deliberations are traditionally recognized as privileged communication.** x x x In *Akbayan v. Aquino,* we adopted the ruling of the U.S. Supreme Court in *NLRB v. Sears, Roebuck & Co.*, which stated that the deliberative process privilege protects from disclosure "advisory opinions, recommendations, and deliberations comprising part of a process by which government decisions and policies are formulated." We explained that "[w]ritten advice from a variety of individuals is an important element of the government's decision-making process and that the interchange of advice could be stifled if courts forced the government to disclose those recommendations;" thus, the privilege is intended "to prevent the 'chilling' of deliberative communications."

6. ID.; ID.; ID.; ID.; THE PRIVILEGED CHARACTER OF THE INFORMATION DOES NOT END WHEN AN AGENCY HAS ADOPTED A DEFINITE PROPOSITION OR WHEN A CONTRACT HAS BEEN PERFECTED OR CONSUMMATED; THE DELIBERATIVE PROCESS PRIVILEGE APPLIES IF ITS PURPOSE IS SERVED.— The privileged character of the information does not end when an agency has adopted a definite proposition or when a contract has been perfected or consummated; otherwise, the purpose of the privilege will

be defeated. The deliberative process privilege applies if its purpose is served, that is, "to protect the frank exchange of ideas and opinions critical to the government's decision[-]making process where disclosure would discourage such discussion in the future." x x x In *Gwich'in Steering Comm. V. Office of the Governor,* the Supreme Court of Alaska held that communications have not lost the privilege even when the decision that the documents preceded is finally made. The Supreme Court of Alaska held that "the question is not whether the decision has been implemented, or whether sufficient time has passed, but whether disclosure of these preliminary proposals could harm the agency's future decision[-]making by chilling either submission of such proposals or their forthright consideration."

7. ID.; ID.; ID.; THE DELIBERATIVE PROCESS EXEMPTS MATERIALS THAT ARE PREDECISIONAL AND DELIBERATIVE BUT REQUIRES DISCLOSURE OF POLICY STATEMENTS AND FINAL OPINIONS THAT HAVE THE FORCE OF LAW OR EXPLAIN ACTIONS THAT AN AGENCY HAS ALREADY TAKEN.— Traditionally, U.S. courts have established two fundamental requirements, both of which must be met, for the deliberative process privilege to be invoked. *First,* the communication must be **predecisional**, i.e., "antecedent to the adoption of an agency policy." *Second,* the communication must be **deliberative**, i.e., "a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters." It must reflect the "give-and-take of the consultative process." x x x Thus, "[t]he deliberative process privilege exempts materials that are 'predecisional' and 'deliberative,' but requires disclosure of policy statements and final opinions' 'that have the force of law or explain actions that an agency has already taken.'" x x x This Court applied the deliberative process privilege in *In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses* and found that court records which are "predecisional" and "deliberative" in nature – in particular, documents and other communications which are part of or related to the deliberative process, i.e., notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers – are protected and

cannot be the subject of a subpoena if judicial privilege is to be preserved. We further held that this privilege is not exclusive to the Judiciary and cited our ruling in *Chavez v. Public Estates Authority*.

8. ID.; ID.; ID.; REPUBLIC ACT NO. 9285; THE DELIBERATIVE PROCESS PRIVILEGE CAN BE INVOKED IN ARBITRATION PROCEEDINGS; POLICY BASES AND PURPOSE OF DELIBERATIVE PROCESS PRIVILEGE.— The deliberative process privilege can also be invoked in arbitration proceedings under RA 9285. "Deliberative process privilege contains three policy bases: *first*, the privilege protects candid discussions within an agency; *second*, it prevents public confusion from premature disclosure of agency opinions before the agency establishes final policy; and *third*, it protects the integrity of an agency's decision; the public should not judge officials based on information they considered prior to issuing their final decisions." Stated differently, the privilege serves "to assure that subordinates within an agency will feel free to provide the decision[-]maker with their uninhibited opinions and recommendations without fear of later being subject to public ridicule or criticism; to protect against premature disclosure of proposed policies before they have been finally formulated or adopted; and to protect against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency's action."

9. ID.; ID.; ID.; ID.; THE DISCLOSURE OF AN INFORMATION COVERED BY THE DELIBERATIVE PROCESS PRIVILEGE TO A COURT ARBITRATOR WILL DEFEAT THE POLICY BASES AND PURPOSE OF THE PRIVILEGE.— Under RA 9285, orders of an arbitral tribunal are appealable to the courts. If an official is compelled to testify before an arbitral tribunal and the order of an arbitral tribunal is appealed to the courts, such official can be inhibited by fear of later being subject to public criticism, preventing such official from making candid discussions within his or her agency. The decision of the court is widely published, including details involving the privileged information. This disclosure of privileged information can inhibit a public official

from expressing his or her candid opinion. Future quality of deliberative process can be impaired by undue exposure of the decision-making process to public scrutiny after the court decision is made. Accordingly, a proceeding in the arbitral tribunal does not prevent the possibility of the purpose of the privilege being defeated, if it is not allowed to be invoked. In the same manner, the disclosure of an information covered by the deliberative process privilege to a court arbitrator will defeat the policy bases and purpose of the privilege.

10. ID.; ID.; ID.; ID.; NO EXPRESS WAIVER OF INFORMATION FORMING PART OF THE AGENCY'S PREDECISIONAL DELIBERATIVE OR DECISION MAKING PROCESS UNDER THE AGREEMENT.— DFA did not waive the privilege in arbitration proceedings under the Agreement. The Agreement does not provide for the waiver of the deliberative process privilege by DFA. x x x. Section 20.02 of the Agreement merely allows, ***with the consent of the other party***, disclosure by a party to a court arbitrator or administrative tribunal of the contents of the "Amended BOT Agreement or **any information relating to the negotiations** concerning the operations, contracts, commercial or financial arrangements or affair[s] **of the other parties hereto."** There is no express waiver of information forming part of DFA's predecisional deliberative or decision-making process. Section 20.02 does not state that a party to the arbitration is compelled to disclosure to the tribunal privileged information in such party's possession. Nothing in Section 20.03 mandates compulsory disclosure of privileged information. Section 20.03 merely states that "the restrictions imposed in Section 20.02," referring to the "consent of the other party," shall not apply to a disclosure of privileged information by a party in possession of a privileged information. This is completely different from compelling a party to disclosure privileged information in its possession against its own will.

11. ID.; ID.; ID.; ID.; THE DELIBERATIVE PROCESS PRIVILEGE CANNOT BE WAIVED, FOR THERE IS A PUBLIC POLICY INVOLVED, THAT IS, THE POLICY OF OPEN, FRANK DISCUSSION BETWEEN SUBORDINATE AND CHIEF CONCERNING ADMINISTRATIVE ACTION.— Rights cannot be waived if it is contrary to law,

public order, **public policy**, morals, or good customs, or prejudicial to a third person with a right recognized by law. There is a **public policy** involved in a claim of deliberative process privilege – "the policy of open, frank discussion between subordinate and chief concerning administrative action." Thus, the deliberative process privilege cannot be waived. As we have held in *Akbayan v. Aquino*, the deliberative process privilege is closely related to the presidential communications privilege and protects the public disclosure of information that can compromise the quality of agency decisions.

12. ID.; ID.; ID.; ID.; AS A QUALIFIED PRIVILEGE, THE GOVERNMENT AGENCY ASSERTING THE DELIBERATIVE PROCESS PRIVILEGE BEARS THE BURDEN OF ESTABLISHING THE CHARACTER OF THE DECISION, THE DELIBERATIVE PROCESS INVOLVED, AND THE ROLE PLAYED BY THE DOCUMENTS IN THE COURSE OF THAT PROCESS; CASE REMANDED TO THE REGIONAL TRIAL COURT.— As qualified privilege, the burden falls upon the government agency asserting the deliberative process privilege to prove that the information in question satisfies both requirements – predecisional and deliberative. "The agency bears the burden of establishing the character of the decision, the deliberative process involved, and the role played by the documents in the course of that process." It may be overcome upon a showing that the discoverant's interests in disclosure of the materials outweigh the government's interests in their confidentiality. "The determination of need must be made flexibly on a case-by-case, *ad hoc* basis," and the "factors relevant to this balancing include: the relevance of the evidence, whether there is reason to believe the documents may shed light on government misconduct, whether the information sought is available form other sources and can be obtained without compromising the government's deliberative processes, and the importance of the material to the discoverant's case." In the present case, considering that the RTC erred in applying our ruling in *Chavez v. Public Estates Authority*, and both BCA's and DFA's assertions of subpoena of evidence and the deliberative process privilege are broad and lack specificity, we will not be able to determine whether the evidence sought to be produced is covered by the deliberative process privilege. The parties are directed

to specify their claims before the RTC and, thereafter, the RTC shall determine which evidence is covered by the deliberative process privilege, if there is any, based on the standards provided in this Decision. It is necessary to consider the circumstances surrounding the demand for the evidence to determine whether or not its production is injurious to the consultative functions of government that the privilege of non-disclosure protects.

LEONEN, *J., separate concurring opinion*:

1. CIVIL LAW; ARBITRATIONS; REPUBLIC ACT NO. 876 (THE ARBITRATION LAW), REPUBLIC ACT NO. 9285 (THE ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004), AND ITS IMPLEMENTING RULES AND REGULATIONS, AND THE SPECIAL RULES ON ALTERNATIVE DISPUTE RESOLUTION APPLY TO THE CASE AT BAR.— Both parties stipulated in the Amended Build-Operate-Transfer Agreement that in case of dispute, the matter shall be brought to arbitration under the 1976 UNCITRAL Arbitration Rules. x x x Article 33(1) of the 1976 UNCITRAL Arbitration Rules mandates that the arbitration tribunal shall apply the law designated by the parties. If the parties fail to designate the applicable law, the applicable law shall be that which is determined by the conflict of laws x x x. Since both parties are Filipino and did not designate the applicable law in the Agreement dated April 5, 2002, the applicable law is Republic Act No. 876. Section 14 of Republic Act No. 876 allows the arbitrators to issue subpoenas at any time before the issuance of the award x x x. Republic Act No. 9285, its Implementing Rules and Regulations, and the Special Rules on Alternative Dispute Resolution may also apply since these are procedural laws that may be applied retroactively.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO INFORMATION; NOT ABSOLUTE; "EXECUTIVE PRIVILEGE" IS A LIMITATION ON THE RIGHT TO INFORMATION.— The law recognizes the fundamental right of the People to be informed of matters of public concern. x x x. The right to information is not absolute and is "subject to limitations as may be provided by law." One of the limitations imposed on the right to information is

that of executive privilege. In *Almonte v. Vasquez,* Former Associate Justice Vicente V. Mendoza introduced the concept of governmental privilege against public disclosure: At common law a governmental privilege against disclosure is recognized with respect to state secrets bearing on military, diplomatic and similar matters. This privilege is based upon public interest of such paramount importance as in and of itself transcending the individual interests of a private citizen, even though, as a consequence thereof, the plaintiff cannot enforce his legal rights.

3. ID.; ID.; ID.; EXECUTIVE PRIVILEGE; DEFINED; KINDS; PRESIDENTIAL COMMUNICATIONS PRIVILEGE AND DELIBERATIVE PROCESS PRIVILEGE, DISTINGUISHED.— Executive privilege has been defined as "the power of the Government to withhold information from the public, the courts, and the Congress" or "the right of the President and high-level executive branch officers to withhold information from Congress, the courts, and ultimately the public." Executive privilege has been further defined in *Neri v. Senate Committee on Accountability of Public Officers and Investigations, et al.* to encompass two (2) kinds of privileged information: (1) presidential communications privilege and (2) deliberative process privilege. Thus: [T]here are two (2) kinds of executive privilege: one is the presidential communications privilege and, the other is the deliberative process privilege. The former pertains to "communications, documents or other materials that reflect presidential decision-making and deliberations and that the President believes should remain confidential." The latter includes "advisory opinions, recommendations and deliberations comprising part of a process by which governmental decision and policies are formulated." Accordingly, they are characterized by marked distinctions. Presidential communications privilege applies to decision-making of the President while, the deliberative process privilege, to decision-making of executive officials. The first is rooted in the constitutional principle of separation of power and the President's unique constitutional role; the second on common law privilege. Unlike the deliberative process privilege, the presidential communications privilege applies to documents in their entirety, and covers final and post-decisional materials as well as pre-deliberative ones. As a consequence, congressional or judicial negation of the presidential communications privilege

is always subject to greater scrutiny than denial of the deliberative process privilege.

4. ID.; ID.; ID.; ID.; PURPOSE.— Unlike state secrets, the purpose of the privilege is not for the protection of national security. The purpose is to protect the free exchange of ideas between those tasked with decision-making in the executive branch and to prevent public confusion before an agency has adopted a final policy decision: Courts have identified three purposes in support of the privilege: (1) it protects candid discussions within an agency; (2) it prevents public confusion from premature disclosure of agency opinions before the agency establishes final policy; and (3) it protects the integrity of an agency's decision; the public should not judge officials based on information they considered prior to issuing their final decisions. For the privilege to be validly asserted, the material must be pre-decisional and deliberative.

5. ID.; ID.; ID.; FOR THE INFORMATION TO BE COVERED BY THE DELIBERATIVE PROCESS PRIVILEGE, IT MUST BE PRE-DECISIONAL AND DELIBERATIVE; DISCUSSED; THE PRIVILEGE MAY CONTINUE EVEN AFTER A DEFINITE PROPOSITION HAS BEEN MADE IF THE INFORMATION CONCERNS MATTERS OF NATIONAL SECURITY, DIPLOMATIC RELATIONS, AND PUBLIC ORDER OR IF PUBLIC DISCLOSURE HAS BEEN LIMITED BY LAW.— Information is pre-decisional if no final decision has been made. On the other hand, information is deliberative if it exposes the decision-making process of the agency: A document is "predecisional" under the deliberative process privilege if it precedes, in temporal sequence, the decision to which it relates. In other words, communications are considered predecisional if they were made in the attempt to reach a final conclusion. A material is "deliberative," on the other hand, if it reflects the give-and-take of the consultative process. The key question in determining whether the material is deliberative in nature is whether disclosure of the information would discourage candid discussion within the agency. If the disclosure of the information would expose the government's decision-making process in a way that discourages candid discussion among the decision-makers (thereby undermining the courts' ability to perform their

functions), the information is deemed privileged. x x x. Thus, for the information to be covered by the deliberative process privilege, it must be (1) pre-decisional and (2) deliberative. The privilege ends when the executive agency adopts a definite proposition. *Akbayan v. Aquino*, however, qualified that the privilege may continue *even after* a definite proposition has been made if the information concerns matters of national security, diplomatic relations, and public order or if public disclosure has been limited by law.

6. ID.; ID.; ID.; THE DELIBERATIVE PROCESS PRIVILEGE MAYBE WAIVED UNLESS THE INFORMATION CONCERNS NATIONAL SECURITY, DIPLOMATIC RELATIONS, OR PUBLIC ORDER.— The deliberative process privilege may have already been waived by the Department of Foreign Affairs in the Amended Build-Operate-Transfer Agreement. The deliberative process privilege is lesser in scope than the presidential communications privilege. Its coverage and duration are limited. It stands to reason that the privilege may be waived unless the information concerns national security, diplomatic relations, or public order. In Sections 20.02 and 20.03 of the Amended Build-Operate-Transfer Agreement, the parties agreed to keep information relating to negotiations confidential, subject to certain limitations. x x x The Department of Foreign Affairs was a party to the Amended Build-Operate-Transfer Agreement. While it stipulated that all matters concerning the contract were confidential, it similarly stipulated that information could be disclosed to a court arbitrator. If it intended to exercise its privilege to keep *all* matters concerning the Amended Build-Operate-Transfer Agreement including negotiations concerning its implementation confidential, it should not have agreed to the exceptions in Section 20.03 of the Agreement. This stipulation, however, only affects disclosures made by officers of the Department of Foreign Affairs. The Department of Finance and the Commission on Audit were not parties to the Amended Build-Operate-Transfer Agreement; hence, they could still validly invoke the deliberative process privilege.

7. ID.; ID.; ID.; THE DELIBERATIVE PROCESS PRIVILEGE NEED NOT BE INVOKED WHERE THE PROCEEDINGS ARE NOT MADE PUBLIC AND THE RECORDS ARE

CONFIDENTIAL IN NATURE.— The deliberative process privilege may not always apply to arbitration proceedings under Republic Act No. 9285. The deliberative process privilege is a privilege that an officer of an executive department may invoke to prevent *public* disclosure of any information that may compromise its decision-making capability. Its purpose "rests most fundamentally on the belief that were agencies forced to operate in a fishbowl, frank exchange of ideas and opinions would cease and the quality of administrative decisions would consequently suffer." This is to prevent subjecting an agency's decision-making process to public opinion before any definite policy action has been made. Thus, the privilege may lose its purpose when the disclosure is not to the public. Here, the Department of Foreign Affairs opposed the disclosure of information to the *Ad Hoc* Tribunal by invoking the privilege, but the proceedings of the *Ad Hoc* Tribunal are not made public. x x x Thus, considering that the records of the *Ad Hoc* Tribunal are confidential in nature, there could not have been any need for the Department of Foreign Affairs to invoke the deliberative process privilege.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Castillo Laman Tan Pantaleon & San Jose for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the Orders dated 11 October 2013[2] and 8 January 2014,[3] as well as the Resolution dated 2 September 2013,[4] of the Regional Trial Court of Makati City (RTC), Branch 146, in SP PROC. No. M-7458.

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[1] *Rollo*, pp. 17-45. Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Id.* at 46-49. Penned by Presiding Judge Encarnacion Jaja G. Moya.

[3] *Id.* at 50.

[4] *Id.* at 51-56.

The Facts

In an Amended Build-Operate-Transfer Agreement dated 5 April 2002 (Agreement), petitioner Department of Foreign Affairs (DFA) awarded the Machine Readable Passport and Visa Project (MRP/V Project) to respondent BCA International Corporation (BCA), a domestic corporation. During the implementation of the MRP/V Project, DFA sought to terminate the Agreement. However, BCA opposed the termination and filed a Request for Arbitration, according to the provision in the Agreement:

> *Section 19.02. Failure to Settle Amicably*. — If the Dispute cannot be settled amicably within ninety (90) days by mutual discussion as contemplated under Section 19.01 herein, the Dispute shall be settled with finality by an arbitrage tribunal operating under International Law, hereinafter referred to as the *"Tribunal"*, under the **UNCITRAL Arbitration Rules contained in Resolution 31/98 adopted by the United Nations General Assembly on December 15, 1976**, and entitled *"Arbitration Rules on the United Nations Commission on the International Trade Law"*. The DFA and the BCA undertake to abide by and implement the arbitration award. The place of arbitration shall be Pasay City, Philippines, or such other place as may be mutually agreed upon by both parties. The arbitration proceeding shall be conducted in the English language.[5] (Emphasis supplied)

On 29 June 2009, an *ad hoc* arbitral tribunal[6] was constituted. In an Order dated 15 April 2013,[7] the arbitral tribunal approved BCA's request to apply in court for the issuance of subpoena, subject to the conditions that the application will not affect its proceedings and the hearing set in October 2013 will proceed whether the witnesses attend or not.

On 16 May 2013, BCA filed before the RTC a Petition for Assistance in Taking Evidence[8] pursuant to the Implementing

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[5] *Id.* at 264.

[6] Composed of Atty. Danilo L. Concepcion as chairman, and Dean Custodio O. Parlade and Atty. Antonio P. Jamon, as members.

[7] *Rollo*, pp. 83-84.

[8] *Id.* at 68-80.

Rules and Regulations (IRR) of "The Alternative Dispute Resolution Act of 2004," or Republic Act No. 9285 (RA 9285). In its petition, BCA sought the issuance of subpoena *ad testificandum* and subpoena *duces tecum* to the following witnesses and documents in their custody:[9]

Witnesses	Documents to be produced
1. Secretary of Foreign Affairs or his representative/s, specifically Undersecretary Franklin M. Ebdalin and Ambassador Belen F. Anota	a. Request for Proposal dated September 10, 1999 for the MRP/V Project; b. Notice of Award dated September 29, 2000 awarding the MRP/V Project in favor of BCA and requiring BCA to incorporate a Project Company to implement the MRP/V Project; c. Department of Foreign Affairs Machine Readable Passport and Visa Project Build- Operate-Transfer Agreement dated February 8, 2001; d. Department of Foreign Affairs Machine Readable Passport and Visa Project Amended Build-Operate-Transfer Agreement dated April 5, 2002; e. Documents, records, papers and correspondence between DFA and BCA regarding the negotiations for the contract of lease of the PNB building, which was identified in the Request for Proposal as the Central Facility Site, and the failure of said negotiations; f. Documents, records, reports, studies, paper and correspondence between DFA and BCA regarding the search for alternative Central Facility Site; g. Documents, records, papers and correspondence between DFA and BCA regarding the latter's submission of the

[9] *Id.* at 72-77.

