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OF THE

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FROM

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MANILA
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 191492. July 4, 2016]

PATRICIA SIBAYAN represented by TEODICIO SIBAYAN, *petitioner, vs.* **EMILIO COSTALES, SUSANA ISIDRO, RODOLFO ISIDRO, ANNO ISIDRO and ROBERTO CERANE,** *respondents.*

SYLLABUS

REMEDIAL LAW; APPEALS; DISMISSAL OF THE APPEAL; FAILURE TO FILE BRIEF APPELLANT'S WITHIN THE REGLEMENTARY PERIOD, RESULTS IN THE ABANDONMENT OF THE APPEAL WHICH MAY BE THE CAUSE FOR ITS DISMISSAL; ATTRIBUTION OF COUNSEL'S NEGLIGENCE CANNOT SHIELD THE CLIENT FROM ADVERSECONSEQUENCE OF HER OWN NEGLIGENCE..— We find no reason to disturb the appellate court's exercise of discretion in dismissing the appeal. We perused the explanation proffered by petitioner and we found nothing that would compel us to reverse the appellate court. The attribution of negligence to the counsel does not automatically shield the client from adverse consequence of her own negligence and relieve her from the unfavorable result of such lapse. Truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer. 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. The failure

to file Appellant's Brief, though not jurisdictional, results in the abandonment of the appeal which may be the cause for its dismissal. We must emphasize that the right to appeal is not a natural right but a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost. In the present case, petitioner failed to file the required brief within the period prescribed under Section 7, Rule 44 of the Rules. Thus, the appellate court rightly considered her appeal abandoned and consequently dismissed the same.

APPEARANCES OF COUNSEL

Bince Viray Dinos Cera & Peralta IV Law Offices for petitioner.

Rodrigo Gualberto for respondents.

R E S O L U T I O N

PEREZ, *J.*:

For resolution of the Court is this Petition for Review on *Certiorari*[1] filed by petitioner Patricia Sibayan represented by Teodicio Sibayan, seeking to reverse and set aside the Resolutions dated 2 October 2009[2] and 26 February 2010[3] of the Court of Appeals (CA) in CA-G.R. CV. No. 91399. The assailed resolutions dismissed the appeal of the petitioner for failure to file her appellant's brief within the reglementary period.

The Facts

On 27 February 2003, petitioner initiated an action for Recovery of Possession and Ownership with Damages against

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[1] *Rollo*, pp. 7-25.

[2] *Id.* at 26-28; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion, concurring.

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

respondents Emilio Costales, Susana Isidro, Rodolfo Isidro, Marcelo Isidro, and Roberto Cerane before the Regional Trial Court (RTC) of Urdaneta, Pangasinan, Branch 45.[4] In her Complaint docketed as Civil Case No. U-7642, petitioner averred that she is the registered owner of a parcel of land with an area of 5,726 square meters located in Brgy. Catablan, Urdaneta City, Pangasinan and registered under Transfer Certificate of Title (TCT) No. 180130.[5] Due to the encroachment effected by respondents on her property, particularly on Lot Nos. 5 and 7 thereof (subject property), petitioner was compelled to file a case against them to protect her rights thereon. To support her claims, petitioner appended in her complaint a copy of the relocation survey showing that the abovementioned lots are within the bounds of TCT No. 180130.[6] Petitioner thus prayed that the RTC declare her the rightful owner of the disputed portion and order respondents to vacate the same and respect her right thereon.[7]

For their part, respondents assailed the ownership of the petitioner on the disputed property and asserted that they, as the lawful owners and occupants, have the right to cultivate the land and enjoy the fruits accruing thereon.[8] Respondents asserted that they, together with their predecessors-in-interest, were in possession of the subject property for over 80 years already.[9] That the spraying of insecticide on the mango trees found in the said property was merely in exercise of their right of dominion as they were the ones who planted those mango trees.[10] Respondents likewise denied having knowledge of any

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[4] *Id.* at 68-72.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.* at 76-79.

[9] *Id.*

[10] *Id.*

relocation survey conducted on the property which was made the basis of the petitioner in filing her complaint.[11]

After the pre-trial conference, trial on the merits ensued wherein the trial court received the respective documentary and testimonial evidence of both parties. After respondents put their case to rest, the case was submitted for decision.

On 24 April 2007, the RTC rendered a Decision[12] dismissing Civil Case No. U-7642 filed by the petitioner. It was found by the court *a quo* that respondents were occupying the disputed portion for 52 years already and the action of the petitioner to remove them from the said lot is already barred by laches. An examination of the relocation survey submitted by the petitioner and reception of testimonial evidence from opposing sides reveals that there was no overlapping or encroachment of properties in the case at bar that warrants the removal of cloud. The RTC thus disposed:

"WHEREFORE, IN VIEW OF THE FOREGOING, the Court renders judgment dismissing the herein amended complaint filed by [petitioner] against [respondents].

SO ORDERED."[13]

Petitioner timely filed a Motion for Reconsideration[14] which was denied by the RTC in an Order[15] dated 2 August 2007.

Dissatisfied, petitioner elevated the adverse RTC Decision to the CA by filing a Notice of Appeal[16] before the lower court.

Pursuant to Section 7, Rule 44 of the Revised Rules of Court,[17] the appellate court ordered petitioner to file her corresponding

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[11] *Id.*

[12] *Id.* at 80-100.

[13] *Id.* at 100.

[14] *Id.* at 101-105.

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

[16] *Id.* at 113.

[17] SEC. 7. *Appellant's brief.* — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice

Appellant's Brief within 45 days from the receipt of the copy of the notice. A copy of the said notice was received by petitioner's counsel on 17 November 2008; petitioner has therefore until 31 January 2009 to file the required brief. Unfortunately, petitioner was able to file her Appellant's Brief only on ***19 June 2009 or 139 days after the lapse of the reglementary period.*** This long delay prompted the CA to consider the appeal abandoned and dismissed in a Resolution[18] dated 2 October 2009, to wit:

"***WHEREFORE***, the Motion to Admit Appellant's Brief is **DENIED**. The instant appeal is considered ***ABANDONED*** and ***DISMISSED*** pursuant to Section 1 (e) Rule 50 of the Revised Rules of Court."[19]

Faulting her counsel for the non-filing of the Appellant's Brief within the reglementary period, petitioner sought for the reconsideration of the earlier CA Resolution dismissing her appeal. She averred that she should not be allowed to suffer from the consequences of her counsel's negligence and prayed for the liberality of the court to afford her the opportunity to ventilate her case on the merits. To rule otherwise, the petitioner claimed, is tantamount to deprivation of her right to enjoy her property without due process.

For failure of the petitioner to present persuasive arguments to merit the reinstatement of her appeal, the CA denied her Motion for Reconsideration in its Resolution[20] dated 26 February 2010. The disquisition of the appellate court reads:

"In the case at bench, not only was there a considerable delay of one hundred thirty-nine (139) days in the filing of appellants brief. No justifiable explanation therefor was proffered by [petitioner] other

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of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

[18] *Rollo*, pp. 26-31.

[19] *Id.* at 31.

[20] *Supra* note 3.

than continuing pressure of work of her counsel or negligence of her counsel. Such unexplained delay is not just a technical lapse which can be excused. Moreover. We thus reiterate that a client is bound by [her] counsel's conduct, negligence and mistakes in handling the case, and the client [might not] be heard to complain that the result might have been different had [her] lawyer proceeded differently. The only exceptions to the general rule which the Supreme Court finds acceptable are when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the rule results in the outright deprivation of one's property through technicality. Failure to file the appellant's brief can qualify as simple negligence, but it does not amount to gross negligence. Also, there is no outright deprivation of property. [Petitioner] actively participated in the proceedings before the lower court."[21] (Citations omitted)

Unflinching, petitioner is now before this Court via this instant Petition for Review on *Certiorari* assailing the CA's Decision and Resolution on the following grounds:

The Issue

I.

THE COURT OF APPEALS ERRED IN DENYING THE MOTION TO ADMIT APPELLANT'S BRIEF AND CONSIDERING THE APPEAL AS DISMISSED AND ABANDONED;

II.

THE COURT OF APPEALS ERRED IN CLASSIFYING ONLY AS SIMPLE NEGLIGENCE THE LONG DELAY OF HER COUNSEL IN FILING THE APPELLANT'S BRIEF THEREBY BINDING HER TO THE AFORESAID NEGLIGENCE;

III.

THE COURT OF APPEALS ERRED IN DENYING PETITIONER HER RIGHT TO APPEAL WHEN SHE STOOD TO LOSE HER RIGHT TO HER PROPERTY DUE TO THE ERRONEOUS JUDGMENT OF THE RTC.[22]

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

[22] *Id.* at 15.

The Court's Ruling

The core issue here is whether the CA erred in dismissing the appeal for petitioner's failure to file the appellant's brief seasonably.

In insisting that the dismissal of her appeal was erroneous, petitioner harps on the negligence of her counsel which is gross and therefore should not bind her. She argues that her right to exercise ownership over her property is at stake and the denial of the appeal would be tantamount to deprivation of her right to property without due process of law. To not allow her to ventilate her position on appeal would bind her to the RTC Decision which is patently erroneous.

The Court resolves to deny the petition.

Section 3, Rule 41 of the 1997 Rules of Civil Procedure provides:

> Section 3. *Period of ordinary appeal.* — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

The foregoing Rule should be read in consonance with Section 7, Rule 44, which states:

> Section 7. *Appellant's brief.* — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

Corollarily, the CA has, under the foregoing provision, discretion to dismiss or not to dismiss respondent's appeal.

Section 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxx xxx xxx

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules[.][23]

Expounding on the discretion of the appellate court to dismiss or allow the appeal to proceed despite belated service and filing of the required brief, the Court in *Diaz v. People*,[24] held:

The usage of the word *may* in Section 1 (e) of Rule 50 indicates that the dismissal of the appeal upon failure to file the appellant's brief is not mandatory, but discretionary. Verily, the failure to serve and file the required number of copies of the appellant's brief within the time provided by the Rules of Court does not have the immediate effect of causing the outright dismissal of the appeal. This means that the discretion to dismiss the appeal on that basis is lodged in the CA, by virtue of which the CA may still allow the appeal to proceed despite the late filing of the appellant's brief, when the circumstances so warrant its liberality. In deciding to dismiss the appeal, then, the CA is bound to exercise its sound discretion upon taking all the pertinent circumstances into due consideration.

The CA in the case at bar opted to dismiss the appeal interposed by petitioner considering the negligence of the counsel as merely simple which binds petitioner from the adverse consequence thereof. Her invocation of outright deprivation of property did not carry her day before the appellate court as it was observed that she actively participated in the proceedings before the trial court and thus she was afforded therein the unfettered opportunity to ventilate her case.

We find no reason to disturb the appellate court's exercise of discretion in dismissing the appeal. We perused the explanation proffered by petitioner and we found nothing that would compel

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[23] RULES OF COURT, Rule 50, Sec. 1(e).

[24] 704 Phil. 146, 157 (2013).

us to reverse the appellate court. The attribution of negligence to the counsel does not automatically shield the client from adverse consequence of her own negligence and relieve her from the unfavorable result of such lapse. Truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer.[25] 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.[26]

The failure to file Appellant's Brief, though not jurisdictional, results in the abandonment of the appeal which may be the cause for its dismissal.[27] We must emphasize that the right to appeal is not a natural right but a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of the law.[28] The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost. In the present case, petitioner failed to file the required brief within the period prescribed under Section 7, Rule 44 of the Rules.[29] Thus, the appellate court rightly considered her appeal abandoned and consequently dismissed the same.

WHEREFORE, premises considered, the petition is **DENIED**. The assailed Resolutions of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

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

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[25] *Torrecampo v. NLRC*, G.R. No. 199617, September 2, 2015.

[26] *Id.*

[27] *Beatingo v. Bu Gasis*, 657 Phil. 552, 559 (2011).

[28] *Id.*

[29] *Heirs of the late Cruz Barredo v. Sps. Asis*, 480 Phil. 642, 649 (2004).

THIRD DIVISION

[G.R. No. 203179. July 4, 2016]

TECHNO DEVELOPMENT & CHEMICAL CORPORATION, *petitioner, vs.* **VIKING METAL INDUSTRIES, INCORPORATED,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE GENERALLY CONCLUSIVE UPON THE COURT; EXCEPTIONS, ENUMERATED.— [T]he Court notes that its jurisdiction in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again. In several cases, however, it has been repeatedly held that the rule that factual findings of the Court of Appeals are binding on the Court are subject to the following exceptions: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) *when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.*

2. ID.; ID.; ID.; ID.; EXCEPTION PRESENT WHERE APPELLATE COURT OVERLOOKED FACTUAL ISSUES PRESENTED BY THE PETITIONER WHICH WOULD UNJUSTLY RESPONDENT AT THE EXPENSE OF THE PETITIONER; CASE AT BAR.— In the instant case, while the appellate court aptly ruled upon and rejected VMI's claim of ₱550,000.00 subject of VMI's Complaint for Sum of Money against Techno, it clearly overlooked the factual issues presented by Techno in its counterclaim against VMI. In its thirty-five (35)-page Decision, the CA seemed to have preoccupied itself with the other issues presented by VMI as against PNOC-EDC and Techno, without addressing the issue of whether VMI has an outstanding unpaid obligation in favor of Techno, nor providing any reason for such failure. x x x Here, the Court finds that petitioner Techno duly proved its claims that VMI purchased paint products therefrom, that the same were delivered to VMI, and that VMI failed to fully pay the price therefor. As borne by the evidence on record, Techno not only submitted a Statement of Account containing a list of accounts receivable from VMI for its unpaid products purchased from Techno, as well as the corresponding delivery receipts and invoices signed by VMI representatives evidencing delivery by Techno of paint products and receipt thereof by VMI, it further presented corroborating testimony of Techno's Chief Accountant and also the testimony of its President attesting to the fact that VMI still had an outstanding account with Techno. It is evident, therefore, that petitioner Techno preponderantly established its counterclaim, especially in light of the fact that respondent VMI never contested the same in spite of every opportunity to do so. x x x Ultimately, it must be noted that if Techno's claim was to be denied simply by the failure of the lower courts to pass upon the same in their decisions, without any factual or legal explanation therefor, VMI would be unjustly enriched at the expense of Techno for VMI's failure to pay for the paints it received. Such unjust enrichment due to the failure to make remuneration of or for property or benefits received cannot be countenanced and must be correspondingly corrected by the Court. In view of the foregoing, the Court finds Techno to be entitled to the payment of the unpaid paint products purchased by VMI therefrom.

3. CIVIL LAW; DAMAGES; IN THE ABSENCE OF PROOF THAT RESPONDENT FAILED TO PAY FOR IT'S

PURCHASED PRODUCTS FRAUDULENTLY, EXEMPLARY DAMAGES MUST BE DENIED.— On the matter of petitioner Techno's prayer for exemplary damages in the amount of ₱200,000.00, however, the Court resolves to deny the same. Article 2234 of the Civil Code of the Philippines requires a party to first prove that he is entitled to moral, temperate or compensatory damages before he can be awarded exemplary damages. Moreover, Article 2220 of the same Code provides that in breaches of contract, moral damages may be awarded when the party at fault acted fraudulently or in bad faith. Thus, to justify an award for exemplary damages, the wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner. In the instant case, there is no showing that VMI failed to pay for its purchased paint products fraudulently or in bad faith. The Court, therefore, does not find Techno to be entitled to exemplary damages.

4. **ID.; ID.; ATTORNEY'S FEES COMPUTED ON THE BASIS OF THE STIPULATION IN THE DELIVERY RECEIPTS AND INVOICES.—** As to Techno's claim for the award of attorney's fees in the amount of ₱200,000.00, as well as an honorarium of ₱5,000.00 per appearance, the Court finds said amounts to be inconsistent with the stipulation on the Delivery Receipts and Invoices submitted by Techno which provides that "the buyer agrees to pay . . . in case of an action is filed in Court, an additional Twenty-Five (25%) Per Cent of the total amount of the obligation due and demandable, in the nature of attorney's fees." Thus, instead of the ₱200,000.00 attorney's fees, as well as the ₱5,000.00 honorarium per appearance, the award of attorney's fees must be computed on the basis of said stipulation, which provides for a twenty-five percent (25%) charge on the total amount due to petitioner Techno.

5. **ID.; INTEREST; IMPOSED PURSUANT TO THE STIPULATION IN THE DELIVERY RECEIPTS AND INVOICES; LEGAL INTEREST LIKEWISE IMPOSED IN ACCORDANCE WITH EXISTING JURISPRUDENCE.—** [W]ith respect to the matter of interest, the Court notes the stipulation on the Delivery Receipts and Invoices submitted by Techno which provides that "one (1) Per Cent interest per

month shall be charged on all overdue accounts." Accordingly, respondent VMI is liable to pay interest at the rate of one percent (1%) per month or twelve percent (12%) *per annum* to be computed from default, *i.e.*, judicial or extrajudicial demand pursuant to the provisions of Article 1169 of the Civil Code. Furthermore, in accordance with the doctrine laid down in *Nacar v. Gallery Frames*, when the judgment of the court awarding the sum of money becomes final and executory, the rate of legal interest shall be six percent (6%) *per annum* from such finality until its satisfaction, taking the form of a judicial debt.

APPEARANCES OF COUNSEL

Policarpio & Acorda Law Office for petitioner.
Barbers Molina & Molina for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated March 16, 2012 and Resolution[2] dated August 22, 2012 of the Court of Appeals (*CA*) in CA-G.R. CV No. 84186, which modified the Decision[3] dated August 27, 2003 of the Regional Trial Court (*RTC*), National Capital Judicial Region, Branch 145, Makati City.

The factual antecedents are as follows.

On September 23, 1993, respondent Viking Metal Industries, Incorporated (*VMI*), through its President and General Manager,

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[1] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring; *rollo*, pp. 31-65.

[2] *Id.* at 79-80.

[3] Penned by Judge Cesar D. Santamaria; *id.* at 244-258.

Brilly Bernardez, presented to the PNOC Energy Development Corporation (*PNOC-EDC*) its bid proposal to supply and deliver, within one hundred and sixty (160) days, various fabricated items, consisting of pipe shoes and structural supports, for the PNOC-EDC First 40 MW Mindanao-Geothermal Project (*MG Project*). In a Notice of Award dated January 17, 1994, the project was awarded to VMI for having the lowest bid of ₱6,794,172.30.[4] While said document provided for January 18, 1994 as the project's starting date and June 26, 1994 as completion date, the parties agreed to move the starting date to January 31, 1994 and July 9, 1994 as the completion date.[5] On March 10, 1994, PNOC-EDC likewise awarded to VMI the Bifurcator Fabrication of the MG Project amounting to ₱200,000.00 to expire on July 18, 1994. Pending the execution of a formal contract, VMI and PNOC-EDC agreed that the bid document and the Notice of Award shall constitute as the binding contract between them.[6]

In a meeting held on April 13, 1994 among the representatives of PNOC-EDC, VMI, and herein petitioner Techno Development & Chemical Corporation, the parties agreed to paint the fabricated items with Ultrazinc Primer, an anti-rust primer manufactured by petitioner Techno.[7] Consequently, VMI began purchasing said primer from Techno, while Techno provided VMI with technical personnel to supervise the application of the primer on the fabricated items.

Thereafter, VMI made several deliveries of the fabricated items to PNOC-EDC on May 27, 1994, June 1, 1994, June 2, 1994, November 19, 1994, and finally on January 3, 1996.[8] On the third week of June 1994, however, PNOC-EDC advised VMI of the rejection of 410 pieces of the fabricated items due

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[4] *Id.* at 32.

[5] *Id.* at 33.

[6] *Id.*

[7] *Id.* at 34.

[8] *Id.* at 35.

to the premature rusting of the coated surfaces thereof. In response, the President of VMI and the Vice-President for Technical Services of Techno conducted a joint ocular inspection on June 24, 1994 at the PNOC-EDC Stockyard in Sta. Mesa, Manila. As a result thereof, they noted that rust had manifested on the surface of the fabricated products despite being coated with the Ultrazinc primer. They likewise noted that the primer was very soft and had started to pulverize.[9]

On July 13, 1994, the VMI and Techno representatives met again and agreed that corrective measures on the defective painting would have to be done. Thus, in a follow-up letter dated July 15, 1994, VMI reminded Techno of their agreement that the pull-out of the defective fabricated items, including trucking services, electric and power supply, as well as administration costs, would be for Techno's account.[10] Thereafter, in another meeting among PNOC-EDC, VMI, and Techno, PNOC-EDC reminded VMI of its contractual obligations to finish the project as scheduled and that any delay by VMI's subcontractor, Techno, would be borne by it. In the same meeting, Techno agreed to rectify the balance of the fabricated items with the defective primer applications stocked at the PNOC-EDC Stockyard, while VMI agreed to the withdrawal and repair of the rejected structural supports/pipe shoes. In a later meeting held on August 19, 1994, VMI and Techno agreed on the time-sharing use of VMI's shop and that Techno would deliver the Ultracoat Paints to be used for the repairs.

While the corrosion problem on the fabricated items was being remedied, VMI incurred delays in the submission of required fabrication drawings, encountered difficulties in sourcing construction materials, and committed gross miscalculations of the tons requirements, ultimately resulting in the delay in the deliveries of the structural supports, which should have been completed on July 8 and 18, 1994 but as of August 5, 1994,

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[9] *Id.* at 36.

[10] *Id.*

were only about 60% finished.[11] In spite of said problems, however, PNOC-EDC still proceeded to formally execute the Fabrication Contract with VMI on September 28, 1994, but retained July 9, 1994 as the completion date.

In the next several months, VMI and PNOC-EDC further encountered several delays and consequent contract extensions due to deficiencies and non-conformance of the fabricated items with PNOC-EDC's specifications. In the end, PNOC-EDC advised VMI that it only had until July 30, 1995 to complete the rectification work on the rejected items and that any remaining undelivered items after said deadline would be inventoried and deleted from the contract.[12] True enough, PNOC-EDC decreased the original fabrication contract price of ₱6,794,172.30, which was adjusted to P6,871,605.64 in February 1996, to ₱6,578,034.99.[13]

In a letter dated April 3, 1998, VMI appealed to PNOC-EDC to reconsider its demand of ₱2,265,645.09 as the total collectible amount representing liquidated damages and deductions ratiocinating that the delay was ultimately attributable to the poor and substandard primer paint of Techno. In reply, PNOC-EDC affirmed its deduction and informed VMI that its approval of Techno as paint supplier would not relieve it of its obligation under their contract.[14] Thus, on September 30, 1999, VMI filed before the RTC of Makati City a Complaint for Sum of Money and Damages against PNOC-EDC due to its continued refusal to pay VMI for the remaining balance of the contract price allegedly amounting to ₱2,265,644.23 and against Techno for the reimbursement of ₱550,000.00 for the alleged repairs done on the defective coating of the fabricated items.[15]

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[11] *Id.* at 37-38.

[12] *Id.* at 39-41.

[13] *Id.* at 41.

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

[15] *Id.* at 42.

On the one hand, PNOC-EDC averred in its Answer with Counterclaim that VMI is not entitled to recovery of any amount since the retained amount of ₱2,230,410.10 (not ₱2,265,644.23 as VMI claims) was applied as follows: ₱1,374,321.13 as penalty for the delays; ₱293,570.65 as deletion of work from the contract; and ₱490,959.72 as repairs and rectification costs of defective pipes.[16] On the other hand, Techno averred that: it provided VMI with the manual for the proper application of its paint products and technical personnel, who actually witnessed and recorded the failure by VMI personnel to comply with the proper procedures on the application of its paint products and, thus, warned said VMI personnel that Techno would not give them any guarantee in case the fabricated items get rusty; the re-painting of the defective fabricated items were all undertaken at the sole expense of Techno, without any cost to VMI; Techno is not a party to the Fabrication Contract between VMI and PNOC-EDC; and it is actually VMI that has an unpaid obligation in favor of Techno amounting to ₱166,750.00 plus interest.[17]

During the pre-trial, the parties agreed on the following issues for resolution: (1) whether PNOC-EDC rightfully withheld the amount of ₱2,265,644.23 as penalty; (2) whether VMI was in delay in the fulfillment of its obligation with PNOC-EDC; and (3) whether Techno could be held liable to VMI and, on the other hand, *whether VMI has an outstanding unpaid obligation in favor of Techno*.[18]

On August 27, 2003, the RTC rendered its Decision the pertinent portions of which read:

> An examination of the evidence on record shows that the delay of the plaintiff in the performance of its obligation cannot be solely attributed to it. It was mainly caused by the paint failure on the fabricated materials. PNOC-EDC was cognizant of this fact as shown in its letter of July 13, 1994.

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[16] *Id.*

[17] *Id.* at 43.

[18] *Id.*

xxx xxx xxx

From this aforequoted letter, it is palpably clear that PNOC-EDC acknowledged the fact that the delay was caused by defendant Techno. Thus, it cannot insist now that it was plaintiff alone who was responsible for it. x x x

xxx xxx xxx

It cannot be denied that plaintiff purchased from Techno the paint used in the fabrication of the subject materials. This is in accordance with the directive of defendant PNOC-EDC since Techno was a duly accredited supplier of paints as it (PNOC-EDC) was satisfied by the quality of the paint products of Techno after a test was conducted on it. Hence, there being accreditation for the purchase and use of Ultracoat 2130 from Techno, it has warranted the good quality of this paint. **Even if there was no directive from PNOC-EDC, Techno is still obligated to the plaintiff to deliver good Ultracoat 2130 paint as the contract of sale between it and the plaintiff carries with it the implied warranty of Techno against hidden defects of the products bought by the plaintiff**.

xxx xxx xxx

The defense of Techno that plaintiff did not follow the manual of procedure given to it for the proper application of the subject paint is less convincing in the face of its failure to adduce evidence on the existence of this manual of procedure. What it offered in evidence to prove the fault of the plaintiff are "daily inspectors reports" and "diagrams of pipe support." x x x Again, these documentary evidence do not persuade, mainly because the alleged instructors or representatives of defendant Techno who allegedly conducted the inspection and prepared the reports were not presented as witnesses to testify on these matters. More than this, Techno did not even bother to formally communicate to either the plaintiff or defendant PNOC-EDC of the alleged faulty procedure applied by plaintiff as well the intention of Techno to withdraw the warranty of its products sold to the plaintiff.

Finally, while it is true that defendant Techno is not privy to the Fabrication Contract, its assumption of the cost of rectification is enough proof that it was aware of the fact that its product is defective. Had it been otherwise, it should not have assumed the obligation.

PREMISES CONSIDERED, judgment is rendered in favor of the plaintiff and against the defendants as follows:

1) Ordering defendant PNOC-EDC to pay the amount of ₱2,265,644.23 representing the balance of the stipulated price under the Fabrication Contract;

2) Ordering defendant Techno to pay the plaintiff the amount of ₱550,000.00 representing the cost of the rectification on the subject materials; [and]

3) Ordering both defendants to pay jointly and severally the sum of ₱100,000.00 for as attorney's fees plus cost of suit.

SO ORDERED.[19]

Aggrieved, petitioner Techno appealed the RTC's Decision to the CA contending, among other assertions, that the trial court erred in finding that it was liable to pay the costs of the rectification in the amount of ₱550,000.00 without any legal or factual basis on record, that it did not enter into any contract with VMI obliging it to pay ₱550,000.00 as cost of rectification, and that VMI did not adduce any sufficient evidence to support its claim thereto. In fact, when Techno saw the huge estimates made by VMI on the projected cost of rectification, it undertook the repainting at its sole expense instead without any cost to VMI. Also, Techno faulted the trial court for failing to consider its undisputed counterclaim against VMI for the unpaid purchases of paint products amounting to ₱166,750.00.[20]

In its Decision dated March 16, 2012, the CA pertinently ruled as follows:

VMI's claim falls squarely within the realm of actual or compensatory damages. However, its failure to prove actual expenditure consequently conducts to a failure of its claim. In determining actual damages, the Court cannot rely on mere assertions, speculations, conjectures or guesswork but must depend on competent proof and on the best evidence obtainable regarding

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[19] *Id.* at 255-258. (Emphasis ours; citations omitted)

[20] *Id.* at 60-62.

the actual amount of loss such as receipts or other documentary proofs to support such claim.

To support its claim of Php550,000.00 against Techno, VMI presented a letter dated June 28, 1994 of VMI Bernardez addressed to Danilo Tuazon, President of Techno, containing a price quotation for the scope of work to be done on the fabricated items with defective coating in the amount of Php426,165.85. We note that said letter did not bear the conformity of Techno and worse, it was a mere photocopy.

A price quotation is not a competent proof to show that VMI solely undertook the repainting of the defective fabricated products. In a meeting held among the parties on August 19, 1994, VMI and Techno agreed on the time-sharing use of VMI's shop and for Techno to deliver the Ultracoat paints to be used for the repairs of the fabricated items. This only proves that Techno did its share. Failing to satisfy the Court that VMI certainly suffered actual damages amounting to Php550,000.00, its claim must necessarily fail.

We do not find the award of attorney's fees justified in this case. The general rule is that no premium should be placed on the right to litigate and attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. We find no evidence of bad faith by PNOC-EDC and Techno which would justify the award of attorney's fees.

WHEREFORE, PNOC-EDC's appeal is PARTIALLY GRANTED. The appealed Decision of the RTC, Makati City, Branch 145 is MODIFIED, as follows:

1) The award of actual damages in the amount of Php550,000.00 in favor of VMI and against Techno is DELETED;

2) The award of unpaid balance of the Contract Price in the amount of Php2,265,644.23 in favor of Viking Metal Industries, Inc. against PNOC-Energy Development Corporation is reduced to Php2,230,410.10 and the penalty charges in the amount of Php180,663.21 is to be deducted therefrom, for a net award of Php2,049,746.89.

3) The award of Attorney's fees amounting to Php100,000.00 is also DELETED.

SO ORDERED.[21]

In a Motion for Partial Reconsideration dated April 12, 2012, petitioner Techno averred that while the appellate court correctly deleted the award of actual damages in the amount of ₱550,000.00, and attorney's fees in the amount of ₱100,000.00 against Techno and in favor of VMI, the appellate court nevertheless omitted to rule on its counterclaim against VMI for the unpaid purchases of paint products amounting to ₱166,750.00. In its Resolution dated August 22, 2012, however, the CA denied petitioner Techno's Motion for Partial Reconsideration finding no cogent and persuasive reason to deviate from its previous findings and conclusions considering that the allegations in their motions are a mere rehash and had already been passed upon.[22] Hence, this petition involving the following argument:

I.

THE COURT OF APPEALS GRAVELY ERRED IN OMITTING AND FAILING TO CONSIDER THE COUNTERCLAIM OF PETITIONER TECHNO AGAINST RESPONDENT VIKING DESPITE THE FACT THAT RESPONDENT HAD ADMITTED ITS OBLIGATION AND PETITIONER HAD ESTABLISHED BY A PREPONDERANCE OF EVIDENCE THAT RESPONDENT HAS FAILED TO PAY FOR PETITIONER'S PRODUCTS IN THE TOTAL AMOUNT OF PHP166,750.00.

In the instant petition, Techno reiterates that while the appellate court correctly deleted the costs of rectification in the amount of ₱550,000.00 and the ₱100,000.00 attorney's fees awarded by the trial court, it nonetheless erred when it omitted, without any legal basis, to render a ruling on its counterclaim against respondent VMI for the unpaid products purchased by the latter. According to Techno, the CA overlooked and disregarded the issue of whether it is entitled to its counterclaim despite the fact that VMI had already admitted its obligation and that it

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[21] *Id.* at 62-64. (Emphasis ours)

[22] *Id.* at 79-80.

had sufficiently proven its claim. Techno points out that from the very beginning, it had already established in its Answer with Compulsory Counterclaim dated October 19, 1999 that VMI is still indebted thereto in the amount of ₱166,750.00 plus interest equivalent to one percent (1%) per month beginning January 1995 until full payment, as stipulated in the purchase invoice, exclusive of additional charges and attorney's fees. In fact, during the pre-trial, the parties even agreed on said counterclaim as one of the issues which will be submitted for resolution. Yet, while the appellate court's Decision mentioned such counterclaim in the narration of issues raised, it failed to resolve the same, offering no explanation and legal basis for such omission.

In support of its claim, Techno presented the following evidence: (1) Statement of Account[23] dated January 31, 1995 containing a list of accounts receivable from VMI for its unpaid products purchased from Techno; (2) several Invoices and Delivery Receipts[24] signed by representatives of VMI evidencing delivery by Techno of paint products and receipt thereof by VMI; (3) corroborating testimony of Techno's Chief Accountant; and (4) testimony of its President attesting to the fact that VMI still had an outstanding account with Techno in the aforestated amount. In addition, Techno asserts that VMI's witness, its President Brilly Bernardez, even admitted his knowledge of the existence of the unpaid obligation of VMI in favor of Techno as shown by the following excerpt of his testimony during trial:

> Q: **Are you aware of the fact that you may still have some unpaid obligation due to Techno Development?**
> (Brilly Bernardez) A: **Yes, there could be but subject to verification.**
>
> Q: And the amount due is in connection with this project?
> A: That particular project, sir.

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[23] *Id.* at 229.

[24] *Id.* at 230-243.

COURT
This project?

WITNESS (Brilly Bernardez)
A: Yes, Your Honor.[25]

At the same trial, moreover, Techno recounts that while VMI attempted to present rebuttal evidence, VMI ultimately withdrew said evidence thereby establishing Techno's assertion that VMI utterly failed to refute its counterclaim. In the end, Techno avers that it would be rather unfair to deem the appellate court's judgment as final for if its counterclaim will not be considered, VMI will be unjustly enriched at the expense of Techno in view of the established fact that VMI actually received and used Techno's products without giving any corresponding consideration therefor.[26]

For its part, respondent VMI countered that when the trial court rendered its decision ruling that Techno was guilty of breach in its respective obligation towards VMI, it was clearly implied that Techno's counterclaim was without basis.[27] Thereafter, while the CA opted to cancel the trial court's award of damages in favor of Techno for lack of sufficient evidence, it did not disturb the rest of the findings of the lower court including the denial of the counterclaim. Thus, VMI claims that Techno can no longer assert its counterclaim and allege that the same was never addressed. Besides, to do so would request the Court to reopen the factual issues and to assume the role of a trial court.[28]

We rule in favor of petitioner.

At the outset, the Court notes that its jurisdiction in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are

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[25] *Id.* at 24. (Emphasis ours)

[26] *Id.* at 25-26.

[27] *Id.* at 564.

[28] *Id.* at 565.

conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again.[29] In several cases, however, it has been repeatedly held that the rule that factual findings of the Court of Appeals are binding on the Court are subject to the following exceptions: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) *when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.*

In the instant case, while the appellate court aptly ruled upon and rejected VMI's claim of ₱550,000.00 subject of VMI's Complaint for Sum of Money against Techno, it clearly overlooked the factual issues presented by Techno in its counterclaim against VMI. In its thirty-five (35)-page Decision, the CA seemed to have preoccupied itself with the other issues presented by VMI as against PNOC-EDC and Techno, without addressing the issue of whether VMI has an outstanding unpaid obligation in favor of Techno, nor providing any reason for such failure. Had it exerted additional effort in taking Techno's claims into consideration, as well as their supporting pieces of proof, it would have warranted their meritorious and evidentiary value.

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[29] *Development Bank of the Philippines v. Traders Royal Bank, et al.*, 642 Phil. 547, 556 (2010).

A review of the records of the case would reveal that the evidence presented by Techno preponderantly established its counterclaim. By preponderance of evidence is meant that the evidence adduced by one side is, as a whole, superior to that of the other side.[30] Essentially, preponderance of evidence refers to the comparative weight of the evidence presented by the opposing parties.[31] As such, it has been defined as "the weight, credit, and value of the aggregate evidence on either side," and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence.[32] It is proof that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[33]

Here, the Court finds that petitioner Techno duly proved its claims that VMI purchased paint products therefrom, that the same were delivered to VMI, and that VMI failed to fully pay the price therefor. As borne by the evidence on record, Techno not only submitted a Statement of Account containing a list of accounts receivable from VMI for its unpaid products purchased from Techno, as well as the corresponding delivery receipts and invoices signed by VMI representatives evidencing delivery by Techno of paint products and receipt thereof by VMI, it further presented corroborating testimony of Techno's Chief Accountant and also the testimony of its President attesting to the fact that VMI still had an outstanding account with Techno. It is evident, therefore, that petitioner Techno preponderantly established its counterclaim, especially in light of the fact that respondent VMI never contested the same in spite of every opportunity to do so.

A cursory reading of the records shows that VMI never bothered to refute Techno's counterclaim by contrary evidence or by any sort of denial in its pleadings filed before the RTC, the CA, or

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[30] *NFF Industrial Corporation v. G & L Associated Brokerage and/or Gerardo Trinidad*, G.R. No. 178169, January 12, 2015, 745 SCRA 73, 94.

[31] *Id.*

[32] *Id.*

[33] *Id.*

the present Court. As petitioner Techno points out, while VMI attempted to present rebuttal evidence, VMI ultimately withdrew said evidence. Note that from the very first instance when Techno raised the counterclaim in its Answer with Compulsory Counterclaim dated October 19, 1999 up until the filing of its Comment before the Court on January 28, 2013, VMI had every opportunity to refute Techno's claims of non-payment. Regrettably for VMI, however, it never denied the existence of its outstanding account with Techno, not even on rebuttal. In fact, as asserted by Techno, VMI's witness, President Brilly Bernardez, even acknowledged the possibility of the existence of an unpaid obligation in favor of Techno, albeit its susceptibility of being subject to verification. It is interesting to note, moreover, that instead of rectifying its failure to refute Techno's claims before the courts below, all VMI had to say in its Comment filed before the Court was that it was clearly implied from the trial court's ruling that Techno's counterclaim was without basis and that the same was effectively affirmed by the appellate court when it did not rule upon the same. To this Court, such reasoning barely repudiates the preponderance of Techno's evidence. Thus, taking VMI's complete and utter failure to offer any sort of opposing evidence, documentary or testimonial, in conjunction with those pieces of evidence duly adduced by Techno, the Court deems it necessary to consider Techno's claim.

At this point, it is worthy to note that a careful look at the rulings of the trial court and appellate court would reveal that neither court exerted any effort in determining the veracity of petitioner's assertions. While both courts acknowledged the counterclaim in their decisions, and even listed the same as part of the issues that needed to be resolved, nowhere in their decisions did they even remotely pass upon said claim. It can hardly be said, therefore, that the courts below definitively denied Techno's claim to the payment of the unpaid products in the sheer absence of any showing that they took into consideration Techno's allegations much less the probative value of the evidence presented to support it. Even granting VMI's argument that the trial court implicitly denied Techno's counterclaim against it, and that the appellate court affirmed said denial, the Court finds the need

to reverse said implicit denials and grant Techno's counterclaim for as previously threshed out, not only did petitioner Techno present sufficient proof to substantiate its claim, VMI consistently and utterly failed to adduce any evidence to refute the same.

Ultimately, it must be noted that if Techno's claim was to be denied simply by the failure of the lower courts to pass upon the same in their decisions, without any factual or legal explanation therefor, VMI would be unjustly enriched at the expense of Techno for VMI's failure to pay for the paints it received. Such unjust enrichment due to the failure to make remuneration of or for property or benefits received cannot be countenanced and must be correspondingly corrected by the Court.[34] In view of the foregoing, the Court finds Techno to be entitled to the payment of the unpaid paint products purchased by VMI therefrom.

On the matter of petitioner Techno's prayer for exemplary damages in the amount of ₱200,000.00, however, the Court resolves to deny the same. Article 2234[35] of the Civil Code of the Philippines requires a party to first prove that he is entitled to moral, temperate or compensatory damages before he can be awarded exemplary damages. Moreover, Article 2220[36] of

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[34] *Philippine Commercial International Bank v. Balmaceda, et al.*, 674 Phil. 509, 528 (2011), citing *Philippines v. Philab Industries, Inc.*, 482 Phil. 693, 709-710 (2004).

[35] Art. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[36] Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

the same Code provides that in breaches of contract, moral damages may be awarded when the party at fault acted fraudulently or in bad faith. Thus, to justify an award for exemplary damages, the wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner.[37] In the instant case, there is no showing that VMI failed to pay for its purchased paint products fraudulently or in bad faith. The Court, therefore, does not find Techno to be entitled to exemplary damages.

As to Techno's claim for the award of attorney's fees in the amount of ₱200,000.00, as well as an honorarium of ₱5,000.00 per appearance, the Court finds said amounts to be inconsistent with the stipulation on the Delivery Receipts and Invoices submitted by Techno which provides that "the buyer agrees to pay x x x in case of an action is filed in Court, an additional Twenty-Five (25%) Per Cent of the total amount of the obligation due and demandable, in the nature of attorney's fees."[38] Thus, instead of the ₱200,000.00 attorney's fees, as well as the ₱5,000.00 honorarium per appearance, the award of attorney's fees must be computed on the basis of said stipulation, which provides for a twenty-five percent (25%) charge on the total amount due to petitioner Techno.

Finally, with respect to the matter of interest, the Court notes the stipulation on the Delivery Receipts and Invoices submitted by Techno which provides that "one (1) Per Cent interest per month shall be charged on all overdue accounts."[39] Accordingly, respondent VMI is liable to pay interest at the rate of one percent (1%) per month or twelve percent (12%) *per annum* to be computed from default, *i.e.*, judicial or extrajudicial demand pursuant to the provisions of Article 1169 of the Civil Code. Furthermore, in accordance with the doctrine laid down in *Nacar*

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[37] *Tankeh v. Development Bank of the Philippines, et al.*, 720 Phil. 641, 693 (2013).

[38] *Rollo*, pp. 230-243.

[39] *Id.*

v. Gallery Frames,[40] when the judgment of the court awarding the sum of money becomes final and executory, the rate of legal interest shall be six percent (6%) *per annum* from such finality until its satisfaction, taking the form of a judicial debt.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The dispositive portion of the assailed Decision dated March 16, 2012 of the Court of Appeals in CA-G.R. CV No. 84186 shall now read as follows:

1) The award of actual damages in the amount of ₱550,000.00 in favor of respondent Viking Metal Industries, Incorporated and against petitioner Techno Development & Chemical Corporation is **DELETED**;

2) The award of unpaid balance of the Contract Price in the amount of ₱2,265,644.23 in favor of Viking Metal Industries, Incorporated against PNOC-Energy Development Corporation is reduced to ₱2,230,410.10 and the penalty charges in the amount of ₱180,663.21 is to be deducted therefrom, for a net award of ₱2,049,746.89;

3) The award of Attorney's fees amounting to ₱100,000.00 is also **DELETED**;

4) Respondent Viking Metal Industries, Incorporated is **ORDERED** to **PAY** petitioner Techno Development & Chemical Corporation the following: (a) the unpaid purchased paint products in the amount of ₱166,750.00; (b) attorney's fees at the rate of twenty-five percent (25%) of the total unpaid amount; (c) interest at the rate of one percent (1%) per month or twelve percent (12%) *per annum* to be computed from January 31, 1995, the date of default; and (d) from the date of promulgation of this Decision up to full payment, interest at the rate of six percent (6%) *per annum* on the sum of money plus the interest computed under paragraph (c) above.

SO ORDERED.

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

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[40] 716 Phil. 267, 483 (2013).

SECOND DIVISION

[G.R. No. 204222. July 4, 2016]

NEPTUNE METAL SCRAP RECYCLING, INC., *petitioner, vs.* **MANILA ELECTRIC COMPANY and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; NATURE.— Intervention is a remedy by which a third party, who is not originally impleaded in a proceeding, becomes a litigant for purposes of protecting his or her right or interest that may be affected by the proceedings. Intervention is not an absolute right but may be granted by the court when the movant shows facts which satisfy the requirements of the statute authorizing intervention. The allowance or disallowance of a motion to intervene is within the sound discretion of the court.

2. ID.; ID.; ID.; REQUIREMENTS FOR INTERVENTION TO BE ALLOWED; WHAT CONSTITUTES LEGAL INTEREST ON THE PART OF THE INTERVENOR.— Section 1, Rule 19 of the Rules provides that a court may allow intervention (a) if the movant has legal interest or is otherwise qualified, and (b) if the intervention will not unduly delay or prejudice the adjudication of rights of the original parties and if the intervenor's rights may not be protected in a separate proceeding. Both requirements must concur. Section 2, Rule 19 of the Rules requires a movant to file the motion for intervention before the RTC's rendition of judgment and to attach a pleading-in-intervention. The court may allow intervention after rendition of judgment if the movant is an indispensable party. x x x A movant for intervention must have legal interest either (i) in the matter in litigation, (ii) in the success of either of the parties, or (iii) against both parties. The movant may also intervene if he or she is (iv) so situated as to be adversely affected by a distribution or other disposition of property in the court's custody. Legal interest is present when the intervenor will either gain or lose as a direct effect of the judgment. The legal interest must be actual and material,

direct, and immediate. In a theft case, the subject matter in litigation is the item alleged to have been stolen.

3. ID.; ID.; ID.; PETITIONER HAS LEGAL INTEREST IN THE SUBJECT MATTER OF LITIGATION; THERE IS NO SHOWING THAT INTERVENTION WILL DELAY THE ADJUDICATION OF THE RIGHTS OF THE ORIGINAL PARTIES; ALLOWING INTERVENTION IS EVEN BENEFICIAL TO THE COURT IN CASE AT BAR.— As the owner of the scrap copper wires, Neptune undoubtedly has legal interest in the subject matter in litigation. The CA's reversal of the RTC's quashal of the information would necessarily require Neptune to return the bundles of copper wire it had recovered. Undoubtedly, Neptune, as the owner, has a legal interest in the subject matter in litigation before the CA. x x x The Court noted that the oppositors focused their arguments on the intervenor's lack of legal interest such that they failed to allege or present any evidence to meet the second requirement in granting intervention. Thus, the Court has no basis to rule that the intervention will delay the adjudication of rights of the original parties. Too, the intervention is more beneficial and convenient for petitioners and the courts as it will avoid multiplicity of suits and clogging of the court dockets. Similarly, in the present case, the OSG failed to allege or present any evidence showing that Neptune's intervention will delay the proceedings and that Neptune may protect its rights in a separate case. Additionally, allowing Neptune's intervention is even beneficial to the courts in ascertaining whether theft indeed occurred. The information filed before the RTC alleges that the accused committed theft against Meralco. Lack of owner's consent is an essential element of the crime of theft. Neptune's intervention will assist the CA in ascertaining the owner of the scrap copper wires — whether Meralco or Neptune — and in determining whether the rightful owner gave its consent to the accused's act of taking the scrap copper wires. It should be stressed, too, that granting the intervention would reduce the suits filed in court.

4. ID.; ID.; ID.; WHERE THE TRIAL COURT ALLOWED A PARTY TO APPEAR, FILE PLEADINGS, AND REPRESENT ITSELF IN THE COURT PROCEEDINGS WITHOUT FILING A MOTION SPECIFICALLY

DENOMINATED AS A "MOTION FOR INTERVENTION," IT AMOUNT TO INTERVENTION CONTEMPLATED UNDER THE RULES AND COMPLIED WITH THE REQUIREMENT THEREOF.— The rules on intervention are procedural rules, which are mere tools designed to expedite the resolution of cases pending in court. Courts can avoid a strict and rigid application of these rules if such application would result in technicalities that tend to frustrate rather than promote substantial justice. In the present case, Neptune only filed a special appearance with a motion to inspect the container van before the RTC. At that time, Neptune was still uncertain whether it owned or it had legal interest over the container van's contents. After the inspection, however, it ascertained that it indeed owned the scrap copper wires and thus continued to participate in the case. Notably, the RTC allowed Neptune to appear, file pleadings, and represent itself in the court proceedings. All these amount to intervention as contemplated under the rules. The lack of a pleading-in-intervention attached to the entry with motion is justified by Neptune's initial uncertainty as to the ownership of the container van's contents. After the ocular inspections, we note that Neptune filed manifestations, motions, and comment before the RTC to disprove Meralco's alleged ownership and to reclaim the scrap copper wires. These pleadings were accepted and considered by the RTC in rendering its decision. Undeniably, the RTC allowed Neptune to intervene in the case *via* the entry with motion, albeit without filing a motion specifically denominated as a "motion for intervention." Thus, Neptune complied with the requirement of filing an intervention prior to the RTC's rendition of judgment.

APPEARANCES OF COUNSEL

Nicolas & De Vega Law Offices for petitioner.
Office of the Solicitor General for public respondent.
Horatio M. Bona for respondent *Meralco.*

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari* challenging the **March 20, 2012** *and* **October 19, 2012** resolutions[1] of the Court of Appeals (CA) in CA-G.R. SP No. 119642. The CA denied the motion for leave to intervene and to admit the comment-in-intervention filed by Neptune Metal Scrap Recycling, Inc. (*Neptune*) due to lack of legal interest to intervene and late filing of the intervention.

THE FACTS

Neptune traces its roots to the criminal case filed against Rolando Flores (*Flores*) and Jhannery Hupa (*Hupa*) (*the accused*). On August 10, 2010, the accused were driving a trailer truck with a container van towards the Manila International Container Port when men from the Criminal Investigation and Detection Group flagged them down on suspicion that they were illegally transporting electric power transmission scrap copper wires owned by the Manila Electric Company (*Meralco*). The police seized the truck with its contents and detained the accused.

The accused were charged before the Regional Trial Court (*RTC*) of Malabon with theft of electric power transmission lines and materials under Section 3 of Republic Act (*RA*) No. 7832.[2] The case was docketed as Criminal Case No. 10-1419.

The accused filed a motion to quash the information alleging that the facts charged in the information do not constitute an offense.

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[1] *Rollo*, pp. 78-84; penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Michael P. Elbinias and Socorro B. Inting (March 20, 2012 resolution); and by Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes (October 19, 2012 resolution).

[2] Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994, December 8, 1994.

Neptune filed its **entry of special appearance with motion for leave to permit the inspection, examination, and photographing of the seized container van** (*entry with motion*). Neptune argued that it owned the contents of the container van, specifically, the thirteen (13) bundles of scrap copper wires worth around Eight Million Pesos (₱8,000,000.00). Neptune presented several documents to prove its claim of ownership.[3]

The RTC granted Neptune's motion and ordered the inspection of the container van and its contents. A second inspection was done to allow Meralco's representatives to inspect the same.

Neptune continued to participate in the RTC proceedings. It filed several pleadings before the RTC such as: (a) a manifestation on the results of the first inspection; (b) a motion to deposit the keys to the container van with the court; (c) a supplement to the motion to deposit the keys; (d) a memorandum of authorities on "birch cliff copper"; (e) a manifestation on the results of the second inspection; (f) a motion for the release of the goods; and (g) the comment to Meralco's compliance.[4] Neptune also took part in the clarificatory hearing on the inspection.

On January 3, 2011, the RTC ordered the quashal of the information.[5] The RTC noted that no Meralco power transmission scrap copper wires were found in the container van during the two ocular inspections. **The RTC also ordered the return of the keys and the container van to Neptune**. Neptune recovered three remaining bundles of scrap copper wires.

Meralco filed a motion for reconsideration which the RTC denied. Meralco then filed a **petition for *certiorari* before the CA** asking to reinstate the information; it did not include Neptune as a party. Thus, Neptune filed a **motion for leave to intervene and to admit its comment-in-intervention**. Meralco opposed

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[3] *Rollo*, p. 24: (a) purchase order from Trumet International to Neptune; (b) Neptune's Export Declaration to the Department of Trade and Industry; and (c) packing list.

[4] *Id.* at 24-27.

[5] *Id.* at 349-354.

this motion claiming that the subject matter of the offense, *i.e.*, *the electric power transmission scrap copper wires*, is different from the birch cliff copper wires claimed by Neptune.

The CA denied Neptune's motion for leave to intervene. The CA ruled that: (a) Neptune failed to demonstrate its legal interest on the subject matter in litigation; (b) the intervention will unduly delay or prejudice the case; and (c) Neptune failed to timely file a motion for intervention before the RTC and to directly and actively participate in the RTC proceedings. The CA added that Neptune may vindicate its rights in a separate action.

The CA also denied Neptune's motion for reconsideration; hence, this petition.

THE PARTIES' ARGUMENTS

In its petition, Neptune argues that it has legal interest over the subject matter in litigation — the scrap copper "birch cliff" found in the container van; in fact, it was persistent in asserting its right of ownership even before the RTC. If the RTC's order is reversed, Neptune stands to lose the three recovered bundles of copper scrap worth approximately ₱2,000,000.00 because Articles 25 and 45 of the Revised Penal Code (*RPC*) provide for the forfeiture of the instruments and proceeds of an offense in favor of the government. Neptune adds that the owner of a property subject of the litigation has a right to intervene.

Neptune also argues that the intervention would not delay the adjudication of the parties' rights, and in fact would facilitate the administration of justice in determining whether the accused are liable for the crime charged.

Neptune stresses that its entry with motion was effectively a motion for intervention timely filed before the RTC. The RTC, it adds, also recognized Neptune's intervention by allowing it to participate in the proceedings by filing numerous pleadings and appearing in court hearing.

Assuming that the motion for intervention was belatedly filed, Neptune argues, the CA should still have allowed Neptune's intervention. As a general rule, intervention is allowed only before

or during a trial. However, in several cases, the Court has allowed intervention even after rendition of judgment if the facts and merits of the case warrant it.[6]

In its comment,[7] the Office of the Solicitor General (*OSG*), representing the People of the Philippines, argues: first, that Neptune's petition raises questions of fact which are not allowed in a Rule 45 petition. The issue of whether Neptune complied with the requirements for intervention requires the Court to scrutinize the evidence.

Second, the OSG insists, that Neptune has no legal interest to justify the intervention for three reasons: (1) Neptune has no legal interest in the subject matter of the case. The subject matter in the present case is the transmission copper wires owned by Meralco, not the birch cliff copper wires claimed by Neptune. (2) Neptune has no interest in the success of either party or against both parties because it cannot be prejudiced by a court's finding of guilt of the accused. (3) Neptune cannot be adversely affected by the distribution or disposition of the property in the court's custody. The OSG notes that the container van is not in the court's custody as it has not yet been offered in evidence.

Third, the OSG argues that the motion for intervention was belatedly filed. It emphasizes that Neptune filed only an entry with special appearance, not a motion for intervention, before the RTC. The entry of special appearance could not be considered a motion for intervention because it had no pleading-in-intervention attached to it as required under Section 19 of the Rules of Court (Rules). The motion for leave to permit inspection, examination, and photographing of the seized container van does not constitute a pleading-in-intervention. Thus, the RTC gravely abused its discretion when it took cognizance of Neptune's motions and pleadings despite the absence of personality to take part in the proceedings.

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[6] *Office of the Ombudsman v. Miedes*, G.R. No. 176409, February 27, 2008, 547 SCRA 148.

[7] *Rollo*, pp. 396-429.

In its reply,[8] Neptune reiterates its arguments and adds that the legal question raised in the petition is whether the entry and its accompanying motion were effectively a motion for intervention under Rule 19 of the Rules. Even assuming that the petition raises a pure question of fact, the Court may still take cognizance of the case as it falls under the two exceptions: (a) the CA's findings of fact are conclusions without citation of specific evidence; and (b) the CA's findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

Neptune also clarifies that the transmission wires claimed by Meralco are part of the scrap copper wires claimed by Neptune. In fact, the RTC found no Meralco property inside the container van. Meralco also failed to present any evidence to show that it owns the copper wires.

THE COURT'S RULING

We find the petition **meritorious**.

The issue before the Court is whether the CA erred in denying Neptune's motion for intervention.

Intervention is a remedy by which a third party, who is not originally impleaded in a proceeding, becomes a litigant for purposes of protecting his or her right or interest that may be affected by the proceedings.[9] Intervention is not an absolute right but may be granted by the court when the movant shows facts which satisfy the requirements of the statute authorizing intervention.[10] The allowance or disallowance of a motion to intervene is within the sound discretion of the court.[11]

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[8] *Id.* at 426a-450.

[9] *Ongco v. Dalisay*, G.R. No. 190810, July 18, 2012, 677 SCRA 232.

[10] *Executive Secretary v. Northeast Freight Forwarders, Inc.*, G.R. No. 179516, March 17, 2009, 581 SCRA 736.

[11] *Heirs of Restrivera v. De Guzman*, G.R. No. 146540, July 14, 2004, 434 SCRA 456.

Section 1, Rule 19 of the Rules provides that a court may allow intervention (a) if the movant has legal interest or is otherwise qualified, and (b) if the intervention will not unduly delay or prejudice the adjudication of rights of the original parties and if the intervenor's rights may not be protected in a separate proceeding.[12] Both requirements must concur.

Section 2, Rule 19 of the Rules requires a movant to file the motion for intervention before the RTC's rendition of judgment and to attach a pleading-in-intervention.[13] The court may allow intervention after rendition of judgment if the movant is an indispensable party.[14]

With these procedural rules as guidelines, we examine, ***first***, whether Neptune has a legal interest to intervene in the present case. Is Neptune's ownership of the allegedly stolen items sufficient to grant intervention?

A movant for intervention must have legal interest either (i) in the matter in litigation, (ii) in the success of either of the parties, or (iii) against both parties.[15] The movant may also intervene if he or she is (iv) so situated as to be adversely affected by a distribution or other disposition of property in the court's custody.[16] Legal interest is present when the intervenor will either gain or lose as a direct effect of the judgment.[17] The legal interest must be actual and material, direct, and immediate.[18] In a theft case, the subject matter in litigation is the item alleged to have been stolen.[19]

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[12] *Supra* note 10.

[13] Rules of Court, Rule 19, Section 2.

[14] *Looyuko v. Court of Appeals*, G.R. No. 102696, July 12, 2001, 361 SCRA 150; and *Pinlac v. Court of Appeals*, G.R. No. 91486, September 10, 2003, 410 SCRA 419.

[15] Rules of Court, Rule 19, Section 1.

[16] *Id.*

[17] *Cariño v. Ofilada*, G.R. No. 102836, January 18, 1993, 217 SCRA 206.

[18] *Id.*

[19] *BSB Group, Inc. v. Go*, G.R. No. 168644, February 16, 2010, 612 SCRA 596.

In the present case, Neptune argues that it has a legal interest in the subject matter in litigation, particularly, the scrap copper wires in the container van. The RTC found Neptune to be the owner of the contents of the container van; hence, it released these contents to Neptune. The RTC also noted that no Meralco transmission wires were found in the container van during the two ocular inspections. Thus, the RTC quashed the information against the accused.

As the owner of the scrap copper wires, Neptune undoubtedly has legal interest in the subject matter in litigation. The CA's reversal of the RTC's quashal of the information would necessarily require Neptune to return the bundles of copper wire it had recovered. Undoubtedly, Neptune, as the owner, has a legal interest in the subject matter in litigation before the CA.

Second, we determine whether Neptune's intervention would unduly delay or prejudice the adjudication of the rights of the accused and of the State. We also consider whether Neptune's rights may be protected in a separate proceeding.

In one case,[20] the Court effectively placed the burden on the oppositors to argue that the intervention would delay the proceedings and that the intervenor's rights would not be protected in a separate case. The Court noted that the oppositors focused their arguments on the intervenor's lack of legal interest such that they failed to allege or present any evidence to meet the second requirement in granting intervention.[21] Thus, the Court has no basis to rule that the intervention will delay the adjudication of rights of the original parties.[22] Too, the intervention is more beneficial and convenient for petitioners and the courts as it will avoid multiplicity of suits and clogging of the court dockets.[23]

Similarly, in the present case, the OSG failed to allege or present any evidence showing that Neptune's intervention will

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[20] *Supra* note 10, at 749-750.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 750.

delay the proceedings and that Neptune may protect its rights in a separate case.

Additionally, allowing Neptune's intervention is even beneficial to the courts in ascertaining whether theft indeed occurred. The information filed before the RTC alleges that the accused committed theft against Meralco. Lack of owner's consent is an essential element of the crime of theft. Neptune's intervention will assist the CA in ascertaining the owner of the scrap copper wires — whether Meralco or Neptune — and in determining whether the rightful owner gave its consent to the accused's act of taking the scrap copper wires. It should be stressed, too, that granting the intervention would reduce the suits filed in court.

Third, we verify whether Neptune timely filed its intervention. As we noted above, a would-be intervenor must file the motion for intervention before the RTC renders its judgment.

In the present case, Neptune filed a motion denominated as "motion for intervention" only before the CA or only after the RTC had rendered its judgment. Neptune argues that the entry with motion it filed with the RTC is tantamount to a motion for intervention. The OSG, on the other hand, argues that the entry with motion cannot constitute as a motion for intervention because it lacked the pleading-in-intervention required by the Rules.

We rule in Neptune's favor and hold that the entry with motion effectively constitutes a motion for intervention.

The rules on intervention are procedural rules, which are mere tools designed to expedite the resolution of cases pending in court.[24] Courts can avoid a strict and rigid application of these rules if such application would result in technicalities that tend to frustrate rather than promote substantial justice.[25]

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[24] *Al-Amanah Islamic Investment Bank of the Philippines v. Celebrity Travel and Tours, Incorporated*, G.R. No. 155524, August 12, 2004, 436 SCRA 356-357.

[25] *Id.*

In the present case, Neptune only filed a special appearance with a motion to inspect the container van before the RTC. At that time, Neptune was still uncertain whether it owned or it had legal interest over the container van's contents. After the inspection, however, it ascertained that it indeed owned the scrap copper wires and thus continued to participate in the case. Notably, the RTC allowed Neptune to appear, file pleadings, and represent itself in the court proceedings. All these amount to intervention as contemplated under the rules.

The lack of a pleading-in-intervention attached to the entry with motion is justified by Neptune's initial uncertainty as to the ownership of the container van's contents. After the ocular inspections, we note that Neptune filed manifestations, motions, and comment before the RTC to disprove Meralco's alleged ownership and to reclaim the scrap copper wires. These pleadings were accepted and considered by the RTC in rendering its decision.

Undeniably, the RTC allowed Neptune to intervene in the case *via* the entry with motion, albeit without filing a motion specifically denominated as a "motion for intervention." Thus, Neptune complied with the requirement of filing an intervention prior to the RTC's rendition of judgment.

All told, the CA erred when it denied Neptune's motion for intervention on the grounds that it lacked legal interest to intervene and that it filed the intervention beyond the prescribed period.

WHEREFORE, we hereby **GRANT** the petition. The March 20, 2012 and October 19, 2012 resolutions of the Court of Appeals in CA-G.R. SP No. 119642 are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

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

Mendoza,[*] *J.,* on official leave.

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[*] On Official Leave.

SECOND DIVISION

[G.R. No. 205753. July 4, 2016]

ROSA PAMARAN, substituted by her heirs, through their representative, ROSEMARY P. BERNABE, *petitioners, vs.* **BANK OF COMMERCE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; CAUSE OF ACTION, DEFINED; ELEMENTS.— A cause of action is an act or omission by which a person violates the right of another. Its essential elements are: (1) plaintiff's right, which arises from or is created by whatever means, and is covered by whatever law; (2) defendant's obligation not to violate such right; and, (3) defendant's act or omission in violation of such right and for which plaintiff's may seek relief from defendant.

2. ID.; CIVIL PROCEDURE; MOTION TO DISMISS UNDER SECTION 1(g) OF RULE 16 AND UNDER RULE 33, DISTINGUISHED.— When an action is filed, the defendant may, nevertheless, raise the issue of want of cause of action through a proper motion to dismiss. Thus, a distinction must be made between a motion to dismiss for failure to state a cause of action under Section 1(g) of Rule 16, and the one under Rule 33 of the Rules of Court. In the first situation, the motion must be made before a responsive pleading is filed; and it can be resolved only on the basis of the allegations in the initiatory pleading. On the other hand, in the second instance, the motion to dismiss must be filed after the plaintiff rested his case; and it can be determined only on the basis of the evidence adduced by the plaintiff. In the first case, it is immaterial if the allegations in the complaint are true or false; however, in the second situation, the judge must determine the truth or falsity of the allegations based on the evidence presented. Stated differently, a motion to dismiss under Section 1(g) of Rule 16 is based on preliminary objections made before the trial while the motion to dismiss under Rule 33 is a demurrer to evidence on the ground of insufficiency of evidence, and is made only after the plaintiff rested his case.

3. ID.; ID.; DISMISSAL OF THE COMPLAINT IS UNJUSTIFIED; THE TRIAL COURT DISREGARDED THE ALLEGATIONS IN THE COMPLAINT AND FAILED TO CONSIDER THAT RESPONDENT'S ARGUMENTS NECESSITATE THE EXAMINATION OF EVIDENCE THAT CAN BE DONE THROUGH A FULL-BLOWN TRIAL.— [I]n granting Bankcom's motion to dismiss, the RTC Olongapo took into consideration the arguments set forth in the motion, and ignored the assertions in the Complaint x x x Not only did the RTC Olongapo disregard the allegations in the Complaint, it also failed to consider that the Bankcom's arguments necessitate the examination of the evidence that can be done through a full-blown trial. The determination of whether Rosa has a right over the subject house and of whether Bankcom violated this right cannot be addressed in a mere motion to dismiss. Such determination requires the contravention of the allegations in the Complaint and the full adjudication of the merits of the case based on all the evidence adduced by the parties.

4. ID.; ID.; VENUE OF ACTION; WHERE THE PRIMARY OBJECTIVE OF THE COMPLAINT IS TO RECOVER DAMAGES AND NOT TO REGAIN OWNERSHIP OR POSSESSION OF THE PROPERTY, THE CASE IS A PERSONAL ACTION PROPERLY FILED IN THE PLACE WHERE THE PLAINTIFF RESIDES.— The Complaint (specifically allegations nos. 3 and 16 thereof) stated that this case is one for recovery of damages relating to the injury committed by Bankcom for violating Rosa's right to due process, and right to enjoy her house. Rosa repeatedly averred that she does not seek recovery of its possession or title. Her interest to the house is merely incidental to the primary purpose for which the action is filed, that is, her claim for damages. Clearly, this action involves Rosa's interest in *the value* of the house but *only in so far as to determine her entitlement to damages.* She is not interested in the house itself. Indeed, the primary objective of the Complaint is to recover damages, and not to regain ownership or possession of the subject property. Hence, this case is a personal action properly filed in the RTC Olongapo, where Rosa resided.

5. ID.; JURISDICTION; AN ACTION FOR DAMAGES FILED IN RTC OLONGAPO DOES NOT INTERFERE WITH THE

JURISDICTION OF THE RTC MUNTINLUPA WHERE THE PETITION FOR ISSUANCE OF WRITS OF POSSESSION IS PENDING; REASONS.— [T]his action does not interfere with the jurisdiction of the RTC Muntinlupa. One, the nature of this action, which is for damages, is different from the petition before the RTC Muntinlupa, which is for issuance of writs of possession. Two, the laws relied upon in these actions vary; this damage suit is based on Rosa's reliance on her right emanating from Article 32 of the Civil Code; while Bankcom's Petition is pursuant to Act No. 3135, as amended. Third, this case involves a claim arising from Bankcom's alleged violation of Rosa's right to due process, and to the enjoyment of her house. On the other hand, the one for issuance of writs of possession involves Bankcom's application to be placed in possession of the subject properties. Last, as already discussed, the former is a personal action while the latter is a real action affecting title to and possession of a real property.

APPEARANCES OF COUNSEL

Leonardo W. Bernabe for petitioner.

Perez Calima Maynigo Roque & Amparo Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the December 10, 2012 and February 4, 2013 Orders[1] of the Regional Trial Court of Olongapo City, Branch 75 (RTC Olongapo) granting the motion to dismiss by way of affirmative defenses and accordingly dismissing the Complaint[2] in Civil Case No. 29-0-2012 for "Damages and Restitution of Value of a Residential House Unlawfully Taken."

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[1] Records, pp. 202-204, 231-232; penned by Presiding Judge Raymond C. Viray.

[2] *Id.* at 2-9.

Factual Antecedents

In the Complaint dated February 27, 2012, Rosa Pamaran (Rosa) alleged that her children, Rhodora Pamaran (Rhodora), and spouses Rosemary P. Bernabe (Rosemary) and Leonardo W. Bernabe (spouses Bernabe), owned adjacent lots respectively covered by (a) Transfer Certificate of Title No. (TCT) 213130, and (b) TCT No. 124149. These lots correspondingly covered 341 and 366 square meters and are located at Doña Rosario Bayview Subdivision, Sucat, Muntinlupa City. Purportedly, in 1987, Rosa built her residential house on these lots with the consent of Rhodora and spouses Bernabe.