	Project Master Plan (Phase One of the MRP/V Project); h. Documents, records, papers and correspondence among DFA, DFA's Project Planning Team, Questronix Corporation, MRP/V Advisory Board and other related government agencies, and BCA regarding the recommendation for the issuance of the Certificate of Acceptance in favor of BCA; i. Certificate of Acceptance for Phase One dated June 9, 2004 issued by DFA; j. Documents, records, papers and correspondence between DFA and BCA regarding the approval of the Star Mall complex as the Central Facility Site; k. Documents, records, papers and correspondence among DFA, Questronix Corporation, MRP/V Advisory Board and other related government agencies, and BCA regarding the recommendation for the approval of the Star Mall complex as the Central Facility Site; l. Documents, records, papers and correspondence between DFA and BCA regarding the DFA's request for BCA to terminate its Assignment Agreement with Philpass, including BCA's compliance therewith; m. Documents, records, papers and correspondence between DFA and BCA regarding the DFA's demand for BCA to prove its financial capability to implement the MRP/V Project, including the compliance therewith by BCA; n. Documents, records, papers and correspondence between DFA and BCA

	regarding the DFA's attempt to terminate the Amended BOT Agreement, including BCA's response to DFA and BCA's attempts to mutually discuss the matter with DFA; o. Documents, records, papers and correspondence among DFA and MRP/V Advisory Board, DTI-BOT Center, Department of Finance and Commission on Audit regarding the delays in the implementation of the MRP/V Project, DFA's requirement for BCA to prove its financial capability, and the opinions of the said government agencies in relation to DFA's attempt to terminate the Amended BOT Agreement; and p. Other related documents, records, papers and correspondence.
2. Secretary of Finance or his representative/s, specifically former Secretary of Finance Juanita D. Amatong	a. Documents, records, papers and correspondence between DFA and Department of Finance regarding the DFA's requirement for BCA to prove its financial capability to implement the MRP/V Project and its opinion thereon; b. Documents, records, papers and correspondence between DFA and DOF regarding BCA's compliance with DFA's demand for BCA to further prove its financial capability to implement the MRP/V Project; c. Documents, records, papers and correspondence between DFA and DOF regarding the delays in the implementation of the MRP/V Project; d. Documents, records, papers and correspondence between DFA and DOF regarding the DFA's attempted termination of the Amended BOT Agreement; and

	e. Other related documents, records, papers and correspondence.
3. Chairman of the Commission on Audit or her representative/s, specifically Ms. Iluminada M. V. Fabroa (Director IV)	a. Documents, records, papers and correspondence between DFA and COA regarding the COA's conduct of a sectoral performance audit on the MRP/V Project; b. Documents, records, papers and correspondence between DFA and COA regarding the delays in and its recommendation to fast-track the implementation of the MRP/V Project; c. Documents, records, papers and correspondence between DFA and COA regarding COA's advice to cancel the Assignment Agreement between BCA and Philpass "for being contrary to existing laws and regulations and DOJ opinion"; d. Documents, records, papers and correspondence between DFA and COA regarding DFA's attempted termination of the Amended BOT Agreement; and e. Other related documents, records, papers and correspondence.
4. Executive Director or any officer or representative of the Department of Trade and Industry Build-Operate-Transfer Center, specifically Messrs. Noel Eli B. Kintanar, Rafaelito H. Taruc and Luisito Ucab	a. Documents, records, papers and correspondence between DFA and BOT Center regarding the delays in the implementation of the MRP/V Project, including DFA's delay in the issuance of the Certificate of Acceptance for Phase One of the MRP/V Project and in approving the Central Facility Site at the Star Mall complex; b. Documents, records, papers and correspondence between DFA and BOT Center regarding BCA's financial capability and the BOT Center's opinion on DFA's demand for BCA to further prove its financial capability to implement the MRP/V Project;

	c. Documents, records, papers and correspondence between DFA and BOT Center regarding the DFA's attempt to terminate the Amended BOT Agreement, including the BOT Center's unsolicited advice dated December 23, 2005 stating that the issuance of the Notice of Termination was "precipitate, and done without first carefully ensuring that there were sufficient grounds to warrant such an issuance" and was"devoid of merit"; d. Documents, records, papers and correspondence between DFA and BOT Center regarding the DFA's unwarranted refusal to approve BCA's proposal to obtain the required financing by allowing the entry of a "strategic investor"; and e. Other related documents, records, papers and correspondence.
5. Chairman of the DFA MRP/V Advisory Board or his representative/s, specifically DFA Undersecretary Franklin M. Ebdalin and MRP/V Project Manager, specifically Atty. Voltaire Mauricio	a. Documents, records, papers and correspondence between DFA and the MRP/V Advisory Board regarding BCA['s] performance of its obligations for Phase One of the MRP/V Project, the MRP/V Advisory Board's recommendation for the issuance of the Certificate of Acceptance of Phase One of the MRP/V Project and its preparation of the draft of the Certificate of Acceptance; b. Documents, records, papers and correspondence between DFA and the MRP/V Advisory Board regarding the latter's recommendation for the DFA to approve the Star Mall complex as the Central Facility Site; c. Documents, records, papers and correspondence between DFA and the

	MRP/V Advisory Board regarding BCA's request to allow the investment of S.F. Pass International in Philpass; d. Documents, records, papers, and correspondence between DFA and the MRP/V Advisory Board regarding BCA's financial capability and the MRP/V Advisoty Board's opinion on DFA's demand for BCA to further prove its financial capability to implement the MRP/V Project; e. Documents, records, papers and corespondence between DFA and the MRP/V Advisory Board regarding the DFA's attempted termination of the Amended BOT Agreement; and f. Other related documents, records, papers and correspondence.

On 1 July 2013, DFA filed its comment, alleging that the presentation of the witnesses and documents was prohibited by law and protected by the deliberative process privilege.

The RTC Ruling

In a Resolution dated 2 September 2013, the RTC ruled in favor of BCA and held that the evidence sought to be produced was no longer covered by the deliberative process privilege. According to the RTC, the Court held in *Chavez v. Public Estates Authority*[10] that acts, transactions or decisions are privileged only before a definite proposition is reached by the agency and since DFA already made a definite proposition and entered into a contract, DFA's acts, transactions or decisions were no longer privileged.[11]

The dispositive portion of the RTC Resolution reads:

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[10] 433 Phil. 506 (2002).

[11] *Rollo*, pp. 54-55.

WHEREFORE, the petition is granted. Let subpoena *ad testificandum* [and subpoena] *duces tecum* be issued to the persons listed in paragraph 11 of the Petition for them to appear and bring the documents specified in paragraph 12 thereof, before the Ad Hoc Tribunal for the hearings on October 14, 15, 16, 17, 2013 at 9:00 a.m. and 2:00 p.m. at the Malcolm Hall, University of the Philippines, Diliman, Quezon City.[12]

On 6 September 2013, the RTC issued the subpoena *duces tecum* and subpoena *ad testificandum*. On 12 September 2013, DFA filed a motion to quash the subpoena *duces tecum* and subpoena *ad testificandum*, which BCA opposed.

In an Order dated 11 October 2013, the RTC denied the motion to quash and held that the motion was actually a motion for reconsideration, which is prohibited under Rule 9.9 of the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules).

On 14, 16, and 17 October 2013, Undersecretary Franklin M. Ebdalin (Usec. Ebdalin), Atty. Voltaire Mauricio (Atty. Mauricio), and Luisito Ucab (Mr. Ucab) testified before the arbitral tribunal pursuant to the subpoena.

In an Order dated 8 January 2014, the RTC denied the motion for reconsideration filed by DFA. The RTC ruled that the motion became moot with the appearance of the witnesses during the arbitration hearings. Hence, DFA filed this petition with an urgent prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction.

In a Resolution dated 2 April 2014, the Court issued a temporary restraining order enjoining the arbitral tribunal from taking cognizance of the testimonies of Usec. Ebdalin, Atty. Mauricio, and Mr. Ucab.

The Issues

DFA raises the following issues in this petition: (1) the 1976 UNCITRAL Arbitration Rules and the Rules of Court apply to

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[12] *Id.* at 55.

the present arbitration proceedings, not RA 9285 and the Special ADR Rules; and (2) the witnesses presented during the 14, 16, and 17 October 2013 hearings before the *ad hoc* arbitral tribunal are prohibited from disclosing information on the basis of the deliberative process privilege.

The Ruling of the Court

We partially grant the petition.

Arbitration is deemed a special proceeding[13] and governed by the special provisions of RA 9285, its IRR, and the Special ADR Rules.[14] RA 9285 is the general law applicable to all matters and controversies to be resolved through alternative dispute resolution methods.[15] While enacted only in 2004, we held that RA 9285 applies to pending arbitration proceedings since it is a procedural law, which has retroactive effect:

> **While RA 9285 was passed only in 2004, it nonetheless applies in the instant case since it is a procedural law which has a retroactive effect.** Likewise, KOGIES filed its application for arbitration before the KCAB on July 1, 1998 and it is still pending because no arbitral award has yet been rendered. Thus, RA 9285 is applicable to the instant case. Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. **As a general rule, the retroactive application of procedural laws does not violate any personal rights because no vested right has yet attached nor arisen from them.**[16] (Emphasis supplied)

The IRR of RA 9285 reiterate that RA 9285 is procedural in character and applicable to all pending arbitration proceedings.[17]

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[13] The Arbitration Law or Republic Act No. 876, Section 22; Special ADR Rules, Rule 1.2.

[14] Rules of Court, Rule 72, Section 2 provides: "In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings."

[15] *Department of Foreign Affairs v. Judge Falcon*, 644 Phil. 105 (2010).

[16] *Korea Technologies Co., Ltd. v. Judge Lerma*, 566 Phil. 1, 27 (2008).

[17] IRR of RA 9285, Article 8.4.

Consistent with Article 2046 of the Civil Code,[18] the Special ADR Rules were formulated and were also applied to all pending arbitration proceedings covered by RA 9285, provided no vested rights are impaired.[19] Thus, contrary to DFA's contention, RA 9285, its IRR, and the Special ADR Rules are applicable to the present arbitration proceeding. The arbitration between the DFA and BCA is still pending, since no arbitral award has yet been rendered. Moreover, DFA did not allege any vested rights impaired by the application of those procedural rules.

RA 9285, its IRR, and the Special ADR Rules provide that any party to an arbitration, whether domestic or foreign, may request the court to provide assistance in taking evidence such as the issuance of subpoena *ad testificandum* and subpoena *duces tecum.*[20] The Special ADR Rules specifically provide that they shall apply to assistance in taking evidence,[21] and the RTC order granting assistance in taking evidence shall be immediately executory and not subject to reconsideration or appeal.[22] An appeal with the Court of Appeals (CA) is only possible where the RTC denied a petition for assistance in taking evidence.[23] An appeal to the Supreme Court from the CA is allowed only under any of the grounds specified in the Special ADR Rules.[24] We rule that the DFA failed to follow the procedure and the

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[18] Civil Code, Article 2046: "The appointment of arbitrators and the procedure for arbitration shall be governed by the provisions of such rules of court as the Supreme Court shall promulgate."

[19] Special ADR Rules, Rule 24.1: "Considering its procedural character, the Special ADR Rules shall be applicable to all pending arbitration, mediation or other ADR forms covered by the ADR Act, unless the parties agree otherwise. The Special ADR Rules, however, may not prejudice or impair vested rights in accordance with law."

[20] IRR of RA 9285, Rules 4.27 and 5.27; Special ADR Rules, Rules 9.1 and 9.5.

[21] Special ADR Rules, Rule 1.1 (g).

[22] Special ADR Rules, Rules 9.9 and 19.1.

[23] Special ADR Rules, Rules 19.12 and 19.26.

[24] Special ADR Rules, Rules 19.36 and 19.37.

hierarchy of courts provided in RA 9285, its IRR, and the Special ADR Rules, when DFA directly appealed before this Court the RTC Resolution and Orders granting assistance in taking evidence.

DFA contends that the RTC issued the subpoenas on the premise that RA 9285 and the Special ADR Rules apply to this case. However, we find that even without applying RA 9285 and the Special ADR Rules, the RTC still has the authority to issue the subpoenas to assist the parties in taking evidence.

The 1976 UNCITRAL Arbitration Rules, agreed upon by the parties to govern them, state that the "arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable."[25] Established in this jurisdiction is the rule that the law of the place where the contract is made governs, or *lex loci contractus*.[26] Since there is no law designated by the parties as applicable and the Agreement was perfected in the Philippines, "The Arbitration Law," or Republic Act No. 876 (RA 876), applies.

RA 876 empowered arbitrators to subpoena witnesses and documents when the materiality of the testimony has been demonstrated to them.[27] In *Transfield Philippines, Inc. v. Luzon Hydro Corporation*,[28] we held that Section 14 of RA 876 recognizes the right of any party to petition the court to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration.

Considering that this petition was not filed in accordance with RA 9285, the Special ADR Rules and 1976 UNCITRAL Arbitration Rules, this petition should normally be denied.

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[25] Article 33(1) of the 1976 UNCITRAL Arbitration Rules.

[26] *Korea Technologies Co., Ltd. v. Judge Lerma, supra* note 16.

[27] Section 14 of RA 876.

[28] 523 Phil. 374 (2006).

However, we have held time and again that the ends of justice are better served when cases are determined on the merits after all parties are given full opportunity to ventilate their causes and defenses rather than on technicality or some procedural imperfections.[29] More importantly, this case is one of first impression involving the production of evidence in an arbitration case where the **deliberative process privilege** is invoked.

Thus, DFA insists that we determine whether the evidence sought to be subpoenaed is covered by the deliberative process privilege. DFA contends that the RTC erred in holding that the deliberative process privilege is no longer applicable in this case. According to the RTC, based on *Chavez v. Public Estates Authority*,[30] "acts, transactions or decisions are privileged only before a definite proposition is reached by the agency," and since, in this case, DFA not only made "a definite proposition" but already entered into a contract then the evidence sought to be produced is no longer privileged.[31]

We have held in *Chavez v. Public Estates Authority*[32] that:

> Information, however, on *on-going evaluation or review* of bids or proposals being undertaken by the bidding or review committee is not immediately accessible under the right to information. While the evaluation or review is still on-going, there are no "official acts, transactions, or decisions" on the bids or proposals. However, once the committee makes its *official recommendation*, there arises a "*definite proposition*" on the part of the government. From this moment, the public's right to information attaches, and any citizen can access all the non-proprietary information leading to such definite proposition.
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> The right to information, however, does not extend to matters recognized as privileged information under the separation of powers.

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[29] *Department of Foreign Affairs v. Judge Falcon, supra* note 15, citing *Ateneo de Naga University v. Manalo*, 497 Phil. 635 (2005).

[30] *Supra* note 10.

[31] *Rollo*, pp. 54-55.

[32] *Supra* note 10, at 531-532, 534.

The right does not also apply to information on military and diplomatic secrets, information affecting national security, and information on investigations of crimes by law enforcement agencies before the prosecution of the accused, which courts have long recognized as confidential. The right may also be subject to other limitations that Congress may impose by law.

There is no claim by PEA that the information demanded by petitioner is privileged information rooted in the separation of powers. The information does not cover Presidential conversations, correspondences, or discussions during closed-door Cabinet meetings which, like internal deliberations of the Supreme Court and other collegiate courts, or executive sessions of either house of Congress, are recognized as confidential. This kind of information cannot be pried open by a co-equal branch of government. **A frank exchange of exploratory ideas and assessments, free from the glare of publicity and pressure by interested parties, is essential to protect the independence of decision-making of those tasked to exercise Presidential, Legislative and Judicial power.** This is not the situation in the instant case.

We rule, therefore, that the constitutional right to information includes official information on ***on-going negotiations*** before a final contract. The information, however, must constitute definite propositions by the government and should not cover recognized exceptions like **privileged information**, military and diplomatic secrets and similar matters affecting national security and public order. Congress has also prescribed other limitations on the right to information in several legislations. (Emphasis supplied)

Contrary to the RTC's ruling, there is nothing in our *Chavez v. Public Estates Authority*[33] ruling which states that once a "definite proposition" is reached by an agency, the privileged character of a document no longer exists. On the other hand, we hold that before a "definite proposition" is reached by an agency, there are no "official acts, transactions, or decisions" yet which can be accessed by the public under the right to information. Only when there is an official recommendation can a "definite proposition" arise and, accordingly, the public's right to information attaches. However, this right to information

[33] *Supra* note 10.

has certain limitations and **does not cover privileged information** to protect the independence of decision-making by the government.

Chavez v. Public Estates Authority[34] expressly and unequivocally states that the right to information "**should not cover recognized exceptions like privileged information**, military and diplomatic secrets and similar matters affecting national security and public order." Clearly, *Chavez v. Public Estates Authority*[35] expressly mandates that "**privileged information**" should be outside the scope of the constitutional right to information, just like military and diplomatic secrets and similar matters affecting national security and public order. In these exceptional cases, even the occurrence of a "definite proposition" will not give rise to the public's right to information.

Deliberative process privilege is one kind of privileged information, which is within the exceptions of the constitutional right to information. In *In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses,*[36] we held that:

Court deliberations are traditionally recognized as privileged communication. Section 2, Rule 10 of the IRSC provides:

Section 2. Confidentiality of court sessions. — Court sessions are executive in character, with only the Members of the Court present. Court deliberations are confidential and shall not be disclosed to outside parties, except as may be provided herein or as authorized by the Court.

Justice Abad discussed the rationale for the rule in his concurring opinion to the Court Resolution in *Arroyo v. De Lima* (TRO on Watch List Order case): the rules on confidentiality will enable the Members of the Court to "freely discuss the issues without fear of

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[34] *Supra* note 10.

[35] *Supra* note 10.

[36] *In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses under the Subpoenas of February 10, 2012 and the Various Letters for the Impeachment Prosecution Panel Dated January 19 and 25, 2012*, 14 February 2012 (unsigned Resolution).

criticism for holding unpopular positions" or fear of humiliation for one's comments. **The privilege against disclosure of these kinds of information/communication is known as deliberative process privilege, involving as it does the deliberative process of reaching a decision.** "Written advice from a variety of individuals is an important element of the government's decision-making process and that the interchange of advice could be stifled if courts forced the government to disclose those recommendations;" the privilege is intended "to prevent the 'chilling' of deliberative communications."

The privilege is not exclusive to the Judiciary. We have in passing recognized the claim of this privilege by the two other branches of government in *Chavez v. Public Estates Authority* (speaking through J. Carpio) when the Court declared that —

[t]he information x x x like internal deliberations of the Supreme Court and other collegiate courts, or executive sessions of either house of Congress, are recognized as confidential. This kind of information cannot be pried open by a co-equal branch of government. A frank exchange of exploratory ideas and assessments, free from the glare of publicity and pressure by interested parties, is essential to protect the independence of decision-making of those tasked to exercise Presidential, Legislative and Judicial power. (Emphasis supplied)

In *Akbayan v. Aquino*,[37] we adopted the ruling of the U.S. Supreme Court in *NLRB v. Sears, Roebuck & Co*,[38] which stated that the deliberative process privilege protects from disclosure "advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated." We explained that "[w]ritten advice from a variety of individuals is an important element of the government's decision-making process and that the interchange of advice could be stifled if courts forced the government to disclose those recommendations"; thus, the privilege is intended "to prevent the 'chilling' of deliberative communications."[39]

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[37] 580 Phil. 422 (2008).

[38] 421 U.S. 132 (1975).

[39] *In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses under the Subpoenas of*

The privileged character of the information does not end when an agency has adopted a definite proposition or when a contract has been perfected or consummated; otherwise, the purpose of the privilege will be defeated.

The deliberative process privilege applies if its purpose is served, that is, "to protect the frank exchange of ideas and opinions critical to the government's decision[-]making process where disclosure would discourage such discussion in the future."[40] In *Judicial Watch of Florida v. Department of Justice*,[41] the U.S. District Court for the District of Columbia held that the deliberative process privilege's "ultimate purpose x x x is to prevent injury to the quality of agency decisions by allowing government officials freedom to debate alternative approaches in private," and this ultimate purpose would not be served equally well by making the privilege temporary or held to have expired. In *Gwich'in Steering Comm. v. Office of the Governor*,[42] the Supreme Court of Alaska held that communications have not lost the privilege even when the decision that the documents preceded is finally made. The Supreme Court of Alaska held that "the question is not whether the decision has been implemented, or whether sufficient time has passed, but whether disclosure of these preliminary proposals could harm the agency's future decision[-]making by chilling either the submission of such proposals or their forthright consideration."

Traditionally, U.S. courts have established two fundamental requirements, both of which must be met, for the deliberative process privilege to be invoked.[43] *First*, the communication must

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February 10, 2012 and the Various Letters for the Impeachment Prosecution Panel Dated January 19 and 25, 2012, *supra* note 35.

[40] *Vandelay Entm't, LLC v. Fallin*, 2014 OK 109 (16 December 2014); *City of Colorado Springs v. White*, 967 P.2d 1042 (1998).

[41] 102 F. Supp. 2d 6 (2000).

[42] 10 P.3d 572 (2002).

[43] *Pacific Coast Shellfish Growers Association v. United States Army Corps of Engineers*, 2016 U.S. Dist. LEXIS 68814 (W.D. Wash. 24 May 2016); *Judicial Watch, Inc. v. Department of Justice*, 306 F. Supp. 2d 58

be **predecisional**, i.e., "antecedent to the adoption of an agency policy." *Second*, the communication must be deliberative, *i.e.*, "a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters." It must reflect the "give-and-take of the consultative process."[44] The Supreme Court of Colorado also took into account other considerations:

> Courts have also looked to other considerations in assessing whether material is predecisional and deliberative. The function and significance of the document in the agency's decision-making process are relevant. Documents representing the ideas and theories that go into the making of policy, which are privileged, should be distinguished from "binding agency opinions and interpretations" that are "retained and referred to as precedent" and constitute the policy itself.
>
> Furthermore, courts examine the identity and decision-making authority of the office or person issuing the material. A document from a subordinate to a superior official is more likely to be predecisional, "while a document moving in the opposite direction is more likely to contain instructions to staff explaining the reasons for a decision already made."
>
> Finally, in addition to assessing whether the material is predecisional and deliberative, and in order to determine if disclosure of the material is likely to adversely affect the purposes of the privilege, courts inquire whether "the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency." As a consequence, **the deliberative process privilege typically covers recommendations, advisory opinions, draft documents, proposals, suggestions, and other subjective documents that reflect the personal opinions of the writer rather than the policy of the agency.**[45] (Emphasis supplied)

(D.D.C. 2004); *Gwich'in Steering Comm. v. Office of the Governor*, *supra* note 41; *Judicial Watch of Florida v. Department of Justice*, *supra* note 40; *City of Colorado Springs v. White*, 967 P.2d 1042 (1998); *Judicial Watch v. Clinton*, 880 F. Supp. 1 (D.D.C. 1995); *Strang v. Collyer*, 710 F. Supp. 9 (D.D.C. 1989); *Fulbright & Jaworski v. Dep't. of the Treasury*, 545 F. Supp. 615 (D.D.C. 1982).

[44] *Id.*

[45] *City of Colorado Springs v. White*, 967 P.2d 1042 (1998).

Thus, "[t]he deliberative process privilege exempts materials that are 'predecisional' and 'deliberative,' but requires disclosure of policy statements and final opinions 'that have the force of law or explain actions that an agency has already taken.'"[46]

In *City of Colorado Springs v. White*,[47] the Supreme Court of Colorado held that the outside consultant's evaluation report of working environment and policies was covered by the deliberative process privilege because the report contained observations on current atmosphere and suggestions on how to improve the division rather than an expression of final agency decision. In *Strang v. Collyer*,[48] the U.S. District Court for the District of Columbia held that the meeting notes that reflect the exchange of opinions between agency personnel or divisions of agency are covered by the deliberative process privilege because they "reflect the agency's group thinking in the process of working out its policy" and are part of the deliberative process in arriving at the final position. In *Judicial Watch v. Clinton*,[49] the U.S. District Court for the District of Columbia held that handwritten notes reflecting preliminary thoughts of agency personnel were properly withheld under the deliberative process privilege. The U.S. District Court reasoned that "disclosure of this type of deliberative material inhibits open debate and discussion, and has a chilling effect on the free exchange of ideas."

This Court applied the deliberative process privilege in *In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses*[50] and found that court records which are "predecisional" and "deliberative" in nature — in particular, documents and other communications which are part of or related to the deliberative process, i.e., notes, drafts, research papers, internal discussions,

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[46] *Fulbright & Jaworski v. Dep't. of Treasury*, 545 F. Supp. 615 (D.D.C. 1982).

[47] *Supra*.

[48] 710 F. Supp. 9 (D.D.C. 1989).

[49] 880 F. Supp. I (D.D.C. 1995).

[50] *Supra* note 36.

internal memoranda, records of internal deliberations, and similar papers — are protected and cannot be the subject of a subpoena if judicial privilege is to be preserved. We further held that this privilege is not exclusive to the Judiciary and cited our ruling in *Chavez v. Public Estates Authority*.[51]

The deliberative process privilege can also be invoked in arbitration proceedings under RA 9285.

"Deliberative process privilege contains three policy bases: *first*, the privilege protects candid discussions within an agency; *second*, it prevents public confusion from premature disclosure of agency opinions before the agency establishes final policy; and *third*, it protects the integrity of an agency's decision; the public should not judge officials based on information they considered prior to issuing their final decisions."[52] Stated differently, the privilege serves "to assure that subordinates within an agency will feel free to provide the decision[-]maker with their uninhibited opinions and recommendations without fear of later being subject to public ridicule or criticism; to protect against premature disclosure of proposed policies before they have been finally formulated or adopted; and to protect against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency's action."[53]

Under RA 9285,[54] orders of an arbitral tribunal are appealable to the courts. If an official is compelled to testify before an arbitral tribunal and the order of an arbitral tribunal is appealed

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[51] *Supra* note 10.

[52] *City of Colorado Springs v. White*, *supra* note 45.

[53] *Judicial Watch v. Clinton*, *supra*.

[54] RA 9285, Section 32 provides that: "Domestic arbitration shall continue to be governed by Republic Act No. 876, otherwise known as "The Arbitration Law" as amended by this Chapter. x x x." RA 876, Section 29 provides that: "An appeal may be taken from an order made in a proceeding under this Act, or from a judgment entered upon an award through certiorari proceedings, but such appeals shall be limited to questions of law. The

to the courts, such official can be inhibited by fear of later being subject to public criticism, preventing such official from making candid discussions within his or her agency. The decision of the court is widely published, including details involving the privileged information. This disclosure of privileged information can inhibit a public official from expressing his or her candid opinion. Future quality of deliberative process can be impaired by undue exposure of the decision-making process to public scrutiny after the court decision is made.

Accordingly, a proceeding in the arbitral tribunal does not prevent the possibility of the purpose of the privilege being defeated, if it is not allowed to be invoked. In the same manner, the disclosure of an information covered by the deliberative process privilege to a court arbitrator will defeat the policy bases and purpose of the privilege.

DFA did not waive the privilege in arbitration proceedings under the Agreement. The Agreement does not provide for the waiver of the deliberative process privilege by DFA. The Agreement only provides that:

> ***Section 20.02*** None of the parties shall, at any time, before or after the expiration or sooner termination of this Amended BOT Agreement, **without the consent of the other party**, divulge or suffer or permit its officers, employees, agents or contractors to divulge to any person, other than any of its or their respective officers or employees who require the same to enable them properly to carry out their duties, **any of the contents of this Amended BOT Agreement or any information relating to the negotiations concerning the operations, contracts, commercial or financial arrangements or affair[s] of the other parties hereto.** Documents marked "CONFIDENTIAL" or the like, providing that such material shall be kept confidential, and shall constitute prima facie evidence that such information contained therein is subject to the terms of this provision.
>
> ***Section 20.03*** **The restrictions imposed in Section 20.02 herein shall not apply to the disclosure of any information:**

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proceedings upon such an appeal, including the judgment thereon shall be governed by the Rules of Court in so far as they are applicable."

x x x x x x x x x

C. To a court arbitrator or administrative tribunal the course of proceedings before it to which the disclosing party is party; x x x[55] (Emphasis supplied)

Section 20.02 of the Agreement merely allows, ***with the consent of the other party***, disclosure by a party to a court arbitrator or administrative tribunal of the contents of the "Amended BOT Agreement or **any information relating to the negotiations** concerning the operations, contracts, commercial or financial arrangements or affair[s] **of the other parties hereto."** There is no express waiver of information forming part of DFA's predecisional deliberative or decision-making process. Section 20.02 does not state that a party to the arbitration is compelled to disclose to the tribunal privileged information in such party's possession.

On the other hand, **Section 20.03 merely allows a party, if it chooses, *without the consent of the other party*, to disclose to the tribunal privileged information in such disclosing party's possession. In short, a party can disclose privileged information in its possession, even without the consent of the other party, if the disclosure is to a tribunal. However, a party cannot be compelled by the other party to disclose privileged information to the tribunal, where such privileged information is in its possession and not in the possession of the party seeking the compulsory disclosure.**

Nothing in Section 20.03 mandates compulsory disclosure of privileged information. Section 20.03 merely states that "the restrictions imposed in Section 20.02," referring to the "consent of the other party," shall not apply to a disclosure of privileged information by a party in possession of a privileged information. This is completely different from compelling a party to disclose privileged information in its possession against its own will.

Rights cannot be waived if it is contrary to law, public order, **public policy**, morals, or good customs, or prejudicial to a third

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[55] *Rollo*, pp. 264-265.

person with a right recognized by law.[56] There is a **public policy** involved in a claim of deliberative process privilege — "the policy of open, frank discussion between subordinate and chief concerning administrative action."[57] Thus, the deliberative process privilege cannot be waived. As we have held in *Akbayan v. Aquino*,[58] the deliberative process privilege is closely related to the presidential communications privilege and protects the public disclosure of information that can compromise the quality of agency decisions:

> Closely related to the "presidential communications" privilege is the **deliberative process privilege** recognized in the United States. As discussed by the U.S. Supreme Court in *NLRB v. Sears, Roebuck & Co*, deliberative process covers documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated. Notably, the privileged status of such documents rests, not on the need to protect national security but, on the "**obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news," the objective of the privilege being to enhance the quality of agency decisions.** (Emphasis supplied)

As a qualified privilege, the burden falls upon the government agency asserting the deliberative process privilege to prove that the information in question satisfies both requirements — predecisional and deliberative.[59] "The agency bears the burden of establishing the character of the decision, the deliberative process involved, and the role played by the documents in the course of that process."[60] It may be overcome upon a showing that the discoverant's interests in disclosure of the materials outweigh the government's interests in their confidentiality.[61]

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[56] Civil Code, Article 6.

[57] *Kaiser Aluminum & Chemical Corp. v. United States*, 157 F.Supp. 939 (1958).

[58] *Supra* note 37, at 475.

[59] *Vandelay Entm't, LLC v. Fallin*, 2014 OK 109 (16 December 2014); *City of Colorado Springs v. White*, *supra* note 45.

[60] *Strang v. Collyer*, *supra* note 48.

[61] *City of Colorado Springs v. White*, *supra* note 45.

"The determination of need must be made flexibly on a case-by-case, *ad hoc* basis," and the "factors relevant to this balancing include: the relevance of the evidence, whether there is reason to believe the documents may shed light on government misconduct, whether the information sought is available from other sources and can be obtained without compromising the government's deliberative processes, and the importance of the material to the discoverant's case."[62]

In the present case, considering that the RTC erred in applying our ruling in *Chavez v. Public Estates Authority*,[63] and both BCA's and DFA's assertions of subpoena of evidence and the deliberative process privilege are broad and lack specificity, we will not be able to determine whether the evidence sought to be produced is covered by the deliberative process privilege. The parties are directed to specify their claims before the RTC and, thereafter, the RTC shall determine which evidence is covered by the deliberative process privilege, if there is any, based on the standards provided in this Decision. It is necessary to consider the circumstances surrounding the demand for the evidence to determine whether or not its production is injurious to the consultative functions of government that the privilege of non-disclosure protects.

WHEREFORE, we resolve to **PARTIALLY GRANT** the petition and **REMAND** this case to the Regional Trial Court of Makati City, Branch 146, to determine whether the documents and records sought to be subpoenaed are protected by the deliberative process privilege as explained in this Decision. The Resolution dated 2 April 2014 issuing a Temporary Restraining Order is superseded by this Decision.

SO ORDERED.

Brion and *Mendoza, JJ.,* concur.

Leonen, J., see separate concurring opinion.

Del Castillo,J., on official leave.

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[62] *Supra* note 45.

[63] *Supra* note 10.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

This Petition for Review on Certiorari[1] assails the Resolution[2] dated September 2, 2013 and the Orders[3] dated October 11, 2013 and January 8, 2014 of Branch 146 of the Regional Trial Court of Makati City. The assailed judgments allowed the issuance of a subpoena *duces tecum* and subpoena *ad testificandum* to compel the officers of the Department of Foreign Affairs to testify and present documents to the *Ad Hoc* Arbitral Tribunal, which was constituted to resolve the issues between the parties.

On September 29, 2000, the Department of Foreign Affairs issued a Notice of Award to BCA International Corporation to undertake its Machine Readable Passport and Visa Project (Project).[4] In compliance with the Notice of Award, BCA International Corporation incorporated Philippine Passport Corporation to implement the Project.[5] On February 8, 2001, the Department of Foreign Affairs and Philippine Passport Corporation entered into a Build-Operate-Transfer Agreement.[6]

However, Department of Justice Opinion No. 10 dated March 4, 2002 stated that Philippine Passport Corporation had no personality to enter into the Build-Operate-Transfer Agreement since the Project was awarded to BCA International Corporation, not to Philippine Passport Corporation.[7] Thus, the Department of Foreign Affairs and BCA International Corporation entered

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[1] *Rollo*, pp. 17-45.

[2] *Id.* at 51-56. The Resolution was penned by Judge Encarnacion Jaja G. Moya of Branch 146 of the Regional Trial Court, Makati City.

[3] *Id.* at 46-48 and 50. The Orders were penned by Judge Encarnacion Jaja G. Moya of Branch 146 of the Regional Trial Court, Makati City.

[4] *Id.* at 86.

[5] *Id.*

[6] *Id.* at 219-242, Annex 1 of Comment.

[7] *Id.* at 193, Comment.

into an Amended Build-Operate-Transfer Agreement[8] dated April 5, 2002[9] to replace BCA International Corporation as the party to the Agreement.[10]

During the implementation of the Project, dispute arose[11] between the parties. The Department of Foreign Affairs sought to terminate the Build-Operate-Transfer Agreement.[12] BCA International Corporation opposed the termination and filed a Request for Arbitration before the Philippine Dispute Resolution Center, Inc., invoking Section 19.02 of the Agreement:[13]

> ***Section 19.02. Failure to Settle Amicably.*** — If the Dispute cannot be settled amicably within ninety (90) days by mutual discussion as contemplated under Section 19.01 herein, the Dispute shall be settled with finality by an arbitrage tribunal operating under International Law, hereinafter referred to as the "*Tribunal*," under the UNCITRAL Arbitration Rules contained in Resolution 31/98 adopted by the United Nations General Assembly on December 15, 1976, and entitled "*Arbitration Rules on the United Nations Commission on the International Trade Law*." The DFA and the BCA undertake to abide by and implement the arbitration award. The place of arbitration shall be Pasay City, Philippines, or such other place as may mutually be agreed upon by both parties. The arbitration proceeding shall be conducted in the English language.[14] (Emphasis in the original)

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[8] *Id.* at 85-119, Annex G of Petition.

[9] Petitioner alleges that the Agreement was dated April 5, 2002 while respondent alleges that it was dated April 2, 2002. The Agreement is undated but was notarized on April 5, 2002.

[10] *Rollo*, p. 193.

[11] Petitioner alleges that respondent was financially incapable of implementing the Project (*Id.* at 19), while respondent alleges that petitioner committed numerous delays in the Project's implementation (*Id.* at 193-194).

[12] *Ponencia*, pp. 1-2.

[13] *Id.* at 2.

[14] *Rollo*, p. 106.

On June 29, 2009, the *Ad Hoc* Tribunal[15] was constituted to resolve the dispute.[16] On April 15, 2013, the *Ad Hoc* Tribunal granted BCA International Corporation's motion to apply for a subpoena to compel allegedly hostile witnesses.[17]

On May 15, 2013, BCA International Corporation filed before Branch 146 of the Regional Trial Court of Makati City a Petition[18] under Article 5.27 (a)[19] of the Implementing Rules and Regulations of Republic Act No. 9285.[20] The Petition sought the issuance of a subpoena *ad testificandum* and a subpoena *duces tecum* to the following witnesses and the documents within their custody:[21]

Witness	Documents to be produced
1. Secretary of Foreign Affairs or his representative/s, specifically Undersecretary Franklin M. Ebdalin and Ambassador Belen F. Anota	a. Request for Proposal dated September 10, 1999 for the MRP/V Project; b. Notice of Award dated September 29, 2000 awarding the MRP/V Project in favor of BCA and requiring BCA to incorporate a Project Company to implement the MRP/V Project; c. Department of Foreign Affairs Machine Readable and Passport and Visa Project Build-Operate-Transfer Agreement dated February 8, 2001;

[15] *Id.* at 20. The Tribunal was composed of Dean Danilo Concepcion as Chair, and Dean Custodio O. Parlade and Professor Antonio P. Jamon as Members.

[16] *Ponencia*, p. 2.

[17] *Rollo*, p. 20.

[18] *Id.* at 68-82.

[19] DOJ Dept. Circ. No. 98 (2009), Art. 5.27(a) provides:

Article 5.27. Court Assistance in Taking Evidence and Other Matters. (a) The arbitral tribunal or a party, with the approval of the arbitral tribunal may request from a court, assistance in taking evidence such as the issuance of subpoena *ad testificandum* and subpoena *duces tecum*, deposition taking, site or ocular inspection, and physical examination of properties. The court may grant the request within its competence and according to its rules on taking evidence.

[20] Alternative Dispute Resolution Act of 2004 (2004).

[21] *Ponencia*, p. 2.

	d. Department of Foreign Affairs Machine Readable Passport and Visa Project Amended Build-Operate-Transfer Agreement dated April 5, 2002; e. Documents, records, papers and correspondence between DFA and BCA regarding the negotiations for the contract of lease of the PNB building, which was identified in the Request for Proposal as the Central Facility Site, and the failure of said negotiations; f. Documents, records, reports, studies, papers and correspondence between DFA and BCA regarding the search for alternative Central Facility Site; g. Documents, records, papers and correspondence between DFA and BCA regarding the latter's submission of the Project Master Plan (Phase One of the MRP/V Project); h. Documents, records, papers and correspondence among DFA, DFA's Project Planning Team, Questronix Corporation, MRP/V Advisory Board and other related government agencies, and BCA regarding the recommendation for the issuance of the Certificate of Acceptance in favor of BCA; i. Certificate of Acceptance for Phase One dated June 9, 2004 issued by DFA; j. Documents, records, papers and correspondence between DFA and BCA regarding the approval of the Star Mall complex as the Central Facility Site; k. Documents, records, papers and correspondence among DFA, Questronix Corporation, MRP/V Advisory Board and other related government agencies, and BCA regarding the recommendation for the approval of the Star Mall complex as the Central Facility Site; l. Documents, records, papers and correspondence between DFA and BCA regarding the DFA's request for BCA to

	terminate its Assignment Agreement with Philpass, including BCA's compliance therewith; m. Documents, records, papers and correspondence between DFA and BCA regarding the DFA's demand for BCA to prove its financial capability to implement the MRP/V Project, including the compliance therewith by BCA; n. Documents, records, papers and correspondence between DFA and BCA regarding the DFA's attempt to terminate the Amended BOT Agreement, including BCA's response to DFA and BCA's attempts to mutually discuss the matter with DFA; o. Documents, records, papers and correspondence between DFA and MRP/V Advisory Board, DTI-BOT Center, Department of Finance and Commission on Audit regarding the delays in the implementation of the MRP/V Project, DFA's requirement for BCA to prove its financial capability, and the opinions of the said government agencies in relation to DFA's attempt to terminate the Amended BOT Agreement; and p. Other related documents, records, papers and correspondence.
2. Secretary of Finance or his representative/s, specifically former Secretary of Finance Juanita D. Amatong	a. Documents, records, papers and correspondence between DFA and Department of Finance regarding the DFA's requirement for BCA to prove its financial capability to implement the MRP/V Project and its former opinion thereon; b. Documents, records, papers and correspondence between DFA and DOF regarding BCA's compliance with DFA's demand for BCA to further prove its financial capability to implement the MRP/V Project; c. Documents, records, papers and correspondence between DFA and DOF regarding the delays in the implementation of the MRP/V Project;

	d. Documents, records, papers and correspondence between DFA and DOF regarding the DFA's attempted termination of the Amended BOT Agreement; and e. Other related documents, records, papers and correspondence.
3. Chairman of the Commission on Audit or her representative/s specifically Ms. Iluminada M. V. Fabroa (Director IV)	a. Documents, records, papers and correspondence between DFA and COA regarding the COA's conduct of a sectoral performance audit on the MRP/V Project; b. Documents, records, papers and correspondence specifically between DFA and COA regarding the delays in and its recommendation to fast-track the implementation of the MRP/V Project; c. Documents, records, papers and correspondence between DFA and COA regarding COA's advice to cancel the Assignment Agreement between BCA and Philpass "for being contrary to existing laws and regulations and DOJ opinion"; d. Documents, records, papers and correspondence between DFA and COA regarding DFA's attempted termination of the Amended BOT Agreement; and e. Other related documents, records, papers and correspondence.
4. Executive Director or any officer or representative of the Department of Trade and Industry Build-Operate-Transfer Center, specifically Messengers Noel Eli B. Kintanar,	a. Documents, records, papers and correspondence between DFA and BOT Center regarding the delays in the implementation of the MRP/V Project, including DFA's delay in the issuance of the Certificate of the Department Acceptance for Phase One of the MRP/V Project and in approving the Central Facility Site at the Star Mall complex; b. Documents, records, papers and correspondence between DFA and BOT Center regarding BCA's financial capability and the BOT Center's opinion on DFA's demand for BCA to further prove its financial capability to implement the MRP/V Project;

Rafaelito H. Taruc and Luisito Ucab	c. Documents, records, papers and correspondence between DFA and BOT Center regarding the DFA's attempt to terminate the Amended BOT Agreement, including the BOT Center's unsolicited advice dated December 23, 2005 stating that the issuance of the Notice of Termination was "precipitate, and done without first carefully ensuring that there were sufficient grounds to warrant such an issuance" and was "devoid of merit"; d. Documents, records, papers and correspondence between DFA and BOT Center regarding the DFA's unwarranted refusal to approve BCA's proposal to obtain the required financing by allowing the entry of a "strategic investor"; and e. Other related documents, records, papers and correspondence.
5. Chairman of the DFA MRP/V Advisory Board or his representative/s, specifically DFA Undersecretary Franklin M. Ebdalin and MRP/V Project Manager, specifically Atty. Voltaire Mauricio	a. Documents, records, papers and correspondence between DFA and the MRP/V Advisory Board regarding BCA['s] performance of its obligations for Phase One of the MRP/V Project, the Advisory Board's recommendation for the issuance of the Certificate of Acceptance of Phase One of the MRP/V Project and its preparation of the draft of the Certificate of Acceptance; b. Documents, records, papers and correspondence between DFA and the MRP/V Advisory Board regarding the latter's recommendation for the DFA to approve the Star Mall complex as the Central Facility Site; c. Documents, records, papers and correspondence between DFA and the MRP/V Advisory Board regarding BCA's request to allow the investment of S.F. Pass International in Philpass; d. Documents, records, papers and correspondence between DFA and the MRP/V Advisory Board regarding BCA's financial capability and the MRP/V Advisory Board's opinion on DFA's demand for BCA to further prove its financial capability to implement the MRP/V Project;

	e. Documents, records, papers and correspondence between DFA and the MRP/V Advisory Board regarding the DFA's attempted termination of the Amended BOT Agreement; and f. Other related documents, records, papers and correspondence.[22]

In its Comment[23] dated July 1, 2013, the Department of Foreign Affairs alleged that the information sought from the proposed witnesses and documents were protected by the deliberative process privilege.[24]

On September 2, 2013, the Regional Trial Court issued the Resolution[25] granting the Petition pursuant to Rule 9.8[26] of the Special Rules of Court on Alternative Dispute Resolution.[27] The trial court held that the information sought to be produced was no longer protected by the deliberative process privilege.[28] Citing *Chavez v. Public Estates Authority*,[29] it found that the Department of Foreign Affairs not only made a definite proposition but had already entered into a contract.[30] Thus, any evidence sought to be produced was no longer covered under the privilege.[31]

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

[23] *Rollo*, pp. 134-146.

[24] *Id.* at 26.

[25] *Id.* at 51-56.

[26] A.M. No. 07-11-08-SC (2009), Rule 9.8 provides:

Rule 9.8. *Court action*. — If the evidence sought is not privileged, and is material and relevant, the court shall grant the assistance in taking evidence requested and shall order petitioner to pay costs attendant to such assistance.

[27] A.M. No. 07-11-08-SC (2009).

[28] *Rollo*, p. 52.

[29] 433 Phil. 506 (2002) [Per *J.* Carpio, *En Banc*].

[30] *Rollo*, p. 55.

[31] *Id.*

On September 6, 2013, the trial court issued a subpoena *duces tecum* and a subpoena *ad testificandum* ordering the persons listed in the Petition to appear and bring the required documents before the *Ad Hoc* Tribunal on October 14, 15, 16, and 17, 2013.[32] On September 12, 2013, the Department of Foreign Affairs filed a Motion to Quash Subpoena *Duces Tecum* and *Ad Testificandum*,[33] which was opposed[34] by BCA International Corporation.

On October 11, 2013, the Regional Trial Court issued the Order[35] denying the Motion to Quash since it was actually a motion for reconsideration, which was prohibited under Rule 9.9[36] of the Special Rules of Court on Alternative Dispute Resolution.[37] The Department of Foreign Affairs moved for reconsideration[38] of this Order.

On October 14, 15, 16, and 17, 2013, Former Undersecretary of Foreign Affairs Franklin D. Ebdalin, Project Manager Atty. Voltaire Mauricio, and Luisito Ubac of the Department of Trade and Industry testified before the *Ad Hoc* Tribunal.[39] On January 8, 2014, the trial court issued the Order[40] denying the Department of Foreign Affairs' Motion for Reconsideration on the ground that the appearance of the witnesses before the Tribunal rendered the action moot.[41]

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[32] *Ponencia*, p. 6.

[33] *Rollo*, pp. 147-165.

[34] *Id.* at 166-177.

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

[36] A.M. No. 07-11-08-SC (2009), Rule 9.9 provides:

Rule 9.9. *Relief against court action*. — The order granting assistance in taking evidence shall be immediately executory and not subject to reconsideration or appeal. If the court declines to grant assistance in taking evidence, the petitioner may file a motion for reconsideration or appeal.

[37] *Rollo*, p. 48.

[38] *Id.* at 57-64.

[39] *Id.* at 28.

[40] *Id.* at 50.

[41] *Id.*

Aggrieved, the Department of Foreign Affairs filed before this Court a Petition for Review with Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.[42] In the Resolution dated April 2, 2014, this Court issued a temporary restraining order enjoining the *Ad Hoc* Tribunal from taking cognizance of the witnesses' testimonies.[43]

The Department of Foreign Affairs argues that the Regional Trial Court erred in applying the Implementing Rules and Regulations of Republic Act No. 9285 and the Special Rules of Court on Alternative Dispute Resolution, considering that both parties agreed to be bound by the Arbitration Rules on the United Nations Commission on the International Trade Law (1976 UNCITRAL Arbitration Rules).[44] It further argues that the evidence sought by BCA International Corporation is covered by the deliberative process privilege.[45]

BCA International Corporation, on the other hand, argues that this Court has no jurisdiction to intervene in a private arbitration under (a) Article 5[46] of the UNCITRAL Model Law; (b) Article 5.4[47] of the Implementing Rules and Regulations of

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[42] *Id.* at 17-45.