Sometime in 1997 and 1998, Southmarine International Ltd. Co. (Southmarine) obtained loans from the Bank of Commerce (Bankcom). To secure these loans, Rhodora and spouses Bernabe constituted real estate mortgages (REM) on their lots. Rosa claimed that Bankcom neither included her house in determining the loan amount nor obtained her consent to the REM. She added that Bankcom was aware of the existence of her house on these lots.

Rosa asserted that eventually, these lots were foreclosed and their ownership was consolidated in favor of Bankcom. Later, Bankcom filed petitions for issuance of writs of possession, which were granted[3] by the RTC of Muntinlupa City, Branch 206 (RTC Muntinlupa) on November 22, 2011 and December 21, 2011.

Rosa averred that because of these writs, she was dispossessed of her house in February 2012. Thus, she prayed that Bankcom be ordered to pay her damages amounting to ₱3 million for the value of her house, ₱300,000.00 for its violation of her right to due process and equal protection of law, and ₱100,000.00 for attorney's fees.

Bankcom, on its end, raised in its Answer[4] with Compulsory Counterclaim the following affirmative defenses: 1) Rosa has

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[3] *Id.* at 88-99; Decisions dated November 22, 2011 and December 21, 2011 penned by Judge Patria A. Manalastas-de Leon.

[4] *Id.* at 50-63.

no cause of action against it; 2) the Complaint is a collateral attack on its title and an interference with the jurisdiction of the RTC Muntinlupa; 3) Rosa was not deprived of due process; and, 4) the venue was improperly laid.

Bankcom contended that Rosa has no cause of action because she is not the owner of the subject lots as well as the improvement thereon; and she was never a party to any contract between Bankcom, and its mortgagors, Rhodora and spouses Bernabe. It also argued that this Complaint is a collateral attack on its title because the REM and the Certificate of Sale indicated that they covered not only the subject lots, but including the improvement thereon.

In addition, Bankcom insisted that the Complaint interfered with the jurisdiction of RTC Muntinlupa, which already granted in its favor writs of possession over the properties. It argued that while the Complaint is captioned as one for "Damages and Restitution of Value of Residential House Unlawfully Taken," the same is a real action because it concerns Rosa's claim of ownership over the subject house. It posited that the Complaint should have been filed before the RTC Muntinlupa where such property is located.

In her Reply[5] with Answer to Counterclaim and Comment[6] to Bankcom's Affirmative Defenses, Rosa argued that she did not authorize her children to encumber her house. She also stated that the REM was a contract of adhesion, thus, its stipulation that "the mortgage included all the buildings and improvements [on the land]" pertained to improvements belonging to the mortgagors, not to third persons.

Moreover, Rosa clarified that she does not question the writs of possession issued by the RTC Muntinlupa. She, nonetheless, claimed that her Complaint concerns Bankcom's use of these writs to deprive her of her house. On this, she declared that this is not a collateral attack on Bankcom's title but a direct

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[5] *Id.* at 103-106.

[6] *Id.* at 130-135.

attack on its abuse of her right to due process by arrogating to itself her house, which was not part of the REM.

Finally, Rosa contended that this a personal action because while she cited real properties situated in Muntinlupa City, she is not asking to be the owner or possessor thereof but is merely praying that Bankcom be ordered to pay her damages corresponding to the value of her house. She likewise affirmed that the venue is proper since she resides in Olongapo City.

Because of Rosa's demise on September 10, 2012, her heirs[7] (petitioners) substituted[8] her, designating Rosemary as their representative in this case.

On December 10, 2012, the RTC Olongapo issued the first assailed Order granting Bankcom's motion to dismiss and accordingly, dismissing the Complaint.

Thereafter, petitioners filed a Motion for Reconsideration, which was denied by the RTC Olongapo in the second assailed Order dated on February 4, 2013.

Issues

Hence, petitioners filed this Petition raising the following issues:

a) Whether x x x the court *a quo* erred in resolving the issue of lack of cause of action on the basis of evidence *aliunde* put forth before it by the movant and not solely on the basis of the complaint.

b) Whether x x x the court *a quo* erred in disregarding the jurisprudential rule that a movant to dismiss on the ground of lack of cause of action is deemed to have hypothetically admitted plaintiff's factual representation in the complaint.

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[7] Namely, Lorna M. Pamaran-Dionio, Arlene M. Pamaran-Bucoy, Teody Richard M. Pamaran, Francisco M. Pamaran, Jr., Joel M. Pamaran, Lalita M. Pamaran-Klainatorn, Maybelline M. Pamaran-Guerzon, Rhodora M. Pamaran-Brouillette, Rosemary M. Pamaran-Bernabe; *id.* 176.

[8] *Id.* at 183.

c) Whether x x x the court *a quo* committed error in procedure when it resolved a question of fact in favor of [Bankcom] without first giving [p]etitioners the opportunity to present evidence on a controversial fact, and used such conclusion of fact to justify the dismissal of a complaint on the ground of lack of cause of action.

d) Whether x x x the court *a quo* erred in justifying its dismissal of [p]etitioners' complaint on a thesis that its initiation interfered with the exercise of jurisdiction of a co-equal court in *[e]x parte* proceedings for the issuance of writ of possession under Act 3135.[9]

Petitioners' Arguments

Petitioners state that in resolving Bankcom's motion to dismiss (by way of affirmative defenses) on the ground of lack of cause of action, the RTC Olongapo should have exclusively considered the averments in the Complaint, which are deemed hypothetically admitted. They added that RTC Olongapo's inquiry is limited to the determination of whether these allegations present a case on which the relief may be granted.

Petitioners insist that the Complaint states a cause of action, which relates to Bankcom's purported unlawful taking of the house of the late Rosa; and such cause of action entitles petitioners to recover damages corresponding to the value thereof. They submit that the RTC Olongapo's conclusion that the REM included the lots and the improvement thereon, without giving Rosa the opportunity to prove the allegations in the Complaint is a procedural error tantamount to denial of due process.

Finally, petitioners declare that the RTC Olongapo further justified the dismissal of the Complaint on the ground that the Complaint interfered with the jurisdiction of the RTC Muntinlupa. They stress that the petition for issuance of writ of possession filed with the RTC Muntinlupa and the instant Complaint for damages are different actions and the reliefs sought for in them differ from the other.

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[9] *Rollo*, pp. 47-48.

Respondent's Arguments

For its part, Bankcom states that the RTC Olongapo properly dismissed the Complaint on the ground of lack of cause of action. It reiterates that Rosa was never privy to any contract between Bankcom and its mortgagors. It also avers that the Complaint is a collateral attack, on its title because if the value of the house is restituted to petitioners, such grant would diminish its title over the properties subject of the writs of possession issued by the RTC Muntinlupa.

At the same time, Bankcom alleges that the RTC Olongapo correctly dismissed the complaint on the ground of improper venue. It maintains that while the Complaint was denominated as one for damages and restitution of value of a house unlawfully taken, the action is, in fact, a real action because it is based on Rosa's claim of ownership over the house built on the subject lots.

Our Ruling

The Court grants the Petition.

Petitioners come directly before the Court, on pure questions of law, essentially raising the issue of whether the RTC Olongapo erred in dismissing the Complaint, without trial, and only upon motion to dismiss by way of affirmative defenses raised in Bankcom's Answer.

A cause of action is an act or omission by which a person violates the right of another. Its essential elements are: (1) plaintiff's right, which arises from or is created by whatever means, and is covered by whatever law; (2) defendant's obligation not to violate such right; and, (3) defendant's act or omission in violation of such right and for which plaintiff's may seek relief from defendant.[10]

When an action is filed, the defendant may, nevertheless, raise the issue of want of cause of action through a proper motion

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[10] *Soloil, Inc. v. Philippine Coconut Authority*, 642 Phil. 337, 344 (2010).

to dismiss. Thus, a distinction must be made between a motion to dismiss for failure to state a cause of action under Section 1(g)[11] of Rule 16, and the one under Rule 33[12] of the Rules of Court.[13]

In the first situation, the motion must be made before a responsive pleading is filed; and it can be resolved only on the basis of the allegations in the initiatory pleading. On the other hand, in the second instance, the motion to dismiss must be filed after the plaintiff rested his case; and it can be determined only on the basis of the evidence adduced by the plaintiff. In the first case, it is immaterial if the allegations in the complaint are true or false; however, in the second situation, the judge must determine the truth or falsity of the allegations based on the evidence presented.[14]

Stated differently, a motion to dismiss under Section 1(g) of Rule 16 is based on preliminary objections made before the trial while the motion to dismiss under Rule 33 is a demurrer to evidence on the ground of insufficiency of evidence, and is made only after the plaintiff rested his case.[15]

Here, Bankcom submitted its motion to dismiss by way of affirmative defenses. Clearly, there had been no presentation

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[11] RULES OF COURT, Rule 16, Section 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

xxx xxx xxx

(g) That the pleading asserting the claim states no cause of action.

[12] RULES OF COURT, Rule 33, Section 1. *Demurrer to Evidence*. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (1a, R35)

[13] *The Manila Banking Corporation v. University of Baguio, Inc*., 545 Phil. 268, 275 (2007).

[14] *Id.* at 275-276.

[15] *Id.* at 276.

of evidence made and Rosa had not yet rested her case. As Bankcom's motion was made before trial then, it falls within the first instance above-discussed.

Moreover, Bankcom's motion to dismiss must be resolved with reference to the allegations in the Complaint assuming them to be true. The RTC Olongapo does not need to inquire on the truthfulness of these allegations and declare them to be false. If it does, such court would be denying the plaintiff (Rosa) of her right to due process of law. In other words, in determining whether a complaint states or does not state a cause of action, the court must hypothetically admit the truth of the allegations and determine if it may grant the relief prayed for based on them. The court cannot consider external factors in determining the presence or the absence of a cause of action other than the allegations in the complaint.[16]

Here, the pertinent portions of the Complaint read:

3. The instant suit is a **personal action for the recovery of damages** by the plaintiff (*Rosa*) from the defendant (*Bankcom*) occasioned by defendant's reckless **violation of the constitutional right of the former not to be deprived of her property without due process of law**. The instant suit is authorized under Article 32 of the Civil Code x x x

xxx xxx xxx

6. The **plaintiff is the owner of a residential house** that she ha[d] constructed in 1987, which x x x has a current market value of at least Php3,000,000.00 constructed on 2 residential lots covered by TCT No. 213130 x x x in the name of Rhodora Pamaran, x x x and TCT No. 124149 x x x in the name of Spouses Rosemary P. Bernabe and Leonardo W. Bernabe x x x Both residential lots are located at Doña Rosario Bayview Subd., Sucat, Muntinlupa City. The plaintiff had the residential house constructed x x x with the express consent of the lot owners, Rhodora Pamaran and the spouses Rosemary and Leonardo Bernabe; who are her children. The residential house is currently declared for taxation purposes in the name of the plaintiff x x x

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[16] *China Road v. Court of Appeals*, 401 Phil. 590, 599-600 (2000).

7. Sometime in 1997 and 1998, x x x Southmarine International Ltd. Co. x x x obtained loans from defendant bank. [T]o secure the said loans, **Rhodora Pamaran and Spouses Rosemary and Leonardo Bernabe constituted real estate mortgages on the residential lots only.**

8. The defendant bank was aware of the existence of [plaintiff's] residential house x x x **[P]laintiff never executed a real estate mortgage over her residential house in favor of the defendant** x x x

9. [Later], t**he defendant bank foreclosed on the collateralized residential lots pursuant to the real estate mortgages** x x x [I]n 1999, the ownership of the residential lots was consolidated in favor of the defendants x x x

10. After more than 10 years from the foreclosure sale x x x, the defendant initiated ex-parte petitions for issuance of writs of possession over the 2 residential lots x x x [T]he RTC of Muntinlupa City x x x issued the writs of possession x x x without any notice to the plaintiff whose residential house would be necessarily affected.

11. **By virtue of the[se] writs x x x, the plaintiff x x x was unceremoniously dispossessed [of her house] by the defendant x x x without any due process of law** x x x

xxx xxx xxx

16. **The invasion or violation by the defendant of the constitutional right of the plaintiff should entitle the latter to damages** x x x

xxx xxx xxx

17. The **defendant cannot just divest the plaintiff of her residential lot without adequate compensation**. Thus, it is only just and right that the defendant, for divesting the plaintiff of the possession and enjoyment of her residential house, should compensate the plaintiff or restitute to her the fair market value of her residential house x x x[17] (Emphases supplied)

In fine, the allegations in the Complaint provide that: Rosa is the owner of a residential house built on the lots owned by her children; by reason of the foreclosure of these lots, Bankcom

[17] Records, pp. 3-5, 7.

acquired the lots and also appropriated Rosa's house; thus, Rosa seeks recovery of damages against Bankcom.

Hypothetically admitting these allegations to be true, Rosa's cause of action against Bankcom involves a) her right over her house; b) Bankcom's obligation to respect Rosa's right to enjoy her house; and c) Bankcom's violation of such right, which gave rise to this action for damages.

Notably, in granting Bankcom's motion to dismiss, the RTC Olongapo took into consideration the arguments set forth in the motion, and ignored the assertions in the Complaint, to wit:

> Bankcom acquired title and possession of tie subject properties by virtue of the real estate mortgages executed by Rhodora Pamaran and Spouses Leonardo and Rosemary P. Bernabe in favor of defendant (*Bankcom*). The mortgagors failed to settle their obligation; hence, defendant foreclosed the properties and was declared the highest bidder. The corresponding Certificates of Sale were issued in favor of defendant. Upon failure of the mortgagors to redeem their respective properties, Bankcom filed [p]etitions for issuance of writs of possession over the two parcels of land owned by the mortgagors, which were granted x x x and [c]orresponding titles were issued to Bankcom x x x . Likewise, the real estate mortgages clearly provide that the subject thereof includes not only the parcels of land, but likewise 'all the buildings and improvements now existing or may hereafter be erected or constructed thereon.' **It is therefore safe to conclude that when the mortgagors executed and signed the same, they were aware that the mortgage does not pertain to the land only but also to all the buildings and improvements that may be found therein; otherwise, they should have refused x x x the contracts**.[18] (Emphasis supplied)

Not only did the RTC Olongapo disregard the allegations in the Complaint, it also failed to consider that the Bankcom's arguments necessitate the examination of the evidence that can be done through a full-blown trial. The determination of whether Rosa has a right over the subject house and of whether Bankcom violated this right cannot be addressed in a mere motion to

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[18] *Id.* at 191.

dismiss. Such determination requires the contravention of the allegations in the Complaint and the full adjudication of the merits of the case based on all the evidence adduced by the parties.[19]

In addition, the RTC supported its dismissal of the Complaint on the ground that the Complaint interfered with the jurisdiction of the RTC Muntinlupa, which had previously issued writs of possession to Bankcom. The RTC Olongapo decreed that since Rosa sought damages corresponding to the value of her alleged house, she is, in effect, asking the invalidation of the writs of possession.

The position of the RTC Olongapo is unjustified.

In the Complaint, and in her Comment to Bankcom's Affirmative Defenses, the late Rosa made it clear that this is a personal action for damages arising from Bankcom's violation of her right to due process and equal protection; and her right to enjoy her house. She clarified that she does not question the writs issued by the RTC Muntinlupa, but she assails Bankcom's use thereof in depriving her of the right to enjoy said house. She also stressed that since this is a personal action, then it was properly filed in RTC Olongapo, as she is a resident of Olongapo.

Section 1, Rule 4 of the Rules of Court, in relation to Section 2 thereof, defines a real action as one "affecting title to or possession of real property or interest therein;" and, all other actions are personal actions. A real action must be filed in the proper court which has jurisdiction over the subject real property, while a personal action may be filed where the plaintiff or defendant resides, or if the defendant is a non-resident, where he may be found, at the election of the plaintiff. Personal actions include those filed for recovery of personal property, or for enforcement of contract or recovery of damages for its breach, or for the *recovery of damages for injury committed to a person or property*.[20]

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[19] See *Belle Corporation v. De Leon-Banks*, 695 Phil. 467, 478-480 (2012).

[20] *Bank of the Philippine Islands v. Hontanosas, Jr.*, G.R. No. 157163, June 25, 2014.

The Complaint (specifically allegations nos. 3 and 16 thereof) stated that this case is one for recovery off damages relating to the injury committed by Bankcom for violating Rosa's right to due process, and right to enjoy her house. Rosa repeatedly averred that she does not seek recovery of its possession or title. Her interest to the house is merely incidental to the primary purpose for which the action is filed, that is, her claim for damages.

Clearly, this action involves Rosa's interest in *the value* of the house but *only in so far as to determine her entitlement to damages*. She is not interested in the house itself. Indeed, the primary objective of the Complaint is to recover damages, and not to regain ownership or possession of the subject property.[21] Hence, this case is a personal action properly filed in the RTC Olongapo, where Rosa resided.

Finally, this action does not interfere with the jurisdiction of the RTC Muntinlupa. One, the nature of this action, which is for damages, is different from the petition before the RTC Muntinlupa, which is for issuance of writs of possession. Two, the laws relied upon in these actions vary; this damage suit is based on Rosa's reliance on her right emanating from Article 32[22] of the Civil Code; while Bankcom's Petition is pursuant to Act No. 3135,[23] as amended. Third, this case involves a claim arising from Bankcom's alleged violation of Rosa's right to due process, and to the enjoyment of her house. On the other hand, the one for issuance of writs of possession involves Bankcom's application

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[21] See *Saraza v. Francisco*, G.R. No. 198718, November 27, 2013, 711 SCRA 95, 107.

[22] Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

xxx xxx xxx

(6) The right against deprivation of property without due process of law[.]

[23] An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgage.

to be placed in possession of the subject properties. Last, as already discussed, the former is a personal action while the latter is a real action affecting title to and possession of a real property.

Given these, the RTC erred in dismissing the Complaint on the grounds of lack of cause of action, and of improper venue.

WHEREFORE, the Petition is **GRANTED**. The December 10, 2012 and February 4, 2013 Orders of the Regional Trial Court of Olongapo City, Branch 75 in Civil Case No. 29-0-2012 are **REVERSED** and **SET ASIDE**. Accordingly, the Complaint is **REINSTATED** and this case is **REMANDED** to the Regional Trial Court of Olongapo City, Branch 75, which is ordered to resolve the case with dispatch.

SO ORDERED.

Carpio Acting C.J.[*] (*Chairperson*), *Brion,* and *Leonen, JJ.,* concur.

Mendoza,[**] *J.,* on official leave.

SECOND DIVISION

[G.R. No. 205951. July 4, 2016]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **PHILIPPINE RABBIT BUS LINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; AVAILABLE AGAINST ONE WHO WITHHOLDS

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[*] Per Special Order No. 2357 dated June 28, 2016.

[**] On official leave.

POSSESSION AFTER THE EXPIRATION OR TERMINATION OF HIS RIGHT OF POSSESSION UNDER A CONTRACT TO SELL.— It must have escaped the attention of the MTCC, the RTC, and the CA that an ejectment case is not limited to lease agreements or deprivations of possession by force, intimidation, threat, strategy, or stealth. It is as well available against one who withholds possession after the expiration or termination of his right of possession under an express or implied contract, such as a contract to sell. Under Section 1, Rule 70 of the 1997 Rules, "a x x x vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs."

2. ID.; ID.; ID.; ID.; DEMAND TO PAY PRIOR TO THE FILING OF THE EJECTMENT CASE IS NOT REQUIRED WHEN THE ACTION WAS BASED ON A CONTRACT TO SELL; FAILURE TO PAY THE AMORTIZATIONS AS AGREED RENDERED THE CONTRACT TO SELL WITHOUT FORCE AND EFFECT AND THE BUYER LOST ITS RIGHT TO CONTINUE OCCUPYING THE PROPERTY AND SHOULD VACATE THE SAME.— It was plainly erroneous for the lower courts to require a demand to pay prior to filing of the ejectment case. This is not one of the requisites in an ejectment case based on petitioner's contract to sell with respondent. As correctly argued by petitioner, the full payment of the purchase price in a contract to sell is a positive suspensive condition whose non-fulfillment is not a breach of contract, but merely an event that prevents the seller from conveying title to the purchaser; in other words, the non-payment of the purchase price renders the contract to sell ineffective and without force and effect. Respondent's failure and refusal to pay the monthly amortizations as agreed rendered the contract to sell without force and effect; it therefore lost its right to continue occupying the subject property, and should vacate the same.

APPEARANCES OF COUNSEL

Oracion Barlis and Associates for petitioner.
Nisce and Associates Law for respondent.
Juan B. Valdez, co-counsel for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

An ejectment case is not limited to lease agreements or deprivations of possession by force, intimidation, threat, strategy, or stealth. It is as well an available remedy against one who withholds possession after the expiration or termination of his right of possession under an express or implied contract, such as a contract to sell.

This Petition for Review on *Certiorari*[1] assails the July 31, 2012 Decision[2] of the Court of Appeals (CA) dismissing the Petition for Review[3] in CA-G.R. SP No. 102065, and its January 25, 2013 Resolution[4] denying reconsideration of the assailed Decision.

Factual Antecedents

Petitioner Union Bank of the Philippines is the owner of two parcels of land totaling 1,181 square meters, with improvements (subject property), in Poblacion, Alaminos, Pangasinan, covered by Transfer Certificates of Title Nos. 21895 and 21896.[5] Respondent Philippine Rabbit Bus Lines, Inc. was the former

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[1] *Rollo,* pp. 9-35.

[2] *Id.* at 177-191; penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela.

[3] *Id.* at 150-175.

[4] *Id.* at 193-194.

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

owner of the lots but it lost the same by foreclosure to petitioner; nonetheless, respondent continued to occupy the same.

On November 8, 2001, petitioner and respondent executed a Contract to Sell[6] covering the subject property for ₱12,208,633.57, payable within seven years in quarterly installments (principal and interest) of ₱824,757.97, The contract to sell stipulated, among others, that "[a]ll payments required under this Contract to Sell shall be made by the [buyer] without need of notice, demand, or any other act or deed, at the principal office address of the [seller];"[7] and that should respondent fail to fully comply with the agreement or in case the contract is canceled or rescinded, all its installment payments "shall also be forfeited by way of penalty and liquidated damages"[8] and "applied as rentals for [its] use and possession of the property without need for any judicial action or notice to or demand upon the [buyer] and without prejudice to such other rights as may be available to and at the option of the [seller] such as, but not limited to bringing an action in court to enforce payment of the Purchase Price or the balance thereof and/or for damages, or for any causes of action allowed by law."[9]

Respondent failed to fully pay the stipulated price in the contract to sell. Petitioner thus sent a December 10, 2003 notarized demand letter entitled "Demand to Pay with Rescission of Three (3) Contracts to Sell dated November 8, 2001,"[10] which stated among others that —

> Our records show that you have failed to pay your past due quarterly installment payments for August 31, 2003 and November 30, 2003 as per attached Statement of Account as of December 16, 2003 in the total amount of PESOS: NINE MILLION NINE HUNDRED

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[6] *Id.* at 51-54.

[7] *Id.* at 51.

[8] *Id.* at 52.

[9] *Id.* at 51-52.

[10] *Id.* at 56.

FORTY THOUSAND ONE HUNDRED NINETY SEVEN & 36/100 (₱9,940,197.36) x x x:

xxx xxx xxx

Correspondingly, you are hereby given a period of thirty (30) days from receipt hereof within which to pay your aforesaid past due installment payments, otherwise, your three (3) Contracts to Sell with UNION BANK OF THE PHILIPPINES over the properties x x x are deemed automatically rescinded effective thirty (30) days from the expiration of the 30-day period to update your past due installment payments without further notice.[11]

Petitioner sent another letter-demand to vacate[12] dated May 24, 2004 to respondent, stating as follows:

We write in connection with your proposal to purchase back the properties that are the subject of the three (3) Contracts to Sell executed on November 8, 2003[13] and were rescinded effective February 28, 2004. x x x

As you are aware, we deferred the sending of the Demand to Vacate over the said properties because of the three (3) postdated checks (PDC's) with an aggregate amount of ₱1.5 Million which you have tendered to the bank, as well as your proposal to purchase again the said properties after the Rescission of the Contracts to Sell last February 28, 2004. Unfortunately, out of the three (3) PDC's submitted to the bank, only one (1) check had cleared amounting to ₱500,000.00 which shall be applied as rental payment as mentioned in our letter dated March 17, 2004.

Moreover, we wish to inform you that your proposal to purchase again the said properties as contained in your letter dated April 16, 2004 was never finalized nor presented for approval given that you failed to make good your promised payment of ₱1.5 Million. We have given you more than enough time but there is still no relief in sight.

For this reason, the bank has decided to exercise its right to take physical possession of the above-mentioned properties. As such, we

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[11] *Id.*

[12] *Id.* at 58.

[13] Should be "2001."

are giving you fifteen (15) days upon receipt of this letter within which to vacate the said properties and surrender possession of the premises to the bank, otherwise, we will be constrained to refer your account for proper legal action.[14]

Thus, it appears that after petitioner sent its December 10, 2003 letter-demand to pay the amount of ₱9,940,197.36, respondent was unable to pay and petitioner rescinded the contract to sell on February 28, 2004. Despite the fact that the contract to sell has been rescinded, respondent proposed to continue with the same and issued and tendered to the petitioner three postdated checks in the amount of ₱1.5 million as payment. However, only one check in the amount of ₱500,000.00 cleared. Petitioner thus sent another March 17, 2004 letter to respondent stating that the said ₱500,000.00 has been applied as rental payment; respondent replied in an April 16, 2004 letter proposing to proceed with the sale. Petitioner thereafter sent the above May 24, 2004 letter-demand to vacate, which respondent received on May 26, 2004.

Ruling of the Municipal Trial Court in Cities (MTCC)

On May 26, 2005, petitioner filed an ejectment case against respondent before the MTCC of Alaminos, Pangasinan, which was docketed as Civil Case No. 2171. The Complaint[15] for "Ejectment with Prayer for Fixation of Rentals" prayed that respondent be evicted from the subject property, and that it be ordered to pay petitioner rental in arrears in the amount of ₱1.5 million, ₱125,000.00 monthly rent from May 27, 2004 until respondent completely vacates the premises, attorney's fees, and costs.

In its Answer[16] and Supplemental Answer,[17] respondent prayed for dismissal, claiming that petitioner had no cause of action

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[14] *Rollo*, p. 58.

[15] *Id.* at 39-46.

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

[17] *Id.* at 64-66.

for ejectment and the MTCC had no jurisdiction over the case because it involved breach of contract and rescission of the contract to sell, which are cognizable by the Regional Trial Court (RTC); that since the case is one for rescission, there should be mutual restitution, but the amounts involved — payments, interests and penalties — should be properly computed; that the demand to vacate was not unequivocal and was improperly served; and that the verification and certification on non-forum shopping in the Complaint were defective for lack of proper authority.

After proceedings in due course, the MTCC issued on October 25, 2006 a Decision[18] dismissing Civil Case No. 2171 for lack of jurisdiction. It held that petitioner's case is one for rescission and enforcement of the stipulations in the contract to sell; that the demand to vacate and fixing of rentals prayed for are consequences of petitioner's unilateral cancellation of the contract and are thus inextricably connected with rescission; and that there is "no definite expiration or termination of the [respondent's] right to possess"[19] the subject property, and such right depended "upon its fulfillment of the stipulations in the contract."[20]

Ruling of the Regional Trial Court

Petitioner appealed before the RTC,[21] which rendered a Decision[22] on August 6, 2007, stating as follows:

> The demand required and contemplated in Sec. 2 of Rule 70 of the Revised Rules of Court is a demand for the defendant to pay the rentals due or to comply with the conditions of the lease and not

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[18] *Id.* at 100-110; penned by Judge Borromeo R. Bustamante.

[19] *Id.* at 109.

[20] *Id.*

[21] Branch 55.

[22] *Rollo*, pp. 111-115; Decision in Civil Case No. A-3115 penned by Judge Elpidio N. Abella.

only a demand to vacate the premises; and where the defendant does not comply with the said demand within the period provided by Sec. 2 then his possession becomes unlawful. Consequently, both demands to pay and to vacate are necessary to make the defendant a deforciant in order that Ejectment suit may be filed and the fact of such demands must be alleged in the complaint, otherwise the Inferior Court cannot acquire jurisdiction over the case.

Analyzing the above letter of demand sent by the plaintiff-appellant to the defendant-appellee, the same did not demand for the payment of the defendant-appellee's obligation. It was merely a demand to vacate without the demand to pay.

Hence, the Court is of the considered opinion that such demand is not sufficient compliance with Sec. 2 of Rule 70 of the Rules of Court. Furthermore, a Notice of Demand giving the lessee the alternative whether to pay the rental or vacate the premises does not comply with the above rule (Vda. de Murga vs. Chan, L-24-680, October 7, 1968). In the said letter of demand itself, it says: "As such, we are giving you fifteen (15) days upon receipt of this letter within which to vacate the said properties and surrender possession of the premises to the bank, otherwise we will be constrained to refer your account for proper legal action." To the mind of the Court, this is not the final demand contemplated under the same rule, because should the defendant fail to vacate, the plaintiff-appellant will still refer defendant-appellee's account for proper legal action which does not comply with the requirements of said Sec. 2 of Rule 70 of the Rules of Court.

Moreover, it was ruled in the case of Penas Jr. vs. Court of Appeals, G.R. 12734, July 7, 1994, that an alternative demand on either to renew the expired lease contract or vacate is not a definite demand to vacate and would be insufficient basis for the filing of an action for unlawful detainer. Hence, the Court rules that the demand letter x x x is not a definite demand to vacate because if it fails to vacate, the defendant-appellee's account would still be referred for proper legal action hence, insufficient basis for filing an action for unlawful detainer.

In such case, the jurisdictional requisite of demand to pay and to vacate was not complied with and the lower court did not acquire jurisdiction over the unlawful detainer case, hence, it was properly dismissed.

There is no more need to discuss the other issues raised as they are now moot and academic.

WHEREFORE, foregoing premises considered, the instant appeal is dismissed. Without cost.

SO ORDERED.[23]

Petitioner filed a Motion for Reconsideration,[24] claiming that there was a previous demand to pay, that is, its December 10, 2003 letter entitled "Demand to Pay with Rescission of Three (3) Contract to Sell dated November 8, 2001;" that even then, demand to pay was not necessary because its cause of action for ejectment was not based on non-payment of rent, but rescission of the contract to sell for violation of its terms; and that the final and executory ruling in CA-G.R. SP No. 115438 — which involved the same parties but a different contract to sell over different properties, and where it was held that the inferior court has jurisdiction over the ejectment case notwithstanding respondent's claim that the case is one for rescission — should guide the trial court in resolving the case. However, the RTC denied the motion in a November 29, 2007 Order.[25]

Ruling of the Court of Appeals

Petitioner filed before the CA a Petition for Review,[26] docketed as CA-G.R. SP No. 102065, advancing the same arguments in its Motion for Reconsideration of the RTC Decision, adding that its demand to vacate was unequivocal as it contained a threat that if respondent does not heed the demand, appropriate legal action will be taken; and that all the requisite allegations in a complaint for ejectment were complied with. It prayed that the RTC's August 6, 2007 Decision be set aside, and that a new one be issued granting the reliefs prayed for in its Complaint.

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[23] *Id.* at 114-115.

[24] *Id.* at 116-124.

[25] *Id.* at 147-149.

[26] *Id.* at 150-175.

On July 31, 2012, the CA rendered a Decision denying the Petition. It held that petitioner had a cause of action for ejectment based on non-payment of rentals and refusal to vacate since respondent's right to occupy the subject property terminated when it failed to honor the contract to sell by not paying the agreed amortizations, and thereafter their agreement was converted into a lease, but respondent failed to pay rent and did not vacate the premises; however, it failed to comply with the jurisdictional requirement of demand to pay *and* vacate under Section 2, Rule 70 of the 1997 Rules of Civil Procedure[27] (1997 Rules). It found, as the RTC did, that while there was a demand to vacate upon respondent, there was no prior demand to pay made on the latter; that since both requisites — demand to pay and vacate — must concur, the absence of one strips the lower court of jurisdiction over petitioner's Complaint for ejectment.

Petitioner moved to reconsider, but in its January 25, 2013 Resolution, the CA held its ground. Hence, the present Petition.

Issues

Petitioner submits that —

SINCE THE CONTRACT TO SELL BETWEEN PETITIONER UBP AND RESPONDENT PRBL WAS ALREADY CANCELED DUE TO PRBL'S FAILURE TO PAY THE PURCHASE PRICE, IS IT STILL REQUIRED FOR THE PETITIONER UBP TO ISSUE A DEMAND TO PAY PRIOR TO THE FILING OF THE EJECTMENT CASE?

IF SUCH DEMAND TO PAY IS REQUIRED, WAS THE PETITIONER UBP ABLE TO COMPLY WITH THE SAME WHEN IT PREVIOUSLY MADE A DEMAND FOR THE RESPONDENT

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[27] Rule 70, Forcible Entry and Unlawful Detainer.

Sec. 2. Lessor to proceed against lessee only after demand. — Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.

TO PAY THE AMOUNT DUE (EXHIBIT "B") BEFORE ISSUING THE DEMAND TO VACATE (EXHIBIT "C")?

ASSUMING EX-GRATIA ARGUMENTI THAT NO DEMAND TO PAY WAS ISSUED BY THE PETITIONER PRIOR TO THE FILING OF THIS CASE, WAS IT CORRECT FOR THE HONORABLE COURT TO HAVE CONSIDERED SUCH ISSUE EVEN IF THE SAME WAS NOT RAISED BY THE PARTIES DURING THE PRE-TRIAL CONFERENCE AND WAS NEVER TOUCHED BY THE PARTIES IN THEIR PLEADINGS?

SINCE THE ISSUE REGARDING UBP'S RIGHT TO EJECT PRBL FROM THE PREMISES HAD BEEN SETTLED WITH FINALITY IN ANOTHER CASE DECIDED BY THE HONORABLE COURT OF APPEALS, CAN THE SAID COURT IGNORE THE FINAL DECISION AND THEN RULE IN A CONTRARY MANNER?[28]

Petitioner's Arguments

Petitioner essentially argues in its Petition and Reply[29] that since the contract to sell was already rescinded, it was no longer required to make a demand for payment prior to filing an ejectment suit; that in *Union Bank of the Philippines v. Maunlad Homes, Inc.*,[30] which involved a similar Contract to Sell executed by it, this Court declared that in a contract to sell, the non-payment of the purchase price renders the agreement without force and effect, and the buyer's act of withholding installment payments deprived it of the right to continue possessing the property subject matter of the agreement; that since its ejectment case is anchored not on failure to pay rent, but on violation of the contract to sell, no demand for payment was required; and that, just the same, a demand to pay was made on December 10, 2003. Petitioner thus prays for reversal of the assailed dispositions and the granting of the reliefs prayed for in its Complaint.

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[28] *Rollo*, pp. 21-22.

[29] *Id.* at 256-261.

[30] 692 Phil. 667 (2012).

[31] *Rollo*, pp. 242-245.

Respondent's Arguments

In its Comment,[31] respondent finds no cogent or compelling reason to reverse the CA Decision, arguing that since there was no demand to pay, the MTCC did not acquire jurisdiction over the petitioner's ejectment case.

Our Ruling

The Petition must be granted.

It must have escaped the attention of the MTCC, the RTC, and the CA that an ejectment case is not limited to lease agreements or deprivations of possession by force, intimidation, threat, strategy, or stealth. It is as well available against one who withholds possession after the expiration or termination of his right of possession under an express or implied contract, such as a contract to sell. Under Section 1, Rule 70 of the 1997 Rules, "a x x x vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs." In such cases, it is sufficient to allege in the plaintiff's complaint that—

1. The defendant originally had lawful possession of the property, either by virtue of a contract or by tolerance of the plaintiff;

2. Eventually, the defendant's possession of the property became illegal or unlawful upon notice by the plaintiff to defendant of the expiration or the termination of the defendant's right of possession;

3. Thereafter, the defendant remained in possession of the property and deprived the plaintiff the enjoyment thereof; and

4. Within one year from the unlawful deprivation or withholding of possession, the plaintiff instituted the complaint for ejectment.[32]

Upon an examination of the Complaint and evidence in Civil Case No. 2171, it appears that petitioner complied with the above requirements. It alleged that respondent acquired the right to occupy the subject property by virtue of the November 8, 2001 Contract to Sell; that respondent failed to pay the required amortizations and thus was in violation of the stipulations of the agreement; that petitioner made a written "Demand to Pay with Rescission of Three (3) Contracts to Sell dated November 8, 2001," but respondent was unable to heed the demand; that respondent lost its right to retain possession of the subject property, and it was illegally occupying the premises; that petitioner made another demand, this time a written demand to vacate on May 24, 2004, which respondent received on May 26, 2004; that respondent refused to vacate the premises; that on May 26, 2005, or within the one-year period required by the Rules, the ejectment case was filed; and that there is a need to determine the rents and damages owing to petitioner.

It was plainly erroneous for the lower courts to require a demand to pay prior to filing of the ejectment case. This is not one of the requisites in an ejectment case based on petitioner's contract to sell with respondent. As correctly argued by petitioner, the full payment of the purchase price in a contract to sell is a positive suspensive condition whose non-fulfillment is not a breach of contract, but merely an event that prevents the seller from conveying title to the purchaser; in other words, the non-payment of the purchase price renders the contract to sell ineffective and without force and effect.[33] Respondent's failure

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[32] *Piedad v. Gurieza*, G.R. No. 207525, June 18, 2014, 727 SCRA 71, 77; *Union Bank of the Philippines v. Maunlad Homes, Inc.*, *supra* note 23 at 676.

[33] *Union Bank of the Philippines v. Maunlad Homes, Inc. supra* note 23; *Nabus v. Spouses Pacson*, 620 Phil. 344 (2009); *Almocera v. Ong*, 569 Phil. 497 (2008); *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, 515 Phil. 431 (2006).

and refusal to pay the monthly amortizations as agreed rendered the contract to sell without force and effect; it therefore lost its right to continue occupying the subject property, and should vacate the same.

Having arrived at the foregoing conclusions, the Court finds no need to discuss the other points raised in the Petition.

WHEREFORE, the Petition is **GRANTED**. The assailed July 31, 2012 Decision and January 25, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 102065 are **REVERSED** and **SET ASIDE**.

Respondent Philippine Rabbit Bus Lines, Inc. is **ORDERED TO**: 1) **IMMEDIATELY VACATE** the subject property upon the finality of this Decision, and 2) **PAY** petitioner Union Bank of the Philippines all rentals-in-arrears and accruing rentals until it vacates the property.

The case is **REMANDED** to the Municipal Trial Court in Cities of Alaminos, Pangasinan, or to any branch thereof or court handling Civil Case No. 2171, for the determination of the amount of rentals; attorney's fees and costs, if any; and interest, which are all due to petitioner.

SO ORDERED.

Carpio[*] (*Chairperson*), *Brion*, and *Leonen, JJ.*, concur.

Mendoza,[**] *J.* on official leave.

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[*] Per Special Order No. 2357 dated June 28, 2016.

[**] On official leave.

SECOND DIVISION

[G.R. No. 206888. July 4, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARITESS CAYAS Y CALITIS @ "TETET",** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; STRICT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 IS REQUIRED; EXCEPTION, WHEN APPLICABLE.— As a rule, strict compliance with the prescribed procedure is required because of 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. The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the proscribed procedures is not observed. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — **with moral certainty** — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest. Not to be forgotten in considering the exception is the legal reality that the required *corpus delicti* heavily relies on whether the identity and evidentiary value of the confiscated drug itself were shown to have been preserved.

2. ID.; ID.; ID.; FAILURE TO STRICTLY COMPLY WITH THE REQUIREMENTS OF SECTION 21 AND FAILURE TO PROVE THE CRUCIAL LINKS IN THE CHAIN OF CUSTODY RULE ARE FATAL TO THE PROSECUTION'S CASE.— In the present case, the arresting officers failed to mark the plastic sachets confiscated from Cayas immediately after she was arrested. Worse, *the prosecution did not bother to offer any explanation for why the marking of the seized*

items was not made at the place of seizure. Although the physical inventory and photograph may be conducted at the nearest police station or office of the apprehending team in case of warrantless seizures, nothing prevents the apprehending team from immediately conducting the phy*sic*al inventory and photograph of the items at the place where they were seized. Consistency with the chain of custody rule requires that the marking of the seized items — to truly ensure that the same items that enter the chain are eventually the same ones offered in evidence — should be done in the presence of the apprehended violator *immediately upon confiscation.* This step is crucial in the chain of custody rule as it ensures that — even if the seized drugs are transferred from one person to another in the hands of the police — the items confiscated at the place of arrest can easily be identified in court. x x x To our mind, the procedural lapses in the handling and identification of the seized drugs, as well as the unexplained discrepancy in the marking, collectively raise doubts on whether the items presented in court were the exact same items that were taken from Cayas when she was arrested. These constitute major lapses that, standing unexplained, are fatal to the prosecution's case. The conditions set by Section 21 (a), Article II of the IRR of R.A. No. 9165 were not met in the present case as the prosecution, in the first place, did not even recognize the procedural lapses the police committed in handling the confiscated items. Had the prosecution done so, it would not have glossed over the deficiencies and would have, at the very least, submitted an explanation and proof showing that the integrity and evidentiary value of the seized items had been preserved. All told, the identity and the evidentiary value of the three (3) plastic sachets containing *shabu* confiscated from Cayas were not substantially proven because her arresting officers failed to strictly comply with the procedure laid down in Section 21 of R.A. No. 9165, and the prosecution failed to prove the crucial links in the chain of custody rule.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY CANNOT PREVAIL OVER THE PRESUMPTION OF INNOCENCE.— [T]he prosecution and the lower courts cannot simply rely on the presumption that the arresting officers were in the regular performance of their duties in the light of Cayas' right to be presumed innocent. The presumption of

regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. It must be remembered that the presumption of regularity is a mere statutory and rebuttable presumption created under Rule 131, Section 3 (m) of the Rules of Court; to recognize it as sufficient to overturn the constitutional presumption of innocence would be an unconstitutional act. Without the presumption of regularity, testimonies of the arresting officers must stand on their own merits and must sufficiently establish proof beyond reasonable doubt that the *corpus delicti* of the offenses of illegal sale and illegal possession of dangerous drugs exists.

4. ID.; ID.; IF THE PROSECUTION CANNOT ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT, THE NEED FOR HER TO ADDUCE EVIDENCE ON HER BEHALF NEVER ARISES.— The defense evidence must likewise be so regarded without being hobbled by the presumption of regularity. From the perspective of the defense, we cannot but note that the evidence for the defense is not strong as Cayas merely claimed that she was framed, and implied that the plastic sachets confiscated from her were planted. In this jurisdiction, the defense of denial and frame-up, like alibi, has been viewed with disfavor for it can be easily concocted and is a common defense ploy in drug cases. These weaknesses, however, do not add any strength nor can they help the prosecution's case because the evidence for the prosecution must stand or fall on its own weight. In the first place, if the prosecution cannot establish Cayas' guilt beyond reasonable doubt, the need for her to adduce evidence on her behalf, in fact, never arises. Thus, we go back to the conclusion that Cayas should be acquitted for failure of the prosecution to prove her guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We resolve the appeal of accused-appellant Maritess Cayas y Calitis @ "Tetet" (*Cayas*) assailing the July 16, 2012 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 04295. The CA affirmed the July 9, 2009 decision[2] of the Regional Trial Court (RTC), Branch 16, Cavite City, finding Cayas guilty beyond reasonable doubt of violating Sections 5 & 11 of Republic Act (*R.A.*) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Cayas was formally charged with illegal sale and possession of dangerous drugs in two (2) separate informations. She pleaded not guilty to both charges.

The evidence for the prosecution consists of the testimonies of the arresting police officers; object evidence, *i.e.*, the buy-bust money and the confiscated drugs; and documentary evidence on the prior surveillance of Cayas and the chain of custody of the illegal drugs.

On October 8, 2003, pursuant to the order of their officer in charge, PO2 Dominador Ronquillo (*PO2 Ronquillo*), PO1 Allen Padilla (*PO1 Padilla*), PO1 Alexander Sernat (*PO1 Sernat*), and a confidential asset were at Barangay San Rafael IV, Noveleta, Cavite, to conduct a buy-bust operation on Cayas. Prior to the operation, the team conducted surveillance on her residence because Cayas, her husband, and her mother-in-law were named in a validated drug watchlist.[3]

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[1] *Rollo*, pp. 2-21; CA *rollo*, pp. 102-121; penned by Associate Justice Rodil V. Zalameda, and concurred in by Associate Justice Andres B. Reyes, Jr. and Associate Justice Ramon M. Bato, Jr.

[2] CA *rollo*, pp. 13-23; RTC records, pp. 166-176; penned by Judge Manuel A. Mayo.

[3] Exhibit "A", records, Vol. I, p. 149.

Acting as the poseur-buyer, PO2 Ronquillo proceeded to the house where Cayas was staying accompanied by the confidential asset. PO1 Padilla and PO1 Sernat positioned themselves a few meters away from the house where they could still observe what was going on.

When Cayas saw PO2 Ronquillo and the confidential asset outside the door of her house, she approached them and asked how much *shabu* they wanted to buy. The confidential asset told Cayas that they were going to buy ₱100.00 worth of *shabu*. PO2 Ronquillo then handed Cayas the pre-marked ₱100.00 bill.[4] Cayas, in turn, took out a plastic sachet containing a white crystalline substance from her pocket and handed it to PO2 Ronquillo. After putting the plastic sachet inside his pocket, PO2 Ronquillo introduced himself as a police officer and accosted Cayas.

When they saw PO2 Ronquillo holding onto Cayas, PO1 Padilla and PO1 Sernat came in and arrested her. Before PO1 Padilla placed handcuffs on Cayas, he frisked her and found in her possession two (2) other plastic sachets containing *shabu*.[5]

Cayas was brought to the Noveleta Municipal Police Station where the plastic sachets were handed to PO3 Genuino. In the presence of Cayas and her arresting officers, PO3 Genuino marked the plastic sachets. The request for laboratory examination was prepared and was forwarded to the Provincial PNP Crime Laboratory in Imus, Cavite, along with the seized drugs.[6] After a quantitative and qualitative examination, Police Inspector Maridel Cuadra Rodis (*PI Rodis*) issued Chemistry Report No. D-504-03 finding that the contents of the plastic sachets tested positive for *methamphetamine hydrochloride*.[7]

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[4] Exhibit "B", records, Vol. II, p. 8.

[5] PO1 Padilla also retrieved the buy-bust money from Cayas.

[6] Exhibit "D", records, Vol. I, p. 151.

[7] Exhibit "E", records, Vol. I, p. 152.

In her testimony, Cayas narrated a different version of the events. She said that in the evening of October 8, 2003, Cayas was inside her residence at Pulo 1, Dalahican, Cavite City, looking after her children while watching television. She denied that she was inside a house located at Barangay San Rafael IV, Noveleta, Cavite.

Because her youngest child started crying, Cayas decided to leave the house to buy her daughter biscuits. When she was about to step out with her two-year-old daughter, PO1 Padilla stopped her and grabbed her hand. PO2 Ronquillo then asked Cayas the whereabouts of her husband. Cayas replied that her husband was out at sea. The police officers then showed her two (2) plastic sachets, told her that they contained *shabu*, and asked for ₱200.00. Cayas replied that she did not know what they were talking about but pulled out ₱2.00 from her pocket. PO1 Padilla then told PO2 Ronquillo that there was no marked money in Cayas' pocket but they had enough evidence.

Thereafter, Cayas and her two (2) year old daughter were brought to the police station in Noveleta, Cavite. Before she was placed inside a detention cell, Cayas was frisked for drugs but none was found on her.

The Ruling of the RTC

In its July 9, 2009 decision, the RTC found Cayas guilty beyond reasonable doubt of illegal sale and possession of *shabu*, and sentenced her to suffer the penalty of life imprisonment for illegal sale, and imprisonment for twelve (12) years and one (1) day to fourteen (14) years for illegal possession.

The RTC held, among others, that Cayas was legally arrested because PO2 Ronquillo went through the motions of buying *shabu* from her. It gave more weight and credence to the testimonies of her arresting officers because Cayas' defense of denial and frame-up were self-serving. It added that *police officers are presumed to have regularly performed their official duty in the absence of evidence to the contrary.*

The Case before the CA

In the assailed decision, the CA found no reason to disturb the findings of fact of the trial court because Cayas failed to show any glaring error, misapprehension of facts, and speculative, arbitrary, and unsupported conclusions. It ruled that the prosecution successfully proved all the elements of both illegal sale and illegal possession of dangerous drugs. In addition, the existence of the *corpus delicti* was duly proven because the integrity and evidentiary value of the illegal drugs were preserved.

The CA, however, modified the penalty imposed by the RTC and ordered Cayas to pay a fine of ₱500,000.00 for illegal sale and ₱300,000.00 for illegal possession, in addition to her prison sentence.

The Court's Ruling

After carefully examining the records of this case, we resolve to **ACQUIT** Cayas because the prosecution failed to prove her guilt beyond reasonable doubt.

At the onset of any criminal proceeding, a constitutional presumption exists for the accused arising from the fact that he is charged with the commission of a crime, *i.e., the accused is* ***presumed innocent*** *unless his guilt is proven beyond reasonable doubt.* This presumption exists without requiring the accused to do anything to trigger it other than be the subject of a criminal charge.

From the evidence on record, we note existing gaps in the prosecution's evidence that opens the room for doubt on whether there indeed had been a buy-bust operation where Cayas was caught red-handed selling prohibited drugs. In other words, we do not believe and so hold that the prosecution has not proven that a crime has been committed through proof beyond reasonable doubt — that the plastic sachets that were *admitted into evidence during the trial were in fact the same items seized from Cayas when she was arrested.*

To warrant a conviction for illegal sale or illegal possession of dangerous drugs, proof beyond reasonable doubt must be

adduced in establishing the *corpus delicti* — the body of the crime whose core is the confiscated illicit drug.[8] In meeting this quantum of proof, Section 21 of R.A. No. 9165 ensures that doubts concerning the identity of the drug are removed.

Section 21 of R.A. No. 9165 provides the procedure to be followed by the arresting officers for the seizure and custody of the illegal drugs, to *wit*:

> The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
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> xxx xxx xxx

The above provision is implemented by Section 21 (a), Article II, of the Implementing Rules and Regulations of R.A. No. 9165 which reads:

> xxx xxx xxx
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search

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[8] *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 248.

warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

xxx xxx xxx

The records utterly fail to show that the police officers who arrested Cayas complied with these proceedings despite their mandatory nature. Here, the apprehending officers failed to conduct a physical inventory and photograph of the confiscated item. All they did was to turn over the three (3) plastic sachets containing *shabu* to PO3 Genuino, who was not even part of the buy-bust team, at the police station. This procedural lapse is plainly evident from the testimony of PO2 Ronquillo:

Q: Now, what happened to the first sachet that Maritess Cayas gave to you?

A: I put it in my pocket, ma'am.

Q: What about these two sachets which were later found from the possession of accused Marites[s] Cayas? Who had custody of them?

A: It was in the custody of PO1 Allen Padilla together with the marked money.

Q: What happened next after she was handcuffed and two more sachets were recovered from her?

A: We proceeded to the police station together with the suspect Maritess Cayas.

Q: And at the police station, what happened?

A: We turned over all the evidence that we confiscated from Maritess Cayas to PO3 Genuino, ma'am.

Q: And what did PO3 Genuino do with the plastic sachets you gave him?

A: He put marking on the plastic sachets with MCC.

Q: What about the two sachets turned over by PO1 Padilla? What did PO3 Genuino do with these sachets, if you know?

A: He also put markings on the two plastic sachets, ma'am.

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Q: By the way, who were present when these markings were made by PO3 Genuino?

A: PO3 Genuino, PO1 Sernat, PO1 Padilla and myself.

Q: What about Maritess Cayas? Where was she at that time?

A: Together with Maritess Cayas, ma'am.[9]

Thus, other than the markings made by PO3 Genuino, no physical inventory was ever made, and no photograph of the seized items were taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking being done in the presence of Cayas, no mention whatsoever was made that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.

While recent jurisprudence has subscribed to the *provision* in the Implementing Rules and Regulations of (*IRR*) R.A. 9165 providing that non-compliance with the prescribed procedure is not fatal to the prosecution's case, we find it proper to define and set the parameters on when strict compliance can be excused.

As a rule, strict compliance with the prescribed procedure is required because of 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.[10]

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[9] TSN, May 27, 2004, pp. 26-30.

[10] *People v. Sabdula*, G.R. No. 184758, April 21, 2014, 722 SCRA 90, 98.

The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the proscribed procedures is not observed. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — **with moral certainty** — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.

Not to be forgotten in considering the exception is the legal reality that the required *corpus delicti* heavily relies on whether the identity and evidentiary value of the confiscated drug itself were shown to have been preserved.

In *Malillin v. People*, we explained the importance of the chain of custody of the confiscated drugs, as follows:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In

other words, the exhibits level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.[11]

In *People v. Kamad*, we recognized the following links that must be established to ensure the preservation of the identity and evidentiary value of the confiscated drug should there be no strict compliance with the procedure provided in Section 21, Article II of R.A. 9165: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[12]

In the present case, the arresting officers failed to mark the plastic sachets confiscated from Cayas immediately after she was arrested. Worse, *the prosecution did not bother to offer any explanation for why the marking of the seized items was not made at the place of seizure*.

Although the physical inventory and photograph may be conducted at the nearest police station or office of the apprehending team in case of warrantless seizures, nothing prevents the apprehending team from immediately conducting the phys*ic*al inventory and photograph of the items at the place where they were seized.[13] Consistency with the chain of custody rule requires that the marking of the seized items — to truly ensure that the same items that enter the chain are eventually the same ones offered in evidence — should be done in the presence

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[11] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[12] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

[13] *People v. Beran*, G.R. No. 203028, January 15, 2014, 714 SCRA 165, 198, citing *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 198.

of the apprehended violator *immediately upon confiscation*.[14] This step is crucial in the chain of custody rule as it ensures that — even if the seized drugs are transferred from one person to another in the hands of the police — the items confiscated at the place of arrest can easily be identified in court.

We note, on the matter of identifying the seized items, that the lower courts overlooked the glaring inconsistency between the testimonies of the arresting officers *vis-à-vis* the entries in the Request for Laboratory Examination and Chemistry Report No. D-504-03. In their testimonies, PO2 Ronquillo and PO1 Padilla said that they remember PO3 Genuino placing the markings "MC" and "MC-P" on the plastic sachet that was subject of the sale and those found on the person of Cayas, respectively. They stated that:

Pros. Rojo: Showing to you Mister Witness, this small plastic sachet with white crystalline substance inside marked as Exhibit "F-8." Do you recognize this plastic sachet, Mr. Witness?

PO2 Ronquillo: Yes, ma'am.

Q: What is this, Mr. Witness?

A: That was what I [was] able to purchase [from] Maritess Cayas.

Q: How do you know this is the same plastic sachet?

A: It has a marking of "MC" stands for Maritess Cayas which the police investigator put the markings.

Q: [Were] you present when the markings [were] made?

A: Yes, ma'am.

Q: I am showing to you two (2) more plastic sachet[s] previously marked Exhibit "F-4" and "F-5." Do you recognize this plastic sachet containing white crystalline substance inside?

A: Yes, ma'am.

Q: What are these plastic sachets?

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[14] *Id.*

A: These were the two (2) plastic sachet[s] that I saw PO1 Padilla confiscate from the pocket of Marites[s] Cayas.

Q: [. . .] How do you know these are the same plastic sachet[s]?

A: There are markings "MC."[15]

xxx xxx xxx

Pros. Rojo: Mr. Witness, you said that after you handcuffed the suspect, you were able to recover marked money from her and two more plastic sachets containing *shabu*, what happened to these plastic sachets?

PO1 Padilla: After we placed the markings by our police investigator, **we** *brought the plastic sachets to the crime laboratory for examination*, ma'am.

Q: Who placed that markings on these plastic sachets?

A: It was PO3 Genuino, ma'am.

Q: Do you know the markings which was placed by PO3 Genuino?

A: Yes, ma'am.

Q: Were you present when PO3 Genuino place[d] the markings?

A: Yes, ma'am.

xxx xxx xxx

Q: What were the markings placed on these two plastic sachets which you recovered from the subject?

A: As I can recall, ma'am, MCC-P.

Q: I am showing you these two plastic sachets previously marked as Exhibit F-4 and F-5, with submarkings, do you recognize these plastic sachets?

A: Yes, ma'am.

Q: And what are those plastic sachets?

A: These were the plastic sachets I was able to recover from the possession of Maritess Cayas, ma'am.

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[15] TSN, September 9, 2004, pp. 6-8.

Q: How do you know that those are the plastic sachets you recovered?

A: Because I saw the police investigator place them with markings, ma'am.[16]

On the other hand, the Request for Laboratory Examination[17] and Chemistry Report No. D-504-03[18] show that the plastic sachet PO2 Ronquillo bought from Cayas had the markings "MC-BB 08 Oct 2003," and the plastic sachets PO1 Padilla found in her pocket have the markings "MC-P-1" and "MC-P2."

In addition, PO1 Padilla testified that he and his team brought the confiscated items to the crime laboratory. The Request for Laboratory Examination, however, shows that the items were delivered by PO1 Goquila.[19]

The testimonies of the arresting officers are the only testimonial evidence on record relating to the handling and marking of the seized items since the testimony of the forensic chemist has been dispensed with by agreement between the parties. Unfortunately, PO3 Genuino was also not presented as a witness and the arresting officers were not asked to explain the discrepancies in the markings.

To our mind, the procedural lapses in the handling and identification of the seized drugs, as well as the unexplained discrepancy in the marking, collectively raise doubts on whether the items presented in court were the exact same items that were taken from Cayas when she was arrested. These constitute major lapses that, standing unexplained, are fatal to the prosecution's case.[20]

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[16] TSN, May 22, 2008, pp. 16-18.

[17] *Supra* note 6.

[18] *Supra* note 7.

[19] Exhibit "D-2", records, Vol. I, p. 151.

[20] See *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 272-273.

The conditions set by Section 21 (a), Article II of the IRR of R.A. No. 9165 were not met in the present case as the prosecution, in the first place, did not even recognize the procedural lapses the police committed in handling the confiscated items. Had the prosecution done so, it would not have glossed over the deficiencies and would have, at the very least, submitted an explanation and proof showing that the integrity and evidentiary value of the seized items had been preserved.[21]

All told, the identity and the evidentiary value of the three (3) plastic sachets containing *shabu* confiscated from Cayas were not substantially proven because her arresting officers failed to strictly comply with the procedure laid down in Section 21 of R.A. No. 9165, and the prosecution failed to prove the crucial links in the chain of custody rule.

Moreover, the prosecution and the lower courts cannot simply rely on the presumption that the arresting officers were in the regular performance of their duties in the light of Cayas' right to be presumed innocent.[22] The presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.[23] It must be remembered that the presumption of regularity is a mere statutory and rebuttable presumption created under Rule 131, Section 3 (m) of the Rules of Court; to recognize it as sufficient to overturn the constitutional presumption of innocence would be an unconstitutional act.

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[21] *Id.*

[22] See *People v. Santos*, G.R. No. 175593, October 17, 2007, 536 SCRA 489, 503, citing *People v. Ambrosio*, G.R. No. 135378, April 14, 2004, 427 SCRA 312, 318.

[23] *Malillin v. People*, *supra* note 11, at 623. See also *People v. Cañete*, G.R. No. 138400, July 11, 2002, 384 SCRA 411, 424; *People v. Ruiz*, G.R. Nos. 135679 & 137375, 367 SCRA 37; *People v. Tan*, G.R. No. 133001, December 14, 2000, 348 SCRA 116; *People v. Dano*, G.R. No. 117690, September 1, 2000, 339 SCRA 515.

Without the presumption of regularity, testimonies of the arresting officers must stand on their own merits and must sufficiently establish proof beyond reasonable doubt that the *corpus delicti* of the offenses of illegal sale and illegal possession of dangerous drugs exists.[24]

The defense evidence must likewise be so regarded without being hobbled by the presumption of regularity. From the perspective of the defense, we cannot but note that the evidence for the defense is not strong as Cayas merely claimed that she was framed, and implied that the plastic sachets confiscated from her were planted. In this jurisdiction, the defense of denial and frame-up, like alibi, has been viewed with disfavor for it can be easily concocted and is a common defense ploy in drug cases.[25] These weaknesses, however, do not add any strength nor can they help the prosecution's case because the evidence for the prosecution must stand or fall on its own weight. In the first place, if the prosecution cannot establish Cayas' guilt beyond reasonable doubt, the need for her to adduce evidence on her behalf, in fact, never arises. Thus, we go back to the conclusion that Cayas should be acquitted for failure of the prosecution to prove her guilt beyond reasonable doubt.

WHEREFORE, in the light of all these premises, we **REVERSE** and **SET ASIDE** the July 16, 2012 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04295. Accused-appellant Maritess Cayas y Calitis @ "Tetet" is hereby ACQUITTED for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered **IMMEDIATELY RELEASED** from detention unless she is otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Superintendent, Correctional Institution for Women, Mandaluyong City, for

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[24] *People v. Sanchez*, *supra* note 13, at 221. See also *Dissenting Opinion* of *J.* Brion in *People v. Agulay*, 588 Phil. 247, 293-294 (2008).

[25] *People v. Rom*, G.R. No. 198452, February 19, 2014, 717 SCRA 147, 170.

immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report to this Court the action he/she has taken within five (5) days from receipt of this Decision.

SO ORDERED.

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

Mendoza,[*] *J.,* on official leave.

THIRD DIVISION

[G.R. No. 208353. July 4, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **STEVE SIATON *y* BATE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, ELUCIDATED.— For a prosecution of illegal sale of dangerous drugs to prosper, the following elements must be established: (1) [T]he identity of the buyer and the seller, the object, and the consideration; and (2) [T]he delivery of the thing sold and the payment therefor. To elucidate on the foregoing elements, this Court has said that "in prosecutions for illegal sale of drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence." The dangerous drug itself constitutes the very *corpus delicti*

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[*] On Official Leave.

of the offense and to sustain a conviction, the identity and integrity of the *corpus delicti* must be shown to have been preserved. This requirement necessarily 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." In drugs cases, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. The mere fact of unauthorized possession or sale is not sufficient to sustain a finding of guilt. The fact that the substance said to be illegally sold is the very same substance offered in court as exhibit must be established. The chain of custody requirement performs this function. In the case at bar, We found several glaring gaps in the chain of custody; thus, We hold that the prosecution failed to establish an important element of the offense, which is the identity of the object.

2. ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY THAT NEED TO BE ESTABLISHED.— Jurisprudence has been instructive in illustrating the links in the chain that need to be established, to wit: First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

3. ID.; ID.; ID.; ID.; MARKING, EXPLAINED; PROCEDURE IN THE MARKING OF THE DANGEROUS DRUGS, NOT COMPLIED WITH IN CASE AT BAR.— The first stage in the chain of custody is the marking of the dangerous drugs. Marking, "which is the affixing on the dangerous drugs or [substance] by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest." The marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby preventing switching, planting or contamination of evidence. The records of the present case are bereft of evidence showing that the

buy-bust team followed the outlined procedure. Other than the markings PO1 Ranile placed, it is clear that no physical inventory and no photograph of the seized items were taken in the presence of the accused-appellant or his counsel, a representative from the media and the Department of Justice (DOJ), and an elective official. x x x It should be noted that when PO1 Ranile claimed that he marked the seized substance, no mention was made of when the marking was done and whether it was made in the presence of accused or any other person. x x x Given that the prosecution only relied on these vague testimonies and nothing more, We conclude that the first link was not sufficiently established.

4. ID.; ID.; ID.; ID.; TURNOVER OF THE SEIZED DRUGS FOR LABORATORY EXAMINATION; UNEXPLAINED GAPS HOW THE SPECIMEN WAS HANDLED WHILE IN THE CUSTODY OF A POLICE OFFICER AND HOW THE SAME WAS SUBSEQUENTLY TURNED OVER TO THE CHEMIST WHO CONDUCTED THE EXAMINATION TAINT THE INTEGRITY OF THE *CORPUS DELICTI*.— The testimonies of PO1 Ranile and PO1 Cuyos as quoted above barely give any details about the turnover to the laboratory. It was just haphazardly claimed that it was PO1 Ranile who turned over the substance to the crime laboratory. To support this claim, the prosecution presented a Request for Laboratory Examination. However, the testimonies were silent as to who received the seized substance from PO1 Ranile. An examination of the Request addressed to the laboratory would show that said document was issued by P/Sr. Insp. Damole and delivered to the crime laboratory by PO1 Ranile. As can be gleaned from Exhibit B-1 of the prosecution, the Request and the accompanying specimen was received by the Police Officer 1 Abesia (PO1 Abesia) on August 5, 2002, 9:36 p.m. It is curious to note that the one who received the Request along with the specimen was not the chemist who conducted the examination. The prosecution failed to show how the specimen was handled while under the custody of PO1 Abesia and how the same was subsequently turned over to Jude Daniel M. Mendoza (Jude Mendoza), the chemist who conducted the examination. Such glaring gaps in the chain of custody seriously taints the integrity of the *corpus delicti*.

5. ID.; ID.; ID.; ID.; SUBMISSION OF THE SPECIMEN TO THE COURT; ABSENCE OF EXPLANATION WHY IT WAS THE PROSECUTOR WHO OBTAINED THE SPECIMEN FROM THE LABORATORY AND TURNED IT OVER TO THE COURT INSTEAD OF THE FORENSIC CHEMIST WHO SHOULD BE TURNING OVER THE SPECIMEN TO THE COURT AND TESTIFYING RENDER THE INTEGRITY OF *CORPUS DELICTI* QUESTIONABLE.— The prosecution merely claimed that Prosecutor Geromo obtained the specimen from the laboratory. However, considering that the chemist who conducted the examination was unable to testify due to his unjustifiable absences, there is no way of knowing how the drugs were kept while in his custody until it was transferred to the court. The foren*sic* chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general stipulation on the chemist's competence and the existence of the chemistry report. Instead of the forensic chemist turning over the substance to the court and testifying, it was Prosecutor Geromo who obtained the specimen from the laboratory and turned it over to the court. We are faced with another question — who turned over the specimen to Prosecutor Geromo? Regrettably, the records are again wanting of any details regarding the custody of the seized drug during the interim — from the time it was turned over to the laboratory up to its presentation in court. Since there was no showing that precautions were taken to ensure that there was no change in the condition of the specimen and no opportunity for someone not in the chain to have possession thereof, the Court can only conclude that the integrity of the *corpus delicti* was not preserved.

6. REMEDIAL LAW; EVIDENCE; GIVEN THE EVIDENTIARY GAPS IN THE CHAIN OF CUSTODY, THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY CANNOT BE APPLIED.— [T]he court is of the considered view that the chain of custody of the seized substance was compromised. It may be true that where no ill motive can be attributed to the police officers, the presumption of regularity in the performance of official duty should prevail. However, such presumption obtains only where there is no deviation from the regular performance of duty. A presumption of

regularity in the performance of official duty applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law. Conversely, where the official act is irregular on its face, the presumption cannot arise. Hence, given the obvious evidentiary gaps in the chain of custody, the presumption of regularity in the performance of duties cannot be applied in this case. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] of the Court of Appeals (CA) dated May 23, 2013 in CA-G.R. CR-H.C. No. 00799. The CA affirmed the July 31, 2007 Judgment[2] of the Regional Trial Court (RTC), Branch 28, Mandaue City, that found the accused-appellant Steve Siaton *y* Bate (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 (The Comprehensive Dangerous Drugs Act of 2002), meriting him the penalty of life imprisonment.

The Information which was filed against him on August 7, 2002 reads:

"That on or about the 5th day of August, 2002, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the aforenamed accused, with deliberate intent, and without

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[1] *Rollo*, pp. 3-18; penned by Associate Justice Ma. Luisa C. Quijano-Padilla, concurred by Associate Justices Ramon Paul. L. Hernando and Carmelita Salandanan-Manahan.