[43] *Ponencia*, p. 6.

[44] *Rollo*, 29-31.

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

[46] United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006* <http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html> (visited June 27, 2016). Article 5 provides:

Article 5. Extent of court intervention. —

In matters governed by this Law, no court shall intervene except where so provided in this Law.

[47] DOJ Dept. Circ. No. 98 (2009), Art. 5.4 provides:

Article 5.4. Extent of Court Intervention. In matters governed by this Chapter, no court shall intervene except in accordance with the Special ADR Rules.

Republic Act No. 9285; and (c) Rule 1.1[48] of the Special Rules of Court on Alternative Dispute Resolution.[49] BCA International Corporation insists that even if this Court did have jurisdiction, the evidence sought from the Department of Foreign Affairs would not be a state secret that, if revealed, would injure the public interest.[50] It argues that in any case, the Department of Foreign Affairs waived its right to confidentiality pursuant to Section 20.03 of the Amended Build-Operate-Transfer Agreement.[51]

From the arguments of the parties, the issues for this Court's resolution are:

First, which arbitration rules should apply to this case; and

Second, whether the evidence sought by BCA International Corporation from the Department of Foreign Affairs is covered by the deliberative process privilege.

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[48] A.M. No. 07-11-08-SC (2009), Rule 1.1 provides:

Rule 1.1. *Subject matter and governing rules.* — The Special Rules of Court on Alternative Dispute Resolution (the "Special ADR Rules") shall apply to and govern the following cases:

a. Relief on the issue of Existence, Validity, or Enforceability of the Arbitration Agreement;
b. Referral to Alternative Dispute Resolution ("ADR");
c. Interim Measures of Protection;
d. Appointment of Arbitrator;
e. Challenge to Appointment of Arbitrator;
f. Termination of Mandate of Arbitrator;
g. Assistance in Taking Evidence;
h. Confirmation, Correction or Vacation of Award in Domestic Arbitration;
i. Recognition and Enforcement or Setting Aside of an Award in International Commercial Arbitration;
j. Recognition and Enforcement of a Foreign Arbitral Award;
k. Confidentiality/Protective Orders; and
l. Deposit and Enforcement of Mediated Settlement Agreements.

[49] *Rollo*, pp. 198-211.

[50] *Id.* at 212.

[51] *Id.* at 213.

I

Both parties stipulated in the Amended Build-Operate-Transfer Agreement that in case of dispute, the matter shall be brought to arbitration under the 1976 UNCITRAL Arbitration Rules, thus:

> ***Section 19.02. Failure to Settle Amicably*** – If the Dispute cannot be settled amicably within ninety (90) days by mutual discussion as contemplated under Section 19.01 herein, the Dispute shall be settled with finality by an arbitrage tribunal operating under International Law, hereinafter referred to as the *"Tribunal,"* under the UNCITRAL Arbitration Rules contained in Resolution 31/98 adopted by the United Nations General Assembly on December 15, 1976, and entitled *"Arbitration Rules on the United Nations Commission on the International Trade Law."* The DFA and the BCA undertake to abide by and implement the arbitration award. The place of arbitration shall be Pasay City, Philippines, or such other place as may mutually be agreed upon by both parties. The arbitration proceeding shall be conducted in the English language.[52] (Emphasis in the original)

Article 33(1) of the 1976 UNCITRAL Arbitration Rules mandates that the arbitration tribunal shall apply the law designated by the parties. If the parties fail to designate the applicable law, the applicable law shall be that which is determined by the conflict of laws:

> **Article 33**
>
> 1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

On the issue of which law applies in this case, I concur with the ponencia.

Since both parties are Filipino and did not designate the applicable law in the Agreement dated April 5, 2002, the

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[52] *Id.* at 106.

applicable law is Republic Act No. 876.[53] Section 14 of Republic Act No. 876 allows the arbitrators to issue subpoenas at any time before the issuance of the award:

> SEC. 14. *Subpoena and subpoena duces tecum*. — Arbitrators shall have the power to require any person to attend a hearing as a witness. They shall have the power to subpoena witnesses and documents when the relevancy of the testimony and the materiality thereof has been demonstrated to the arbitrators. Arbitrators may also require the retirement of any witness during the testimony of any other witness. All of the arbitrators appointed in any controversy must attend all the hearings in that matter and hear all the allegations and proofs of the parties; but an award by the majority of them is valid unless the concurrence of all of them is expressly required in the submission or contract to arbitrate. The arbitrator or arbitrators shall have the power at any time, before rendering the award, without prejudice to the rights of any party to petition the court to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration.

Republic Act No. 9285,[54] its Implementing Rules and Regulations,[55] and the Special Rules on Alternative Dispute Resolution[56] may also apply since these are procedural laws that may be applied retroactively.[57]

II

The law recognizes the fundamental right of the People to be informed of matters of public concern. Article 3, Section 7 of the Constitution provides:

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[53] The Arbitration Law (1953).

[54] Alternative Dispute Resolution Act of 2004 (2004).

[55] DOJ Dept. Circ. No. 98 (2009).

[56] A.M. No. 07-11-08-SC (2009).

[57] See *Korea Technologies, Co., Ltd. v. Hon. Lerma*, 566 Phil. 1, 27 (2008) [Per *J.* Velasco, Jr., Second Division].

ARTICLE III
Bill of Rights

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SECTION 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Similarly, Article II, Section 28 of the Constitution provides:

ARTICLE II
Declaration of Principles and State Policies

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SECTION 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

The right to information is not absolute and is "subject to limitations as may be provided by law."[58] One of the limitations imposed on the right to information is that of executive privilege.

In *Almonte v. Vasquez*,[59] Former Associate Justice Vicente V. Mendoza introduced the concept of governmental privilege against public disclosure:

> At common law a governmental privilege against disclosure is recognized with respect to state secrets bearing on military, diplomatic and similar matters. This privilege is based upon public interest of such paramount importance as in and of itself transcending the individual interests of a private citizen, even though, as a consequence thereof, the plaintiff cannot enforce his legal rights.

In addition, in the litigation over the Watergate tape subpoena in 1973, the U.S. Supreme Court recognized the right of the President to the confidentiality of his conversations and correspondence, which it likened to "the claim of confidentiality of judicial deliberations." Said the Court in *United States v. Nixon*:

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[58] CONST., Art. III, Sec. 7.

[59] 314 Phil. 150 (1995) [Per *J.* Mendoza, *En Banc*].

> The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of the government and inextricably rooted in the separation of powers under the Constitution. . .

Thus, the Court for the first time gave executive privilege a constitutional status and a new name, although not necessarily a new birth.

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On the other hand, where the claim of confidentiality does not rest on the need to protect military, diplomatic or other national security secrets but on a general public interest in the confidentiality of his conversations, courts have declined to find in the Constitution an absolute privilege of the President against a subpoena considered essential to the enforcement of criminal laws.[60]

Executive privilege has been defined as "the power of the Government to withhold information from the public, the courts, and the Congress"[61] or "the right of the President and high-

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[60] *Id.* at 167-171, citing Anno., *Government Privilege Against Disclosure of Official Information*, 95 L. Ed. §§3-4 and 7, pp. 427-429, 434; *United States v. Nixon*, 418 U.S. 683, 708-9, 41 L. Ed. 2d 1039, 1061-4 (1973); Freund, *The Supreme Court 1973 Term — Foreword: On Presidential Privilege*, 88 HARV. L. REV. 13, 18-35 (1974); *United States v. Nixon*, 418 U.S. 683, 41 L. Ed. 2d 1039 (1974); and *Nixon v. Administrator of General Services*, 433 U.S. 425, 53 L. Ed. 2d 867 (1977).

[61] *Senate v. Ermita*, 522 Phil. 1, 37 (2006) [Per J. Carpio-Morales, *En Banc*], citing B. Schwartz, *Executive Privilege and Congressional Investigatory Power*, 47 Cal. L. Rev. 3.

level executive branch officers to withhold information from Congress, the courts, and ultimately the public."[62]

Executive privilege has been further defined in *Neri v. Senate Committee on Accountability of Public Officers and Investigations, et al.*[63] to encompass two (2) kinds of privileged information: (1) presidential communications privilege and (2) deliberative process privilege. Thus:

> [T]here are two (2) kinds of executive privilege: one is the presidential communications privilege and, the other is the deliberative process privilege. The former pertains to "communications, documents or other materials that reflect presidential decision-making and deliberations and that the President believes should remain confidential." The latter includes "advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated."
>
> Accordingly, they are characterized by marked distinctions. Presidential communications privilege applies to decision-making of the President while, the deliberative process privilege, to decision-making of executive officials. The first is rooted in the constitutional principle of separation of power and the President's unique constitutional role; the second on common law privilege. Unlike the deliberative process privilege, the presidential communications privilege applies to documents in their entirety, and covers final and post-decisional materials as well as pre-deliberative ones. As a consequence, congressional or judicial negation of the presidential communications privilege is always subject to greater scrutiny than denial of the deliberative process privilege.[64]

Unlike state secrets, the purpose of the privilege is not for the protection of national security.[65] The purpose is to protect the free exchange of ideas between those tasked with decision-

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[62] *Id.* at 645, citing M. Rozell, *Executive Privilege and the Modern Presidents: In Nixon's Shadow,* 83 MINN. L. REV. 1069.

[63] 572 Phil. 554 (2008) [Per *J.* Leonardo-de Castro, *En Banc*].

[64] *Id.* at 645, citing *In Re: Sealed Case No. 963124,* June 17, 1997.

[65] See *Akbayan v. Aquino,* 580 Phil. 422, 482 (2008) [Per *J.* Carpio Morales, *En Banc*].

making in the executive branch and to prevent public confusion before an agency has adopted a final policy decision:

> Courts have identified three purposes in support of the privilege: (1) it protects candid discussions within an agency; (2) it prevents public confusion from premature disclosure of agency opinions before the agency establishes final policy; and (3) it protects the integrity of an agency's decision; the public should not judge officials based on information they considered prior to issuing their final decisions. For the privilege to be validly asserted, the material must be pre-decisional and deliberative.[66]

Information is pre-decisional if no final decision has been made. On the other hand, information is deliberative if it exposes the decision-making process of the agency:

> A document is "predecisional" under the deliberative process privilege if it precedes, in temporal sequence, the decision to which it relates. In other words, communications are considered predecisional if they were made in the attempt to reach a final conclusion.
>
> A material is "deliberative," on the other hand, if it reflects the give-and-take of the consultative process. The key question in determining whether the material is deliberative in nature is whether disclosure of the information would discourage candid discussion within the agency. If the disclosure of the information would expose the government's decision-making process in a way that discourages candid discussion among the decision-makers (thereby undermining the courts' ability to perform their functions), the information is deemed privileged.[67]

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[66] *C.J.* Puno, Dissenting Opinion in *Neri v. Senate Committee on the Accountability of Public Officers*, 572 Phil. 554, 812 (2008) [Per *J.* Leonardo-de Castro, *En Banc*], citing *Kaiser Aluminum and Chemical Corp*., 433 US 425 (1977) and *Judicial Watch, Inc. v. Clinton*, 880 F. Supp. 1, 12 (D.D.C. 1995) (citation omitted), aff'd, 76 F.3d 1232 (D.C. Cir. 1996).

[67] *In Re: Production of Court Records and Documents*, February 14, 2012 <http://sc.judiciary.gov.ph/jurisprudence/2012/february2012/notice.pdf> 17 [Unsigned Resolution, *En Banc*], citing *Electronic Frontier Foundation v. US Department of Justice*, 2011 WL 596637 and *NLRB v. Sears, Roebuck & Co*., 421 US 151.

Chavez does not mention deliberative process privilege per se. However, it differentiates the nature and duration of governmental privilege from that of public disclosure:

> Information, however, on on-going evaluation or review of bids or proposals being undertaken by the bidding or review committee is not immediately accessible under the right to information. While the evaluation or review is still on-going, there are "no official acts, transactions, or decisions" on the bids or proposals. However, *once the committee makes its official recommendation, there arises a "definite proposition" on the part of the government. From this moment, the public's right to information attaches, and any citizen can access all the non-proprietary information leading to such definite proposition.* In *Chavez v. PCGG*, the Court ruled as follows:
>
> > Considering the intent of the framers of the Constitution, we believe that it is incumbent upon the PCGG and its officers, as well as other government representatives, to disclose sufficient public information on any proposed settlement they have decided to take up with the ostensible owners and holders of ill-gotten wealth. Such information, though, must pertain to definite propositions of the government, not necessarily to intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the "exploratory" stage. There is need, of course, to observe the same restrictions on disclosure of information in general, as discussed earlier — such as on matters involving national security, diplomatic or foreign relations, intelligence and other classified information.
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There is no claim by PEA that the information demanded by petitioner is privileged information rooted in the separation of powers. The information does not cover Presidential conversations, correspondences, or discussions during closed-door Cabinet meetings which, like internal deliberations of the Supreme Court and other collegiate courts, or executive sessions of either house of Congress, are recognized as confidential. This kind of information cannot be pried open by a co-equal branch of government. *A frank exchange of exploratory ideas and assessments, free from the glare of publicity and pressure by interested parties, is essential to protect the independence of decision-making of those tasked to exercise*

Presidential, Legislative and Judicial power. This is not the situation in the instant case.

We rule, therefore, that *the constitutional right to information includes official information on on-going negotiations before a final contract*. The information, however, must constitute *definite propositions by the government and should not cover recognized exceptions like privileged information, military and diplomatic secrets and similar matters affecting national security and public order*. Congress has also prescribed other limitations on the right to information in several legislations.[68] (Emphasis supplied)

Thus, for the information to be covered by the deliberative process privilege, it must be (1) pre-decisional and (2) deliberative. The privilege ends when the executive agency adopts a definite proposition. *Akbayan v. Aquino*,[69] however, qualified that the privilege may continue *even after* a definite proposition has been made if the information concerns matters of national security, diplomatic relations, and public order or if public disclosure has been limited by law.[70]

III

In this case, the Regional Trial Court issued a subpoena *duces tecum* and a subpoena *ad testificandum* on the basis that the

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[68] *Chavez v. Public Estate Authority*, 433 Phil. 506, 531-535 (2002) [Per J. Carpio, *En Banc*], citing *Chavez v. PCGG*, 360 Phil. 133, 166-167 (1998) [Per J. Panganiban, First Division]; *Aquino-Sarmiento v. Morato*, 280 Phil. 560, 570 (1991) [Per J. Bidin, *En Banc*]; *Almonte v. Vasquez*, 314 Phil. 150, 167 (1995) [Per J. Mendoza, *En Banc*]. See *Peoples Movement for Press Freedom, et al. v. Hon. Raul Manglapus*, G.R. No. 84642, April 13, 1988 [Unsigned Resolution, *En Banc*]. See also TAX CODE, Sec. 270; Rep. Act No. 8800 (2000), Sec. 14; Rep. Act No. 8504 (1998), Sec. 3(n); Rep. Act No. 8043 (1995), Sec. 6(j); and Rep. Act No. 7942 (1995), Sec. 94(f).

[69] 580 Phil. 422 (2008) [Per J. Carpio Morales, *En Banc*].

[70] *Id.* at 481-482, citing *Chavez v. Public Estate Authority*, 433 Phil. 506, 531-533 (2002) [Per J. Carpio, *En Banc*]; *Chavez v. PCGG*, 360 Phil. 133, 160-162 (1998) [Per J. Panganiban, First Division]; *Aquino-Sarmiento v. Morato*, 280 Phil. 560, 568-569 (1991) [Per J. Bidin, *En Banc*]; *Almonte v. Vasquez*, 314 Phil. 150, 167-171 (1995) [Per J. Mendoza, *En Banc*]; and *Peoples Movement for Press Freedom, et al. v. Hon. Raul Manglapus*, G.R. No. 84642, April 13, 1988 [Unsigned Resolution, *En Banc*].

deliberative process privilege does not apply since the Department of Foreign Affairs already reached a definite proposition when it entered into the contract.

Chavez defines definite proposition as an "official recommendation"[71] or "official acts, transactions, or decisions"[72] without need of a consummated contract:

> Contrary to AMARI's contention, the commissioners of the 1986 Constitutional Commission understood that the right to information "contemplates inclusion of negotiations leading to the consummation of the transaction." Certainly, a consummated contract is not a requirement for the exercise of the right to information. Otherwise, the people can never exercise the right if no contract is consummated, and if one is consummated, it may be too late for the public to expose its defects.
>
> Requiring a consummated contract will keep the public in the dark until the contract, which may be grossly disadvantageous to the government or even illegal, becomes a *fait accompli*. This negates the State policy of full transparency on matters of public concern, a situation which the framers of the Constitution could not have intended. Such a requirement will prevent the citizenry from participating in the public discussion of any proposed contract, effectively truncating a basic right enshrined in the Bill of Rights. We can allow neither an emasculation of a constitutional right, nor a retreat by the State of its avowed "policy of full disclosure of all its transactions involving public interest."
>
> The right covers three categories of information which are "matters of public concern," namely: (1) official records; (2) documents and papers pertaining to official acts, transactions and decisions; and (3) government research data used in formulating policies. The first category refers to any document that is part of the public records in the custody of government agencies or officials. The second category refers to documents and papers recording, evidencing, establishing, confirming, supporting, justifying or explaining official acts, transactions or decisions of government agencies or officials. The third category refers to research data, whether raw, collated or

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[71] *Chavez v. Public Estate Authority*, 433 Phil. 506, 532 (2002) [Per J. Carpio, *En Banc*].

[72] *Id.*

processed, owned by the government and used in formulating government policies.

The information that petitioner may access on the renegotiation of the JVA includes evaluation reports, recommendations, legal and expert opinions, minutes of meetings, terms of reference and other documents attached to such reports or minutes, all relating to the JVA. However, the right to information does not compel PEA to prepare lists, abstracts, summaries and the like relating to the renegotiation of the JVA. The right only affords access to records, documents and papers, which means the opportunity to inspect and copy them. One who exercises the right must copy the records, documents and papers at his expense. The exercise of the right is also subject to reasonable regulations to protect the integrity of the public records and to minimize disruption to government operations, like rules specifying when and how to conduct the inspection and copying.

The right to information, however, does not extend to matters recognized as privileged information under the separation of powers. The right does not also apply to information on military and diplomatic secrets, information affecting national security, and information on investigations of crimes by law enforcement agencies before the prosecution of the accused, which courts have long recognized as confidential. The right may also be subject to other limitations that Congress may impose by law.[73]

The Department of Foreign Affairs claims that the definite propositions in this case concern the *implementation* and the *proposed termination* of the Amended Build-Operate-Transfer Agreement, and not necessarily the signing of the Agreement.[74] However, according to the Certificate of Acceptance of Phase I,[75] the Department of Foreign Affairs officially approved the

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[73] *Id.* at 532-534, citing *Chavez v. PCGG*, 360 Phil. 133, 166-167 (1998) [Per *J.* Panganiban, First Division]; *Legaspi v. Civil Service Commission,* 234 Phil. 521, 531-533 (1987) [Per *J.* Cortes, *En Banc*]; *Almonte v. Vasquez,* 314 Phil. 150, 167-171 (1995) [Per *J.* Mendoza, *En Banc*]; and *Aquino-Sarmiento v. Morato,* 280 Phil. 560, 568-569 (1991) [Per *J.* Bidin, *En Banc*].

[74] *Rollo,* p. 38.

[75] *Id.* at 283.

implementation of the Agreement.[76] The Department of Foreign Affairs also alleges that it was "constrained to cancel the agreement."[77] Thus, the Department of Foreign Affairs made official recommendations concerning the implementation and termination of the Agreement. It should cease to be covered by the deliberative process privilege.

There is a need to further explain what constitutes definite propositions within the context of deliberative process privilege. *Chavez* did not require a consummated contract and held that even a proposed contract could be considered a definite proposition if there were official acts, transactions, and decisions that precipitated it. There is a lacuna, as in this case, as to what may constitute definite propositions when a perfected contract is in the process of being consummated.

IV

The deliberative process privilege may have already been waived by the Department of Foreign Affairs in the Amended Build-Operate-Transfer Agreement.

The deliberative process privilege is lesser in scope than the presidential communications privilege. Its coverage and duration are limited. It stands to reason that the privilege may be waived unless the information concerns national security, diplomatic relations, or public order.

In Sections 20.02 and 20.03 of the Amended Build-Operate-Transfer Agreement, the parties agreed to keep information relating to negotiations confidential, subject to certain limitations:

Section 20.02. None of the parties shall, at any time, before or after the expiration or sooner termination of this Amended BOT Agreement, without the consent of the other party, divulge or suffer or permit its officers, employees, agents or contractors to divulge to any person, other than any of its respective officers or employees who require the same to enable them to properly carry out their

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[76] *Id.*

[77] *Id.* at 19.

duties, any of the contents of this Amended BOT Agreement or any information relating to the negotiations concerning the operations, contracts, commercial or financial arrangements or affair of the other parties hereto. Documents marked "*CONFIDENTIAL*" or the like, providing that such material shall be kept confidential, and shall constitute prima facie evidence that such information contained therein is subject to the terms of this provision.

Section 20.03. The restrictions imposed in Section 20.02 herein shall not apply to the disclosure of any information:

A. Which may now or hereafter come into public knowledge otherwise than as a result of a breach of an undertaking of confidentiality, or which is obtainable with no more than reasonable diligence from sources other than any of the parties hereto;

B. Which is required by law to be disclosed to a [sic] any person who is authorized by law to receive the same;

C. *To a court arbitrator or administrative tribunal the course of proceedings before it to which the disclosing party is party*; or

D. To any consultants, banks, financiers, or legal or financial advisors of the disclosing party.[78] (Emphasis supplied)

The Department of Foreign Affairs was a party to the Amended Build-Operate-Transfer Agreement. While it stipulated that all matters concerning the contract were confidential, it similarly stipulated that information could be disclosed to a court arbitrator. If it intended to exercise its privilege to keep *all* matters concerning the Amended Build-Operate-Transfer Agreement including negotiations concerning its implementation confidential, it should not have agreed to the exceptions in Section 20.03 of the Agreement.

This stipulation, however, only affects disclosures made by officers of the Department of Foreign Affairs. The Department of Finance and the Commission on Audit were not parties to the Amended Build-Operate-Transfer Agreement; hence, they could still validly invoke the deliberative process privilege.

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[78] *Rollo*, pp. 106-107.

V

The deliberative process privilege may not always apply to arbitration proceedings under Republic Act No. 9285.

The deliberative process privilege is a privilege that an officer of an executive department may invoke to prevent *public* disclosure of any information that may compromise its decision-making capability. Its purpose "rests most fundamentally on the belief that were agencies forced to operate in a fishbowl, frank exchange of ideas and opinions would cease and the quality of administrative decisions would consequently suffer."[79] This is to prevent subjecting an agency's decision-making process to public opinion before any definite policy action has been made.

Thus, the privilege may lose its purpose when the disclosure is not to the public. Here, the Department of Foreign Affairs opposed the disclosure of information to the *Ad Hoc* Tribunal by invoking the privilege, but the proceedings of the *Ad Hoc* Tribunal are not made public. Republic Act No. 9285 requires confidentiality in all arbitration proceedings:

> SEC. 23. *Confidentiality of Arbitration Proceedings.* — The arbitration proceedings, including the records, evidence and the arbitral award, shall be considered confidential and shall not be published except (1) with the consent of the parties, or (2) for the limited purpose of disclosing to the court of relevant documents in cases where resort to the court is allowed herein: *Provided, however,* That the court in which the action or the appeal is pending may issue a protective order to prevent or prohibit disclosure of documents or information containing secret processes, developments, research and other information where it is shown that the applicant shall be materially prejudiced by an authorized disclosure thereof. (Emphasis in the original)

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[79] *C.J.* Puno, Dissenting Opinion in *Neri v. Senate Committee on the Accountability of Public Officers*, 572 Phil. 554, 811 (2008) [Per *J.* Leonardo-de Castro, *En Banc*], citing R. Iraola, *Congressional Oversight, Executive Privilege, and Requests for Information Relating to Federal Criminal Investigations and Prosecutions*, 87 IOWA L. REV., 1559, 1577 (August, 2002).

Thus, considering that the records of the *Ad Hoc* Tribunal are confidential in nature, there could not have been any need for the Department of Foreign Affairs to invoke the deliberative process privilege.

ACCORDINGLY, I vote to **GRANT** the Petition.

THIRD DIVISION

[G.R. No. 211141. June 29, 2016]

HILARIO DASCO, REYMIR PARAFINA, RICHARD PARAFINA, EDILBERTO ANIA, MICHAEL ADANO, JAIME BOLO, RUBEN E. GULA, ANTONIO CUADERNO and JOVITO CATANGUI, *petitioners, vs.* **PHILTRANCO SERVICE ENTERPRISES, INC./ CENTURION SOLANO, Manager,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), PARTICULARLY WHEN THEY COINCIDE WITH THOSE OF THE LABOR ARBITER AND IF SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE ACCORDED RESPECT AND EVEN FINALITY BY THE COURT; EXCEPTION PRESENT.— [T]he Court reiterates that as a rule, it is not a trier of facts and this applies with greater force in labor cases. Hence, factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the LA and if supported by substantial evidence, are accorded respect and even finality by this Court. But where the findings of the NLRC and the LA are contradictory, as in the present case, this Court may delve into the records and examine for itself the questioned findings.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; REGULAR EMPLOYMENT; BUS DRIVERS AND/OR CONDUCTORS ARE NOT FIELD PERSONNEL EVEN IF THEY ARE PERFORMING WORK AWAY FROM THE PRINCIPAL PLACE OF BUSINESS OF THE EMPLOYER, BUT THEY ARE CONSIDERED AS REGULAR EMPLOYEES, FOR THEY PERFORM TASKS WHICH ARE DIRECTLY AND NECESSARILY CONNECTED WITH THE BUS COMPANIES' BUSINESS AND THEY ARE UNDER THE CONTROL AND CONSTANT SUPERVISION OF THE LATTER WHILE IN THE PERFORMANCE OF THEIR WORK.— The determination of whether bus drivers and/or conductors are considered as field personnel was already threshed out in the case of *Auto Bus Transport System, Inc. v. Bautista*, where the Court explained that: As a general rule, [field personnel] are those whose performance of their job/service is not supervised by the employer or his representative, the workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty; hence, they are paid specific amount for rendering specific service or performing specific work. *If required to be a specific places at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the employee.* x x x. Guided by the foregoing norms, the NLRC properly consluded that the petitioners are not field personnel but regular employees who perform tasks usually necessary and desirable to the respondents' business. x x x. In order to monitor their drivers and/or conductors, as well as the passengers and the bus itself, the bus companies put checkers, who are assigned at tactical places along the travel routes that are plied by their buses. The drivers and/or conductors are required to be at the specific bus terminals at a specified time. In addition, there are always dispatchers in each and every bus terminal, who supervise and ensure prompt departure at specified times and arrival at the estimated proper time. Obviously, these drivers and/or conductors cannot be considered as field personnel because they are under the control and constant supervision of the bus companies while in the performance of their work.

3. ID.; ID.; ID.; ID.; BUS DRIVERS AND/OR CONDUCTORS ARE ENTITLED TO THE BENEFITS ACCORDED TO REGULAR EMPLOYEES, INCLUDING OVERTIME PAY AND SERVICE INCENTIVE LEAVE PAY.— The Court agrees with the x x x findings of the NLRC. [T]he petitioners, as bus drivers and/or conductors, are left alone in the field with the duty to comply with the conditions of the respondents' franchise, as well as to take proper care and custody of the bus they are using. Since the respondents are engaged in the public utility business, the petitioners, as bus drivers and/or conductors, should be considered as regular employees of the respondents because they perform tasks which are directly and necessarily connected with the respondents' business. Thus, they are consequently entitled to the benefits accorded to regular employees of the respondents, including overtime pay and SIL pay.

APPEARANCES OF COUNSEL

Miralles & Associates Law Office for petitioners.

D E C I S I O N

REYES, *J.*:

This appeal by petition for review on *certiorari*[1] seeks to annul and set aside the Decision[2] dated August 30, 2013 and Resolution[3] dated January 28, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 126210, which nullified and set aside the Decision[4] dated February 22, 2012 and Resolution[5] dated

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[1] *Rollo,* pp. 8-24.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon concurring; *id.* at 27-35.

[3] *Id.* at 37-38.

[4] Rendered by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go concurring; *id.* at 49-55.

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

May 30, 2012 of the National Labor Relations Commission (NLRC) in NLRC-NCR Case No. 07-10173-11, and reinstated the Decision[6] dated October 17, 2011 of the Labor Arbiter (LA), dismissing the monetary claims of Hilario Dasco, Reymir Parafina, Richard Parafina, Edilberto Ania, Michael Adano, Jaime Bolo, Ruben E. Gula, Antonio Cuaderno and Jovito Catangui (petitioners).

The Facts

This case stemmed from a complaint[7] for regularization, underpayment of wages, non-payment of service incentive leave (SIL) pay, and attorney's fees, filed by the petitioners against Philtranco Service Enterprises, Inc., (PSEI), a domestic corporation engaged in providing public utility transportation, and its Manager, Centurion Solano (respondents).

On various dates from 2006 to 2010, the petitioners were employed by the respondents as bus drivers and/or conductors with travel routes of Manila (Pasay) to Bicol, Visayas and Mindanao, and *vice versa*.[8]

On July 4, 2011, the petitioners filed a case against the respondents alleging that: (1) they were already qualified for

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[6] Issued by Labor Arbiter Enrique L. Flores, Jr.; *id.* at 58-62.

[7] *Id.* at 63-66.

[8]

Name	Date Hired	Routes	Salary
Reymir Parafina	4/24/2010	Manila-Sorsogon and *vice versa*	₱404.00/day
Richard Parafina	4/8/2008	Manila-Sorsogon and *vice versa*	₱404.00/day
Edilberto U. Ania	3/22/2009	Manila-Sorsogon and *vice versa*	₱404.00/day
Michael Adano	11/20/2008	Manila-Sorsogon and *vice versa*	₱404.00/day
Jaime T. Bolo	4/8/2008	Manila-Davao and *vice versa*	₱404.00/day
Ruben E. Gula	2/8/2009	Manila-Davao and *vice versa*	₱404.00/day
Antonio M. Cuaderno	4/20/2010	Manila-Davao and *vice versa*	₱404.00/day
Jovito P. Catangui	2/17/2006	Manila-Davao and *vice versa*	₱404.00/day
Hilario Dasco	10/6/2007	Manila-Daet and *vice versa*	₱404.00/day

Id. at 68-69.

regular employment status since they have been working with the respondents for several years; (2) they were paid only ₱404.00 per round trip, which lasts from two to five days, without overtime pay and below the minimum wage rate; (3) they cannot be considered as field personnel because their working hours are controlled by the respondents from dispatching to end point and their travel time is monitored and measured by the distance because they are in the business of servicing passengers where time is of the essence; and (4) they had not been given their yearly five-day SIL since the time they were hired by the respondents.[9]

In response, the respondents asserted that: (1) the petitioners were paid on a fixed salary rate of ₱0.49 centavos per kilometer run, or minimum wage, whichever is higher; (2) the petitioners are seasonal employees since their contracts are for a fixed period and their employment was dependent on the exigency of the extraordinary public demand for more buses during peak months of the year; and (3) the petitioners are not entitled to overtime pay and SIL pay because they are field personnel whose time outside the company premises cannot be determined with reasonable certainty since they ply provincial routes and are left alone in the field unsupervised.[10]

Ruling of the LA

On October 17, 2011, the LA rendered a Decision[11] in favor of the respondents but declared the petitioners as regular employees of the respondents.[12] The LA held that the respondents were able to prove that the petitioners were paid on a fixed salary of ₱0.49 per kilometer run, or minimum wage, whichever is higher. The LA also found that the petitioners are not entitled to holiday pay and SIL pay because they are considered as field personnel.[13]

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[9] *Id.* at 69-71.

[10] *Id.* at 77-79.

[11] *Id.* at 58-62.

[12] *Id.* at 62.

[13] *Id.* at 60.

Dissatisfied with the LA's decision, the petitioners interposed a Partial Appeal[14] filed on December 8, 2011 before the NLRC.

Ruling of the NLRC

In a Decision[15] dated February 22, 2012, the NLRC granted the petitioners' appeal and modified the LA's decision, the dispositive part of which reads:

> WHEREFORE, premises considered, the Partial Appeal is GRANTED. The Decision of the [LA] dated October 17, 2011 is hereby MODIFIED in that [PSEI] is directed to pay [the petitioners] wage differentials covering a period of three (3) years counted backwards from the time they filed their complaint against respondents but taking into consideration the respective dates of employment and the prevailing minimum wage rate applicable. [PSEI] is likewise directed to pay [the petitioners SIL] and overtime benefits limited also for a period of three (3) years counted backwards from the time they filed their complaint against respondents.
>
> SO ORDERED.[16]

The NLRC held that the petitioners are not field personnel considering that they ply specific routes with fixed time schedules determined by the respondents; thus, they are entitled to minimum wage, SIL pay, and overtime benefits.[17] With regard to the respondents' claim that the petitioners have a fixed term contract, the NLRC concurred with the findings of the LA that the respondents failed to show any document, such as employment contracts and employment records, that would show the dates of hiring, as well as the fixed period agreed upon.[18]

The respondents filed a Motion for Reconsideration[19] on March 12, 2012 but it was denied in a Resolution[20] dated May 30,

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

[15] *Id.* at 49-55.

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

[17] *Id.* at 53-54.

[18] *Id.* at 53.

[19] *Id.* at 113-117.

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

2012; hence, they filed a Petition for *Certiorari*[21] before the CA.

Meanwhile, during the pendency of this case before the CA, the petitioners filed a motion for issuance of writ of execution to enforce the NLRC decision. Accordingly, a Writ of Execution dated November 6, 2012 was issued. By virtue of such writ, two units of buses owned by PSEI were levied and sold in a public auction, for the amount of ₱600,000.00. Thereafter, a corresponding Sheriff's Certificate of Sale was issued.[22]

Ruling of the CA

The CA, in its Decision[23] dated August 30, 2013, reversed and set aside the NLRC rulings and reinstated the LA's decision. Consequently, the writ of execution, levy, auction sale and certificate of sale of PSEI's properties were declared null and void. The petitioners and the NLRC Sheriff were directed to return the subject properties or turn over the monetary value thereof to the respondents.[24]

In overturning the NLRC's decision, the CA considered the petitioners as field workers and, on that basis, denied their claim for benefits, such as overtime pay and SIL pay. According to the CA, there was no way for the respondents to supervise the petitioners on their job. The petitioners are practically on their own in plying the routes in the field, as in fact, they can deviate from the fixed routes, take short cuts, make detours, and take breaks, among others. The petitioners work time and performance are not constantly supervised by the respondents, thus making them field personnel.[25]

Aggrieved by the foregoing disquisition, the petitioners moved for reconsideration[26] but it was denied by the CA in its

[21] *Id.* at 118-126.

[22] *Id.* at 34.

[23] *Id.* at 27-35.

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

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

[26] *Id.* at 39-46.

Resolution[27] dated January 28, 2014. Hence, the present petition for review on *certiorari*.

The Issue

The main issue in this case is whether the petitioners as bus drivers and/or conductors are field personnel, and thus entitled to overtime pay and SIL pay.[28]

Ruling of the Court

The petition is impressed with merit.

Again, the Court reiterates that as a rule, it is not a trier of facts and this applies with greater force in labor cases. Hence, factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the LA and if supported by substantial evidence, are accorded respect and even finality by this Court. But where the findings of the NLRC and the LA are contradictory, as in the present case, this Court may delve into the records and examine for itself the questioned findings.[29]

Nevertheless, the facts and the issues surrounding this petition are no longer novel for this Court. The determination of whether bus drivers and/or conductors are considered as field personnel was already threshed out in the case of *Auto Bus Transport Systems, Inc. v. Bautista*,[30] where the Court explained that:

> As a general rule, [field personnel] are those whose performance of their job/service is not supervised by the employer or his representative, the workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty; hence, they are paid specific amount for rendering specific service or performing specific work. *If required to be at specific places at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the employee.* x x x

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[27] *Id.* at 37-38.

[28] *Id.* at 17.

[29] *Victory Liner, Inc. v. Race*, 548 Phil. 282, 293 (2007).

[30] 497 Phil. 863 (2005).

x x x x x x x x x

x x x At this point, it is necessary to stress that the definition of a "field personnel" is not merely concerned with the location where the employee regularly performs his duties but also with the fact that the employee's performance is unsupervised by the employer. As discussed above, field personnel are those who regularly perform their duties away from the principal place of business of the employer *and whose actual hours of work in the field cannot be determined with reasonable certainty.* Thus, in order to conclude whether an employee is a field employee, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee's time and performance are constantly supervised by the employer.[31]

Guided by the foregoing norms, the NLRC properly concluded that the petitioners are not field personnel but regular employees who perform tasks usually necessary and desirable to the respondents' business. Evidently, the petitioners are not field personnel as defined above and the NLRC's finding in this regard is supported by the established facts of this case: (1) the petitioners, as bus drivers and/or conductors, are directed to transport their passengers at a specified time and place; (2) they are not given the discretion to select and contract with prospective passengers; (3) their actual work hours could be determined with reasonable certainty, as well as their average trips per month; and (4) the respondents supervised their time and performance of duties.

In order to monitor their drivers and/or conductors, as well as the passengers and the bus itself, the bus companies put checkers, who are assigned at tactical places along the travel routes that are plied by their buses. The drivers and/or conductors are required to be at the specific bus terminals at a specified time. In addition, there are always dispatchers in each and every bus terminal, who supervise and ensure prompt departure at specified times and arrival at the estimated proper time. Obviously, these drivers and/or conductors cannot be considered as field personnel because they are under the control and constant supervision of the bus companies while in the performance of their work.

[31] *Id.* at 873-874, citing the Bureau of Working Conditions, Advisory Opinion to Philippine Technical-Clerical Commercial Employees Association.

As correctly observed by the NLRC:

> [I]t is undisputed that [the petitioners] as bus drivers/conductors ply specific routes of [PSEI], . . . averaging 2 to 5 days per round trip. They follow fixed time schedules of travel and follow the designated route of [PSEI]. Thus, in carrying out their functions as bus drivers/conductors, they are not at liberty to deviate from the fixed time schedules for departure or arrival or change the routes other than those specifically designated for [PSEI], in accordance with the franchise granted to the [PSEI] as a public utility provider. In other words, [the petitioners] are clearly under the strict supervision and control of [PSEI] in the performance of their functions otherwise the latter will not be able to carry out its business as public utility service provider in accordance with its franchise.[32]

The Court agrees with the above-quoted findings of the NLRC. Clearly, the petitioners, as bus drivers and/or conductors, are left alone in the field with the duty to comply with the conditions of the respondents' franchise, as well as to take proper care and custody of the bus they are using. Since the respondents are engaged in the public utility business, the petitioners, as bus drivers and/or conductors, should be considered as regular employees of the respondents because they perform tasks which are directly and necessarily connected with the respondents' business. Thus, they are consequently entitled to the benefits accorded to regular employees of the respondents, including overtime pay and SIL pay.

WHEREFORE, the petition is **GRANTED.** The Decision dated August 30, 2013 and Resolution dated January 28, 2014 of the Court of Appeals in CA-G.R. SP No. 126210 are **REVERSED** and **SET ASIDE.** The Decision dated February 22, 2012 and Resolution dated May 30, 2012 of the National Labor Relations Commission in NLRC-NCR Case No. 07-10173-11 are **REINSTATED.**

SO ORDERED.

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

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[32] *Rollo,* pp. 53-54.

SECOND DIVISION

[G.R. No. 211526. June 29, 2016]

PMI-FACULTY AND EMPLOYEES UNION, *petitioner, vs.* **PMI COLLEGES BOHOL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; PROCEDURAL RULES WERE CONCEIVED TO AID IN THE ATTAINMENT OF JUSTICE; THUS, IF THE STRINGENT APPLICATION OF THE RULES WOULD HINDER RATHER THAN SERVICE THE DEMANDS OF JUSTICE, THE FORMER MUST YIELD TO THE LATTER.— [W]e find that the relaxation of the rules of procedure in this case was the more prudent move to follow in the interest of substantial justice. Rules of procedure are not inflexible tools designed to hinder or delay, but rather to facilitate and promote the administration of justice. Their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must always be eschewed. Procedural rules were conceived to aid in the attainment of justice. If the stringent application of the rules would hinder rather than service the demands of justice, the former must yield to the latter.

2. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI; THE RIGHT TO APPEAL SHOULD NOT BE LIGHTLY DISREGARDED BY A STRINGENT APPLICATION OF RULES OF PROCEDURE ESPECIALLY WHERE THE APPEAL IS ON ITS FACE MERITORIOUS AND THE INEREST OF SUBSTANTIAL JUSTICE WOULD BE SERVED BY PERMITTING THE APPEAL.— [I]t must be emphasized that the right to appeal should not be lightly disregarded by a stringent application of rules of procedure especially where the appeal is on its face meritorious and the interest of substantial justice would be served by permitting the appeal. This principle finds particular significance in administrative and quasi-judicial bodies, like the NLRC, which are not bound by technical rules of procedure in the adjudication of cases.

3. ID.; ID.; ID.; ID.; THE COURT, IN THE PUBLIC INTEREST AND FOR ENPEDITIOUS ADMINISTRATION OF JUSTICE, HAS RESOLVED ACTIONS ON THE MERITS, INSTEAD OF REMANDING THEM FOR FURTHER PROCEEDINGS, AS WHERE THE ENDS OF JUSTICE WOULD NOT BE SUBSERVED BY THE REMAND OF THE CASE.— Had the CA also looked into the merits of the case, it could have found that the Union's *certiorari* petition was not without basis xxx. The case calls for a resolution on the merits. And, although the Court is not a trier of facts, we deem it proper not to remand the case to the CA anymore and to resolve the appeal ourselves, without further delay. In *Metro Eye Security, Inc. v. Julie V. Salsona,* the Court avoided a remand of the case to the CA, *"x x x since all the records of this case are before us, there is no need to remand the case to the Court of Appeals. On many occasions, the Court, in the public interest and for expeditious administration of justice, has resolved actions on the merits, instead of remanding them for further proceedings, as where the ends of justice would not be sub-served by the remand of the case."* The present case is in this same situation.

4. ID.; ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED BY THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) WHEN IT IMMEDIATELY REJECTED THE AFFIDAVITS OF THE OFFICERS AND MEMBERS OF THE PETITIONER UNION FOR BEING "SELF-SERVING" WITHOUT PROVIDING ANY BASIS FOR SUCH CONCLUSION.— The NLRC had been too quick in rejecting the sworn statements of the Union officers and members that they had been locked out by the respondent when they reported for duty in the morning of August 9, 2010, branding their affidavits as self-serving, without providing any basis for such a conclusion other than who submitted the statements in evidence, which it implied to be the Union. x x x. [W]e find no reason for Mascardo, Bagaslao, Enriquez, and Fallar to make self-serving and therefore false statements on their failure to hold their classes in the morning of August 9, 2010 because they were refused entry by the security guards. While they are Union members, they are first and foremost teachers who were reporting for duty on that day. The same thing can be said of the Union officers who were also refused entry by the guards.

We likewise find no reason for the officers to throw away all their preparations for a lawful strike on the very last day, had they not been pushed to act by the respondent's closing of the gates on August 9, 2010. It was thus grave abuse of discretion for the NLRC to completely ignore the affidavits of the officers and members of the Union directly saying that they were refused entry into the school premises on August 9, 2010, especially when LA Montenegro intimated that the respondent could have presented the testimonies of the guards on duty at the time to belie the statements of the Union officers and members.

5. LABOR AND SOCIAL LEGISLATIONS; LABOR CODE; DOUBTS IN THE EVIDENCE PRESENTED BY THE EMPLOYER AND THE UNION SHOULD BE RESOLVED IN FAVOR OF THE UNION.— Like its immediate rejection of the affidavits of the Union members and officers for being "self-serving," without giving any credible basis for its sweeping declaration, we find the NLRC to have overstepped the bounds of its discretionary authority in "swallowing hook, line, and sinker," as the Union put it, the compact disc submitted by the school, as it is obvious that it was suffering from a serious doubt in credibility because of its much belated submission. The doubt should have been resolved in favor of the Union. [I]t is well to stress that under Article 4 of the Labor Code, "*all doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.*" In *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, the Court reiterated that the principle laid down in the law has been extended by jurisprudence to cover doubts in the evidence presented by the employer and the employee. As discussed earlier, the Union has raised serious doubt on the evidence relied on by the NLRC. Consistent with Article 4 of the Labor Code, we resolve the doubt in the Union's favor.

APPEARANCES OF COUNSEL

Pro Labor Legal Assistance Center for petitioner.
Martinel Vergara Gonzales & Serrano for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] which seeks to nullify the **December 20, 2012** and **January 30, 2014 resolutions**[2] of the Court of Appeals in CA-G.R. CEB-SP No. 07204.

The Antecedents

Respondent PMI Colleges Bohol *(respondent)* is an educational institution that offers maritime and customs administration courses to the public. Petitioner PMI-Faculty and Employees Union *(Union)* is the collective bargaining representative of the respondent's rank-and-file faculty members and administrative staff.

On October 2, 2009, the Union filed a notice of strike[3] with the National Conciliation and Mediation Board *(NCMB)* in Cebu City, against the respondent, on grounds of *gross violation* of Sections 3 and 3 (a) of their collective bargaining agreement (*CBA*). The Union threatened to go on strike on the first working day of the year 2010 following the failure of the conciliation and mediation proceedings to settle the dispute. In an order[4] dated December 29, 2009, Secretary Marianito D. Roque of the Department of Labor and Employment *(DOLE)* certified the dispute to the National Labor Relations Commission *(NLRC)* for compulsory arbitration.