[2] CA *rollo*, pp. 34-41.

being authorized by law, did then and there wil[l]fully, unlawfully and feloniously sell, deliver and give away to another "shabu" or methylamphetamine hydrochloride, a dangerous drug, weighing 0.04 gram, without legal authority.

CONTRARY TO LAW."[3]

The Facts

Accused-appellant was charged and convicted by the lower courts for selling shabu, in violation of Section 5, Article II of R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, which provides:

> **"Section 5**. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions."

The antecedent facts were culled from the records of the case, particularly the Appellee's Brief[4] for the version of the prosecution and the Appellant's Brief[5] for the version of the defense.

For the Prosecution

On August 5, 2002, at about 2:25 in the afternoon, Police Officer 1 Jojit Ching Ranile (PO1 Ranile), accompanied by a confidential asset and other police operatives, conducted surveillance in Looc, Mandaue City. One of the objectives of the surveillance was to ascertain whether or not accused-appellant

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[3] Records, p. 1.

[4] CA *rollo*, pp. 54-67.

[5] *Id.* at 17-33.

Steve Siaton was selling shabu. To validate the information, the confidential asset conducted a test buy. The asset bought shabu from accused-appellant while in the presence of PO1 Ranile.

After the confirmation of the item to be shabu, the police operatives planned to conduct a buy-bust operation. Prior to the said operation, PO1 Ranile, Senior Police Officer 2 Jun Bataluna (SPO2 Bataluna), Police Officer 2 Alain Carado (PO2 Carado) and Police Senior Inspector Allan Mondares Damole (P/Sr. Insp. Damole), had a briefing and pre-operation conference at Station 4, Mandaue City Police Office. During the said pre-operation briefing, they agreed that PO1 Ranile would act as the poseur-buyer. After which, PO1 Ranile and Police Officer 1 Robert Junn Cuyos (PO1 Cuyos) proceeded to Looc, Mandaue City. When PO1 Ranile saw accused-appellant Steve Siaton, he approached him and asked if he could buy a sachet of shabu. Steve Siaton readily replied "How much?" PO1 Ranile showed him the marked money in the amount of ₱100.00 and said "One Peso," which means One-Hundred Pesos in drug parlance. Without any hesitation, accused-appellant answered yes and picked out a small pack of suspected shabu and delivered the same to PO1 Ranile. In turn, the officer handed over the marked ₱100.00 bill. After which, he gave the pre-arranged signal by holding his nose. Whereupon, PO1 Cuyos, who was on stand by, immediately approached the accused-appellant and held his left arm and said "Bay, don't resist because this is police."[6]

During the arrest, PO1 Ranile informed accused-appellant of his constitutional rights. When they reached the police station, he prepared a request for laboratory examination of the pack of shabu, which was marked "SBS," which stood for Steve Bate Siaton. PO1 Ranile delivered the confiscated pack to the crime laboratory, where it was eventually found to be positive for shabu.[7]

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[6] *Id.* at 57-58.

[7] *Id.*

For the Defense

Accused-appellant testified that on August 5, 2002 at 2 o'clock in the afternoon, he was playing a computer game at the store of his aunt located across the chapel of San Roque Looc, Mandaue City. Thereafter, an unknown short, chubby and curly haired person approached him while he was playing. The unknown person asked him where he could obtain shabu. Accused-appellant replied that he did not know. Said person briefly left him and entered a house about 100 meters away from the store of his aunt. While accused-appellant was still playing, the unknown person came back, sat beside him and asked him what game he was playing. Accused-appellant explained the game he was playing and after 10 minutes, 3 more unknown persons, who turned out to be policemen, arrived. The policemen held him by his neck and arms, while they held the unknown person, by the shoulders. Despite accused-appellant's struggles and complaints, the policemen remained silent and forced him to go with them. Accused-appellant, together with the unknown person, were brought to Precinct 4, where he was frisked. The policemen only recovered FIVE PESOS (₱5.00) from him and he was eventually detained in jail.[8]

The RTC Decision

On July 31, 2007, the RTC found Steve Siaton guilty of the offense charged and imposed upon him the penalty of Life Imprisonment. The dispositive portion of the RTC Judgment is as follows:

"**WHEREFORE**, this Joint Judgment is hereby rendered finding the accused STEVE SIATON Y BATE GUILTY beyond reasonable doubt for violation of Section 5, Article II of RA 9165. Accordingly, the Court hereby imposes upon accused the penalty of life imprisonment together with the accessory penalties of the law.

The period of detention of [the] accused at the Mandaue City Jail shall be given full credit.

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

The Court hereby orders the destruction of the pack of shabu marked 'Exhibit A'.

IT IS SO ORDERED."[9]

Aggrieved, accused-appellant sought the reversal of the foregoing decision by questioning the validity of the buy-bust operation conducted by the police officers and by bringing to fore several inconsistencies in the prosecution witnesses' testimonies. Accused-appellant contended that the inconsistencies regarding the vehicle used during the buy-bust operation rendered questionable the truthfulness of all the statements regarding the operation. The defense likewise claimed that the absence of a pre-operation report, which would have detailed how the buy-bust operation would have been conducted, also marred the operation. Lastly, accused-appellant put in issue the lack of inventory and photographs at the time of seizure.

The CA Decision

The CA, in its assailed decision, affirmed the judgment of conviction of the RTC. The CA ruled that the testimonies of the two police officers offered by the prosecution clearly showed that the chain of custody remained unbroken. The court likewise held that there was a substantial compliance with the law and that the integrity of the seized illegal drug was well preserved. The dispositive portion of the decision reads:

"**WHEREFORE**, in view thereof, the appeal is **DENIED**. The judgment dated July 31, 2007 of the Regional Trial Court, Branch 28, Mandaue City in Criminal Case No. DU-9504 finding the accused-appellant Steve Siaton Y Bate guilty of the crime charged is hereby **AFFIRMED**.

SO ORDERED."[10]

In a Resolution[11] dated September 23, 2013, We required the parties to file their respective supplemental briefs. The

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

[10] *Rollo*, p. 17.

[11] *Id.* at 23.

prosecution manifested that it is no longer filing any supplemental brief.[12] The issues raised in appellant's supplemental brief[13] were similar to those previously raised to the appellate court. The appellant raises the following assignment of errors:

I. THE TRIAL COURT ERRED IN UPHOLDING THE EXISTENCE AND VALIDITY OF THE BUY[-]BUST OPERATION CONDUCTED BY THE POLICE OFFICERS.

II. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[14]

Ruling of this Court

Before this Court disposes of the case, it should be underscored that appeals in criminal cases throw the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.[15] Considering that what is at stake is the liberty of the accused, this Court thoroughly reviewed the records of the case and finds that the appeal is meritorious.

The crucial issue in this case is whether, to establish *corpus delicti*, the integrity and evidentiary value of the seized substance have been preserved in an unbroken chain of custody. A thorough review of the records of this case leads this Court to conclude that the prosecution failed to establish the *corpus delicti* of the crime charged.

Elements of illegal sale of dangerous drugs

For a prosecution of illegal sale of dangerous drugs to prosper, the following elements must be established:

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[12] *Id.* at 27.

[13] *Id.* at 35.

[14] CA *rollo*, p. 19.

[15] *People v. Balagat*, 604 Phil. 529, 534 (2009).

(1) [T]he identity of the buyer and the seller, the object, and the consideration; and

(2) [T]he delivery of the thing sold and the payment therefor.[16]

To elucidate on the foregoing elements, this Court has said that "in prosecutions for illegal sale of drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence."[17] The dangerous drug itself constitutes the very *corpus delicti* of the offense and to sustain a conviction, the identity and integrity of the *corpus delicti* must be shown to have been preserved. This requirement necessarily 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."[18] In drugs cases, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. The mere fact of unauthorized possession or sale is not sufficient to sustain a finding of guilt. The fact that the substance said to be illegally sold is the very same substance offered in court as exhibit must be established.[19] The chain of custody requirement performs this function. In the case at bar, We found several glaring gaps in the chain of custody; thus, We hold that the prosecution failed to establish an important element of the offense, which is the identity of the object.

Chain of custody

The Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment[20] defines "chain of custody" as follows:

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[16] *People v. Amansec*, 678 Phil. 831, 860 (2011).

[17] *People v. Lazaro Jr.*, 619 Phil. 235, 249 (2009).

[18] *People v. Beran*, G.R. No. 203028, January 15, 2014, 714 SCRA 165, 189.

[19] *Mallillin v. People*, 576 Phil. 576, 587 (2008).

[20] Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002.

Section 1 (b). – "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

In *Mallillin v. People*,[21] We explained that the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. Ideally, the evidence presented by the prosecution should include testimony about every link in the chain, from the moment the item was picked up to the time it was offered into evidence. The prosecution should present evidence establishing the chain of custody in such a way that "every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain."[22] In addition, these witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and that there had been no opportunity for someone not in the chain to have possession of the same.[23]

Jurisprudence[24] has been instructive in illustrating the links in the chain that need to be established, to wit:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

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[21] *Supra* note 19.

[22] *Id.*

[23] *People v. Martinez, et al.*, 652 Phil. 347, 369 (2010).

[24] *People v. Remigio*, 700 Phil. 452, 468 (2012).

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain an unbroken chain of custody, it becomes essential when the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. "In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering without regard to whether the same is advertent or otherwise not dictates the level of strictness in the application of the chain of custody rule."[25]

A close examination of the records of the case will readily make it evident that the lower courts failed to take note of vital gaps in the first, third and fourth links in the chain of custody.

a. Seizure and marking (1st Link)

The required procedure on the seizure of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

> 1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

This is implemented by Section 21 (a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165, which reads:

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[25] *People v. Climaco*, 687 Phil. 593, 605 (2012).

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: x x x *Provided, further* that non-compliance with these requirements under **justifiable grounds**, as long as the **integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team**, shall not render void and invalid such seizures of and custody over said items[.] [Emphasis supplied]

The first stage in the chain of custody is the marking of the dangerous drugs. Marking, "which is the affixing on the dangerous drugs or [substance] by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest."[26] The marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby preventing switching, planting or contamination of evidence.[27]

The records of the present case are bereft of evidence showing that the buy-bust team followed the outlined procedure. Other than the markings PO1 Ranile placed, it is clear that no physical inventory and no photograph of the seized items were taken in the presence of the accused-appellant or his counsel, a representative from the media and the Department of Justice (DOJ), and an elective official. Prosecution witness PO1 Ranile testified in very general and vague terms as to the procedure undertaken, to wit:[28]

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[26] *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

[27] *Id.* at 131.

[28] TSN, October 6, 2003, pp. 8-10 & January 8, 2004, pp. 13-14.

xxx xxx xxx

Q: Then the shabu which you were able to buy from the accused, what did you do with it?
A: I delivered it to the crime laboratory for examination.

Q: Was there a request made?
A: Yes.

Q: And you were the one who delivered the request?
A: Yes.

Q: The shabu which you bought from the accused, can you identify it?
A: Yes.

Q: Why can you identify it?
A: Because of the marking and I was the one who made the marking on the plastic.

Q: What marking did you place on the plastic?
A: SBS.

Q: What is the meaning of SBS?
A: Steve Bate Siaton.

Q: I am showing to you a document marked as Exh. B which is a request for the laboratory examination signed by Allan [Damole] PS Insp[.], what relation has this to the request made for laboratory examination on the pack of shabu?
A: This is the one.

Q: And on the stamp "Received" marked as Exh. B-1, there is a signature of one Police Officer Ranile, whose signature is that?
A: Mine.

Q: Showing to you a plastic pack containing white substance where there appears to be the marking SBS dated August 5, 2002, what relation has this pack to the one you received?
A: That is the same.

Q: What is the result of the examination?
A: Positive.

Q: How did you come to know that the result was positive?
A: Upon seeing the result from the crime laboratory which says it was positive.

Q: I am showing to you the [C]hemistry [R]eport No. D-1646-2002 marked as Exh. C with submarkings, what relation has this to the result you saw?
A: This is the one.

xxx xxx xxx

Q: Was there a coordination with PDEA at the time of his arrest?
A: No. At that time, we didn't know the procedure yet.

Q: There were no photographs taken of the items?
A: No.

Q: And there was no inventory?
A: None.

It should be noted that when PO1 Ranile claimed that he marked the seized substance, no mention was made of when the marking was done and whether it was made in the presence of accused or any other person. To corroborate the testimony of PO1 Ranile, the prosecution only presented the testimony of PO1 Cuyos[29] but the same likewise failed to elaborate on the procedure undertaken, to wit:

xxx xxx xxx

Q: The pack of shabu which was received by PO1 Ranile after that transaction, what was done with it?
A: We made a request and sent it to the crime laboratory.

Q: Who sent the request to the crime laboratory?
A: It was PO1 Ranile.

Q: And did you come to know the result?
A: Yes. It was positive for shabu.

Given that the prosecution only relied on these vague testimonies and nothing more, We conclude that the first link

[29] TSN, January 19, 2004, p. 7.

was not sufficiently established. It is true that the law now includes a proviso to the effect that non-compliance with the requirements shall not render void and invalid such seizures of and custody over said items provided that: (1) such noncompliance was due to justifiable grounds and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team. However, the prosecution did not show that there were justifiable grounds for deviating from the procedure. The omission became more glaring considering that the prosecution asserted that the buy-bust operation entailed careful planning, including a couple of test buys conducted prior to the operation.

b. Turnover to investigating officer (2nd Link)

PO1 Ranile was both the investigating officer and apprehending officer in this case. As can be gleaned from the above quoted testimonies, it was PO1 Ranile, the poseur-buyer, who took possession of the seized shabu. It was likewise PO1 Ranile who turned the seized substance over to the forensic laboratory for testing. In other words, the seized substance did not change hands. In this sense, it can be said that there was no break in the 2nd link.

c. Turnover for laboratory examination (3rd Link)

Section 21, paragraphs 2 and 3, Article II of R.A. 9165 lay down the proper procedure to be followed in order to sufficiently establish the 3rd link in the chain of custody, to wit:

> 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 under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the 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 on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

The testimonies of PO1 Ranile and PO1 Cuyos as quoted above barely give any details about the turnover to the laboratory. It was just haphazardly claimed that it was PO1 Ranile who turned over the substance to the crime laboratory. To support this claim, the prosecution presented a Request for Laboratory Examination.[30] However, the testimonies were silent as to who received the seized substance from PO1 Ranile. An examination of the Request addressed to the laboratory would show that said document was issued by P/Sr. Insp. Damole and delivered to the crime laboratory by PO1 Ranile. As can be gleaned from Exhibit B-1[31] of the prosecution, the Request and the accompanying specimen was received by the Police Officer 1 Abesia (PO1 Abesia) on August 5, 2002, 9:36 p.m. It is curious to note that the one who received the Request along with the specimen was not the chemist who conducted the examination.[32] The prosecution failed to show how the specimen was handled while under the custody of PO1 Abesia and how the same was subsequently turned over to Jude Daniel M. Mendoza (Jude Mendoza), the chemist who conducted the examination. Such glaring gaps in the chain of custody seriously taints the integrity of the *corpus delicti*.

The substance tested positive for shabu according to the Chemistry Report[33] signed by the forensic chemist; but for unknown reasons, he failed to testify despite being subpoenaed[34]

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[30] Records p. 67.

[31] *Id.*

[32] *Id.* at 69.

[33] *Id.* at 68.

[34] *Id.* at 21, 31 & 33.

by the trial court several times. It should be noted that it was highly irregular for the trial court not to have issued a warrant for the arrest of Jude Mendoza, despite his repeated unexplained absences. His absence remained unexplained and it would seem that the trial court had no qualms about it. On the other hand, when PO1 Ranile and PO1 Cuyos failed to testify, the trial court issued warrants[35] for their arrest and sought explanations for their absences. In a similar case,[36] We considered the failure of the forensic chemist to show up for trial despite the numerous subpoenas sent as an indicator of an irregularity in the 3rd link.

During the pre-trial conference and as embodied in the pre-trial Order dated January 14, 2003,[37] accused-appellant, assisted by counsel, admitted the existence of the chemistry report and the competence of the forensic chemist.[38] Peculiarly, the prosecution, specifically Prosecutor Felixberto M. Geromo (Prosecutor Geromo); admitted that "the chemistry report is not subscribed and it only contains the result of the qualitative examination of the items mentioned therein."[39] Such admission is telling. The credibility and accuracy of the chemistry report are hinged on the signature of the medical technologist. Without said signature, the possibilities for falsification or fabrication of the report are abundant. Subsequently, on May 6, 2003, the trial court without giving any explanation and upon motion of Prosecutor Geromo, ordered the striking out of said stipulation from the pre-trial order.[40] Said Order likewise had groundbreaking implications. It would then seem that the chemistry report was subscribed by the medical technologist only 4 months after the pre-trial was concluded. This Court believes that it is rather improbable for the prosecution, due to mere oversight, to stipulate

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[35] *Id.* at 36.

[36] *People v. Dahil,* G.R. No. 212196, January 12, 2015, 745 SCRA 221.

[37] Records p. 18.

[38] *Id.*

[39] *Id.*

[40] *Id.* at 26.

that the report was unsigned when in reality it was signed, especially since a stipulation such as that would have been too detrimental to their case. Once entered into, stipulations will not be set aside unless for good cause.[41] While Prosecutor Geromo wised up to be relieved of the effect of the stipulation made, he did not allege that these were false or misleading or were obtained through force or fraud. Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the facts stipulated[42] and even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally.[43] More importantly, Section 4 of Rule 118 of the Revised Rules of Court on Criminal Procedure provides:

> **Sec. 4.** *Pre-trial order.* — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice.

The Pre-trial Order was modified 4 months after the conclusion of the pre-trial conference for no apparent reason. The parties are bound by stipulations and admissions made in the Pre-trial Order and absent any showing of manifest injustice, it was highly irregular for the trial court to have allowed the prosecutor to withdraw the admission made. For the foregoing glaring irregularities, We hold that an unbroken third link was not sufficiently established.

d. Submission to the court (4th Link)

The prosecution merely claimed that Prosecutor Geromo obtained the specimen from the laboratory.[44] However, considering

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[41] *Bayas v. Sandiganbayan*, 440 Phil. 55, 59 (2002).

[42] *Schreiber v. Rickert*, 50 NE 2d 879, October 12, 1943.

[43] *Dequito v. Llamas*, 160-A Phil. 7 (1975).

[44] Records, p. 26.

that the chemist who conducted the examination was unable to testify due to his unjustifiable absences, there is no way of knowing how the drugs were kept while in his custody until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general stipulation on the chemist's competence and the existence of the chemistry report. Instead of the forensic chemist turning over the substance to the court and testifying, it was Prosecutor Geromo who obtained the specimen from the laboratory and turned it over to the court. We are faced with another question — who turned over the specimen to Prosecutor Geromo? Regrettably, the records are again wanting of any details regarding the custody of the seized drug during the interim — from the time it was turned over to the laboratory up to its presentation in court. Since there was no showing that precautions were taken to ensure that there was no change in the condition of the specimen and no opportunity for someone not in the chain to have possession thereof, the Court can only conclude that the integrity of the *corpus delicti* was not preserved.

No presumption of Regularity

In view of the foregoing, the court is of the considered view that the chain of custody of the seized substance was compromised. It may be true that where no ill motive can be attributed to the police officers, the presumption of regularity in the performance of official duty should prevail. However, such presumption obtains only where there is no deviation from the regular performance of duty.[45] A presumption of regularity in the performance of official duty applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law. Conversely, where the official act is irregular on its face, the presumption cannot arise.[46] Hence, given the obvious evidentiary gaps in the chain of custody, the presumption

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[45] *People v. Obmiranis*, 594 Phil. 561, 578 (2008).

[46] *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554, 572.

of regularity in the performance of duties cannot be applied in this case. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.[47]

Considering that the integrity of 3 of the 4 links laid down by jurisprudence has been cast in doubt, and in line with the consistent holding of this Court, this doubt must be resolved in favor of the accused-appellant.

WHEREFORE, the foregoing premises considered, the Decision dated May 23, 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 00799 is **REVERSED** and **SET ASIDE**. For failure of the prosecution to prove his guilt beyond reasonable doubt, Steve Siaton *y* Bate is hereby **ACQUITTED** of the charge of violation of Section 5, Article II of RA No. 9165. His immediate **RELEASE** from detention is hereby **ORDERED**, unless he is being held for another lawful cause. Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five (5) days from his receipt of this Decision.

SO ORDERED.

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

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[47] *People v. Peralta*, 627 Phil. 570, 580 (2010).

[*] Designated as Additional Member in lieu of Justice Francis H. Jardeleza per raffle dated June 22, 2016.

THIRD DIVISION

[G.R. No. 210192. July 4, 2016]

ROSALINDA S. KHITRI and FERNANDO S. KHITRI, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; *ESTAFA* WITH ABUSE OF CONFIDENCE; ELEMENTS.—** Under Article 315, paragraph 1(b) of the RPC, the elements of estafa with abuse of confidence are as follows: (1) that the money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is demand by the offended party to the offender.

2. **ID.; ID.; ID.; ID.; MISAPPROPRIATION OR CONVERSION OF MONEY OR PROPERTY, EXPLAINED.—** The essence of estafa committed with abuse of confidence is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words "*convert*" and "*misappropriate*" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.

3. **ID.; ID.; ID.; MALICIOUS INTENT AS A REQUIREMENT IN INTENTIONAL FELONY, EXPOUNDED; MUST BE PROVEN BEYOND REASONABLE DOUBT.—** The element of intent — on which the Court shall focus — is described as the state of mind accompanying an act, especially a forbidden act. It refers to the purpose of the mind and the resolve with which a person proceeds. It does not refer to mere will, for the

latter pertains to the act, while intent concerns the result of the act. While motive is the "moving power" that impels one to action for a definite result, intent is the "*purpose*" of using a particular means to produce the result. On the other hand, the term "felonious" means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose. With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act. Stated otherwise, intentional felony requires the existence of *dolus malus* — that the act or omission be done "willfully," "maliciously," "with deliberate evil intent," and "with malice aforethought." The maxim is *actus non facit reum, nisi mens sit rea* — a crime is not committed if the mind of the person performing the act complained of is innocent. As is required of the other elements of a felony, the existence of malicious intent must be proven beyond reasonable doubt.

4. ID.; ID.; ID.; MALICIOUS INTENT TO MISAPPROPRIATE OR CONVERT THE MONEY RECEIVED WAS NOT SUFFICIENTLY ESTABLISHED IN CASE AT BAR.— In the instant petition, the records do not show that the prosecution was able to prove the existence of malicious intent when the petitioners used the money they received to construct two-door studio-type apartments, one of which would serve as the garments factory. To reiterate, the purpose of the money was achieved. Furthermore, the factual precedents of the case do not sufficiently warrant conviction for the crime of estafa, much less deserve deprivation of liberty. At best, the petitioners could be held liable for damages for violating the tenor of their agreement.

5. REMEDIAL LAW; EVIDENCE; IN VIEW OF THE FACTS AND CIRCUMSTANCES IN CASE AT BAR, THE COURT UPHOLDS THE PRESUMPTION OF INNOCENCE OF THE ACCUSED AND ACQUITS THEM.— In this case, the amount was voluntarily given pursuant to a joint venture agreement for the construction of a garments factory, and with which the petitioners complied. Absent the element of misappropriation, the private complainants could not have been deprived of their money through defraudation. Moreover, the allegation of lost profits, which could have arisen from the aborted joint venture, is conjectural in nature and could barely

be contemplated as prejudice suffered. Where the inculpatory facts and circumstances are susceptible of two or more interpretations, one of which is consistent with the innocence of the accused while the other may be compatible with the finding of guilt, the Court must acquit the accused because the evidence does not fulfill the test of moral certainty required for conviction. Consequently, the Court is constrained to uphold the presumption of innocence in the petitioners' favor and acquit them.

6. ID.; ID.; ID.; WHILE ACCUSED CANNOT BE MADE LIABLE FOR *ESTAFA* IN VIEW OF THE ABSENCE OF THE ELEMENTS AND OF REASONABLE DOUBT, REIMBURSEMENT OF THE AMOUNT RECEIVED PLUS INTEREST IS IN ORDER.— While the petitioners cannot be made criminally liable on the grounds of absence of some of the elements of estafa, and of reasonable doubt, it is undisputed that they received the amount of ₱400,000.00 from the private complainants. Lest unjust enrichment results, reimbursement of the amount is in order. An additional annual interest of six percent (6%) shall be imposed from the finality of this Decision until full payment thereof.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] filed by Rosalinda S. Khitri (Rosalinda) and Fernando S. Khitri (Fernando) (collectively, the petitioners) assailing the Decision[2] of the Court of Appeals (CA) rendered on June 27, 2013 in

[1] *Rollo*, pp. 3-14.

[2] Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Isaias P. Dicdican and Michael P. Elbinias concurring; *id.* at 20-32.

CA-G.R. CR No. 33961, which affirmed the Decision[3] dated December 9, 2009 of the Regional Trial Court (RTC) of Las Piñas City, Branch 253, in Criminal Case No. 00-1023, convicting the petitioners of the crime of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code (RPC).

The Information indicting the petitioners reads:

> That on or about the 25 January, 1991 and sometime thereafter, in the City of Las Pi[ñ]as, Philippines and within the jurisdiction of this Honorable Court, the [petitioners], *conspiring and confederating together and both of them mutually helping and aiding one another*, received in trust from the said complainants the amount of ₱400,000.00 to be used in the construction of a factory building to be built on the one[-]half portion of the [petitioners'] lot located at Monte Vista Park Subd., Sto. Nino, Cainta, Rizal but [the petitioners] once in possession of the said amount of money and far from complying with their obligation, with abuse of confidence and with intent to defraud said complainants[,] did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to their own personal use and benefits said amount of ₱400,000.00 and despite repeated demands made by the complainants[,] [the petitioners] failed and refused and still fails [*sic*] and refuses [sic] to return the said amount of ₱400,000.00 to the damage and prejudice of the said complainants in the aforementioned amount of ₱400,000.00.
>
> CONTRARY TO LAW.[4] (Italics ours)

Antecedents

Rosalinda is Fernando's mother. In their joint Counter-Affidavit,[5] they admitted that they received the amount of Four Hundred Thousand Pesos (₱400,000.00) from Spouses Hiroshi (Hiroshi) and Belen (Belen) Fukami (collectively, the private complainants). However, the petitioners claimed that the money they received was the private complainants' contribution in their joint venture to construct and operate a garments factory.

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[3] Rendered by Presiding Judge Salvador V. Timbang, Jr.; *id.* at 77-84.

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

[5] *Id.* at 48-52.

The petitioners further alleged that they had substantially complied with their obligation by constructing a two-door studio-type apartment in their lot in Cainta, Rizal, half of which was to be devoted for the operation of the garments factory.

On March 28, 2001, the petitioners were arraigned and pleaded "not guilty" to the charge. Since their primary defense was in the nature of an affirmative allegation, the RTC reversed the order of trial.[6]

In her testimony,[7] Rosalinda stated that she manufactures and exports ladies' lingerie and wear. Hiroshi, on the other hand, is an exporter of locally-manufactured women's wear to Japan. They were introduced to each other in 1986 by Hiroshi's agent, who used to source lingerie items from Rosalinda. In 1989, Hiroshi proposed a venture for them to jointly manufacture and export women's wear to United States of America and other countries. The venture required the construction of a factory, with Hiroshi contributing ₱400,000.00 therefor. Initially, Hiroshi wanted the factory to be constructed in Cubao, Quezon City beside Rosalinda's warehouse. However, Rosalinda offered her lot in Monte Vista Park Subdivision, Cainta, Rizal and Hiroshi acceded. The parties' agreement was merely verbal. The construction started in 1991. Half of the lot was reserved for the factory, with the remaining half as Rosalinda's residence. Rosalinda presented a supposed plan for the factory entitled "*Construction of Two-Unit Studio-type Apartments*," prepared for "*Rosalinda P. Subido*."

On cross-examination, Rosalinda clarified that the parties verbally agreed that one-half of the building would be used as factory while the other half would be her residence. However, there was no approved plan for a two-storey factory but only for two units of studio-type apartment. Hiroshi signified his acceptance of the factory building as constructed when he had caused the delivery and installation of five sewing machines

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[6] *Id.* at 22.

[7] *Id.* at 78.

in the apartment units albeit no government permit was obtained to operate the factory. Two weeks after, Hiroshi directed the machines to be pulled out for needed repairs.[8]

In his testimony,[9] Fernando stated that he is also engaged in garments manufacturing since 1979. He is the sole proprietor of Allure Garments and owns an interest in Venus Fashion Apparel Corporation. Rosalinda, on the other hand, solely owns Nandy's Enterprises, another business entity involved in garments manufacturing. Hiroshi first purchased garments from him in 1988. Later, Hiroshi proposed a joint venture to manufacture garments and agreed to contribute money for a factory to be constructed in their lot in Cubao. Hiroshi eventually agreed to have the factory be built instead in their lot in Cainta, Rizal.

In her testimony,[10] Belen confirmed that she and her husband Hiroshi used to source some women's wear and lingerie items, which they export to Japan, from the petitioners in their Cubao factory from 1988 to 1992. Sometime in 1990, when the petitioners were running low on capital, they approached the private complainants to form a corporation to manufacture and export women's clothes and lingerie. Initially, the private complainants hesitated because the project entailed a huge amount for the construction of a two-storey factory. The private complainants at first suggested to have the factory be built in the petitioners' lot in Cubao. However, the Cubao area is congested. Further, after visiting the petitioners' lot in Cainta, and having been shown a sketch of the two-storey factory to be constructed, they agreed to build thereat. The factory was intended to occupy one-half of the lot, while the other half thereof would be reserved for the petitioners' residence. The private complainants gave their ₱400,000.00 contribution to the petitioners and this amount was used to open a Boston Bank joint account in Belen and Rosalinda's names. The private complainants were eventually shocked to discover instead a

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[8] *Id.*

[9] *Id.* at 79.

[10] *Id.* at 79-80.

two-door studio-type apartment, the plan for which was never shown to them. In their disappointment, they demanded the return of their money, but the petitioners avoided their calls and even changed their phone numbers. Through counsel, the private complainants wrote a demand letter for the petitioners to return their money. In response, the petitioners offered one apartment unit, with the cost of the lot where it stands to be paid for separately. The private complainants outrightly rejected the offer.

Hiroshi testified that he had been coming back and forth from Japan to the Philippines for 30 years purchasing and exporting locally manufactured women's clothes. The petitioners were referred to him by a Japanese friend, and he soon began buying merchandise from them in 1988. The petitioners subsequently broached the idea of a joint venture to manufacture women's clothes, with the private complainants contributing to the cost of constructing a two-storey factory building. Since the petitioners' shop in Cubao is too small, they showed him a rough sketch of a two-storey factory on a white board, and brought him to see their lot in Cainta where the factory would be built. The petitioners explained to him that one-half of the lot would be used for the two-storey factory. Later, he asked Belen to check the state of the factory because the petitioners had been rejecting his phone calls. Belen saw a two-door studio-type apartment, instead of a two-storey factory, and took pictures of the same. Hiroshi was never shown the plan for a two-door studio-type apartments, which Rosalinda presented in court. The private complainants tried to contact the petitioners but they could no longer be reached. They felt deceived because their agreement was not complied with.[11]

On cross-examination, Hiroshi admitted that the negotiations for the joint venture were done in his Elizabeth Mansions office in Quezon City. He recalled having seen the petitioners in Las Piñas City only once or twice. There was no written contract anent the joint venture because he trusted the petitioners.[12]

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

[12] *Id.* at 81.

Ruling of the RTC

The RTC, in its Decision[13] dated December 9, 2009, convicted the petitioners, the *fallo* of which reads:

> WHEREFORE, premises considered, the Court finds [the petitioners], **GUILTY** beyond reasonable doubt of the crime of *Estafa* punishable under *Article 315*, paragraph *1 (b) of the [RPC]*. Consequently, [the petitioners] are sentenced to suffer the indeterminate prison term of four (4) years and two (2) months of *Prision Correccional* maximum, as MINIMUM to twenty (20) years of *Reclusion Temporal* as MAXIMUM.
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> Moreover, this Court hereby orders [the petitioners] to reimburse private complainants the sum of . . . FOUR HUNDRED THOUSAND PESOS (Php400,000.00), plus interest of twelve percent (12%) per annum, from January 21, 1991, until fully paid, as actual damages, and ONE HUNDRED THOUSAND PESOS (Php100,000.00), as litigation expenses and attorney[']s fees.
>
> SO ORDERED.[14]

Unfazed by the above, the petitioners appealed to the CA.

Ruling of the CA

In its Decision[15] dated June 27, 2013, the CA affirmed *in toto* the RTC decision. The CA agreed with the RTC that it had jurisdiction over the crime charged. All the elements of the crime of estafa are present, and that the petitioners conspired in committing the crime. The evidence of the prosecution showed that the parties agreed to form a joint venture to manufacture women's wear, with the petitioners contributing the use of one half of their lot in Cainta to build a two-storey garments factory, while the private complainants would contribute ₱400,000.00 for the construction thereof. On January 25, 1991, the private complainants gave the amount of ₱400,000.00, with which Belen and Rosalinda opened a joint account in Boston Bank, San Juan

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[13] *Id.* at 77-84.

[14] *Id.* at 84.

[15] *Id.* at 20-32.

City. On different dates, four checks, each bearing the amount of ₱100,000.00, were issued by Belen to Rosalinda. The petitioners' messenger picked up the checks from the private complainants' residence in Las Piñas City and thereafter, the amounts indicated therein were withdrawn from Boston Bank joint account. After the entire amount of ₱400,000.00 had been withdrawn, the petitioners could no longer be contacted by phone. This prompted Belen to visit the construction site. She discovered that what was constructed was not a two-storey factory building but a residential duplex apartment. Belen took pictures of the apartment and showed them to Hiroshi, who then decided to withdraw from the joint venture and demanded the return of their money. The private complainants consulted a lawyer, who sent demand letters, but they received no reply from the petitioners.

The petitioners filed a motion for reconsideration, which was denied by the CA in its Resolution[16] dated November 21, 2013.

Hence, this petition raising the following errors:

I. THE CA GRAVELY ERRED IN MAINTAINING THAT THE RTC OF LAS PIÑAS CITY HAD JURISDICTION OVER THE CASE.

II. THE CA GRAVELY ERRED IN UPHOLDING THE CONVICTION OF THE PETITIONERS INSTEAD OF FINDING THAT THEIR LIABILITY, IF ANY, IS ONLY CIVIL IN NATURE.

III. THE CA GRAVELY ERRED IN FINDING THAT CONSPIRACY EXISTED BETWEEN THE PETITIONERS.[17]

The Issues

Essentially, the issues for resolution are the following: (1) whether the evidence submitted is sufficient to establish guilt of the petitioners beyond reasonable doubt; and (2) whether

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

[17] *Id.* at 6.

the evidence submitted establishes conspiracy between the petitioners.[18]

In this petition, the petitioners reiterate their contention that the crime for which they were indicted was committed in Quezon City, San Juan City and Cainta, Rizal, and not in Las Piñas City. Moreover, no conspiracy between the petitioners was established. They point out that Belen herself admitted that the amount of ₱400,000.00 was deposited in a joint account, which Belen and Rosalinda opened in a bank in San Juan City. Moreover, there was no criminal intent to swindle the private complainants. It was Hiroshi himself who approached the petitioners to propose a joint venture. In fact, as agreed, a structure was erected on the lot of the petitioners, which, although not exactly what the private complainants had in mind, is suitable for the operation of a garments factory. Hiroshi even delivered and installed sewing machines in the building. After two weeks, he pulled out the sewing machines for the purpose of having them repaired. The petitioners also point out that they never stopped communicating with the private complainants. Besides, 10 years had elapsed from the time the factory was constructed before the private complainants decided to file a criminal complaint.

On the other hand, the Office of the Solicitor General (OSG) maintains that the RTC of Las Piñas City had jurisdiction over the case. The delivery of the checks and acceptance thereof by the petitioners through their authorized representatives connote not merely the transfer of money but also marked the creation of a fiduciary relation between the parties. Hence, in legal contemplation, the petitioners received the amount of ₱400,000.00 in the private complainants' residence in Las Piñas City. The OSG further insists that all the elements of the crime and the fact of conspiracy are present.[19]

Ruling of the Court

The instant petition is meritorious.

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

[19] *Id.* at 90-104.

The RTC of Las Piñas City had jurisdiction over the case.

The Court agrees that the RTC of Las Piñas City had territorial jurisdiction over the case. Although the bank account for the joint venture was set up in San Juan City, in which the ₱400,000.00 capital contribution of the private complainants was deposited and eventually withdrawn, Belen issued four checks from her residence in Las Piñas City. These checks were picked up by the messenger sent by the petitioners.

The Court has ruled in the case of *Tan v. People*[20] that "*[t]he delivery by the private complainant of the check and its acceptance by [the accused] signified not merely the transfer to the accused of the money belonging to private complainant, [but] it also marked the creation of a fiduciary relation between the parties.*"[21]

Not all the elements of the crime of estafa are present.

However, the CA erred in affirming the ruling of the RTC, which convicted the petitioners of estafa as the prosecution failed to prove all the elements of the crime charged.

Under Article 315, paragraph 1 (b) of the RPC,[22] the elements of estafa with abuse of confidence are as follows: (1) that the money, goods or other personal property is received by the

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[20] 542 Phil. 188 (2007).

[21] *Id.* at 198, citing Reyes, *The Revised Penal Code Criminal Law* Book Two 736 (2001).

[22] Art. 315. *Swindling* (*estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow x x x:

xxx xxx xxx

1. With unfaithfulness or abuse of confidence, namely:

xxx xxx xxx

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property;

offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is demand by the offended party to the offender.[23]

In the case at bar, the presence of the first and last elements is undisputed. The petitioners received money in trust or for administration to build a factory in Cainta, and that the private complainants, through counsel, demanded the return of their ₱400,000.00 *via* letters dated December 13, 1999 and January 25, 2000, which were received on December 28, 1999, and January 5, 2000, respectively.[24] However, the elements of misappropriation and prejudice were not sufficiently established.

The essence of estafa committed with abuse of confidence is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words "*convert*" and "*misappropriate*" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.[25]

Here, Rosalinda received ₱400,000.000 for the purpose of constructing a garments factory inside the Monte Vista Park Subdivision, Cainta, Rizal. True to their agreement, she caused the erection of a two-door studio-type apartment, one of which would serve as the garments factory. The private complainants however posit that the structure was not in compliance with their agreed plan. Nonetheless, the purpose of the money had

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xxx xxx xxx

[23] *Jandusay v. People*, 711 Phil. 305, 310-311 (2013).

[24] *Rollo*, pp. 29-30.

[25] *Pamintuan v. People*, 635 Phil. 514, 522 (2010).

been complied with by the petitioners, albeit modified. The Court believes that the ends sought to be achieved by the money have not been rendered illusory by the modification. In fact, after the construction, the private complainants sent five sewing machines for use in the garments factory, but these were subsequently pulled out after two weeks for repairs.

"Not to be overlooked is that this felony falls under the category of *mala in se* offenses that require the attendance of criminal intent. Evil intent must unite with an unlawful act for it to be a felony. *Actus non facit reum, nisi mens sit rea.*"[26]

The element of intent — on which the Court shall focus — is described as the state of mind accompanying an act, especially a forbidden act.[27] It refers to the purpose of the mind and the resolve with which a person proceeds.[28] It does not refer to mere will, for the latter pertains to the act, while intent concerns the result of the act.[29] While motive is the "moving power" that impels one to action for a definite result, intent is the "*purpose*" of using a particular means to produce the result.[30] On the other hand, the term "felonious" means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose.[31] With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act. Stated otherwise, intentional felony requires the existence of *dolus malus* — that the act or omission be done "willfully," "maliciously," "with deliberate evil intent," and "with malice aforethought."[32] The maxim is *actus non facit reum, nisi mens*

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[26] *Manahan, Jr. v. CA*, 325 Phil. 484, 499 (1996).

[27] *Black's Law Dictionary* 670 (8th abr. ed. 2005); see P*eople v. Regato, et al.*, 212 Phil. 268 (1984).

[28] *Guevarra v. Hon. Almodovar*, 251 Phil. 427, 432 (1989), citing 46 CJS Intent, p. 1103.

[29] Albert, *The Revised Penal Code* (Act No. 3815) 23 (1946).

[30] *People v. Ballesteros*, 349 Phil. 366, 374 (1998).

[31] *Black's Law Dictionary* 520 (8th abr. ed. 2005).

[32] Albert, *The Revised Penal Code* (Act No. 3815) 23-25 (1946).

sit rea — a crime is not committed if the mind of the person performing the act complained of is innocent.[33] As is required of the other elements of a felony, the existence of malicious intent must be proven beyond reasonable doubt.[34]

In the instant petition, the records do not show that the prosecution was able to prove the existence of malicious intent when the petitioners used the money they received to construct two-door studio-type apartments, one of which would serve as the garments factory. To reiterate, the purpose of the money was achieved. Furthermore, the factual precedents of the case do not sufficiently warrant conviction for the crime of estafa, much less deserve deprivation of liberty. At best, the petitioners could be held liable for damages for violating the tenor of their agreement.

Ultimately, the amount of ₱400,000.00 given to the petitioners could hardly be considered as the damage sustained by the private complainants. Damage, as an element of estafa, may consist in: (1) the offended party being deprived of his money or property as a result of the defraudation; (2) disturbance in property right; or (3) temporary prejudice.[35] In this case, the amount was voluntarily given pursuant to a joint venture agreement for the construction of a garments factory, and with which the petitioners complied. Absent the element of misappropriation, the private complainants could not have been deprived of their money through defraudation. Moreover, the allegation of lost profits, which could have arisen from the aborted joint venture, is conjectural in nature and could barely be contemplated as prejudice suffered.

Where the inculpatory facts and circumstances are susceptible of two or more interpretations, one of which is consistent with the innocence of the accused while the other may be compatible with the finding of guilt, the Court must acquit the accused because the evidence does not fulfill the test of moral certainty required for conviction.[36]

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[33] *United States v. Catolico*, 18 Phil. 504, 507 (1911).

[34] See *United States v. Barnes*, 8 Phil. 59 (1907).

[35] *Brokmann v. People*, 681 Phil. 84, 87 (2012).

[36] *Aricheta v. People*, 560 Phil. 170, 184 (2007).

Consequently, the Court is constrained to uphold the presumption of innocence in the petitioners' favor and acquit them.

Anent the allegation of conspiracy, the Court deems it proper not to discuss the same in view of the fact that the prosecution failed to establish the existence of all the elements of the crime charged.

Reimbursement of the amount given to the petitioners, plus interests, are due.

While the petitioners cannot be made criminally liable on the grounds of absence of some of the elements of estafa, and of reasonable doubt, it is undisputed that they received the amount of ₱400,000.00 from the private complainants. Lest unjust enrichment results, reimbursement of the amount is in order. An additional annual interest of six percent (6%) shall be imposed from the finality of this Decision until full payment thereof.[37]

WHEREFORE, premises considered, the Decision dated June 27, 2013 of the Court of Appeals, in CA-G.R. CR No. 33961, affirming the Decision rendered on December 9, 2009 by the Regional Trial Court of Las Piñas City, Branch 253, in Criminal Case No. 00-1023, is hereby **REVERSED** and **SET ASIDE**. Rosalinda S. Khitri and Fernando S. Khitri are hereby **ACQUITTED** of the crime of Estafa. However, they are **DIRECTED to REIMBURSE** the private complainants, Spouses Hiroshi and Belen Fukami, of the amount of FOUR HUNDRED THOUSAND PESOS (₱400,000.00), subject to an annual interest of six percent (6%) from the finality of this Decision until full satisfaction thereof.

SO ORDERED.

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

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[37] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

[*] Designated Additional Member per Raffle dated October 27, 2014 *vice* Associate Justice Francis H. Jardeleza.

THIRD DIVISION

[G.R. No. 212206. July 4, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GABBY CONCEPCION y NIMENDA and TOTO MORALES,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS ACCORDED RESPECT.— Appellants essentially assail the credibility of the lone eyewitness. Well-settled is the rule that findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude under gruelling examination. The Court of Appeals affirmed the trial court's finding that the lone eyewitness, Reggie, is credible. x x x Reggie was found to be at the crime scene when the crime of murder took place. The appellate court found Reggie's testimony "clear, straightforward and credible." While Reggie may be a member of *Siete Pares* a rival group of *Otso Makulit*, we agree with the appellate court's *ratio decidendi* that this fact alone does not make Reggie a biased witness.

2. CRIMINAL LAW; REVISED PENAL CODE; MURDER; TREACHERY ATTENDED THE COMMISSION OF THE CRIME.— The attending circumstance of treachery was likewise properly appreciated. Treachery is present when the following conditions are present: (1) the employment of such means of execution that gave the one attacked no opportunity to defend oneself or to retaliate and (2) deliberate or conscious adoption of the means of execution. In *People v. Osianas,* we held there is treachery when "the means used by the accused-appellants to insure the execution of the killing of the victims, so as to afford the victims no opportunity to defend themselves was the tying of the hands of the victims." In this case, it was correctly pointed out by the trial court that the fact that "the arms of the

[victim] were held by [Leopoldo and Algel] when he was stabbed in the back by accused Toto Morales is enough to qualify the killing to murder." Further, the Court of Appeals added that "appellants' attack and their co-accused came without warning and without the slightest provocation from the victim."

3. **ID.; ID.; ID.; PENALTY.—** Under Article 248 of the Revised Penal Code, 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. Appellants are not eligible for parole pursuant to Section 3 of Republic Act No. 9346.

4. **ID.; ID.; ID.; CIVIL LIABILITY.—** 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.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

An Information was filed charging appellant Gabby Concepcion y Nimenda (Gabby), Leopoldo Caguring y Losa (Leopoldo), Algel Negapatan y Castro (Algel), Martin Esgana (Martin), and two John Does with the crime of murder.

The accusatory portion of the Information reads:

That on or about the 23rd day of June 2004, in Navotas, Metro Manila, and within the jurisdiction of this Honorable [Court], the above-named accused, armed with a gun and bladed weapon, acting with discernment, conspiring, confederating, and mutually helping one another, with intent to kill, treachery and evident premeditation, with cruelty, did then and there willfully, unlawfully and feloniously, attack, assault, shoot and stab one JESSIE ASIS y NAMOC, hitting the victim on the different parts of his body, thereby inflicting upon the victim serious wounds which caused his immediate death.[1]

The two John Does were later identified as accused Elloy Caguring (Elloy) and appellant Toto Morales (Toto). An Amended Information[2] of the same tenor was filed charging the two accused with Murder. When arraigned, appellants pleaded not guilty to the charge.

Elloy remained at large.

Trial ensued.

Reggie Lacsa (Reggie) and Jessie Asis (Jessie) belonged to a group named *Siete Pares*[3] while appellants were members of the group *Otso Makulit*. On 23 June 2004, at around 9:00 p.m. at Pier 5, Market 3, Navotas Fishport Complex in Navotas, Metro Manila, Reggie was cleaning Danny Ang's banca when he heard his friend Jessie shout for help. Reggie hid on top of a tolda which is about two to three arms length from the *situs criminis*. He then saw Jessie being chased by Martin, Toto and Elloy. Jessie was running towards the banca where Leopoldo, Algel and Gabby with other companions were waiting for him. Upon seeing Jessie, Leopoldo and Algel held his arms while Toto stabbed him. Thereafter, Jessie was pushed into the water. Thereat, Gabby tried to shoot Jessie but he missed. The other accused roamed around the *banca* and served as Gabby's lookout. Thereafter, they walked away.[4]

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[1] Records, p. 1.

[2] *Id.* at 29.

[3] TSN, 27 January 2005, p. 11.

[4] TSN, 13 April 2005, p. 5; TSN, 27 January 2005, pp. 5-8.

As a result, Jessie died due to hemorrhagic shock secondary to two stab wounds.[5] The police recovered a homemade shotgun and two butcher's knives.

The defense presented Gabby and Algel who both testified that on that fateful night, they, together with Leopoldo, Martin and Toto had just attended a dance party. They left at 10:00 p.m. that same night. While they were walking along Market 3, Navotas Fishport, they were suddenly chased by a group of men armed with a bolo.[6] They all fled and went their own separate ways. Gabby and Algel claimed that they do not know Jessie and Reggie.[7] Leopoldo, Algel and Martin were all minors at the time of the commission of the crime.

On 4 November 2011, the Regional Trial Court (RTC) of Malabon City, Branch 169, rendered its Decision,[8] the dispositive portion of which reads:

WHEREFORE, the foregoing considered, this [c]ourt finds the Accused **LEOPOLDO CAGURING y LOSA** *a.k.a.* **POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG** *a.k.a.* **MAMAY, GABBY CONCEPCION y NIMENDA,** and **TOTO MORALES** guilty beyond reasonable doubt of crime of **MURDER**.

Accused **GABBY CONCEPCION y NIMENDA** and **TOTO MORALES** are sentenced to suffer the penalty of *Reclusion Perpetua*.

Accused **LEOPOLDO CAGURING y LOSA** *a.k.a.* **POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG** *a.k.a.* **MAMAY**, being minors are entitled to the privileged mitigating circumstance of minority and are sentenced to suffer the penalty of six (6) years of *Prision Mayor* as minimum to fourteen (14) years eight (8) months and one (1) day of *Reclusion Temporal* as maximum.

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[5] Exhibit Folder, p. 10.

[6] TSN, 2 October 2008, pp. 4-7; TSN, 24 July 2009, pp. 3-6.

[7] TSN, 4 May 2009, pp. 4-5; TSN, 24 July 2009, p. 9.

[8] CA *rollo*, pp. 19-29; Presided by Judge Emmanuel D. Laurea.

Considering, however that accused **LEOPOLDO CAGURING y LOSA** *a.k.a.* **POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG** *a.k.a.* **MAMAY** were minors at the time of the commission of the crime, the Department of Social Welfare and Development (DSWD) and the Bureau of Corrections (BUCOR) is directed to facilitate the confinement of the said minors in an agricultural camp or other training facilities.

The Department of Social Welfare and Development (DSWD) and the Bureau of Corrections (BUCOR) are likewise directed to make a report with respect to accused **LEOPOLDO CAGURING y LOSA** *a.k.a.* **POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG** *a.k.a.* **MAMAY** within ten (10) days from the time this case becomes final and executory.

Accused **LEOPOLDO CAGURING y LOSA** *a.k.a.* **POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG** *a.k.a.* **MAMAY, GABBY CONCEPCION y NIMENDA and TOTO MORALES** are likewise directed to pay the legal heirs of the Jessie Asis y Namoc the amounts of **FIFTY THOUSAND PESOS (₱50,000.00)** as civil indemnity, and **FIFTY THOUSAND PESOS (₱50,000.00)** as moral damages and **TWENTY FIVE THOUSAND PESOS (₱25,000.00)** as temperate damages.

Let warrant of arrest be issued against ELLOY CAGURING who remains at large up to this time. In the meantime, let this case against accused Elloy Caguring be archived subject to automatic revival upon his arrest.

Furnish the Department of Social Welfare and Development (DSWD) and Bureau of Corrections (BUCOR) of this Decision.[9]

The trial court found that the killing was attended by treachery and that appellants conspired to kill Jessie. The trial court gave credence to the testimony of eyewitness Reggie who had no motive to falsely testify against appellants. The trial court also considered the flights of appellant Toto and accused Elloy as indicia of guilt.

Aggrieved, appellants appealed to the Court of Appeals. In their Brief,[10] appellants first argue that Reggie's testimony is

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

[10] *Id.* at 50-63.

full of inconsistencies pertaining to the following: (1) number of stab wounds inflicted on the victim; (2) where the victim came prior to the incident; (3) the reason why Reggie was at the *situs criminis*; and (4) whether the victim was alone when the crime happened. Second, appellants stress that Reggie had the motive to falsely testify against them because he is a member of *Siete Pares*, the rival of their group *Otso Makulit*. Third, it was improbable that Reggie witnessed the entire incident because of the fact that he was hiding and the place was not well-lighted. Appellants assert that the prosecution failed to prove treachery to qualify the crime to murder. Appellants add that it was not shown that the stabbing was premeditated or that the accused made some preparations to ensure its execution.

The Court of Appeals, in its Decision[11] dated 7 August 2013, affirmed in full the ruling of the RTC, viz.:

> **ACCORDINGLY**, the Decison dated November 4, 2011 is **AFFIRMED with MODIFICATION**, as follows:
>
> (1) the awards of civil indemnity and moral damages are increased to ₱75,000.00 each;
>
> (2) exemplary damages of ₱30,000[.00] are awarded.[12]

The Court of Appeals concurred with the findings of the RTC that prosecution witness Reggie witnessed the incident and positively identified appellants as the assailants. The appellate court dismissed the alleged inconsistencies in the testimony of Reggie as "more apparent than real, if not totally trivial."[13]

After a painstaking review of the records, we see no reason to grant the appeal. Both lower courts correctly found appellants guilty beyond reasonable doubt of the crime of murder.

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[11] *Rollo*, pp. 2-20; Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Ricardo R. Rosario and Rodil *V.* Zalameda concurring.

[12] *Id.* at 19.

[13] *Id.* at 13.

Appellants essentially assail the credibility of the lone eyewitness. Well-settled is the rule that findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude under gruelling examination.[14] The Court of Appeals affirmed the trial court's finding that the lone eyewitness, Reggie, is credible.

Appellants zeroed in on the alleged inconsistencies in Reggie's testimony. This issue was succinctly addressed by the Court of Appeals when it dismissed the alleged inconsistencies in this wise:

> **First**: Based on [Reggie's] testimony, he saw appellant [Toto] stab the victim once, albeit the autopsy report indicated two stab wounds. This can be easily explained. Because appellants and the other accused were ganging up on the victim, [Reggie] obviously cannot tell who else among the assailants, aside from appellant [Toto], also stabbed the victim. At any rate, the fact that he saw appellant Morales deliver the first blow does not mean that it was the only injury inflicted on the victim and that it was Morales alone who injured him. In any event, [Reggie's] testimony clearly shows that he was indeed at the scene of the crime and it was appellant [Toto] who he saw stabbing the victim once.
>
> **Second**: Whether the victim came from his house or from Market 3 prior to the incident is absolutely irrelevant to appellants' culpability for murder. The fact is at the time the incident happened, the victim was at the situs criminis where the appellants' group slays him.
>
> **Third**: Whatever [Reggie] was doing at the *situs criminis* at the time of the incident, again, has no bearing whatever on appellants' culpability for murder. For sure, [Reggie] saw with his two eyes appellants and their co-accused slaying the victim.
>
> **Finally**, whether [Reggie] was alone or with someone else when the crime happened is also irrelevant to appellants' plea of innocence.[15]

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[14] *People v. Sevillano*, G.R. No. 200800, 9 February 2015.

[15] *Rollo*, pp. 14-15.

Reggie was found to be at the crime scene when the crime of murder took place. The appellate court found Reggie's testimony "clear, straightforward and credible."[16] While Reggie may be a member of *Siete Pares* a rival group of *Otso Makulit*, we agree with the appellate *court's ratio decidendi* that this fact alone does not make Reggie a biased witness.

With respect to appellants' allegation that it was impossible for Reggie to have witnessed the whole incident, Reggie categorically stated in his direct examination that he was about two to three meters from the *situs criminis*. He was also familiar with appellants, they being his former friends.[17]

The attending circumstance of treachery was likewise properly appreciated. Treachery is present when the following conditions are present: (1) the employment of such means of execution that gave the one attacked no opportunity to defend oneself or to retaliate and (2) deliberate or conscious adoption of the means of execution.[18] In *People v. Osianas*,[19] we held there is treachery when "the means used by the accused-appellants to insure the execution of the killing of the victims, so as to afford the victims no opportunity to defend themselves was the tying of the hands of the victims."

In this case, it was correctly pointed out by the trial court that the fact that "the arms of the [victim] were held by [Leopoldo and Algel] when he was stabbed in the back by accused Toto Morales is enough to qualify the killing to murder."[20] Further, the Court of Appeals added that "appellants' attack and their co-accused came without warning and without the slightest provocation from the victim."[21]

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[16] *Id.* at 12.

[17] TSN, 27 January 2005, p. 9.

[18] *Fantastico v. Malicse*, G.R. No. 190912, 12 January 2015.

[19] 588 Phil. 615, 635 (2008).

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

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

Under Article 248 of the Revised Penal Code, 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.[22] Appellants are 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.[23] 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.

WHEREFORE, the assailed 7 August 2013 Decision of the Court of Appeals in CA-G.R. CR HC No. 05451 finding appellants Gabby Concepcion y Nimenda and Toto Morales guilty beyond reasonable doubt of the crime of murder is **AFFIRMED with MODIFICATIONS** that appellants are not eligible for parole; the awards of civil indemnity, moral damages, and exemplary damages are increased to ₱100,000.00 each; in addition 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, Reyes,* and *Leonen,*[*] *JJ.*, concur.

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[22] *People v. Jalbonian*, 713 Phil. 93, 106 (2013).

[23] *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

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

THIRD DIVISION

[G.R. No. 212337. July 4, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BELTRAN FUENTES, JR.,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO VALID REASON TO DEPART FROM THE FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS.—** It is a well-settled principle that the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case. The evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. We find no valid reason to depart from the abovementioned doctrine especially when the Court of Appeals held that her testimony was categorical and positive.

2. **ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONY OF A WITNESS DO NOT AFFECT HER CREDIBILITY SINCE THEY HAVE NOTHING TO DO WITH THE ELEMENTS OF THE CRIME OF RAPE.—** Appellant points out to several supposed inconsistencies in AAA's statements such as how appellant manhandled her before actually raping her. We have ruled time and again that minor inconsistencies

in the testimony of the rape victim do not detract from the actual fact of rape. These inconsistencies do not affect the credibility of AAA because they have nothing to do with the essential elements of the crime of rape.

3. **ID.; ID.; AFFIDAVIT OF DESISTANCE NOT GIVEN ANY WEIGHT FOR BEING HIGHLY SUSPECT.—** Anent the Affidavit of Desistance, we had previously stated in previous cases that a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable. Indeed, the Affidavit of Desistance executed by AAA is highly suspect.

4. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; PENALTY.—** Under Article 266-B (1), the death penalty shall be imposed if the crime of rape is committed 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. In this case, appellant should be meted the death penalty. However, in view of Republic Act No. 9346, the penalty of *reclusion perpetua* should be imposed without eligibility for parole.

5. **ID.; ID.; ID.; CIVIL LIABILITY.—** Finally, a modification of damages is in order. Pursuant to *People v. Jugueta*, civil indemnity, moral damages and exemplary damages should be increased to ₱100,000.00 each. 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.

APPEARANCES OF COUNSEL

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

R E SO L U T I O N

PEREZ, *J.*:

Before us for review is the Court of Appeals' Decision[1] promulgated on 28 September 2012 in CA-G.R. CEB C.R. HC No. 00467. The Decision affirmed the Regional Trial Court (RTC), Branch 31, Dumaguete City's conviction of appellant Beltran Fuentes, Jr. for rape.

Appellant is charged with rape in the following Information:

> That on or about 8:00 o'clock in the evening of April 30, 2002, at Barangay Nagbo-lao, Municipality of Basay, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, employing force, did then and there, willfully, unlawfully and feloniously have carnal knowledge with [AAA],[2] a 14-years old minor girl, and niece of the accused without the victim's consent and against the latter's will.
>
> Contrary to Article 266-A of the Revised Penal Code as amended by Republic Act No. 7659 in relation to Republic Act No. 7610.[3]

After filing the case, AAA executed an Affidavit of Desistance[4] on 24 June 2002.

Upon arraignment, appellant pleaded not guilty. During the pre-trial, the parties stipulated that AAA is a 14-year old minor and niece of appellant by affinity.

The prosecution's version of the rape incident is encapsulated as follow:

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[1] *Rollo*, pp. 4-13; Penned by Associate Justice Ramon Paul L. Hernando with Associate Justice Gabriel T. Ingles and Zenaida T. Galapate-Laguilles concurring.

[2] The real name of the victim is withheld to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

[3] Records, p. 1.

[4] *Id.* at 211.

AAA lives in her parents' house in *Barangay* Nagbo-alao, Basay, Negros Oriental. At around 8:00 p.m. on 20 April 2002, AAA was defecating under a gmelina tree situated at some 35 meters from her house. Appellant suddenly appeared and grabbed her from behind. Appellant initially warned AAA not to tell her mother before he forced her to lie down. Appellant started to kiss her. AAA struggled but she was overpowered by appellant. Appellant managed to strip his and AAA's pants and underwear. He then mounted her and inserted his penis into her vagina. After consummating his bestial act, appellant ordered AAA to keep her mouth shut, else her mother would scold them. When AAA reached the house, she immediately told her parents about her ordeal.[5] They then went to the police station to report the rape incident. Thereafter, AAA underwent a medical examination where she was found to have lacerations in her hymen and her underwear had blood-stained secretions.[6] AAA was born on 6 June 1987[7] and she was fourteen-years old on the date of the rape incident.

Appellant testified on his behalf. He claimed that on the alleged date of the crime, he was doing carpentry work in the house of the parents of AAA. He worked from 8:00 a.m. until 5:00 p.m. then headed home right after. Upon reaching home, appellant rested for a while. While waiting for supper, he heard a certain Gina Becang calling for him and accusing him of molesting AAA. He first went directly to the store of AAA's parents and told AAA not to make accusations. He then went to the house of his parents-in-law where he was arrested.[8]

AAA filed an Affidavit of Desistance on 24 June 2002.

In a Decision[9] dated 24 January 2006, the trial court found appellant guilty beyond reasonable doubt of rape. The dispositive portion of the decision reads:

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[5] TSN, 19 August 2003, pp. 4-14.

[6] TSN, 19 December 2002, pp. 8-10.

[7] Records, p. 12.

[8] TSN, 6 January 2004, pp. 3-7.

[9] CA *rollo*, pp. 11-15; Penned by Presiding Judge Rogelio L. Carampatan.

WHEREFORE, all the foregoing premises considering, and finding the evidence of the prosecution to have proved the guilt of accused for the crime of rape defined under Article 266-A, No. 1, and penalized under Article 266-B, with the aggravating circumstance of being the relative of the victim by affinity within the third civil degree, accused Beltran Fuentes, Jr., is hereby sentenced to serve the supreme penalty of death, with all the accessory penalties of the law.[10]

Appellant filed a motion for new trial invoking AAA's retraction. The trial court denied the motion.

Appellant appealed.

On 28 September 2012, the Court of Appeals affirmed the decision of the trial court. It ruled that the categorical and positive testimony of AAA prevailed over appellant's defense of denial and alibi. The Court of Appeals also ruled that AAA has no motive to falsely testify against appellant. The Court of Appeals upheld the express renunciation of the affidavit of desistance by AAA based on her explanation that she was lured by appellant's wife into signing the affidavit in exchange for sending her to school. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The assailed January 24, 2006 Judgment of the Regional Trial Court (RTC), Branch 31 of Dumaguete City in Criminal Case No. 1581 is hereby **AFFIRMED** with the modification that the penalty of death imposed on accused-appellant is reduced to reclusion perpetua without eligibility for parole pursuant to Republic Act 9346.

No costs.[11]

In his appellant's Brief,[12] appellant argues that AAA's testimony is improbable with respect to how appellant removed her shorts and underwear when she was apparently defecating when appellant grabbed her. Appellant also claims that AAA

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[10] *Id.* at 15.

[11] *Rollo*, p. 12.

[12] CA *rollo*, pp. 77-92.

was not able to positively identify him because she was merely relying on the familiarity of his voice.

Refuting appellant's arguments, appellee maintains that appellant's guilt in committing the crime of rape was proven beyond reasonable doubt. The alleged "confusing" testimony of AAA was in fact clear and categorical. Appellee points out that the medical certificate corroborates AAA's testimony that she was raped. Appellee also avers that appellant failed to present any concrete evidence to prove his alibi in light of the positive identification made by AAA. Finally, appellee urges the Court to dismiss the recantation because it was dubious.

The issue in this case is whether appellant is guilty beyond reasonable doubt of the crime charged. Appellant is essentially assailing the credibility of AAA.

It is a well-settled principle that the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case.[13] The evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing.[14]

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[13] *People v. Balino*, G.R. No. 194833, 2 July 2014, 729 SCRA 52, 60.

[14] *People v. Abat*, G.R. No. 202704, 2 April 2014, 720 SCRA 557, 564-565 citing *People v. Sapigao*, 614 Phil. 589, 599 (2009).

We find no valid reason to depart from the abovementioned doctrine especially when the Court of Appeals held that her testimony was categorical and positive. It correctly ruled on this matter when it held:

> Private complainant categorically and positively identified in court as to how she was raped by the appellant. She was defecating under the gemelina (sic) tree when she was suddenly hugged by the appellant from behind who warned her not to tell her mother about it for they might be scolded. He then forced her to lie down and inserted his penis to the victim's vagina. AAA remained straightforward in her testimony despite the obvious effort of the defense to confuse her during cross-examination. We therefore find no reason not to believe her, just as the trial court had no such reason.[15]

Appellant points out to several supposed inconsistencies in AAA's statements such as how appellant manhandled her before actually raping her. We have ruled time and again that minor inconsistencies in the testimony of the rape victim do not detract from the actual fact of rape.[16] These inconsistencies do not affect the credibility of AAA because they have nothing to do with the essential elements of the crime of rape.

Anent the Affidavit of Desistance, we had previously stated in previous cases that a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.[17]

Indeed, the Affidavit of Desistance executed by AAA is highly suspect. The Court of Appeals noted, thus:

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[15] *Rollo*, p. 8.

[16] *People v. Delfin*, G.R. No. 190349, 10 December 2014, 744 SCRA 413, 425.

[17] *People v. Salazar*, 648 Phil. 520, 530 (2010) citing *People v. Ramirez*, G.R. Nos. 150079-80, June 10, 2004, 431 SCRA 666, 676.

We note of the fact that AAA expressly renounced during trial the affidavit of desistance that she executed on June 24, 2002 when she testified in open court on August 19, 2003 about the sexual assault made by appellant against her on the night of April 30, 2002. Further, she was able to explain why she executed the same. The document was a product of compulsion and influence on the part of appellant's wife to force AAA to sign the document. The victim was lured by appellant's wife into signing the document in exchange for her offer that she will send her to school until she finishes her education. Such testimony of AAA effectively casts doubt on the truthfulness of said affidavit. Thus, it deserves non consideration at all.[18]

Article 266 of the Revised Penal Code provides:

Article 266-A. Rape: When and How Committed. — Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

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

xxx xxx xxx

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

xxx xxx xxx

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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[18] *Rollo*, pp. 11-12.

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;

The prosecution was able to show evidence that all the circumstances necessary to convict appellant under the above provisions were present in the case.

Based on the testimony of AAA, there was carnal knowledge between her and appellant. This was further corroborated by medical findings which showed vaginal lacerations. It was further stipulated during pre-trial that the appellant is AAA's uncle by affinity and that she was fourteen years old at the time of the rape incident. It was ruled in *People v. Ofemiano*[19] that "even absent any actual force or intimidation, rape may be committed if the malefactor has moral ascendancy over the victim. We emphasized that in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, moral influence or ascendancy substitutes for violence or intimidation."

Against this overwhelming evidence of the prosecution, denial and alibi cannot stand, more so when his alibi is unsubstantiated and even inconsistent.

Under Article 266-B (1), the death penalty shall be imposed if the crime of rape is committed 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. In this case, appellant should be meted the death penalty. However, in view of Republic Act No. 9346, the penalty of *reclusion perpetua* should be imposed without eligibility for parole.

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[19] 625 Phil. 92, 99 (2010) citing *People v. Corpuz*, 597 Phil. 459, 467 (2009).

Finally, a modification of damages is in order. Pursuant to *People v. Jugueta*,[20] civil indemnity, moral damages and exemplary damages should be increased to ₱100,000.00 each. 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.