On July 19, 2010, the Union filed a second notice of strike allegedly over the same CBA violation. On July 28, 2010, the respondent filed a *Motion to Strike Out Notice of Strike and to*

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[1] *Rollo,* pp. 14-26; filed under Rule 45 of the Rules of Court.

[2] *Id.* at 32-34 & 36-37; penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Ramon Paul L. Hernando and Maria Elisa Sempio Diy.

[3] CA *ro1lo,* pp. 416-417.

[4] *Id.* at 418-421.

Refer the Dispute to Voluntary Arbitration, claiming that the Union failed to exhaust administrative remedies before resorting to a 2nd notice of strike. On August 5, 2010, the respondent filed a *Motion for Joinder of Issues* under the 2nd notice of strike with those of the 1st notice.

On August 2, 2010, the Union submitted its strike vote. It alleged that while waiting for the expiration of the 15-day cooling-off period and/or the completion of the 7-day strike vote period, its members religiously reported for duty. On August 9, 2010, the last day of the cooling-off and strike vote periods, the Union officers and members reported for work (except for Union President Alberto ***Porlacin*** who was attending to his sick wife at the time), but they were allegedly not allowed entry to the school premises. This incident, according to the Union, was confirmed under oath by its officers/members.

In protest of what it considered a lock-out by the respondent, the Union staged a strike on the same day. The respondent reacted with a *Petition to Declare the Strike Illegal*, also filed on the same day. DOLE Secretary Rosalinda D. Baldoz assumed jurisdiction over the dispute through an order[5] dated August 10, 2010. She directed the strikers to return to work, and the school to resume operations.

The Compulsory Arbitration Decisions

In his decision[6] of September 26, 2011, Labor Arbiter Leo N. Montenegro *(LA Montenegro)* dismissed the petition for lack of merit, declaring that the petitioner substantially complied with all the requirements of a valid strike, except for staging the strike a day earlier. LA Montenegro considered the staging of the strike one day earlier not sufficient for a declaration of illegality as the Union "officers/members were illegally locked out by the petitioner in not allowing them to enter the school premises to perform their respective jobs x x x."[7]

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[5] *Id.* at 565-566.

[6] *Id.* at 177-188.

[7] *Id.* at 184, last paragraph.

LA Montenegro brushed aside the respondent's submission that there is no proof that it locked out the Union officers/members on August 9, 2010, for the Union's failure to present as evidence the memorandum the school supposedly issued regarding the alleged lockout. LA Montenegro gave more credence to the testimonies[8] of the Union officers and members regarding the lockout. He stressed that the respondent could have been more convincing had it presented the statements of the security guards who manned the gates during the strike on whether the strikers were prevented from reporting for work on August 9, 2010.

On appeal by the respondent, the NLRC reversed[9] LA Montenegro's decision as it found the strike "to be illegal for having failed to comply with the requisites of a valid strike. Thus, the Union officers serving and acting as such during the period of the illegal strike are x x x deemed to have lost their employment status with complainant PMI Colleges Bohol."[10]

The NLRC was not persuaded by the Union's claim that its premature strike was precipitated by the respondent's refusal to admit the members and officers of the Union inside the school premises when they reported for work on August 9, 2010. It considered the affidavits of the officers and members on the alleged lockout self-serving.

On the other hand, the NLRC pointed out, the compact disc submitted in evidence by the respondent revealed that the strikers never mentioned that they were staging a strike due to the respondent's refusal to give them entry to the school. It added

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[8] *Rollo*, p. 139; Joint Affidavit dated July 18, 2011, of PMI faculty members Teodomila Mascardo, Conchita Bagaslao, Mary Jean Enriquez and Cirilo Fallar, pp. 140-141; Joint Affidavit dated November 21, 2011, of members of the union board of directors Joel Langcamon (former President of the Union), Victorino Cabalit, Nelson Estano, and Cirilo Fallar.

[9] CA *rollo* pp. 24-36; NLRC Decision promulgated on April 30, 2012; penned by Commissioner Violeta Ortiz-Bantug and concurred in by Commissioner Julie C. Rendoque.

[10] *Id.* at 35; NLRC decision, p. 12, dispositive portion.

that during the strike, the entry to and exit from the school premises did not appear to be restricted by the security guards.

The Union moved for reconsideration, but the NLRC denied the motion in its resolution[11] of June 29, 2012. The Union was thus constrained to seek relief from the CA through a Rule 65 petition for *certiorari*.

The CA Ruling

In its first assailed resolution,[12] the CA 20th Division dismissed the petition due to the following procedural infirmities:

1. There is a deficiency in the docket and other lawful fees paid by the petitioner in the amount of ₱30.00;
2. Petitioner failed to append an Affidavit of Service, in violation of Section 13, Rule 13 of the Rules of Court;
3. Petitioner failed to attach the Postal Registry Receipts in violation of Section 13, Rule 13 of the Rules of Court;
4. Petitioner failed to explain why the preferred personal mode of FILING was not availed of, in violation of Section 11, Rule 13 of the Rules of Court;
5. Petitioner merely attached photocopies of the certified true copies of the assailed NLRC Decision and Resolution in violation of Section 3, Rule 46 in relation to Section 1, Rule 65 of the 1997 Rules of Civil Procedure;
6. Petitioner failed to state in the verification that the allegations in the petition are '*based on authentic records*,' in violation of Section 4, Rule 7 of the 1997 Rules of Civil Procedure, as amended by A.M. No. 00-2-10-SC (May 1, 2000);
7. In the Verification and Certification of Non-forum Shopping, no competent evidence as to the identity of the petitioner was shown (at least one current identification document issued by an official agency bearing the photograph and signature of the petitioner) in violation of Section 12, Rule II of the 2004 Rules on Notarial Commission; and

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[11] *Rollo*, pp. 171-172.

[12] *Supra* note 2; CA Resolution of December 20, 2012.

8. The Notarial Certificate in the Verification and Certification of Non-forum Shopping did not contain the serial number of the notary public, the province or city where he was commissioned and the office address of the notary public, in violation of Section (b) and (c), Rule VIII of the 2004 Rules of Notarial Practice."

Additionally, the CA noted that "the petition is bereft of any proof of authority for Mr. ALBERTO PORLACIN to sign the Verification and Certification of Non-forum Shopping page in behalf of petitioner PMI Faculty and Employees Union."[13]

Under the Rules of Court, the CA emphasized, a pleading that lacks proper verification is treated as an unsigned pleading[14] and, an unsigned pleading produces no legal effect."[15]

Undaunted, the Union moved for reconsideration, but the CA denied the motion in its resolution or January 30, 2014.[16] It stressed that the motion was not a challenge to its December 20, 2012 resolution, but an appeal for a liberal application of the formal requirements for a *certiorari* petition. The Union offered its explanation for its procedural lapses and, as a gesture of its willingness to abide by the rules, it submitted an amended petition.[17]

The CA was not persuaded by the Union's submission. It regarded the Union's explanations to be "either admission of negligence or dismal excuses"[18] which, in its appreciation, were a sufficient justification for the dismissal of the petition. Moreover, the CA considered the amended petition to be of no help in curing the Union's procedural lapses as the pleading itself was defective. It pointed out in this respect that an

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[13] *Id.* at 33, par. 1.

[14] Section 4, Rule 7.

[15] Section 3, Rule 7.

[16] *Supra* note 2.

[17] CA *rollo*, pp. 350-362.

[18] *Supra* note 2, CA Resolution of January 30, 2014, p. 2, par. 3.

attachment to the amended petition, a certified true copy of the NLRC's assailed April 30, 2012 decision,[19] had no relevance to the present case.

The CA explained that in this case, the Union assailed the April 30, 2012 NLRC decision[20] in ***NLRC Case No. VAC-01-000054-2012*** which stemmed from ***RAB Case No. VIII-04-0024-11-B*** involving the issue of the legality or illegality of the strike on August 9, 2010. On the other hand, what was attached to the amended petition was the April 30, 2012 NLRC decision[21] in ***NLRC Case No. VAC-01-000053-2012*** which arose from ***RAB Case No. VII-04-0026-B*** where the respondent sought to have the Union declared liable for unfair labor practice on grounds of alleged refusal to sign a negotiated CBA.

The Petition

The Union is now before the Court seeking a reversal of the CA resolutions on the issue of whether the appellate court committed a reversible error of law when it dismissed its petition for *certiorari* solely on technical grounds. It argues that in dismissing the petition, the CA ignored the principle that "substantial justice must prevail over procedural infirmities."[22]

The Union pleads for a liberal application of the rules of procedure in the resolution of its dispute with the respondent, especially when "it is obvious that the NLRC seriously erred and committed grave abuse of discretion in holding that the strike was illegal and declaring all union officers who have participated in the strike to have lost their employment status."[23] It impugns the evidence — the video footage (compact disc) of the strike area — relied upon by the NLRC in concluding that the strike was illegal.

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[19] CA *rollo*, pp. 367-379.

[20] *Supra* note 11.

[21] *Supra* note 19.

[22] *Supra* note 1, p. 17; Grounds II.

[23] *Id.* at 24, par. 35.

Particularly, the Union faults the NLRC for not checking the source of the video footage and the credibility of whoever took it. It questions the reliability of the compact disc as it was presented only on appeal or after the lapse of 15 months from the happening of the strike on August 9, 2012. It bewails that due to the advances in science and technology, the footage could have been edited and even altered to produce the desired result.

The Respondent's Position

In its Comment[24] dated September 1, 2014, the respondent prays that the petition be dismissed for lack of merit and for being procedurally flawed.

On the matter of procedure, the respondent submits that the verification and certification of non-forum shopping attached to the petition is defective because: (1) it was executed before the petition was completed, pointing out that the document was executed on April 3, 2014, while the petition was completed only on April 5, 2014; and (2) the authority of the affiant (Alberto Porlacin) had not been shown.

Further, the respondent maintains, the Union was guilty of forum-shopping considering that contrary to the Union's averment in the petition's verification and certification page, the Union officers also filed an illegal dismissal case before the NLRC.

In any event, the respondent argues, the petition would still be without merit as the NLRC correctly found illegal the strike declared by the Union on August 9, 2010.

The Court's Ruling

The procedural question

The CA decided the present labor dispute purely on technical grounds. Also, the respondent itself would want the petition dismissed for alleged procedural lapses on the part of the Union.

After a careful study of the records, we find that the relaxation of the rules of procedure in this case was the more prudent

[24] *Rollo*, pp. 215-233.

move to follow in the interest of substantial justice. Rules of procedure are not inflexible tools designed to hinder or delay, but rather to facilitate and promote the administration of justice. Their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must always be eschewed.[25] Procedural rules were conceived to aid in the attainment of justice. If the stringent application of the rules would hinder rather than service the demands of justice, the former must yield to the latter.[26]

Moreover, it must be emphasized that the right to appeal should not be lightly disregarded by a stringent application of rules of procedure especially where the appeal is on its face meritorious and the interest of substantial justice would be served by permitting the appeal.[27] This principle finds particular significance in administrative and quasi-judicial bodies, like the NLRC, which are not bound by technical rules of procedure in the adjudication of cases.[28]

Had the CA also looked into the merits of the case, it could have found that the Union's *certiorari* petition was not without basis, as we shall discuss below. The case calls for a resolution on the merits. And, although the Court is not a trier of facts, we deem it proper not to remand the case to the CA anymore and to resolve the appeal ourselves, without further delay.

In *Metro Eye Security, Inc. v. Julie V. Salsona*,[29] the Court avoided a remand of the case to the CA, "*x x x since all the records of this case are before us, there is no need to remand the case to the Court of Appeals. On many occasions, the*

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[25] *Jaworski v. PAGCOR*, 464 Phil. 375, 385 (2004).

[26] *City of Dumaguete v. Philippine Ports Authority*, 671 Phil. 610, 627 (2011), citing *Basco v. CA*, 392 Phil. 251, 266 (2000).

[27] *Pacific Asia Overseas Shipping Corporation v. NLRC, et al.*, 244 Phil. 127, 134 (1988).

[28] *Ford Philippines Salaried Employees Association v. NLRC*, 240 Phil. 284, 297-298 (1987).

[29] 560 Phil. 632 (2007).

Court, in the public interest and for expeditious administration of justice, has resolved actions on the merits, instead of remanding them for further proceedings, as where the ends of justice would not be sub-served by the remand of the case."[30] The present case is in this same situation.

The merits of the case

The declaration of the strike a day before the completion of the cooling-off and strike vote periods was but a reaction to the respondent's locking out the officers and members of the Union. The Union does not deny that it staged the strike on August 9, 2010, or on the 21st day after the filing of the strike notice on July 19, 2010, and the submission of the strike vote on August 2, 2010, a day earlier than the 22 days required by law (15 days strike notice, plus 7 days strike vote period).[31] It, however, maintained that it was left with no choice but to go on strike a day earlier because the respondent had barred its officers and members from entering the school premises.

The NLRC had been too quick in rejecting the sworn statements[32] of the Union officers and members that they had been locked out by the respondent when they reported for duty in the morning of August 9, 2010, branding their affidavits as self-serving, without providing any basis for such a conclusion other than who submitted the statements in evidence,[33] which it implied to be the Union.

On the contrary, we find the statements credible, particularly those of Engr. Teodomila **Mascardo**, Engr. Conchita **Bagaslao**, Ms. Mary Jean **Enriquez**, and Mr. Cirilo **Fallar**[34] that they had classes at 7:30 a.m. to 8:30 a.m. on Monday, August 9, 2010, and that, in compliance with their teaching load, they

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[30] *Id.* at 641, 642.

[31] LABOR CODE, Article 278 (formerly Article 263), (c), (e) and (f).

[32] *Supra* note 8.

[33] *Supra* note 10, at 10, par. 2.

[34] *Rollo*, p. 139; Joint Affidavit.

had to be in the school premises at 7:00 a.m. but were surprised when they were not allowed to enter on that day by the guards on duty. They protested, they added, and insisted on entering the school premises, but they were pushed out of the school grounds by the guards who said that they were just following orders from the PMI management.

Under the circumstances, we find no reason for Mascardo, Bagaslao, Enriquez, and Fallar to make self-serving and therefore false statements on their failure to hold their classes in the morning of August 9, 2010 because they were refused entry by the security guards. While they are Union members, they are first and foremost teachers who were reporting for duty on that day. The same thing can be said of the Union officers who were also refused entry by the guards. We likewise find no reason for the officers to throw away all their preparations for a lawful strike on the very last day, had they not been pushed to act by the respondent's closing of the gates on August 9, 2010.

It was thus grave abuse of discretion for the NLRC to completely ignore the affidavits of the officers and members of the Union directly saying that they were refused entry into the school premises on August 9, 2010, especially when LA Montenegro intimated that the respondent could have presented the testimonies of the guards on duty at the time to belie the statements of the Union officers and members.

In sharp contrast, the NLRC readily admitted the video footage of the strike area on August 9, 2010, which the respondent offered in evidence only on appeal or more than a year (15 months) after it was supposed to have been taken. The much belated submission of the video footage puts in question, as the Union argued in its *certiorari* petition, the authenticity and, therefore, the credibility of the footage. Why was the footage not presented to the labor arbiter, considering that the respondent reserved the right to adduce additional evidence, documentary and testimonial, in the resolution of the case?[35] Why did it take

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[35] *Id.* at 73; Respondent's Position Paper, p. 18, par. 26.

more than a year to present it when the footage was taken on the first day of the strike?

The respondent's explanation for the 15-month delay in the presentation of the compact disc contents to prove that the school did not lock out the Union members and officers deserves scant consideration. We are not convinced that the respondent spent more than a year to secure the affidavits of the personnel of Ramasola Superstudio, based in Tagbilaran City, that purportedly took the footage. As the Union pointed out, a member of the school's management, lawyer Evaneliza Cloma-Lucero, who resides in Tagbilaran City could have been asked to depose the studio's personnel. Neither are we persuaded by the excuse that the respondent's counsel is residing in Pasig City. Again, as observed by the Union, air travel can bring the lawyer to Tagbilaran City in just a little over an hour to take the deposition.

The inordinate delay in the submission of the compact disc cannot but generate negative speculations on why it took so long for the respondent to introduce it in evidence. We thus find the Union's apprehension about the authenticity and credibility of the compact disc not surprising; 15 months are too long a period to wait for the submission of a piece of evidence which existed on the first day of the strike way back on August 9, 2010.

Like its immediate rejection of the affidavits of the Union members and officers for being "self-serving," without giving any credible basis for its sweeping declaration, we find the NLRC to have overstepped the bounds of its discretionary authority in "swallowing hook, line, and sinker," as the Union put it,[36] the compact disc submitted by the school, as it is obvious that it was suffering from a serious doubt in credibility because of its much belated submission. The doubt should have been resolved in favor of the Union.

At this point, it is well to stress that under Article 4 of the Labor Code, "*all doubts in the implementation and interpretation*

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[36] *Rollo*, p. 182; Petition for *Certiorari*, p. 10, par. 4.

of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor." In *Peñaflor v. Outdoor Clothing Manufacturing Corporation*,[37] the Court reiterated that the principle laid down in the law has been extended by jurisprudence to cover doubts in the evidence presented by the employer and the employee.[38] As discussed earlier, the Union has raised serious doubt on the evidence relied on by the NLRC. Consistent with Article 4 of the Labor Code, we resolve the doubt in the Union's favor.

In sum, **we find merit in the petition**. The CA reversibly erred when (1) it decided the present labor dispute and dismissed the Union's *certiorari* petition purely on technical grounds, and (2) in blindly ignoring the blatant grave abuse of discretion on the part of the NLRC that completely disregarded the affidavits of the officers and members of the Union and readily admitted the respondent's belatedly submitted video footage.

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED.** The assailed resolutions of the Court of Appeals are **SET ASIDE.** The September 26, 2011 decision of Labor Arbiter Leo N. Montenegro is **REINSTATED**, and the April 30, 2012 decision of the National Labor Relations Commission **VACATED.**

SO ORDERED.

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

Del Castillo, J., on leave.

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[37] 624 Phil. 490 (2010).

[38] *Id.* at 505, citing *Fujitsu Computer Products of the Philippines v. CA*, 494 Phil. 697 (2005).

SECOND DIVISION

[G.R. No. 212186. June 29, 2016]

ARIEL LOPEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; SHOULD ONLY RAISE QUESTIONS OF LAW; EXCEPTIONS; PRESENT.— The general rule is that a Rule 45 petition for review on *certiorari* should only raise questions of law. x x x However, there are instances when this Court allows questions of fact in a Rule 45 petition for review. These instances include the following: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. There is a question of law "when there is doubt as to what the law is on a certain state of facts" and there is a question of fact "when the doubt arises as to the truth or falsity of the alleged facts." In this case, petitioner asks this Court to review the evidence and argues that the prosecution was unable to prove his guilt beyond reasonable doubt. Thus, petitioner raises a question of fact. Nevertheless, this Court gives due course to the Petition because it falls under the exceptions as to when this Court may entertain questions of fact. A review of the record shows that the trial court and the Court of Appeals misapprehended the facts, and their findings are contradicted by the evidence presented.

2. CRIMINAL LAW; ANTI-CATTLE RUSTLING LAW OF 1974 (PD NO. 533); ELEMENTS OF CATTLE RUSTLING; NOT PROVED.— The prosecution failed to prove one of the elements of cattle-rustling, specifically, that the lost carabao of Mario and Teresita Perez is the same carabao allegedly stolen by petitioner. Presidential Decree No. 533 defines cattle-rustling x x x. The elements of cattle-rustling are: (1) large cattle is taken; (2) it belongs to another; (3) the taking is done without the consent of the owner or raiser; (4) the taking is done by any means, method or scheme; (5) the taking is done with or without intent to gain; and (6) the taking is accomplished with or without violence or intimidation against persons or force upon things. Not all of the elements of cattle-rustling were proven by the prosecution. The carabao transported by petitioner and Alderete was not sufficiently proven to be the same carabao owned by Mario and Teresita Perez.

3. ID.; ID.; ID.; WHILE THE DATE OF COMMISSION OF THE OFFENSE IS NOT AN ELEMENT OF CATTLE RUSTLING, THE INCONSISTENCIES IN THE TESTIMONIES OF THE PROSECUTION'S WITNESSES WITH REGARDS TO THE DATE OF COMMISSION OF THE OFFENSE AFFECTED PETITIONER'S RIGHT TO PREPARE HIS DEFENSE INTELLIGENTLY.— The prosecution was unable to establish the date when the carabao was lost. Perez stated that the carabao was lost on July 17, 2002. According to Teresita, the carabao was lost on July 27, without stating any year. The written entry in the police blotter stated that the carabao was lost on July 15, 2002. While the date of commission of the offense is not an element of cattle-rustling, the inconsistencies in the testimonies of the prosecution's witnesses with regards the date of commission of the offense affected petitioner's right to prepare his defense intelligently.

4. ID.; REPUBLIC ACT NO. 7438; CUSTODIAL INVESTIGATION, DEFINED; REQUEST FOR APPEARANCE BEFORE THE POLICE STATION TO A PERSON IDENTIFIED AS A SUSPECT IS AKIN TO AN INVITATION ISSUED BY POLICE OFFICERS FOR CUSTODIAL INVESTIGATION.— Petitioner's uncounselled admission during the confrontation at the police station is inadmissible in evidence. x x x. [T]he

record shows that petitioner's appearance before the police station was far from being voluntary. x x x In this case, the so-called "request for appearance" is no different from the "invitation" issued by police officers for custodial investigation. Section 2 of Republic Act No. 7438 provides: SEC. 2. *Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers.* – . . . . As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law. Custodial investigation has also been defined as: Custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission. The circumstances surrounding petitioner's appearance before the police station falls within the definition of custodial investigation. Petitioner was identified as a suspect in the theft of large cattle. Thus, when the request for appearance was issued, he was already singled out as the probable culprit.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; PETITIONER IS COVERED BY THE RIGHTS OF THE ACCUSED DURING CUSTODIAL INVESTIGATION, AS THE CONFRONTATION AT THE POLICE STATION WAS DONE IN A CUSTODIAL SETTING; THUS HIS UNCOUNSELLED ADMISSION IS INADMISSIBLE IN EVIDENCE.— PO3 Lozarito testified that there was no custodial investigation because he did not ask question. He "let Teresita and [petitioner] confront each other." However, PO3 Lozarito's explanation attempts to circumvent the law protecting the rights of the accused during custodial investigation. *People v. Chavez* discussed that the so-called Miranda rights "are intended to protect ordinary citizens from the pressures of a custodial setting." The confrontation between Teresita and petitioner can be considered as having been done in a custodial setting because (1) petitioner was requested to appear by the police; (2) the confrontation was done in a police station; and (3) based on his testimony, PO3 Lozarito was inside the police station during the confrontation. When petitioner appeared before Teresita at the police station, the "pressures of a custodial setting" were present.