WHEREFORE, the assailed 28 September 2012 Decision of the Court of Appeals in CA-G.R. CEB C.R. HC No. 00467 finding appellant Beltran Fuentes, Jr. guilty beyond reasonable doubt of the crime of rape is **AFFIRMED with MODIFICATIONS** that appellant is not eligible for parole; the awards of civil indemnity, moral damages, and exemplary damages are increased to ₱100,000.00 each; and finally, 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, Reyes,* and *Jardeleza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 219627. July 4, 2016]

NATIONAL POWER CORPORATION, *petitioner, vs.* **SOUTHERN PHILIPPINES POWER CORPORATION,** *respondent.*

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[20] *People v. Jugueta*, G.R. No. 202125, 5 April 2016.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ENERGY REGULATORY COMMISSION RULES OF PRACTICE AND PROCEDURE; A MOTION FOR RECONSIDERATION RECEIVED BY THE ENERGY REGULATORY COMMISSION FOUR (4) DAYS AFTER DUE DATE SHOULD HAVE GIVEN DUE COURSE BY THE COMMISSION IN VIEW OF PETITIONER'S SATISFACTORY EXPLANATION FOR MISSING THE DEADLINE.— It is a basic tenet that procedural rules are necessary to facilitate an orderly and speedy adjudication of disputes. Thus, courts and litigants alike are enjoined to strictly abide by the rules. Nonetheless, this Court has, in exceptionally meritorious cases, suspended the technical rules of procedure "in order that litigants may have ample opportunity to prove their respective claims, and that a possible denial of substantial justice, due to legal technicalities, may be avoided." x x x Here, petitioner has shown a clear and persuasive reason for this Court to relax the rules. The Energy Regulatory Commission previously allowed petitioner to file its other pleadings through a private courier (such as LBC) despite its prescribed mode on the filing of pleadings being either personally or by registered mail. This liberality extended by the Commission on petitioner's earlier filings gave it a reasonable ground to believe that its filing of a motion for reconsideration through the same private courier would be considered sufficient compliance with the Energy Regulatory Commission Rules of Practice and Procedure. Unfortunately, the Motion for Reconsideration reached the Commission four (4) days beyond the due date. Petitioner's delay in filing the motion for reconsideration was far from being intentional and dilatory. Petitioner simply followed its usual mode of filing its pleadings, which had been previously acceptable to the Commission. The Energy Regulatory Commission itself adopts a liberal policy in the construction of its Rules of Practice and Procedure "to secure the most expeditious and least expensive determination of every proceeding x x x on its merits." Hence, the Commission should have given due course to petitioner's Motion for Reconsideration, given petitioner's satisfactory explanation for missing the deadline.

2. CIVIL LAW; CONTRACTS; GOVERNMENT CONTRACT; THE SUBJECT ENERGY CONVERSION AGREEMENT AND ITS SCHEDULES REVEAL NO EXPRESS PROHIBITION AGAINST RESPONDENT'S INSTALLATION OF A SIXTH ENGINE IN ITS POWER STATION.— While paragraph 3.1 of the Agreement's First Schedule states that respondent is responsible for the "complete design, development and construction of the Power Station, consisting of 5 x 18V38 Stork-Wartsila engines with Black Start capability," nothing in the Agreement restricts respondent from replacing or adding engines after the Completion Date. Rather, what is clear from the Project Scope and Specifications enumerated in the First Schedule is respondent's obligation to generate a minimum net capacity of 50 megawatts: x x x Furthermore, from the Completion Date, respondent, at its own cost, is "responsible for the management, operation, maintenance and repair of the Power Station [and] x x x ensure that the Power Station is in good operating condition and capable of converting Fuel supplied by [petitioner] into electricity in a safe and stable manner within the Operating Parameters." These parameters include ensuring that the "capacity of the Power Station shall not be less than 50,000 [kilowatts] as measured at the high side of the main output transformers at the site and design conditions provided in Section 4.1 of the First Schedule." Thus, the Agreement does not limit respondent to the five (5) generating units initially required to be installed, and that what is of prime importance is that respondent makes available to petitioner electricity no less than 50,000 kilowatts. Section 3.1 of the Agreement's First Schedule, which provides for the construction of a five (5)-engine Power Station, cannot be construed alone. Various stipulations of a contract must be interpreted or read together to arrive at its true meaning. The legal effect of a contract is not determined by any particular provision alone, disconnected from all others, but from the language used and gathered from the whole instrument. We likewise consider that the Energy Conversion Agreement was executed under a Build-Operate-Own arrangement. Under this arrangement, respondent is authorized to finance, construct, own, and operate the Power Station to supply petitioner with electricity. Thus, subject only to the limitations expressed in the Agreement, respondent has a free hand not only in the "design, construction, engineering, supply and installation of equipment, testing and commissioning

of the Power Station[,]" but more significantly, in the "management, operation, maintenance and repair of the Power Station." Specifically, respondent is given the right to "do all other things necessary or desirable for the completion of the Power Station" under the specifications set forth in the First Schedule, as well as to "do all other things necessary or desirable for the running of the Power Station within the Operating Parameters."

3. ID.; ID.; ID.; ID.; IT IS NOT SPECIFIED IN THE AGREEMENT THAT THE ADDITIONAL FIVE (5)-MEGAWATT CAPACITY MUST BE PRODUCED ONLY FROM THE ORIGINAL FIVE (5) GENERATING UNITS; PETITIONER IS LIABLE TO PAY RESPONDENT THE CONTRACTED CAPACITY OF 55 MEGAWATTS.— Although it is clear that respondent is given an allowance of five (5)-megawatt contracted capacity or up to a maximum of 55 megawatts, it is not specified in the Agreement that the additional five (5)-megawatt contracted capacity must be produced only from the original five (5) generating units. This omission in the Agreement binds petitioner. We resort to the fundamental principle that a contract is the law between parties. Absent any showing that its provisions are contrary to law, morals, good customs, public order, or public policy, it should be enforced to the letter. Contracts cannot be altered for the benefit of one party and to the detriment of another. Neither can this Court, by construction, "relieve [a] party from the terms to which [it] voluntarily consented, or impose on [it] those which [it] did not." Hence, we uphold the Court of Appeals' affirmation of the Energy Regulatory Commission's Decision holding petitioner National Power Corporation liable to pay respondent Southern Philippines Power Corporation for the contracted capacity of 55 megawatts from 2005 to 2010.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

LEONEN, *J.*:

This Petition for Review on Certiorari[1] assails the Court of Appeals' (a) February 20, 2015 Decision[2] affirming the Energy Regulatory Commission's Decision,[3] and (b) July 24, 2015 Resolution[4] denying reconsideration.

On October 26, 1996, the consortium of ALSONS Power Holdings Corporation and TOMEN Corporation entered into an Energy Conversion Agreement[5] with the National Power Corporation for a 50-megawatt bunker-C fired diesel-generating power project in General Santos City.[6]

Under the Energy Conversion Agreement, the consortium will design, build, and operate a bunker-C fired diesel-generating power station (Power Station),[7] which will convert the fuel supplied by the National Power Corporation into electricity that will, in turn, be delivered to National Power Corporation.[8]

On January 31, 1997, Southern Philippines Power Corporation assumed the obligations of the consortium to the Energy Conversion Agreement through the Accession Undertaking.[9]

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[1] *Rollo*, pp. 24-48.

[2] *Id.* at 49-58. The Decision was penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Romeo F. Barza and Agnes Reyes-Carpio of the Third Division, Court of Appeals, Manila.

[3] *Id.* at 81-97. The Decision dated April 1, 2013 was signed by Chairperson Zenaida G. Cruz-Ducut and Commissioners Maria Teresa A.R. Castañeda, Jose C. Reyes, Alfredo J. Non, and Gloria Victoria C. Yap-Taruc.

[4] *Id.* at 59.

[5] *Id.* at 102-190.

[6] *Id.* at 49-50 and 83, Energy Regulatory Commission Decision.

[7] *Id.* at 108, Energy Conversion Agreement, Art. 2, par. 2.01.

[8] *Id.* at 111, Energy Conversion Agreement, Art. 2, par. 2.08.

[9] *Id.* at 50, 84, and 191-193, Accession Undertaking.

The cooperation period between Southern Philippines Power Corporation and the National Power Corporation started on the day after March 18, 1998, when the Power Station was declared completed.[10] Since then until 2004, Southern Philippines Power Corporation consistently nominated 50 megawatts of the Power Station's capacity to the National Power Corporation.[11]

On February 2, 2005, Southern Philippines Power Corporation informed the National Power Corporation that it installed an additional engine with a five (5)-megawatt generating capacity.[12] Thus, from April 2005, Southern Philippines Power Corporation guaranteed to the National Power Corporation a total capacity of 55 megawatts, equivalent to 110% of the nominal capacity allowed under the Energy Conversion Agreement.[13]

In a letter dated March 24, 2008, Southern Philippines Power Corporation requested payment in the amount of ₱45,840,673.22, attributable to the additional 10% capacity made available to the National Power Corporation since 2005.[14]

In a letter-reply dated April 21, 2008, the National Power Corporation manifested its refusal to pay for the additional 10% capacity.[15] It claimed that it had the discretion to accept or reject Southern Philippines Power Corporation's capacity nomination if it exceeds 100% of the nominal capacity.[16]

On August 25, 2008, the parties executed a Terms of Reference and mutually agreed to submit the resolution of their dispute to the Energy Regulatory Commission.[17]

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[10] *Id.* at 84.

[11] *Id.* at 50 and 84.

[12] *Id.* at 84.

[13] *Id.*

[14] *Id.* at 50 and 84. The Energy Regulatory Commission Decision states that the additional capacity was made available since April 2005.

[15] *Id.*

[16] *Id.* at 84.

[17] *Id.* at 51 and 85.

On January 6, 2009, Southern Philippines Power Corporation filed before the Energy Regulatory Commission a Petition for Dispute Resolution[18] praying that:

> it be allowed to declare a capacity nomination of 110% of the nominal capacity without the consent of N[ational] P[ower] C[orporation]; that it be allowed to supplement the energy sources of the Power Station with additional engines as may be necessary without the consent of N[ational] P[ower] C[orporation]; and that N[ational] P[ower] C[orporation] be ordered to pay unpaid fees from 2005 to 2008.[19]

The National Power Corporation filed an Answer praying for the dismissal of the Petition, contending that:

> it can accept capacity nominations of up to 110% of the Nominal Capacity but the same should only come from the five (5) 18V38 Stork-Wartsila engines provided for in the E[nergy] C[onversion] A[greement]; that S[outhern] P[hilippines] P[ower] C[orporation] is not allowed to install additional units to meet its Contracted Capacity; and that N[ational] P[ower] C[orporation] can only be held liable to pay for generated energy beyond 50 MW when the same comes from the five (5) generating units under the E[nergy] C[onversion] A[greement].[20]

On December 14, 2009, Southern Philippines Power Corporation filed a Supplemental Petition praying for payment of the unpaid fees for the period of 2005 to 2010.[21]

The Energy Regulatory Commission, in its Decision[22] dated April 1, 2013, granted Southern Philippines Power Corporation's Petition and Supplemental Petition:

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[18] *Id.*

[19] *Id.* at 51.

[20] *Id.*

[21] *Id.*

[22] *Id.* at 81-97.

WHEREFORE, the foregoing premises considered, the petition and supplemental petition both filed by Southern Philippines Power Corporation (SPPC) are hereby **GRANTED**.

Accordingly, the National Power Corporation (NPC) should pay SPPC for the contracted capacity of 55,000 kW from 2005 until 2010.

Relative thereto, SPPC and NPC are directed to reconcile their accounts and submit the same, including the proposed payment scheme, within thirty (30) days, from receipt hereof.

SO ORDERED.[23] (Emphasis in the original)

The Commission's Order[24] dated June 3, 2013 denied the National Power Corporation's Motion for Reconsideration for being filed out of time.

The Court of Appeals, in its Decision[25] dated February 20, 2015, denied the National Power Corporation's Petition for Review and affirmed the Energy Regulatory Commission's April 1, 2013 Decision and June 3, 2013 Order.[26] It also denied reconsideration.[27]

Hence, this Petition was filed.

Petitioner National Power Corporation argues that the Energy Regulatory Commission should not have denied its Motion for Reconsideration.[28] Petitioner was under the honest impression that filing its motion by private courier was sufficient compliance with Rule 23, Section 1 and Rule 10, Section 4 of Resolution No. 38.[29] Unfortunately, the Energy Regulatory Commission

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[23] *Id.* at 96.

[24] *Id.* at 98-101.

[25] *Id.* at 49-58.

[26] *Id.* at 58.

[27] *Id.* at 59.

[28] *Id.* at 32.

[29] *Id.*

received the Motion four (4) days after its due date and considered it filed out of time.[30]

Petitioner argues that courts should not be too strict with procedural technicalities when these do not impair the proper administration of justice, and courts should rule on the merits as much as possible.[31] Petitioner quotes Rule 1, Sections 3 and 4 of the Energy Regulatory Commission Rules, which provide for the Commission's power to issue procedural directions and the liberal construction of the rules "consistent with the requirements of justice."[32]

Petitioner explains that this case involves government funds amounting to not less than ₱400,000,000.00, and the Energy Regulatory Commission's late receipt of its Motion for Reconsideration should not have been sufficient reason to deny it.[33]

On the merits, petitioner argues that it should not be held liable for the dispatch of the 55-megawatt contracted capacity from 2005 to 2010.[34] Petitioner disagrees with the Court of Appeals' statement that Section 3.3 of the First Schedule of Energy Conversion Agreement does not limit Southern Philippines Power Corporation to the original five (5) generating units.[35] Petitioner contends that the provision of the First Schedule of the Agreement clearly provides for five (5) Stork-Wartsila engines as comprising the Power Station. Thus, respondent Southern Philippines Power Corporation's unilateral installation of an additional sixth engine constitutes an amendment of the Energy Conversion Agreement.[36] The provision of the First Schedule provides:

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[30] *Id.*

[31] *Id.*

[32] *Id.* at 32-33.

[33] *Id.* at 33.

[34] *Id.* at 38.

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

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

1. Project Scope:

   The Contractor shall be responsible for the design, engineering, supply, construction, installation and erection, including civil works, testing and commissioning of a bunker-C fired diesel generating power station.

   xxx xxx xxx

3. Extent of Works/Supply

   In pursuance of its obligation under Section 1, the Contractor shall be responsible for:

   3.1. Complete design, development and construction of the Power Station, consisting of 5 x 18V38 Stork-Wartsila engines with Black Start capability.

   xxx xxx xxx

   3.3. Electro-Mechanical Works

   Supply, installation/erection, tests and commissioning to put into operation the required number of generation units and its corresponding minimum net capacity of 50,000 kW.[37]

Petitioner argues that the installation of the sixth engine changes the definition of nominal capacity under Article I of the Energy Conversion Agreement, "which is 50,000 [kilowatts] measured at the high voltage side of the main power transformers."[38] The additional engine would make the nominal capacity equivalent to 55 megawatts and would result in a distortion of the formula since the 110% nomination would then be based on the increased nominal capacity, and 110% of 55 megawatts or 60.5 megawatts is way beyond what the Energy Conversion Agreement provides.[39]

Petitioner likewise submits that:

Thus, the original five (5)-engine configuration of the power station is more than sufficient to produce 50 MW or to nominate 110% thereof

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[37] *Id.* at 39.

[38] *Id.* at 40-42.

[39] *Id.* at 42.

which is 55 MW since the combined name plate rating of the 5 engines is 56.7 MW. To unilaterally add a 6th engine seven (7) years after the execution of the E[nergy] C[onversion] A[greement] just to make certain that it can produce 110% of the nominal capacity is definitely not contemplated by the E[nergy] C[onversion] A[greement].[40]

Petitioner argues that it is only liable to pay for energy beyond 50 megawatts when the additional five (5) megawatts comes from the five (5) generating units under the Energy Conversion Agreement that has a total capacity of 56.7 megawatts. Further, this is an added incentive for respondent to keep these engines in good running order and to comply with the operating parameters provided by the Energy Conversion Agreement Schedules.[41]

From 1998 to 2004, respondent consistently nominated and demonstrated 50-megawatt nominal capacities, which is petitioner's main requirement. It was only in 2005 when respondent unilaterally installed a sixth engine, without petitioner's prior consent, that it began nominating a 55-megawatt nominal capacity. Petitioner accepted the nomination, but on the condition that it be tested using the original five (5)-engine configuration of the plant.[42]

Petitioner prays for the reversal of the Court of Appeals Decision and Resolution, and "that judgment be rendered ordering NPC to pay only for the tested capacity actually demonstrated using the original five engines for the period 2005 to 2010 as shown in the joint test certificates issued for said periods."[43] It submits that the "amount should be based on the actual net kW capability of the power station actually demonstrated and tested based on its original configuration of five engines":[44]

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[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.* at 44.

[44] *Id.* at 43-44.

Test Period	Tested Capacity for Five (5) Engines
April 19, 2005	52,754.94 kW
December 28, 2006	51,517.81 kW
April 27, 2007	51,558.40 kW
November 4, 2008	50,943.37 kW
October 22, 2009	52,882.83 kW
June 16, 2010	49,989.45 kW[45]

In its Comment,[46] respondent submits that the Petition is "an obvious attempt by the N[ational] P[ower] C[orporation] to have this Honorable Court review or re-examine the factual findings and resulting conclusions of the E[nergy] R[egulatory] C[ommission] (which has been affirmed by the Court of Appeals) in a Rule 45 petition."[47]

Respondent argues that the Petition, even if considered, should still be denied for lack of merit.[48] The Motion for Reconsideration before the Energy Regulatory Commission was filed out of time — that is, four (4) days after the deadline — rendering the Energy Regulatory Commission Decision final and executory.[49] Outright dismissing the Petition would be in line with the immutability of judgments.[50] Respondent contends that justice would be best served if petitioner were ordered to satisfy its contractual obligations, and not evade them by merely invoking that over ₱400,000,000.00 in government funds are involved.[51]

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[45] *Id.*

[46] *Id.* at 454-473.

[47] *Id.* at 455.

[48] *Id.* at 457.

[49] *Id.* at 458.

[50] *Id.* at 462.

[51] *Id.* at 463.

Respondent asserts that even assuming that the Energy Regulatory Commission Decision has not attained finality, the Petition still does not merit its reversal.[52] It argues that it is "not contractually prohibited under the E[nergy] C[onversion] A[greement] to supplement the energy sources of the Power Station with additional engines."[53]

Respondent quotes provisions from the Energy Conversion Agreement to support its contention that it "may nominate a Contracted Capacity of up to, but not exceeding, 55,000 [kilowatts] in any year without securing [petitioner]'s consent."[54] As found by the Energy Regulatory Commission, "it is not incumbent upon [petitioner] to decide on the number of engines that will be utilized in producing the required capacity, for so long as the same produces the required capacity."[55] Moreover, "Section 3.3 of the First Schedule of the E[nergy] C[onversion] A[greement] clearly does not limit [respondent] to the original five (5) generating units but in fact allows it to put up the required number of units capable of generating a minimum net capacity of 50,000 [kilowatts]."[56]

Respondent argues that:

> The installation of the 6th engine would not change the definition of Nominal Capacity because it has a definite value. Regardless of whether [respondent] SPPC uses 5, or 6, or 7 engines, the Nominal Capacity will always be at 50,000 kW and 110% of the Nominal Capacity will always still be 55,000 kW.[57]

Further, this case only involves Capacity Fee; thus, Capacity Fee should be paid whether or not standby electricity is actually

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[52] *Id.*

[53] *Id.* at 466.

[54] *Id.* at 467.

[55] *Id.* at 468.

[56] *Id.*

[57] *Id.* at 468-469.

used. Respondent contends that petitioner cannot renege from its contractual obligations and argue unjust enrichment.[58]

The issues for resolution are as follows:

First, whether the Court of Appeals erred in affirming the Energy Regulatory Commission's denial of petitioner's Motion for Reconsideration, which was filed by private courier and received by the Energy Regulatory Commission four (4) days after due date; and

Second, whether under the Energy Conversion Agreement, petitioner is obliged to accept a capacity nomination of up to 110% and, thus, liable to pay respondent for the additional capacity supplied.

I

The Court of Appeals erred in upholding the denial by the Energy Regulatory Commission of petitioner's Motion for Reconsideration purely on a technicality.

It is a basic tenet that procedural rules are necessary to facilitate an orderly and speedy adjudication of disputes.[59] Thus, courts and litigants alike are enjoined to strictly abide by the rules. Nonetheless, this Court has, in exceptionally meritorious cases, suspended the technical rules of procedure "in order that litigants may have ample opportunity to prove their respective claims, and that a possible denial of substantial justice, due to legal technicalities, may be avoided."[60]

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[58] *Id.* at 470.

[59] *Fortich v. Corona*, 359 Phil. 210, 220 (1998) [Per J. Martinez, Second Division].

[60] *Bagalanon v. Court of Appeals*, 166 Phil. 699, 702 (1977) [Per J. Martin, First Division], citing *Quibuyen v. Court of Appeals*, 119 Phil. 48, 55 (1963) [Per J. Paredes, En Banc]; *Luzteveco Employees Association, CCLU v. Luzteveco, Inc.*, 122 Phil. 1037, 1048-1049 (1965) [Per J. J. P. Bengzon, En Banc]; *Arches vs. Bellosillio*, 126 Phil. 426, 428-429 (1967) [Per J. J. P. Bengzon, En Banc].

In *Philippine Bank of Communications v. Yeung*,[61] this Court adopted a liberal approach to procedural rules and considered the petitioner's motion for reconsideration as having been properly filed before the Court of Appeals, though it was filed beyond the 15-day reglementary period.[62] The seven (7)-day delay in filing the motion for reconsideration was found to be excusable in light of the merits of the case and because the delay was not entirely attributable to the fault or negligence of the petitioner.[63] The Court cited *Sanchez v. Court of Appeals*,[64] among other cases,[65] which sets forth a number of reasons to be considered in suspending procedural rules:

> Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.[66]

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[61] G.R. No. 179691, December 4, 2013, 711 SCRA 490 [Per J. Brion, Third Division].

[62] *Id.* at 500-501.

[63] *Id.*

[64] 452 Phil. 665 (2003) [Per J. Bellosillo, En Banc].

[65] See *Barnes v. Padilla*, 482 Phil. 903, 915 (2004) [Per J. Austria-Martinez, Second Division]; *Republic v. Court of Appeals*, 379 Phil. 92, 98-99 (2000) [Per J. Mendoza, Second Division]; *Olacao v. National Labor Relations Commission*, 257 Phil. 878, 889 (1989) [Per J. Melencio-Herrera, Second Division]; *Siguenza v. Court of Appeals*, 222 Phil. 94, 99 (1985) [Per J. Gutierrez, Jr., First Division]; *Ramos v. Bagasao*, 185 Phil. 276, 279 (1980) [Per J. Abad Santos, Second Division].

[66] *Sanchez v. Court of Appeals*, 452 Phil. 665, 674 (2003) [Per J. Bellosillo, En Banc].

Here, petitioner has shown a clear and persuasive reason for this Court to relax the rules. The Energy Regulatory Commission previously allowed petitioner to file its other pleadings through a private courier (such as LBC) despite its prescribed mode on the filing of pleadings being either personally or by registered mail.[67] This liberality extended by the Commission on petitioner's earlier filings gave it a reasonable ground to believe that its filing of a motion for reconsideration through the same private courier would be considered sufficient compliance with the Energy Regulatory Commission Rules of Practice and Procedure. Unfortunately, the Motion for Reconsideration reached the Commission four (4) days beyond the due date.

Petitioner's delay in filing the motion for reconsideration was far from being intentional and dilatory. Petitioner simply followed its usual mode of filing its pleadings, which had been previously acceptable to the Commission. The Energy Regulatory Commission itself adopts a liberal policy in the construction of its Rules of Practice and Procedure "to secure the most expeditious and least expensive determination of every proceeding . . . on its merits."[68] Hence, the Commission should have given due course to petitioner's Motion for Reconsideration, given petitioner's satisfactory explanation for missing the deadline.

This notwithstanding, we rule for respondent on the substantive issue.

II

Under the Eighth Schedule of the Energy Conversion Agreement, petitioner is obliged to pay for the amount of

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[67] Res. No. 38 (2006), A Resolution Promulgating the Energy Regulatory Commission's Rules of Practice and Procedure, Rule 10, Sec. 4 provides:

> Rule 10, Section 4. Filing of Pleadings and Other Papers. — The filing of pleadings and other papers shall be made by presenting the original and two (2) copies of any pleading or other papers, together with the diskettes or compact discs containing the electronic files of the same, personally to the Docket Section of the Commission, or by sending them by registered mail addressed to the Docket Section.

[68] Res. No. 38 (2006), Rule 1, Sec. 4.

contracted capacity, which is determined by the "actual net [kilowatt] capability of the Power Station *nominated* and *demonstrated* by [respondent],"[69] subject only to the following limitations:

> 2.1 such Contracted Capacity may not exceed 110% of the nominal capacity unless NPC so agrees at its sole option and terms; and
>
> 2.2 if at the beginning of any Contract Year the Contractor nominates and demonstrates a Contracted Capacity less than ninety-five (95%) of the Nominal Capacity, such Contracted Capacity shall be applied for the Contract Year, unless the Contractor subsequently requests for another test to nominate and demonstrate an increased amount in which case such increased amount shall be the Contracted Capacity for the remainder of such Contract Year.[70]

Referred to in the Agreement as the Capital Recovery Fee, it pertains simply to the amount which petitioner pays for the availability of electricity at an agreed level, whether the electricity is actually used or not.[71]

The dispute in this case arose in 2005 when respondent installed an additional engine in the Power Station.[72] From 2005 to 2010, respondent nominated and demonstrated a capacity of 55 megawatts.[73] Petitioner refused to pay for the additional five (5)-megawatt contracted capacity because it allegedly came from

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[69] *Rollo*, p. 161, Energy Conversion Agreement.

[70] *Id.* at 161, Energy Conversion Agreement, Eighth Schedule. See *rollo*, p. 106, Energy Conversion Agreement, Art. 1, which provides:

> Art. 1. Definition of Terms. —
>
> xxx xxx xxx
>
> "Nominal Capacity" shall mean 50,000 kW, measured at the high voltage side of the main power transformers.

[71] *Id.* at 161, Energy Conversion Agreement, Art. 1.

[72] *Id.* at 90, ERC Decision.

[73] *Id.* at 90-93, ERC Decision.

the additional sixth engine, which was outside the coverage of the Energy Conversion Agreement.

Contrary to petitioner's stance, a reading of the entire Energy Conversion Agreement and its Schedules reveals no express prohibition against respondent's installation of a sixth engine in its Power Station.

While paragraph 3.1 of the Agreement's First Schedule states that respondent is responsible for the "complete design, development and construction of the Power Station, consisting of 5 x 18V38 Stork-Wartsila engines with Black Start capability,"[74] nothing in the Agreement restricts respondent from replacing or adding engines after the Completion Date.[75] Rather, what is clear from the Project Scope and Specifications enumerated in the First Schedule is respondent's obligation to generate a minimum net capacity of 50 megawatts:

> 3.3 Electro-Mechanical Works
>
> Supply, installation/erection, tests and commissioning to put into operation the required number of generation units and its corresponding minimum net capacity of 50,000 kW.
>
> xxx xxx xxx
>
> 4. Design Criteria
>
> 4.1 Engine-generator Units
>
> The engine-generator units with an aggregate capacity of not less than 50,000 kW (subject to the provisions of Article 5.04) shall be capable of delivering the said output at the following site and design conditions:

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[74] *Id.* at 138, Energy Conversion Agreement, First Schedule, par. 3.1.

[75] *Id.* at 104. Energy Conversion Agreement, Art. 1 provides:

> Article 1. Definition of Terms. —
>
> xxx xxx xxx
>
> "Completion Date" means the day upon which the Contractor certifies, as concurred by NPC, that the Power Station has successfully completed its testing and guarantees that the Power Station is capable of operating in accordance with the Operating Parameters specified in the Second Schedule.

xxx xxx xxx

Furthermore, from the Completion Date, respondent, at its own cost, is "responsible for the management, operation, maintenance and repair of the Power Station [and] . . . ensure that the Power Station is in good operating condition and capable of converting Fuel supplied by [petitioner] into electricity in a safe and stable manner within the Operating Parameters."[76] These parameters include ensuring that the "capacity of the Power Station shall not be less than 50,000 [kilowatts] as measured at the high side of the main output transformers at the site and design conditions provided in Section 4.1 of the First Schedule."[77]

Thus, the Agreement does not limit respondent to the five (5) generating units initially required to be installed, and that what is of prime importance is that respondent makes available to petitioner electricity no less than 50,000 kilowatts.

Section 3.1 of the Agreement's First Schedule, which provides for the construction of a five (5)-engine Power Station, cannot be construed alone. Various stipulations of a contract must be interpreted or read together[78] to arrive at its true meaning. The legal effect of a contract is not determined by any particular provision alone, disconnected from all others, but from the language used and gathered from the whole instrument.[79]

We likewise consider that the Energy Conversion Agreement was executed under a Build-Operate-Own arrangement.[80] Under this arrangement, respondent is authorized to finance, construct,

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[76] *Id.* at 120, Energy Conversion Agreement, Art. 8, par. 8.01.

[77] *Id.* at 144, Energy Conversion Agreement, Second Schedule, par. 1.1.

[78] CIVIL CODE, Art. 1374. See *Philippine National Construction Corp. v. Mars Construction Enterprises, Inc.*, 382 Phil. 510, 518 (2000) [Per J. Panganiban, Third Division]; *HDMF v. Court of Appeals*, 351 Phil. 858, 864 (1998) [Per J. Purisima, Third Division].

[79] *Angeles v. Philippine National Railways*, 532 Phil. 147, 156 (2006) [Per J. Garcia, Second Division]; *Rivera v. Espiritu*, 425 Phil. 169, 184 (2002) [Per J. Quisumbing, Second Division].

[80] *Rollo*, p. 103, Energy Conversion Agreement, Recitals.

own, and operate the Power Station to supply petitioner with electricity. Thus, subject only to the limitations expressed in the Agreement, respondent has a free hand not only in the "design, construction, engineering, supply and installation of equipment, testing and commissioning of the Power Station[,]"[81] but more significantly, in the "management, operation, maintenance and repair of the Power Station."[82]

Specifically, respondent is given the right to "do all other things necessary or desirable for the completion of the Power Station"[83] under the specifications set forth in the First Schedule, as well as to "do all other things necessary or desirable for the running of the Power Station within the Operating Parameters."[84]

Undeniably, with respect to contracted capacity, there are only two requirements under the Agreement:

(1) Respondent must *nominate* or guarantee, at the beginning of every year of the cooperation period,[85] the availability of electricity to petitioner at the contracted capacity of not less than 50,000 kilowatts (or 50 megawatts) nor more than 110% or 55,000 kilowatts (or 55 megawatts);[86] and

(2) Respondent must be able to *demonstrate* that the Power Station has the technical capability of producing and delivering to petitioner the contracted capacity.[87]

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[81] *Id.* at 112, Energy Conversion Agreement, Art. 3, par. 3.01.

[82] *Id.* at 120, Energy Conversion Agreement, Art. 8, par. 8.01.

[83] *Id.* at 113, Energy Conversion Agreement, Art. 3, par. 3.02.

[84] *Id.* at 121, Energy Conversion Agreement, Art. 8, par. 8.04.

[85] *Id.* at 105. Energy Conversion Agreement, Art. 1 provides:
Article 1. Definition of Terms. —
xxx xxx xxx
"Cooperation Period" means the period of eighteen (18) years from the Target Completion Date or Completion Date whichever is later, as the same may be extended pursuant to the terms hereof.

[86] *Id.* at 161, Energy Conversion Agreement, Eighth Schedule, par. 2.

[87] *Id.*

> Subsequently, petitioner and respondent will issue a joint test certificate stating whether the Power Station has satisfactorily completed the test or has successfully demonstrated its ability to deliver the contracted capacity.[88]

Although it is clear that respondent is given an allowance of five (5)-megawatt contracted capacity or up to a maximum of 55 megawatts, it is not specified in the Agreement that the additional five (5)-megawatt contracted capacity must be produced only from the original five (5) generating units. This omission in the Agreement binds petitioner.

We resort to the fundamental principle that a contract is the law between parties. Absent any showing that its provisions are contrary to law, morals, good customs, public order, or public policy, it should be enforced to the letter.[89] Contracts cannot be altered for the benefit of one party and to the detriment of another. Neither can this Court, by construction, "relieve [a] party from the terms to which [it] voluntarily consented, or impose on [it] those which [it] did not."[90]

Hence, we uphold the Court of Appeals' affirmation of the Energy Regulatory Commission's Decision holding petitioner National Power Corporation liable to pay respondent Southern Philippines Power Corporation for the contracted capacity of 55 megawatts from 2005 to 2010.

WHEREFORE, the Petition is **DENIED**.

SO ORDERED.

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

Mendoza, J., on official leave.

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[88] *Id.* at 117, Energy Conversion Agreement, Art. 6, par. 6.06.

[89] *See Metropolitan Bank and Trust Co. v. Wong*, 412 Phil. 207, 216 (2001) [Per J. Sandoval Gutierrez, Third Division].

[90] *Spouses Cabahug v. National Power Corporation*, 702 Phil. 597, 604 (2013) [Per J. Perez, Second Division]; *Bautista v. Court of Appeals*, 379 Phil. 386, 399 (2000) [Per J. Puno, First Division].

THIRD DIVISION

[G.R. No. 220449. July 4, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RUSGIE GARRUCHO *Y* SERRANO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS, ESSENTIAL ELEMENTS.— For a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drug to the *poseur-buyer* and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS, ELEMENTS OF.— In prosecutions for illegal possession of dangerous drugs, on the other hand, it must be shown that (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug. The existence of the drug is the very *corpus delicti* of the crime of illegal possession of dangerous drugs and, thus, a condition *sine qua non* for conviction.