6. ID.; EVIDENCE; HEARSAY EVIDENCE; DEFINED.— [P]O3 Lozarito's statement on what transpired between petitioner and Mario and Teresita Perez are inadmissible for being hearsay. Hearsay evidence is defined as: It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, *i.e.*, those which are derived from his own perception. *A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard.* Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits. PO3 Lozarito testified that he "let Teresita and [Lopez] confront each other." He most likely overheard the conversation between Teresita and petitioner. Thus, he had no personal knowledge of what the parties had discussed.

7. CRIMINAL LAW; ANTI-CATTLE RUSTLING LAW OF 1974 (PD NO. 533); PETITIONER IS ACQUITTED ON GROUND OF REASONABLE DOUBT, AS THE PROSECUTION FAILED TO PROVE ALL THE ELEMENTS OF CATTLE RUSTLING AND HIS RIGHTS DURING CUSTODIAL INVESTIGATION WERE VIOLATED.— *People v. Bio* has held that "the infractions of the so-called Miranda rights render inadmissible only the extrajudicial confession or admission made during custodial investigation." With this rule applied and petitioner's uncounselled admission disregarded, petitioner should still be acquitted because the prosecution was unable to prove the identity of the lost carabao owned by Mario and Teresita Perez. For the prosecution's failure to prove all the elements of cattle-rustling, and for the violation of petitioner's rights during custodial investigation, we hold that there is reasonable doubt that petitioner is guilty of cattle-rustling. Thus, he must be acquitted.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

To sustain a conviction for cattle-rustling, the identity of the stolen cattle must be proven with certainty. Otherwise, the accused must be acquitted on the ground of reasonable doubt.

Further, a "request for appearance" issued by law enforcers to a person identified as a suspect is akin to an "invitation." Thus, the suspect is covered by the rights of an accused while under custodial investigation. Any admission obtained from the "request for appearance" without the assistance of counsel is inadmissible in evidence.

Petitioner Ariel Lopez (Lopez) was charged with violation of Presidential Decree No. 533.[1] The accusatory portion of the Information reads:

> That on or about July 17, 2002, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with intent to gain with grave abuse of confidence and without the knowledge and consent of the complainant, wilfully, unlawfully, and feloniously took, stole and carried away one (1) female carabao valued at **Five Thousand (₱5,000.00) Pesos**, more or less, belonging to **Teresita D. Perez**, to the latter's damage and prejudice in the aforesaid amount.
>
> CONTRARY TO LAW.[2] (Emphasis in the original)

Lopez pleaded not guilty during his arraignment.[3]

During trial, Mario Perez (Perez) testified that he purchased the female carabao from a certain Enrique Villanueva. The purchase was evidenced by a Certificate of Transfer of Large Cattle.[4]

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[1] Anti-Cattle Rustling Law of 1974 (1974).

[2] *Rollo*, p. 34, Court of Appeals Decision.

[3] *Id.*

[4] *Id.* at 16-17, Petition.

Perez narrated that he tied his carabao to a coconut tree located inside the property of a certain Constancio Genosas.[5]

Around 5:00 a.m. on July 17, 2002, Perez discovered that the female carabao was missing.[6]

Perez claimed that he searched for his carabao for over a month. After, he went to the Barangay Captain of Wines to ask for assistance.[7]

Prosecution witness Felix Alderete (Alderete) testified that he worked as an errand boy for Lopez from 2000 to 2002.[8]

Alderete claimed that he slept at Lopez's house on July 17, 2002. Around 3:45 a.m. of the next day, Alderete and Lopez went to Constancio Genosas' property.[9]

Lopez untied the carabao and allegedly told Alderete that he would "bring the carabao to his boss named Boy Platan at Malagos."[10] He ordered Alderete to deliver the carabao to Malagos.[11]

Alderete, not knowing whether the carabao was owned by Lopez, followed Lopez's instructions.[12]

Lopez and Boy Platan met Alderete in Malagos. From there, the carabao was loaded on a vehicle headed to Davao City.[13]

The next day, Alderete learned that there was a commotion in Wines, Baguio District, regarding Perez's lost carabao.[14]

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[5] *Id.* at 17.

[6] *Id.* at 40, Court of Appeals Decision.

[7] *Id.* at 17.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

Afraid of being accused for the loss of the carabao, Alderete sought help from the barangay police.[15]

Teresita Perez (Teresita) testified that Barangay Police Moralde informed her and Perez, her husband, that Lopez stole their carabao.[16] Subsequently, a confrontation took place at the barangay police station.[17] During the confrontation, Lopez admitted to taking the carabao and promised to pay indemnification.[18]

Police Officer III Leo Lozarito (PO3 Lozarito) corroborated Teresita's testimony and stated that a request for Lopez's appearance was issued, but no custodial investigation was conducted. He claimed that he simply allowed Lopez and Teresita to "confront each other."[19] He also stated that Lopez wanted to settle by paying for the carabao, but the parties were unable to agree on the price.[20]

The defense presented Lopez as a witness during trial. Lopez denied stealing the carabao.[21] He also denied knowing Alderete. He stated that he was a farmer, [22] and that at the time the offense was committed, he was working at his home in Wines, Baguio District, Davao City.[23]

Lopez testified that he knew Teresita because she "used to borrow rice and feeds from his parents."[24] He was surprised that she accused him of stealing her carabao.[25]

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15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.* at 17-18.

21 *Id.* at 88, Regional Trial Court Sentence.

22 *Id.*

23 *Id.* at 18, Petition.

24 *Id.* at 88.

25 *Id.*

Lopez also testified that he went to the police station where he denied stealing any carabao.[26] After his appearance at the police station, he went home.[27]

The defense presented another witness, Marvin Bongato, who claimed to have seen a certain "Edoy" riding a carabao in the morning of July 17, 2002.[28] He denied seeing Alderete riding a carabao on the same date.[29]

The trial court found Lopez guilty of cattle-rustling.[30] It gave credence to Alderete's testimony that Lopez ordered him to bring the carabao to Malagos.[31] The trial court also noted Alderete's statement that "he knew Lopez was engaged in the buy and sell of large cattle."[32]

In addition, the trial court discussed that Lopez's defense of denial had no credence because during the meeting at the police station, Lopez offered to reimburse the value of the carabao and even knelt in front of Teresita to ask for forgiveness.[33]

The dispositive portion of the trial court's ruling states:

> In view of the foregoing, judgment is hereby rendered finding Ariel Lopez GUILTY of the crime charged. He is hereby sentenced to suffer an indeterminate penalty of from TEN (10) years and ONE (1) day of *prision mayor* maximum to FOURTEEN (14) years, EIGHT (8) months and ONE (1) day of *reclusion temporal* medium.

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[26] *Id.*

[27] *Id.*

[28] *Id.* at 18.

[29] *Id.*

[30] *Id.* at 86-90. The Sentence, promulgated on March 18, 2009, was penned by Judge Virginia Hofileña-Europa, Presiding Judge of Branch 11, Regional Trial Court of Davao City.

[31] *Id.* at 88-89.

[32] *Id.* at 88.

[33] *Id.* at 89.

He is likewise ordered to pay Mario and Teresita Perez the sum of FIVE THOUSAND PESOS (₱5,000.00) representing the value of the stolen carabao.

SO ORDERED.[34] (Emphasis in the original)

Lopez filed before the Court of Appeals an appeal arguing that the prosecution was unable to prove that the carabao allegedly stolen was the same carabao owned by Mario and Teresita Perez.[35] He argued that the "request for appearance . . . issued by PO3 Lozarito was in violation of his custodial rights."[36]

The Court of Appeals ruled[37] that the Certificate of Transfer of Large Cattle and Alderete's testimony were sufficient to prove the ownership of the lost carabao.[38]

Further, the Court of Appeals held that there was no violation of Lopez's custodial rights.[39] PO3 Lozarito did not ask questions, and Lopez was not compelled to make any admissions.[40] Lopez negotiated for a settlement with Mario and Teresita Perez, which could not be considered as custodial investigation.[41]

However, the Court of Appeals modified the penalty imposed by the trial court. It discussed that Presidential Decree No. 533 is not a special law, but an amendment of Article 310 of the Revised Penal Code. Hence, Article 64 of the Revised Penal Code should apply.[42]

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[34] *Id.*

[35] *Id.* at 39.

[36] *Id.* at 44.

[37] *Id.* at 33-49. The appeal, docketed as CA-G.R. CR No. 00673-MIN, was decided on August 12, 2013. The Decision was penned by Associate Justice Renato C. Francisco and was concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

[38] *Id.* at 39-41.

[39] *Id.* at 44.

[40] *Id.*

[41] *Id.* at 44-45.

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

The dispositive portion of the Court of Appeals Decision reads:

> **WHEREFORE**, the decision of the RTC is hereby **AFFIRMED**, with the modification that appellant Ariel G. Lopez is hereby **SENTENCED** to suffer an indeterminate prison term of four (4) years, two (2) months and one (1) day of *prision correccional* maximum, as *minimum*, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as *maximum*.
>
> **SO ORDERED**.[43] (Emphasis in the original)

Lopez moved for reconsideration,[44] but the Motion was denied in the Resolution dated March 6, 2014.[45]

Petitioner Ariel Lopez, through counsel, filed before this Court a Petition for Review on Certiorari[46] on April 30, 2014.

In the Resolution[47] dated July 28, 2014, this Court required respondent to comment and directed the Court of Appeals Clerk of Court to elevate the records of this case.

The Office of the Solicitor General filed its Comment[48] on December 1, 2014.

In the Resolution[49] dated February 2, 2015, this Court noted the Office of the Solicitor General's Comment and required petitioner to file a reply.

On July 7, 2015, counsel for petitioner filed a Manifestation[50] informing this Court that when he received a copy of the February 2,

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

[44] *Id.* at 50-55.

[45] *Id.* at 57-62. The Resolution was penned by Associate Justice Renato C. Francisco and was concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

[46] *Id.* at 13-27.

[47] *Id.* at 123.

[48] *Id.* at 156-176.

[49] *Id.* at 177.

[50] *Id.* at 184-187.

2015 Resolution, he had yet to receive a copy of respondent's Comment. He subsequently realized that he might have received it, but it could have been among the documents that were burned when the Hall of Justice of Cagayan de Oro was razed by fire. In any case, petitioner would no longer file a reply because petitioner's arguments on why he should be acquitted were discussed in the appeal brief, in the Motion for Reconsideration, as well as in the Petition for Review.[51]

In his Petition for Review on Certiorari, petitioner reiterates the arguments raised in his appeal before the Court of Appeals. Petitioner argues that the prosecution failed to prove Mario and Teresita Perez's ownership of the lost carabao. Alderete had no personal knowledge of the lost carabao's appearance, or where it grazed.[52]

Petitioner alleges that he is "engaged in raising livestock, like pigs, chickens and carabaos."[53] He also alleges that the area where the carabao was taken is "a rural and agricultural area, where the abundance of carabaos is not uncommon."[54]

In addition, Alderete himself doubted whether theft was committed. Prosecution witness Urcesio Moralde testified:

> Q: And, specifically, what Felix did say [sic] with respect to his participation in the alleged carabao theft? What did he say?
>
> A: He was doubtful if it was really theft, that he will not report to the other people because it was with me that he was comfortable with.[55] (Emphasis in the original)

Petitioner argues that Alderete's doubt shows that he was unsure who owned the carabao.[56]

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[51] *Id.* at 184.

[52] *Id.* at 21.

[53] *Id.* at 22.

[54] *Id.*

[55] *Id.*

[56] *Id.*

In addition, petitioner points out that there were inconsistencies in the testimonies of the prosecution's witnesses. Alderete testified "that the carabao he and petitioner allegedly untied and brought to Malagos was still pregnant[.]"[57] On the other hand, Perez testified "that the carabao had an offspring, indicating that the carabao was not pregnant."[58]

Alderete also testified that the carabao was taken 3:45 a.m., while his affidavit states that the carabao was taken at night.[59]

Further, Alderete claimed that he heard about a stolen carabao the following day; hence, "he immediately reported the incident to the barangay police."[60] He was allegedly told by the police that they would notify the Barangay Captain and the carabao's owner.[61]

However, Perez testified that he had been looking for his carabao for a month before he reported the loss to the Barangay Captain.[62] This shows that Perez was not immediately informed by the barangay police regarding Alderete's statement.[63]

Petitioner avers that the date when the carabao was allegedly stolen was not proven with certainty. Teresita was unable to cite what year the carabao was stolen. She only testified that the carabao was stolen at 5:00 a.m. of July 27. She explained that she learned of the loss from her husband.[64] Perez, Teresita's husband, testified "that the carabao was lost on July 17, 2002."[65]

On the other hand, the police blotter states that the carabao was stolen on July 15, 2002, "at 5:30 in the morning."[66]

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[57] *Id.*

[58] *Id.*

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

[60] *Id.* at 23.

[61] *Id.* at 23-24.

[62] *Id.* at 24.

[63] *Id.*

[64] *Id.* at 23.

[65] *Id.*

[66] *Id.*

Petitioner further argues that his alleged admission is inadmissible in evidence.[67] He was summoned by the police because he was suspected of stealing a carabao.[68]

Petitioner points out that custodial investigation includes:

> the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law. And any uncounselled confession or admission obtained by the accused on such occasion shall be inadmissible against him.[69]

On the other hand, respondent cites Perez's testimony and argues that it established ownership over the carabao:

Q: You said the carabao was lost. How was it lost?
A: Ariel Lopez untied the rope tied at the coconut tree.

Q: When was it that this carabao was discovered to be lost?
A: At 5:00 a.m. on July 17, 2002.

Q: Who was the person who discovered that the carabao was lost at 5:00 a.m. on July 17, 2002?
A: Me.

Q: At what place?
A: There *where the carabao was tied at the coconut tree.*

x x x x x x x x x

Q: Who tied the carabao to the tree?
A: *Me*, sir.[70] (Emphasis supplied)

Respondent cites Alderete's testimony stating that there were no other carabaos tied in the area and that the lost carabao was a "big female carabao with big horns."[71] Respondent claims

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[67] *Id.* at 25.

[68] *Id.*

[69] *Id.* at 26.

[70] *Id.* at 163.

[71] *Id.* at 164.

that the Certificate of Transfer of Large Cattle is sufficient to prove that Mario and Teresita Perez owned the lost carabao.[72]

Respondent argues that the inconsistencies in Alderete's testimony pertain to minor matters.[73] Likewise, petitioner's statement during the meeting held at the police station was made spontaneously; thus, it is admissible in evidence.[74]

Further, respondent avers that petitioner raises questions of fact, which are not allowed in a Rule 45 petition for review.[75]

The issues for resolution are:

First, whether this Court should deny the Petition for raising questions of fact;

Second, whether all the elements of the crime of cattle-rustling were proven; and

Lastly, whether petitioner's uncounselled admission during the confrontation at the barangay police office is admissible in evidence.

Petitioner should be acquitted.

I

The general rule is that a Rule 45 petition for review on certiorari should only raise questions of law. As provided under Rule 45, Section 1 of the Rules of Court:

RULE 45

APPEAL BY CERTIORARI TO THE SUPREME COURT

SECTION 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts whenever

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[72] *Id.* at 165.

[73] *Id.* at 166.

[74] *Id.* at 167.

[75] *Id.* at 171-172.

authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

However, there are instances when this Court allows questions of fact in a Rule 45 petition for review. These instances include the following:

(1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[76]

There is a question of law "when there is doubt as to what the law is on a certain state of facts"[77] and there is a question of fact "when the doubt arises as to the truth or falsity of the alleged facts."[78]

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[76] *Benito v. People*, G.R. No. 204644, February 11, 2015, 750 SCRA 450, 459-460 [Per *J.* Leonen, Second Division], citing *Pagsibigan v. People*, 606 Phil. 233, 241-242 (2009) [Per *J.* Carpio, First Division].

[77] *Tongonan Holdings and Dev't. Corp. v. Atty. Escaño, Jr.*, 672 Phil. 747, 756 (2011) [Per *J.* Mendoza, Third Division], citing *Republic of the Philippines v. Malabanan*, 646 Phil. 631 (2010) [Per *J.* Villarama, Jr., Third Division].

[78] *Id.*

In this case, petitioner asks this Court to review the evidence and argues that the prosecution was unable to prove his guilt beyond reasonable doubt.[79] Thus, petitioner raises a question of fact. Nevertheless, this Court gives due course to the Petition because it falls under the exceptions as to when this Court may entertain questions of fact. A review of the record shows that the trial court and the Court of Appeals misapprehended the facts, and their findings are contradicted by the evidence presented.

II

The prosecution failed to prove one of the elements of cattle-rustling, specifically, that the lost carabao of Mario and Teresita Perez is the same carabao allegedly stolen by petitioner.

Presidential Decree No. 533 defines cattle-rustling as:

> **Section 2.** *Definition of terms.* — The following terms shall mean and be understood to be as herein defined:
>
> x x x x x x x x x
>
> c. Cattle rustling is the taking away by any means, method or scheme, without the consent of the owner/raiser, of any of the abovementioned animals whether or not for profit or gain, whether committed with or without violence against or intimidation of any person or force upon things. It includes the killing of large cattle, or taking the meat or hide without the consent of the owner/raiser.

The elements of cattle-rustling are:

> (1) large cattle is taken; (2) it belongs to another; (3) the taking is done without the consent of the owner or raiser; (4) the taking is done by any means, method or scheme; (5) the taking is done with or without intent to gain; and (6) the taking is accomplished with or without violence or intimidation against persons or force upon things.[80]

Not all of the elements of cattle-rustling were proven by the prosecution. The carabao transported by petitioner and Alderete

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[79] *Rollo*, pp. 19-20.

[80] *Ernesto Pil-Ey v. People of the Philippines*, 553 Phil. 747, 755 (2007) [Per *J.* Nachura, Third Division].

was not sufficiently proven to be the same carabao owned by Mario and Teresita Perez.

During trial, Alderete testified as follows:

Q: Now it says here, that first art, (sic) "The next day, I heard rumors that the carabao with the same description as the carabao we got the night before, allegedly owned by Mrs. Teresita Perez was stolen, after confirming that it was the same carabao we delivered to Boy Platan, (sic) I immediately went to Montal." Why do you say and why do you confirm that the carabao that you got that early morning of July 17 was also the same carabao that belonged to the private complainant in this case?

A: Because there were no other carabaos tied there. It was only a big carabao, the mother, and offspring of the carabao.

Q: Now, are you saying that in that place of Genosas, there was other carabao other than the one you and Lopez took?

x x x x x x x x x

Q: And besides that, why do you say it is the same carabao meaning, (sic) the one you and Lopez took, being owned by the complainant? (sic)

A: Because the carabao we brought to Malagos was big female carabao with big horns.

Q: And the carabao belonging to the private complainant, how do you describe it?

A: It is her carabao because I went to the place where the carabao was tied and it was the same place where it was lost.[81]

Alderete's description of the carabao is too generic. Alderete did not mention any distinguishing mark on the carabao that petitioner allegedly stole. In other cases involving cattle-rustling, the identity of the stolen cattle was proven with certainty because of distinguishing marks on the cattle.

In *Pil-ey v. People*,[82] the cow was specifically described as "white-and-black-spotted cow."[83]

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[81] *Rollo*, p. 21.

[82] 553 Phil. 747 (2007) [Per *J.* Nachura, Third Division].

[83] *Id.* at 750.

In *Canta v. People*,[84] the stolen cow was identified by all four (4) caretakers, "based on the location of its cowlicks, its sex, and its color."[85] In addition, the reverse side of the Certificate of Ownership of Large Cattle had a drawing of the cow, including the location of its cowlicks. Thus, the identity of the stolen cow was proven.[86]

Perez claims that he owns the carabao allegedly taken by petitioner because he has a "*Katibayan ng Paglilipat ng Pagmamay-ari ng Malalaking Baka*."[87] However, the Certificate only proves that he owns a carabao. It does not prove that he owns the carabao allegedly stolen by petitioner.

In addition, Alderete had no personal knowledge of the appearance of the carabao owned by Mario and Teresita Perez. He himself doubted whether theft was committed.[88]

The prosecution was unable to establish the date when the carabao was lost. Perez stated that the carabao was lost on July 17, 2002.[89] According to Teresita, the carabao was lost on July 27, without stating any year.[90] The written entry in the police blotter stated that the carabao was lost on July 15, 2002.[91] While the date of commission of the offense is not an element of cattle-rustling, the inconsistencies in the testimonies of the prosecution's witnesses with regards the date of commission of the offense affected petitioner's right to prepare his defense intelligently.[92]

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[84] 405 Phil. 726 (2001) [Per *J.* Mendoza, Second Division].

[85] *Id.* at 733.

[86] *Id.*

[87] *Rollo*, p. 35.

[88] *Id.* at 22.

[89] *Id.* at 23.

[90] *Id.*

[91] *Id.*

[92] See *People v. Pareja*, G.R. No. 202122, January 15, 2014, 714 SCRA 131 [Per *J.* Leonardo-De Castro, First Division].

Further, Alderete gave conflicting statements. He testified that when he heard about the lost carabao, "he immediately reported the incident to the barangay police."[93] However, he also testified that "he did not actually reach the barangay."[94]

Alderete stated that he talked with the barangay police and the owner of the carabao. Yet, he also testified that "he did not know what happened after he was told by the police to stay out while the latter [called] the barangay captain and the owner of the carabao."[95]

Alderete's testimony is also contradicted by Perez's testimony. Perez stated that he had looked for his carabao for a month before he reported the matter to the Barangay Captain.[96] He never testified that he was able to talk to Alderete.[97] This leads us to doubt whether Alderete was indeed able to talk to the owner of the carabao.

III

Petitioner's uncounselled admission during the confrontation at the police station is inadmissible in evidence.

The Court of Appeals held that "[t]he constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby the accused orally admits having committed the crime."[98]

However, the record shows that petitioner's appearance before the police station was far from being voluntary. The transcript of stenographic notes during the January 30, 2006 hearing states:

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[93] *Rollo*, p. 23.

[94] *Id.*

[95] *Id.* at 23-24.

[96] *Id.*

[97] *Id.*

[98] *Id.* at 44.

Q: Sometime in the month of July 2002, have you come across with [sic] a reported theft of large cattle?
A: Yes, sir.

Q: And what did you list from that report?
A: It was told to me by the Desk Officer, sir, that a theft of large cattle was reported and the complainant is seeking assistance.

Q: And since the complainant sought assistance from the police, what did the Baguio Police District do to the request of the complainant?
A: So, she identified the alleged suspect so I told my partner to issue a request from [sic] appearance so that the suspect will be confronted in the police station.

Q: You said that you told your partner to invite the accused, what was that phrase again?
A: Request for appearance.

Q: You said that you asked your partner to issue request for appearance, do you know what happened to that request for appearance?
A: It was sent by us sir, and the alleged accused appeared to [sic] our police station.[99]

In this case, the so-called "request for appearance" is no different from the "invitation" issued by police officers for custodial investigation.

Section 2 of Republic Act No. 7438[100] provides:

SEC. 2. Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers. —

x x x x x x x x x

As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection

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[99] *Id.* at 25-26.

[100] An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof (1992).

with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law.

Custodial investigation has also been defined as:

> Custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission.[101]

The circumstances surrounding petitioner's appearance before the police station falls within the definition of custodial investigation. Petitioner was identified as a suspect in the theft of large cattle. Thus, when the request for appearance was issued, he was already singled out as the probable culprit.

PO3 Lozarito testified that there was no custodial investigation because he did not ask questions. He "let Teresita and [petitioner] confront each other."[102] However, PO3 Lozarito's explanation attempts to circumvent the law protecting the rights of the accused during custodial investigation.

People v. Chavez[103] discussed that the so-called Miranda rights "are intended to protect ordinary citizens from the pressures of a custodial setting."[104] The confrontation between Teresita and petitioner can be considered as having been done in a custodial setting because (1) petitioner was requested to appear by the police; (2) the confrontation was done in a police station; and (3) based on his testimony, PO3 Lozarito was inside the police station during the confrontation. When petitioner appeared before Teresita at the police station, the "pressures of a custodial setting"[105] were present.

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[101] *People v. Guting*, G.R. No. 205412, September 9, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/205412.pdf> 5 [Per *J.* Leonardo-De Castro, First Division].

[102] *Rollo*, p. 17.

[103] G.R. No. 207950, September 22, 2014, 735 SCRA 728 [Per *J.* Leonen, Second Division].

[104] *Id.* at 750.

[105] *Id.*

PO3 Lozarito testified that:

Q: You said that Ariel Lopez appeared in the police station, do you know what if anything transpired thereat between Ariel Lopez and Teresita Perez?

x x x x x x x x x

A: No agreement. They will not enter an amicable settlement and the price.

Q: They were just arguing on the price but with respect to other matters, there was no conflict?

A: No conflict.[106]

The Daily Record of Events of the Philippine National Police likewise states that:

[T]he persons of Ariel LOPEZ, Teresita Pere[z], and Mario Pere[z] appear to this station for confrontation and settlement for theift (sic) of large cattle (carabao), herein Ariel Lopez while at this office voluntarily admitted his fault. . . . After lengthly (sic) confrontation no settlement was reach[ed] between both parties[.][107]

Hence, PO3 Lozarito's statement on what transpired between petitioner and Mario and Teresita Perez are inadmissible for being hearsay.

Hearsay evidence is defined as:

It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, *i.e.*, those which are derived from his own perception. *A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard*. Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits.[108] (Emphasis supplied, citations omitted)

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[106] *Rollo*, p. 44.

[107] *Id.* at 45.

[108] *Miro v. Vda. de Erederos*, G.R. Nos. 172532 & 172544-45, November 20,

PO3 Lozarito testified that he "let Teresita and [Lopez] confront each other."[109] He most likely overheard the conversation between Teresita and petitioner. Thus, he had no personal knowledge of what the parties had discussed.

People v. Bio[110] has held that "the infractions of the so-called Miranda rights render inadmissible only the extrajudicial confession or admission made during custodial investigation."[111] With this rule applied and petitioner's uncounselled admission disregarded, petitioner should still be acquitted because the prosecution was unable to prove the identity of the lost carabao owned by Mario and Teresita Perez.

For the prosecution's failure to prove all the elements of cattle-rustling, and for the violation of petitioner's rights during custodial investigation, we hold that there is reasonable doubt that petitioner is guilty of cattle-rustling. Thus, he must be acquitted.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated August 12, 2013 of the Court of Appeals in CA-G.R. CR No. 00673-MIN is **REVERSED** and **SET ASIDE**. Petitioner Ariel Lopez is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. If detained, he is ordered immediately**RELEASED** unless he is confined for any other lawful cause. Any amount paid by way of a bailbond is ordered **RETURNED**.

SO ORDERED.

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

Del Castillo, J., on official leave.

2013, 710 SCRA 371, 390 [Per *J.* Brion, Second Division].

[109] *Rollo,* p. 17.

[110] G.R. No. 195850, February 16, 2015, 750 SCRA 572, 580-581 [Per *J.* del Castillo, Second Division].

[111] *Id.* See also *People v. Chi Chan Liu*, G.R. No. 189272, January 21, 2015, 746 SCRA 476 [Per *J.* Peralta, Third Division].

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— The Supreme Court does not have administrative supervision over administrative agencies, nor is it an entity engaged in making business decisions; it cannot interfere in purely administrative matters nor substitute administrative policies and business decisions with our own; this would amount to judicial overreach; the courts' only concern is the legality, not the wisdom, of an agency's actions; policy matters should be left to policy makers. (*Id*.)

— The Supreme Court does not have the power to audit the expenditures of the Government or any of its agencies and instrumentalities; the Constitution saw fit to vest this power on an independent Constitutional body, the Commission on Audit. (*Id*.)

Office of the Government Corporate Counsel (OGCC) — OGCC shall handle all cases by the GOCCs, unless the legal departments of its client government corporations or entities are duly authorized or deputized by the OGCC. (LBP *vs.* Sps. Amagan, G.R. No. 209794, June 27, 2016) p. 337

— The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate off-springs and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law; in the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office. (*Id*.)

Public bidding — Bidding, in its comprehensive sense means making an offer or an invitation to prospective contractors, whereby the government manifests its intention to make proposals for the purpose of securing supplies, materials, and equipment for official business or public use, or for public works or repair; three principles involved in public

of the tenant, the expiration of a term/period in the leasehold contract, or the alienation of the landholding by the lessor. (*Id*.)

— To protect the lessee's security of tenure, the Code grants him the preferential right to buy the landholding under reasonable terms and conditions if ever the agricultural lessor decides to sell it; the Code also grants him the right to redeem the landholding from the vendee in the event that the lessor sells it without the lessee's knowledge. (*Id*.)

ALIBI AND DENIAL

Defenses of — Alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused; for a defense of alibi to prosper, the accused-appellants must prove not only that they were somewhere else when the crime was committed but they must also satisfactorily establish that it was physically impossible for them to be at the crime scene at the time of its commission. (People *vs.* Barberan, G.R. No. 208759, June 22, 2016) p. 103

ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004 (R.A. NO. 9285)

Implementing rules and regulations — A proceeding in the arbitral tribunal does not prevent the possibility of the purpose of the privilege being defeated, if it is not allowed to be invoked. (Dept. of Foreign Affairs *vs.* BCA Int'l. Corp., G.R. No. 210858, June 29, 2016) p. 704

— Arbitration is deemed a special proceeding and governed by the special provisions of R.A. No. 9285, its IRR, and the Special ADR Rules; R.A. No. 9285 is the general law applicable to all matters and controversies to be resolved through alternative dispute resolution methods. (*Id*.)

— R.A. No. 9285, its IRR and the Special ADR Rules provide that any party to an arbitration, whether domestic or

merits, final order or resolution is an appeal. (Gabutan *vs.* Nacalaban, G.R. Nos. 185857-58, June 29, 2016) p. 546

— Question of fact is beyond the scope thereof. (Cabuhat *vs*. Dev't. Bank of the Phils., G.R. No. 203924, June 29, 2016) p. 596

— The general rule is that a Rule 45 petition for review on *certiorari* should only raise questions of law; exceptions. (Lopez *vs.* People, G.R. No. 212186, June 29, 2016) p. 789

— The resolution of factual issues is the function of the lower courts whose findings, when aptly supported by evidence, is binding to the Supreme Court. (Gabutan *vs.* Nacalaban, G.R. Nos. 185857-58, June 29, 2016) p. 546

— The Supreme Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial. (Rep. of the Phils. *vs.* Looyuko, G.R. No. 170966, June 22, 2016) p. 1

Points of law, theories, issues and arguments — **A**n appellate court is clothed with authority to review rulings even if they are not assigned as errors in the appeal in the following instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent. (Figuera *vs.* Ang, G.R. No. 204264, June 29, 2016) p. 607

into giving consent which he would not have otherwise given. (*Id*.)

ATTORNEYS

Code of Professional Responsibility — 12.02 of the Code of Professional Responsibility which states that, a lawyer shall not file multiple actions arising from the same cause and Rule 12.04 which states a lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes; lawyers should not trifle with judicial processes and resort to forum shopping because they have the duty to assist the courts in the administration of justice. (*In Re:* A.M. No. 04-7-373-RTC [Report on the Judicial Audit Conducted in the RTC, Br. 60, Barili, Cebu], A.C. No. 9871, June 29, 2016) p. 492

Liability of — A lawyer may be disciplined for acts committed even in his private capacity for acts which tend to bring reproach on the legal profession or to injure it in the favorable opinion of the public; there is no distinction as to whether the transgression is committed in a lawyer's private life or in his professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another. (*In Re:* A.M. No. 04-7-373-RTC [Report on the Judicial Audit Conducted in the RTC, Br. 60, Barili, Cebu], A.C. No. 9871, June 29, 2016) p. 492

Negligence — Absent a showing that petitioner regularly followed up with his counsel as to the status of the case, a mere endorsement does not relieve a client of the negligence of his counsel; a client is bound by the mistakes of his counsel; the only exception is when the negligence of the counsel is so gross, reckless and inexcusable that the client is deprived of his day in court; the remedy is to reopen the case and allow the party who was denied his day in court to adduce evidence. (Engr. Paluca *vs.* COA, G.R. No. 218240, June 28, 2016) p. 483

Practice of law — The profession of law exacts the highest standards from its members and adherence to the rigid

the privilege against disclosure of these kinds of information/communication is known as deliberative process privilege, involving as it does the deliberative process of reaching a decision. (*Id*.)

— Deliberative process privilege to be invoked: First, the communication must be predecisional, *i.e*., antecedent to the adoption of an agency policy; Second, the communication must be deliberative, *i.e*., a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters. (*Id*.)

— Right to information should not cover recognized exceptions like privileged information, military and diplomatic secrets and similar matters affecting national security and public order; privileged information should be outside the scope of the constitutional right to information, just like military and diplomatic secrets and similar matters affecting national security and public order. (*Id*.)

— The deliberative process privilege can also be invoked in arbitration proceedings under R.A. No. 9285; deliberative process privilege contains three policy bases: first, the privilege protects candid discussions within an agency; second, it prevents public confusion from premature disclosure of agency opinions before the agency establishes final policy; and third, it protects the integrity of an agency's decision; the public should not judge officials based on information they considered prior to issuing their final decisions. (*Id*.)

— The privileged character of the information does not end when an agency has adopted a definite proposition or when a contract has been perfected or consummated; otherwise, the purpose of the privilege will be defeated. (*Id*.)

— There is a public policy involved in a claim of deliberative process privilege, the policy of open, frank discussion between subordinate and chief concerning administrative

Section 21 — Noncompliance raises doubts whether the illegal drug items used as evidence in both the cases for violation of Sec. 5 and Sec. 11 of R.A. No. 9165 were the same ones that were allegedly seized from appellants; the omission of the inventory and the photographing exposed another weakness of the evidence of guilt, considering that the inventory and photographing to be made in the presence of the accused or his representative, or within the presence of any representative from the media, Department of Justice or any elected official, who must sign the inventory, or be given a copy of the inventory, were really significant stages of the procedure outlined by the law and its IRR. (People *vs.* Miranda, Jr. *y* Paña @ "Erika", G.R. No. 206880, June 29, 2016) p. 657

— Non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance and provided that the integrity of the evidence of the *corpus delicti* was preserved. (*Id*.)

— The provision requires that upon seizure of the illegal drug items, the apprehending team having initial custody of the drugs shall: (a) conduct a physical inventory of the drugs; and (b) take photographs thereof; (c) in the presence of the person from whom these items were seized or confiscated and; (d) a representative from the media and the Department of Justice and any elected public official; and (e) who shall all be required to sign the inventory and be given copies thereof. (*Id*.)

— When the courts are given reason to entertain reservations about the identity of the illegal drug item allegedly seized from the accused, the actual crime charged is put into serious question; courts have no alternative but to acquit on the ground of reasonable doubt; unexplained non-compliance with the procedures for preserving the chain of custody of the dangerous drugs has frequently caused the Court to absolve those found guilty by the lower courts. (*Id*.)

to equitable limitations to prevent its being exercised for fraudulent, unfair, or illegal purposes; the main effect of disregarding the corporate fiction is that stockholders will be held personally liable for the acts and contracts of the corporation, whose existence, at least for the purpose of the particular situation involved, is ignored. (Rep. of the Phils. *vs.* Mega Pacific eSolutions, Inc., G.R. No. 184666, June 27, 2016) p. 160

— Perpetrating fraud against the government would be a great injustice if the remaining individual respondents would enjoy the benefits of incorporation despite a clear finding of abuse of the corporate vehicle; to allow the corporate fiction to remain intact would not subserve, but instead subvert, the ends of justice. (*Id*.)

— Veil-piercing in fraud cases requires that the legal fiction of separate juridical personality is used for fraudulent or wrongful ends. (*Id*.)

CRIMINAL PROCEDURE

Custodial investigation — Request for appearance is no different from the invitation issued by police officers for custodial investigation; custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission. (Lopez *vs.* People, G.R. No. 212186, June 29, 2016) p. 789

Information — When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense. (People *vs.* Brioso *alias* Talap-Talap, G.R. No. 209344, June 27, 2016) p. 292

Mercader, Jr. *vs.* Sps. Bardilas, G.R. No. 163157, June 27, 2016) p. 136

— Road right of way is a discontinuous apparent easement in the context of Art. 622 of the Civil Code which provides that continuous non-apparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of title. (*Id.*)

— The owner of the servant estate retains ownership of the portion on which the easement is established and may use the same in such manner as not to affect the exercise of the easement; what really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits. (*Id.*)

EMINENT DOMAIN

Power of — Its exercise is proscribed by only two Constitutional requirements: (1) that there must be just compensation; and (2) that no person shall be deprived of life, liberty or property without due process of law. (Mun. of Cordova *vs.* Pathfinder Dev't. Corp., G.R. No. 205544, June 29, 2016) p. 622

— The power of eminent domain is essentially legislative in nature but may be validly delegated to local government units; judicial review of the exercise of the power of eminent domain is limited to the following areas of concern: (a) the adequacy of the compensation; (b) the necessity of the taking; and (c) the public use character of the purpose of the taking. (*Id.*)

EMPLOYMENT

Probationary employment — On the ground of failure to meet the standards set by the company, in dismissing probationary employees on this ground, there is no need for a notice and hearing; the employer, however, must still observe due process of law in the form of: 1) informing the employee of the reasonable standards expected of him during his probationary period at the time of his

Willful breach of trust and confidence — The law requires that the breach of trust, which results in the loss of confidence must be willful; the breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently; guidelines for the application of the doctrine of loss of confidence, namely: (1) the loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it should not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith. (Inocente *vs.* St. Vincent Foundation for Children and Aging, Inc., G.R. No. 202621, June 22, 2016) p. 62

EVIDENCE

Burden of proof — If the prosecution fails to meet the required evidence, the defense does not need to present evidence on its behalf, the presumption prevails and the accused should be acquitted. (People *vs.* Miranda, Jr. *y* Paña @ "Erika", G.R. No. 206880, June 29, 2016) p. 657

Hearsay evidence — It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, those which are derived from his own perception; a witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. (Lopez *vs.* People, G.R. No. 212186, June 29, 2016) p. 789

Judicial admissions — Judicial admissions made by the parties in the pleadings or in the course of the trial or other proceedings in the same case are conclusive and do not require further evidence to prove them; they are legally binding on the party making it, except when it is shown that they have been made through palpable mistake or that no such admission was actually made, neither of

— The requisites for authorizing immediate entry are the filing of a complaint for expropriation sufficient in form and substance, and the deposit of the amount equivalent to fifteen percent (15%) of the fair market value of the property to be expropriated based on its current tax declaration. (*Id*.)

FAMILY CODE

Marriages — Dissolved marriage under Art. 45 are governed either by absolute community of property or conjugal partnership of gains, unless the parties agree to a complete separation of property in a marriage settlement entered into before the marriage; since the property relations of the parties is governed by absolute community of property or conjugal partnership of gains, there is a need to liquidate, partition and distribute the properties before a decree of annulment could be issued; this is not the case for the nullity of marriage under Art. 36 of the Family Code because the marriage is governed by the ordinary rules on co-ownership. (*In Re:* A.M. No. 04-7-373-RTC [Report on the Judicial Audit Conducted in the RTC, Br. 60, Barili, Cebu], A.C. No. 9871, June 29, 2016) p. 492

FINANCIAL REHABILITATION AND INSOLVENCY ACT OF 2010 (FRIA) (R.A. NO. 101442)

Liquidation analysis — Absent liquidation analysis, the court could not ascertain if the petitioning debtor's creditors can recover by way of the present value of payments projected in the plan. (Phil. Asset Growth Two, Inc. *vs.* Fastech Synergy Phils., Inc., G.R. No. 206528, June 28, 2016) p. 355

Rehabilitation — A distressed corporation should not be rehabilitated when the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that it may be revived, to the detriment of its numerous stakeholders which include not only the

the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. (*Id*.)

— Refers to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated. (*Id*.)

— Rehabilitation plan minimum requirements are: (*a*) material financial commitments to support the rehabilitation plan; and (*b*) a proper liquidation analysis. (*Id*.)

— The determination of the validity and the approval of the rehabilitation plan is not the responsibility of the rehabilitation receiver, but remains the function of the court; the rehabilitation receiver's duty prior to the court's approval of the plan is to study the best way to rehabilitate the debtor, and to ensure that the value of the debtor's properties is reasonably maintained and after approval, to implement the rehabilitation plan. (*Id*.)

— The purpose of rehabilitation proceedings is not only to enable the company to gain a new lease on life, but also to allow creditors to be paid their claims from its earnings when so rehabilitated; the remedy of rehabilitation should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by: (*a*) the absence of a sound and workable business plan; (*b*) baseless and unexplained assumptions, targets, and goals; and (*c*) speculative capital infusion or complete lack thereof for the execution of the business plan, as in this case. (*Id*.)

— The remedy of rehabilitation should be denied to corporations that do not qualify under the Rules; neither

INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES (AM NO. 01-2-04-SC)

Application of — A corporation may be placed under receivership or management committees that may be created to preserve properties involved in a suit and to protect the rights of the parties under the control and supervision of the court; a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of: (1) dissipation, loss, wastage, or destruction of assets or other properties; and (2) penalization of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public. (Sps. Hiteroza *vs.* Cruzada, G.R. No. 203527, June 27, 2016) p. 345

— Section 4, Rule 4 of the Interim Rules provides that a judgment before pre-trial may only be rendered after the parties' submission of their respective pre-trial briefs; the conduct of a pre-trial is mandatory under the Interim Rules; except in cases of default, Secs. 1 and 4 of Rule 4 of the Interim Rules require the conduct of a pre-trial conference and the submission of the parties' pre-trial briefs before the court may render a judgment on intra-corporate disputes. (*Id*.)

JUDGMENTS

Conclusiveness of judgment — A fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in private with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unrevised by proper authority. (Rep. of the Phils. *vs.* Mega Pacific eSolutions, Inc., G.R. No. 184666, June 27, 2016) p. 160

Overlapping boundaries — A case of overlapping of boundaries or encroachment depends on a reliable, if not accurate, verification survey; survey is the process by which a parcel of land is measured and its boundaries and contents ascertained; also a map, plot or statement of the result of such survey, with the courses and distances and the quantity of the land. (Heirs of Datu Mamalinding Magayoong *vs.* Heirs of Catamanan Mama, G.R. No. 208586, June 22, 2016) p. 90

LITIS PENDENTIA

Concept — Elements of *litis pendentia* are: (a) identity of parties, or at least such parties who represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity, with respect to the two preceding particulars in the two cases, is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other. (*In Re:* A.M. No. 04-7-373-RTC [Report on the Judicial Audit Conducted in the RTC, Br. 60, Barili, Cebu], A.C. No. 9871, June 29, 2016) p. 492

MORTGAGE

Foreclosure of — A petition under Sec. 8 is limited to two grounds: (1) that the mortgage was not violated, meaning the debtor has not missed any payments of his loan; or (2) that the foreclosure sale did not comply with the procedural requirements under Secs. 1-4 of Act No. 3135. (Cabuhat *vs.* Dev't. Bank of the Phils., G.R. No. 203924, June 29, 2016) p. 596

— A petition under Sec. 8 of Act No. 3135 is filed in the same proceedings where possession is requested; this is a summary proceeding under Sec. 7 because the issuance of a writ of possession is a ministerial function of the RTC; this possessory proceeding is not a judgment on the merits, but simply an incident in the transfer of title. (*Id*.)

resolution of the issues raised by the parties. (Ren Transport Corp. *vs.* NLRC (2nd Div.), G.R. No. 188020, June 27, 2016) p. 234

Rules of proceedings —Technicality should not stand in the way of equitably and completely resolving the rights and obligations of the parties for the ends of justice are reached not only through the speedy disposal of cases but, more importantly, through a meticulous and comprehensive evaluation of the merits of the case. (Yumang *vs.* Radio Phils. Network, Inc. (RPN 9), G.R. No. 201016, June 22, 2016) p. 43

OBLIGATIONS

Extinguishment of — A person interested in the fulfillment of the obligation is one who stands to be benefited or injured in the enforcement of the obligation. (Figuera *vs.* Ang, G.R. No. 204264, June 29, 2016) p. 607

— Subrogation of a third person to the rights of the creditor is one of the means to modify obligations; subrogation, sometimes referred to as substitution is an arm of equity that may guide or even force one to pay a debt for which an obligation was incurred but which was in whole or in part paid by another. (*Id.*)

— Tender of payment is the act of offering to the creditor what is due him, together with the demand for the creditor to accept it; to be valid, the tender of payment must be a fusion of intent, ability, and capability to make good such offer, which must be absolute and must cover the amount due. (*Id.*)

— The consent or approval of the debtor is required only if a third person who is not interested in the fulfillment of the obligation pays such; on the other hand, no such requirement exists in cases of payment by a creditor to another creditor who is preferred and by a person interested in the fulfillment of the obligation. (*Id.*)

the land; if the land purchased is in the possession of a person other than the vendor, the purchaser must be wary and must investigate the rights of the actual possessor; without such inquiry, the purchaser cannot be said to be in good faith and cannot have any right over the property. (Gabutan *vs.* Nacalaban, G.R. Nos. 185857-58, June 29, 2016) p. 546

— *Nemo dat quod non habet;* one can sell only what one owns or is authorized to sell, and the buyer can acquire no more right than what the seller can transfer legally. (*Id*.)

— To prove good faith, a buyer of registered and titled land need only show that he relied on the face of the title to the property; he need not prove that he made further inquiry for he is not obliged to explore beyond the four corners of the title; such degree of proof of good faith, however, is sufficient only when the following conditions concur: *first*, the seller is the registered owner of the land; *second*, the latter is in possession thereof; and *third*, at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property or of any defect or restriction in the title of the seller or in his capacity to convey title to the property. (*Id*.)

— Where a purchaser buys from one who is not the registered owner himself, the law requires a higher degree of prudence even if the land object of the transaction is registered; one who buys from one who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land. (*Id*.)

STARE DECISIS

Principle of — Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines; it requires courts in a country to follow the rule established in a decision of the Supreme

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