3. ID.; ID.; IN CRIMINAL CASES INVOLVING DRUGS, FAILURE OF THE PROSECUTION TO INTRODUCE THE SEIZED DRUGS AS EXHIBITS DURING TRIAL IS FATAL; IT IS FAILURE TO ESTABLISH THE INDISPENSABLE ELEMENT OF *CORPUS DELICTI*.— In this case, the prosecution failed to establish the indispensable element of *corpus delicti* of the drug cases against appellant because it did not proffer, identify and submit in court the two

(2) *shabu* sachets allegedly confiscated from her. x x x To prove appellant's guilt of the crimes charged, the prosecution formally offered in evidence the above-stated Exhibits "A" to "K" including their sub-markings, as well as the testimonies of all its witnesses, all of which were admitted by the trial court, without objection on the part of the defense. However, the 2 sachets marked as "RSG-1" and "RSG-2" were notably absent in the prosecution's Formal Offer of Exhibits. It is also significant to note that the two Informations separately charged appellant with illegal sale of "Zero Point Zero Three (0.03) grams" of *shabu* and illegal possession of "Zero Point Zero Three (0.03) grams" of *shabu*, whereas per Chemistry Report D-094-2011, the specimens submitted were: "Two (2) heat-sealed transparent plastic sachet each containing 0.01 gram and 0.02 gram[s] of white crystalline substance with sub-markings 'RSG-1' and 'RSG-2' . . . Total Weight = 0.03 gram[s] . . .". To recall, PO2 Libo-on testified that the sachet marked as "RSG-1" was seized from appellant during the buy-bust operation, while the sachet marked as "RSG-2" was recovered from appellant when she was frisked by PO2 Dorado at the police station. Clearly, there are differences in the weights of drugs confiscated from appellant, as alleged in the Informations, and those which tested positive for *shabu* per the Chemistry Report D-094-2011. Given the fungible nature and unique characteristic of narcotic substances of not being readily identifiable and similar in form to common household substances, the failure of the prosecution to present in court the marked specimens, and to reconcile the noted weight differences, casts serious doubt over the identity and existence of the drugs seized from appellant. It bears emphasis that Chemistry Report No. D-094-2011 is inadequate to establish the existence of the dangerous drugs seized from appellant, because it only tends to prove that the said sachets marked as "RSG-1 and RSG-2" tested positive for *shabu*. Likewise, the Certificate of Inventory and the Chain of Custody Form are insufficient to prove the *corpus delicti* because they merely state that the said marked sachets were seized from appellant, and were then turned over by PO2 Libo-on to the Provincial Crime Laboratory. Anent the photograph of appellant pointing to the items recovered from her, such evidence shows the presence of 2 tiny plastic sachets containing suspected *shabu*, but not the markings "RSG-1 and RSG-2" which identifies them

as the items seized from her. While the foregoing pieces of documentary evidence are crucial in proving the unbroken chain of custody of the drugs seized from appellant, the prosecution failed to establish the identity and existence of the dangerous drugs when it dispensed with the production in court of the very specimens themselves.

4. ID.; ID.; ID.; WITH THE FAILURE OF THE PROSECUTION TO PROVE WITH MORAL CERTAINTY THE IDENTITY AND EXISTENCE OF THE DRUGS SEIZED, ACCUSED DESERVES AN ACQUITTAL.— The burden of proving the guilt of the accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. When moral certainty as to the culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right irrespective of the reputation of the accused, who enjoys the right to be presumed innocent until the contrary is proved. With the failure of the prosecution to prove with moral certainty the identity and existence of the dangerous drugs seized from her, appellant deserves exoneration from the crimes charged.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision[1] dated March 24, 2015 of the Court of Appeals in CA-G.R. CR. HC. No. 01579, which affirmed with modification the Decision[2] of the Regional Trial

[1] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez, concurring.

[2] Penned by Felipe G. Banzon, Presiding Judge of the RTC of Silay City, Branch 69, 6th Judicial Region.

Court (*RTC*) of Silay City, Branch 69, Sixth Judicial Region, finding appellant Rusgie Garrucho *y* Serrano 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*, in Criminal Case Nos. 8255-69 and 8256-69.

In two (2) separate Informations filed before the RTC of Silay City, appellant was charged with violation of Section 5 of R.A. No. 9165, or *Illegal Sale of Dangerous Drugs*, and Section 11 (3) thereof, or *Illegal Possession of Dangerous Drugs*, respectively, to wit:

Criminal Case No. 8255-69

On or about May 29, 2011, at around 8:30 o'clock in the evening, in Sitio Matagoy, Barangay Rizal, Silay City, Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there knowingly, unlawfully and criminally sell, dispense, deliver, transport, distribute or act as broker in the said transaction Zero Point Zero Three (0.03) grams of Methamphetamine Hydrochloride or shabu, a dangerous drug.

CONTRARY TO LAW.

Criminal Case No. 8256-69

On or about May 29, 2011, at around 8:30 o'clock in the evening, in Sitio Matagoy, Barangay Rizal, Silay City, Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law [to] possess or use any dangerous drug did then and there, knowingly, unlawfully and criminally have in her possession and control Zero Point Zero Three (0.03) grams of Methamphetamine Hydrochloride or shabu, a dangerous drug.

CONTRARY TO LAW.

During her arraignment on July 13, 2011, appellant, assisted by counsel, pleaded not guilty to both charges. During the joint trial of the cases, the prosecution presented as witnesses the following police officers: PO3 Rayjay Rebadomia, PO2 Ian

Libo-on, PO2 Christopher Panes, Police Chief Inspector (*P/C Insp*.) Paul Jerome Puentespina and PO2 Hazel Dorado. On the other hand, the defense presented the testimonies of appellant and her neighbors, Remely Buenavista and Rebecca Alterado.

The prosecution recounted that sometime in the evening of May 29, 2011, members of the Philippine National Police (*PNP*), Silay City, Negros Occidental, received reports that appellant was engaged in illegal sale of drugs within the vicinity of Sitio Matagoy, Barangay Rizal of the same city. PO3 Rebadomia and PO2 Libo-on, members of the Intelligence Division of the Silay City PNP, were on duty when they were advised that they will conduct a buy-bust operation against appellant. During the briefing, a Five Hundred Peso (₱500.00) bill was marked, recorded in the police blotter and given to the informant who, in turn, was designated as *poseur-buyer* and was told to raise his right hand over his head to signify a completed purchase.

At around 8:30 o'clock in the evening, the buy-bust team went to the target area in Sitio Matagoy. Wearing civilian clothes, the police officers positioned themselves at a corner, about five (5) meters from where the *poseur-buyer* stood. A few minutes later, a female, later identified as appellant, approached the *poseur-buyer*. Since the target area was well-lighted, the police officers saw the *poseur-buyer* hand the marked money to appellant who, in turn, gave "something" to the *poseur-buyer*. When the *poseur-buyer* made a signal by raising his right hand, the police officers rushed towards appellant, and arrested her while introducing themselves as police officers and reading her constitutional rights. The *poseur-buyer* then handed to the police the suspected *shabu* that appellant sold him. Since there were several persons in the area and appellant was shouting and struggling to free herself, the police decided to bring her and the item bought from her to the police station.

With the assistance of PO2 Dorado of the Women's and Children's Desk of the police station, appellant was frisked and found in possession of the ₱500.00 marked money, an aluminum foil, Twenty-Two Pesos (₱22.00) and another sachet of suspected *shabu*. In the presence of appellant, Sangguniang Panglunsod

Member Ireneo Celis of Silay City, Kagawad Raymund Amit, PO3 Rebadomia, PO2 Libo and PO2 Dorado, the items were photographed and inventoried. Thereafter, Officer-in-Charge Rosauro Francisco prepared the Request of Laboratory Examination, the Request for Drug Test and the Extract Police Report. PO2 Libo-on turned over the seized items to the provincial crime laboratory for examination. The two plastic sachets were received by PO2 Ariel Magbanua, as shown in the Chain of Custody Form. The contents of the plastic sachets yielded positive for *shabu* per Chemistry Report No. D-094-2011. Also, the urine sample taken from appellant tested positive for *shabu*.

For the defense, appellant denied that she was caught in a buy-bust operation in the evening of May 29, 2011. Appellant claimed that she just went out of her house to buy a diaper from a nearby store. She was surprised when unknown persons suddenly held her arms, dragged her towards a waiting motor vehicle, and brought her to the headquarters of the PNP Silay City. She claimed to have been searched at the police station by a policewoman (later identified as PO2 Dorado) who found no illegal object from her. She also denied having in her possession a sachet of *shabu* and the marked ₱500.00 bill, let alone having given to the unnamed poseur-buyer a sachet of *shabu* during a buy-bust operation. Despite appellant's protest, pictures were taken of her while being made to point at the marked bill and the sachets of *shabu* that were already placed on a table. Unable to do anything out of fear, she also claimed to have signed the certificate of inventory because she was ordered to do so, *sans* the presence of a barangay official or a policewoman.

Meanwhile, Buenavista, appellant's neighbor, testified that when she went outside her house in the evening of May 29, 2011, she saw appellant being dragged by three (3) persons, one of than was PO2 Libo-on, without being subjected to a body search. Alterado, appellant's friend, testified that she was then sitting on a chair while waiting for the store to open when she noticed that appellant was being dragged by 3 persons out of the store towards the road. Alterado shouted for help but when the people responded, appellant was already dragged to

the road *sans* a body search on her person, and brought to the city hall.

In a Decision dated September 19, 2012, the RTC rendered a judgment of conviction, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED:

In Criminal Case No. 8255-69, this Court finds accused, Rusgie Garrucho y Serrano GUILTY beyond reasonable doubt of Violation of Section 5 of Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", as her guilt was proven by the prosecution beyond any reasonable doubt.

ACCORDINGLY, this Court sentences accused, Rusgie Garrucho y Serrano, to suffer the penalty of life imprisonment, the same to be served by her at the Correctional Institution for Women, Mandaluyong City, Metro Manila.

Accused named is, further, ordered by this Court to pay a fine of ₱500,000.00, Philippine Currency.

In Criminal Case No. 8526-69, this Court finds accused, Rusgie Garrucho y Serrano, GUILTY beyond reasonable doubt of Violation of Section 11(3) of Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", as her guilt was, likewise, proven by the prosecution beyond any reasonable doubt.

ACCORDINGLY, and in application of the pertinent provision of the Indeterminate Sentence Law, this Court sentences accused, Rusgie Garrucho *y* Serrano, to suffer the penalty of imprisonment for a period of from FOURTEEN (14) YEARS and ONE (1) DAY to SEVENTEEN (17) YEARS, the same to be served by her at the Correctional Institution for Women, Mandaluyong City, Metro Manila.

Accused named is, further, ordered by this Court to pay a fine of ₱500,000.00, Philippine Currency.

The two (2) sachets of small, heat-sealed transparent plastic sachets containing methamphetamine hydrochloride (*shabu*), with an aggregate weight of 0.06 grams, are ordered remitted to the Negros Occidental Provincial Police Office (NOPPO), Camp Alfredo Montelibano, Sr., Bacolod City, for proper disposition.

In the service of the sentence imposed on her by this Court, accused named shall be given full credit for the entire period of her detention pending trial.

NO COSTS.

SO ORDERED.[3]

Aggrieved by the RTC Decision, appellant appealed to the Court of Appeals (*CA*). In a Decision dated March 24, 2015, the CA affirmed with modification the decision of the trial court, thus:

WHEREFORE, the appeal is **DENIED**. The Decision dated September 19, 2012, of the Regional Trial Court, Sixth Judicial Region, Branch 69, Silay City, in Criminal Case Nos. 8255-69 and 8256-69 is **AFFIRMED WITH MODIFICATION**. For violation of Section 11, Article II of RA No. 9165, We impose the indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and one (1) day, as maximum, and affirm the fine of ₱300,000.00.

Costs against accused-appellant.

SO ORDERED.[4]

Dissatisfied with the CA Decision, appellant filed a Notice of Appeal. In the Brief for Accused-Appellant, the Public Attorney's Office asserted that the RTC gravely erred, as follows:

I

x x x IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF ILLEGAL SALE OF PROHIBITED DRUG DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THAT THE TRANSACTION OR SALE OF SHABU TOOK PLACE;

II

x x x IN FINDING ACCUSED-APPELLANT GUILTY OF ILLEGAL POSSESSION OF SHABU DESPITE THE IRRECONCILABLE INCONSISTENCIES IN THE TESTIMONY OF PROSECUTION WITNESSES;

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[3] Records, pp. 177-178.

[4] CA *rollo*, p. 122.

III

x x x IN FINDING ACCUSED-APPELLANT GUILTY DESPITE THE FAILURE OF THE PROSECUTION TO PROVE, PRESENT, IDENTIFY AND OFFER IN EVIDENCE THE *CORPUS DELICTI* OF THE CRIME;

IV

x x x IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED ITEMS.[5]

Appellee, through the Office of the Solicitor General, argued that the trial court did not err in convicting appellant of violation of Sections 5 and 11 (3), Article II of RA No. 9165, because the prosecution successfully proved the presence of all the elements of said crimes, and that the evidentiary value of the items seized from appellant were duly safeguarded.[6]

The appeal is impressed with merit.

For a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[7] The delivery of the illicit drug to the *poseur-buyer* and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.[8]

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[5] *Id.* at 14.

[6] *Id.* at 69.

[7] *People vs. Edwin Dalawis y Hidalgo*, G.R. No. 197925, November 9, 2015.

[8] *Id.*, citing *People of the Philippines vs. Eric Rosauro y Bongcawil*, G.R. No. 209588, February 18, 2015 and *People vs. Torres*, G.R. No. 191730, June 5, 2013, 697 SCRA 452, 462-463.

In prosecutions for illegal possession of dangerous drugs, on the other hand, it must be shown that (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.[9] The existence of the drug is the very *corpus delicti* of the crime of illegal possession of dangerous drugs and, thus, a condition *sine qua non* for conviction.[10]

In *People of the Philippines vs. Enrico Mirondo y Izon*,[11] the Court stressed that "[i]n the prosecution of criminal cases involving drugs, it is firmly entrenched in our jurisprudence that the narcotic substance itself constitutes the *corpus delicti*, the body or substance of the crime, and the fact of its existence is a condition *sine qua non* to sustain a judgment of conviction. It is essential that the prosecution must prove with certitude that the narcotic substance confiscated from the suspect is the same drug offered in evidence before the court. As such, the presentation in court of the *corpus delicti* establishes the fact that a crime has actually been committed. Failure to introduce the subject narcotic substance as an exhibit during trial is, therefore, fatal to the prosecution's cause."

In this case, the prosecution failed to establish the indispensable element of *corpus delicti* of the drug cases against appellant because it did not proffer, identify and submit in court the two (2) *shabu* sachets allegedly confiscated from her.

Nowhere in the testimonies of PO2 Libo-on and PO3 Rebadomia, the Seizing Officers, and P/C Insp. Puentespina, the Forensic Chemical Officer, can it be gathered that the prosecution presented and identified in court the 2 sachets of *shabu* seized from appellant and marked as "RSG-1" and "RSG-2."

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[9] *Miclat, Jr. vs. People*, 672 Phil. 191, 209 (2011).

[10] *People vs. Martinez*, 652 Phil. 347, 369 (2010).

[11] G.R. No. 210841, October 14, 2015.

Direct Examination of PO2 Libo-on

xxx xxx xxx

PROS[ESCUTOR] [MA. LISA LORRAINE] ATOTUBO

Q: On May 29, 2011, were you on duty a[t] around 8:00 in the afternoon?
A: Yes ma'am.

Q: What happened?
A: At 8:30 of May 29, we recorded the ₱500.00 bill at the Police Blotter Entry to be used as marked money and we went to Matagoy St., Rizal, Silay City, together with our confidential asset that will act as poseur buyer.

xxx xxx xxx

Q: After you have the marked money recorded in the police blotter what did you do?
A: We went to Sitio Matagoy together with the poseur buyer. At five (5) meters away we positioned ourselves and saw the suspect that [s]he did not identify us as police officers.

Q: What happened when you were about five (5) meters away from that suspect?
A: We were positioning ourselves that the poseur buyer's position was advantageous with us.

Q: What happened?
A: The poseur buyer handed the marked money. After the transaction [was] completed he raised h[er] hand and touched h[er] cap as a signal that the transaction was completed.

Q: What did you do when the poseur buyer likewise, raised his hand as a signal that the transaction was completed?
A: We immediately rushed to the suspect and arrested h[er].

Q: How did you effect the arrest?
A: We informed h[er] that we are police officers and we arrested h[er] for Violation of Anti-Illegal Drugs. We recovered the suspected shabu which we marked as "RSG-1."

Q: When you effect[ed] the arrest of the suspect, the police buyer was there also?
A: Yes ma'am.

Q: After you recovered the sachet of shabu [from] the poseur buyer what happened?
A: He handed to us the sachet of shabu and we brought the suspect to the police station.

Q: Were you about to recover from the suspect?
A: At first we were able to get the sachet of shabu after that we brought h[er] to the police station as [s]he was resisting the effect of our arrest.

Q: You said that the poseur buyer g[a]ve one (1) sachet of shabu?
A: Yes ma'am.

Q: And you recover[ed] one (1) sachet from that station?
A: Yes ma'am.

Q: All in all there were two (2) sachets that you found in the possession of the accused?
A: Yes the one given to me by the poseur buyer which I marked as "RSG-1" and "RSG-2" which was found from h[er] possession at the police station.

xxx xxx xxx

Q: Aside from the two (2) sachets what else?
A: The aluminum [foil] which I marked as "RSG-3" and the ₱22.00 cash.

Q: That is the only amount you recovered?
A: Yes ma'am.

Q: What about the marked money?
A: Yes ma'am.

xxx xxx xxx

Q: I am showing to you the money — one of them taken from the possession of the accused.

INTERPRETER:
Let the record show that witness is presented an aluminum foil which was marked as RSG-1 which was marked as Exhibit "I".

Q: How about this ₱500.00 bill?
A: It is in h[er] possession.

Q: How about these sachets of two (2) suspected shabu, where was these taken?
A: These we marked "RSG-1" and it was previously marked as "Exhibit H-3" and "H-3-1."

xxx xxx xxx

Q: RSG-1 was recovered from the Buy Bust Operation and RSG-2 at the station?
A: Yes ma'am.

Q: After you brought the accused at the police station and recovered these items what happened?
A: We brought these items to the Crime Laboratory for direct testing and drug examination.

xxx xxx xxx

Q: You said that you brought the accused to the Noppo, were there documents you prepared?
A: I prepared for drug testing and drug examination.

Q: If this document be presented to you would you be able to identify it?
A: Yes ma'am.

INTERPRETER:
Let the records show witness is being presented a document denominated Memoranda dated May 13, 2011.

Q: Is this the one you are referring to?
A: Yes ma'am.

PROS. ATOTUBO:
May I request that this be marked as Exhibit "B".

Q: Aside from this request for direct testing what other document that you prepared?
A: Request for Laboratory Examination.

PROS. ATOTUBO:
Your Honor we would like to mark the Request for Laboratory Examination be marked as Exhibit "C".

Q: What did you do with the items allegedly taken from the accused?
A: We recorded the evidence for inventory.

Q: Do you prepare any document?
A: Yes ma'am.

Q: If that inventory be . . . shown to you would you be able to identify?
A: Yes ma'am.

Q: I am showing to you a Certificate of Inventory, is this the one that you prepared?
A: Yes ma'am.

Q: There is a signature on top of the name of PO3 Libo-on, whose signature is this?
A: That is mine.

PROS. ATOTUBO:

Your Honor we would like to mark that the Certificate of Inventory be marked as Exhibit "E" and the signature of Ian Libo-on as Exhibit "E-1".

COURT:

Make the markings as prayed.

PROS. ATOTUBO:

xxx xxx xxx

Q: How about the accused, was [s]he able to sign?
A: The accused acknowledged h[er] signature.

xxx xxx xxx

Q: When she signed the Certificate of Inventory signed by Rusgie Garr[u]cho which was marked as Exhibit "E-2", aside from the Certificate of Inventory, what else did you prepare?
A: I prepare[d] for the Custody Form.

Q: What is the purpose?
A: Compliance with Section 21, Republic Act 9165, so that you will know that the evidence will be presented was forwarded to the Crime Laboratory.

xxx xxx xxx

PROS. ATOTUBO:

We request that the Chain of Custody Form be marked as Exhibit "F" and the signature of Ian Libo-on be marked as

"F-1" and the person who received the receipt of the Custody Form — PO2 Ariel Magbanua be marked as "F-2".

COURT:

Make the markings as prayed.

Q: After you prepared on this document what else happened?
A: We filed the complaint to the Office of the Prosecutors.

Q: Then what happened next?
A: We presented the shabu together with the subject person for examination at the Crime Laboratory.

Q: Were you able to get the results?
A: The subject person is positive for methamphetamine hydrochloride otherwise known as shabu.

Q: Can you recall if you have executed an Affidavit?
A: Yes ma'am.

xxx xxx xxx

Q: I am showing to you the Joint Affidavit of PO2 Rebadomia and Ian Libo-on, can you recall if this is the Affidavit that you executed?
A: Yes that is my Affidavit.

Q: There is a signature on top of the name PO2 Ian Libo-on, whose signature is this?
A: That was the signature of PO2 Ian Libo-on.

PROS. ATOTUBO:

Your Honor we would like to request that the signature of PO2 Ian Libo-on be marked as Exhibit "A-2".

Q: Do you still affirm and confirm the truthfulness of your Affidavit.
A: Yes ma'am.

PROS. ATOTUBO:

That would be all for the witness.[12]

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[12] TSN, November 14, 2011, pp. 4-11. (Emphasis added.)

Direct Examination of PO3 Rebadomia

[PROS. ATOTUBO:]

Q: On May 29, 2011 at around 8:30 in the evening, what happened?
A: At around 8:30 of May 29, 2011, we caused the blotter of ₱500.00 peso bill to be used in the buy-bust operation.

xxx xxx xxx

Q: You recorded that you will use the ₱500.00 as buy-bust money?
A: Yes ma'am.

Q: Can you recall if you have secured a copy of that blotter?
A: Yes ma'am.

INTERPRETER:
Let the records show that witness is showing the machine copy of the extract of the police blotter.

Q: If I show the said blotter, can you authenticate if this is the one?

INTERPRETER:
Let the records show that witness is shown the original copy of said document.

A: Yes ma'am.

PROS. ATOTUBO:
I would like to mark this as Exhibit "B", the Entry No. 01789 as "B-1".

COURT:
Mark it.

PROS. ATOTUBO:
Q: Mr. Witness, what was your purpose in having that serial number of the ₱500.00 bill recorded in the blotter?

A: Because we will used that as marked money for our buy-bust operation.
Q: You said it was ₱500.00. I am showing to you this ₱500.00 bill. What can you say about this ₱500.00 bill?

INTERPRETER:
Let the records show that witness is shown a ₱500.00 bill with Serial No. QS5226583.

A: This is the marked money that we used.

Q: How do you know that this is the same ₱500.00 bill?
A: Aside from the blotter, we made marking in the last digit of the serial number.

Q: And what number was that?
A: Last digit No. 3.

PROS. ATOTUBO:
Your Honor, may I request that this ₱500.00 bill be marked as Exhibit "J".

COURT:
Mark it.

PROS. ATOTUBO:
Q: Mr. Witness, after you have caused the blotter of that serial number of the ₱500.00 will use for buy-bust operation, what then happened?
A: We gave the ₱500.00 bill to our poseur-buyer and we proceeded to Sitio Matagoy.

Q: Were you together with the poseur-buyer when you proceeded to Sitio Matagoy?
A: Yes, but he went ahead of us. And then we followed, PO2 Ian Libo-on and me.

xxx xxx xxx

Q: When you reached Matagoy where did you proceed?
A: From where the poseur-buyer was, we were five minutes (sic) away from him.

Q: From where you are sitting, can you compare the position of the poseur-buyer?
A: From where I am sitting, to the door of the courtroom.

Q: And was there anyone with the poseur-buyer when you saw him or her?
A: About 9:00, a female person approached him.

Q: Since you said it was 9:00 in the evening, were you able to see the poseur-buyer and the person who approached the poseur-buyer?
A: Yes, because the place was well-lighted.

Q: How about you, were you visible if you were five meters from the poseur-buyer?
A: They could not see us because only us can see them.

Q: Why?
A: Because where we were located, we were in a corner and we could see them if we peeked at them.

Q: So, you said there was a woman who approached your poseur-buyer. What happened next?
A: After that, the poseur-buyer handed something to the woman.

Q: What did the poseur-buyer do next?
A: After the woman handed something to him, he raised his right hand over this head.

Q: And what was the meaning of that raising of his right hand?
A: It means that the transaction was already completed.

Q: So, what did you do?
A: Immediately, we ran towards the woman and identified ourselves as police officers.

Q: And what else?
A: We arrested her after we identified ourselves as police officers and we apprised her of her constitutional rights.

Q: And what was her reaction when she saw you?
A: She was struggling to free herself while we were holding on to her.

Q: If that person is in court, can you identify her?
A: Yes, Ma'am.

Q: Please look out and identify her.

INTERPRETER:

Let the records show that witness pointed to a person who gave her name as Rusgie Garrucho.

Q: After that, what happened?
A: Because there were many persons in the area, and the woman was shouting and struggling, we brought her to the police station, and we made an inventory at the police station.

Q: What else happened?
A: We asked the WCPD to inspect her.

Q: Who was the police woman who inspected her?
A: PO2 Hazel Dorado.

Q: How about the items, were there items which were found in her possession?
A: Yes, we recovered aluminum f[oi]l the ₱500.00 marked money and one sachet of shabu from her, as well as various amounts totaling ₱22.00.

Q: I am showing to you this alleged aluminum foil, what can you say about this?

INTERPRETER:
Let the records show that witness is being presented an aluminum foil marked as RSGF.

A: This was the aluminum foil which we recovered from her.

Q: From where was this taken from her possession?
A: From her pocket.

PROS. ATOTUBO:
May we request that this be marked as Exhibit "I".

COURT:
Mark it.

PROS. ATOTUBO:

xxx xxx xxx

Q: How many sachets of alleged shabu were taken from the accused?
A: Aside from the one we bought, we found in her possession another sachet or a total of two sachets.

Q: This one sachet was bought from the accused. The sachet bought from the accused, what happened to it?
A: The other sachet of shabu which was bought from the accused was given by the poseur-buyer to us.

Q: When was this given by the poseur-buyer?
A: Immediately right in the area, he gave it to us.

Q: There at Matagoy?
A: Yes, Ma'am.

Q: So, after you have frisked the accused and the item was found in her possession, what else did you do?
A: We have it laboratory-tested.

xxx xxx xxx

Q: What were the documents which you prepared in order to have the substance which were taken from the accused undergo laboratory test?
A: We prepared request for laboratory examination and request for drug test.

xxx xxx xxx

Q: I am showing to you this document for drug test. What can you say about this document?

INTERPRETER:
Let the records show that witness is being shown a document dated May 30, 2011, signed by P/Supt. Rosauro B. Francisco, Jr.

A: This is the original copy of the document which we prepared.

PROS. ATOTUBO:
Your Honor, may I request that this request for drug test dated May 30, 2011 be marked as Exhibit "J" for the prosecution.

COURT:
Make the marking.

PROS. ATOTUBO:
Q: You said there was a request for laboratory examination which you prepared. I am showing to you this request for laboratory examination. What can you say about this document?
A: This is the original copy of the document which we prepared.

xxx xxx xxx

PROS. ATOTUBO:
Request that this document be marked as Exhibit "C" for the prosecution.

COURT:
Make the marking.

PROS. ATOTUBO:
Q: Aside from the request for drug test and request for laboratory examination, what other documents were you able to prepare?
A: We prepared the certificate of inventory.

xxx xxx xxx

Q: I am showing to you a certificate of inventory, one signatory of which is Rayjay Rebadomia. Is this the certificate of inventory which you prepared?
A: Yes, Ma'am.

Q: Here, the items which were seized from the accused as stated in your certificate of inventory, Item No. 1, two transparent plastic sachets of suspected shabu marked as RSG-1; Item No. 2, one aluminum foil with marking RSG-1 (sic); Item No. 3, ₱500.00 bill marked money; Item No. 4, cash money marked as RSG-1 (sic).

Mr. Witness, you said that there were two plastic sachets of shabu marked as RSG-1 and RSG-2 which were the subject of the buy-bust operation.

A: The subject of the buy-bust operation was RSG-1 while the recovered sachet was marked RSG-2.

Q: Is this your signature on top of the name RAYJAY REBADOMIA?
A: Yes, Ma'am.

PROS. ATOTUBO:
We request that this be marked as Exhibit "B" and the name and signature of the witness be marked as Exhibit "B-1".

COURT:
Make the markings.

PROS. ATOTUBO:
Q: Aside from the certificate of inventory, were there other documents which you prepared?

A: We also prepared chain of custody form.

Q: What is this chain of custody form about?
A: This document would show where we turned over the recovered items.

Q: Where did you turn over the recovered suspected *shabu*?
A: It was turned over by my companion, PO2 Ian Libo-on to the Provincial Crime Laboratory at Negros Occidental Provincial Office.

PROS. ATOTUBO:
May I request that this Chain of Custody form be marked as Exhibit "F".

COURT:
Make the markings.

PROS. ATOTUBO:
Q: Were you able to get the result of your laboratory examination and drug testing?
A: Yes, we have.

Q: What was the result for the request for drug test of the accused?
A: She was positive as user of shabu.

Q: How about the request for laboratory examination, what was the result?
A: It was found out positive.

Q: Where was the request for drug test, do you have a copy of that?

INTERPRETER:
Let the records show that witness is presenting to the prosecutor the said document dated May 30, 2011.

Q: We have here the initial laboratory report dated May 30, 2011. What can you say about this?
A: This is the original copy of the request.

xxx xxx xxx

PROS. ATOTUBO:
Your Honor, may I request that this laboratory result be marked as Exhibit "G".

COURT:

Make the marking.

PROS. ATOTUBO:

xxx xxx xxx

Q: I am showing to you this Chemistry Result No. D-094-2011. This is the original copy. Can you read the findings?

A: "Qualitative examination conducted on the above-stated specimen show positive result of methamphetamine hydrochloride, a dangerous drug."

xxx xxx xxx

Q: Mr. Witness, were you able to execute an affidavit regarding this case?

A: Yes, Ma'am.

xxx xxx xxx

Q: I am showing to you this Affidavit of PO3 Rayjay Rebadomia and PO2 Ian Libo-on. What can you say about this?

A: Yes, this is the original copy of our joint affidavit.

PROS. ATOTUBO:

May I request that this Join Affidavit be marked as Exhibit "B"?

COURT:

Mark it.

xxx xxx xxx

PROS. ATOTUBO:

Q: By the way, Mr. Witness, you said you entered into police blotter the serial number of the money. After you were able to apprehend the accused, were you able to enter the fact of the apprehension in the police blotter?

A: Yes, it was in the blotter report.

Q: Can you show it to me?

INTERPRETER:

Let the records show that witness is presenting to the Prosecutor a copy of the Extract Police Report dated May 30, 2011, specifically Entry No. 01793 dated May 29, 2011.

PROS. ATOTUBO:
Your Honor, may I request that the Entry No. 01793 be marked as Exhibit "E-2".

COURT:
Make the marking.

PROS. ATOTUBO:
Q: Mr. Witness, do you still affirm and confirm your statement in your Affidavit marked as Exhibit "A"?
A: Yes, Ma'am.

PROS. ATOTUBO:
That is all for this witness.[13]

Direct Examination of P/C Insp. Puentespina

PROS. ATOTUBO:

Q: You are a Foren*sic* Chemical Officer of the PNP Crime Lab?
A: Yes ma'am.

Q: On May 30, 2011, were you on duty?
A: Yes ma'am.

Q: Can you recall if there was a request for drug test on certain Rusgie Garr[u]cho on said date?
A: Yes ma'am.

xxx xxx xxx

Q: Who was the person who requested a drug test for laboratory examination?
A: P/Supt. Rosauro Fran[is]co, the Officer-in-Charge of Silay City Philippine National Police.

Q: I have here a Request for Drug Test of the Silay City Philippine National Police, can you identify if this is the same request received by your office?
A: Yes ma'am, I have here the rubber stamped of the PNP Crime Laboratory.

Q: Is this the evidence you received from said letter?
A: Yes ma'am.

[13] TSN, August 22, 2011, pp. 4-16.

Q: Who was the person who received the request?
A: PO2 Magbanua.

PROS. ATOTUBO.
May I request the Receipt for Drug Test be marked as Exhibit "B-1".

Q: When you received this Request for Drug Test what happened next?
A: Upon receiving the Letter Request PO2 Magbanua properly [p]reserved the urine specimen of Rusgie Garr[u]cho until I arrived at the office to conduct my laboratory examination.

Q: When did you conduct the drug test?
A: I conducted my drug test after lunch in the afternoon.

Q: So the Request for Drug Test which was rubber stamped by your office was received when?
A: In the morning at about 10:32 of May 30, 2011.

xxx xxx xxx

Q: What is the result of the urine sample of Rusgie Garr[u]cho?
A: After conducting the preliminary test we used of the test kit, I proceeded to conduct the confirmatory test for methamphetamine hydrochloride.

Q: You have the result of the drug test?

INTERPRETER:
Let the records show witness is showing to the counsel a document denominated as Chemistry Report No. DT-065-2011 dated May 30, 2011 issued by Chief Insp. Jerome Puentespina.

Q: Is this the final laboratory test?
A: Yes ma'am.

Q: Did you have initial laboratory report?
A: Yes ma'am.

Q: Why do you have two (2) laboratory report?
A: If we could not release the test because we have to undergo the confirmatory test which will took (sic) awhile for the drug specimen we make initial report and immediately release it [but] we have to confirm the identity of the person if indeed

the presence of methamphetamine is indeed in the urine sample of the suspect.

PROS. ATOTUBO:
Your Honor we would like to request the Chemistry Report No. DT-065-2011 be marked as our Exhibit "G".

COURT:
Make the marking as praye[d].

PROS. ATOTUBO:

xxx xxx xxx

Q: Can you read the Findings?
A: "Qualitative examination conducted on the urine sample taken from the above-named living person gave POSITIVE result for Methamphetamine Hydrochloride, a dangerous drug." (Screening Test).

PROS. ATOTUBO:
We request that the conclusion be marked as Exhibit "G-3".

Q: Aside from the Request for Drug Testing, were there other request from Silay City, Philippine National Police?
A: Yes the Request for Laboratory Examination on two (2) heat sealed transparent plastic sachet[s] marked as "RSG-1" and "RSG-2".

Q: You have that Request?

INTERPRETER:
Let the records show witness is showing to this Hon. Court a document denominated as Memorandum Request for Laboratory Examination dated May 30, 2011.

Q: Is this the one you are referring to?
A: Yes ma'am.

PROS. ATOTUBO:
We have already marked this as Exhibit "C".

xxx xxx xxx

Q: What are the specimens received by your office?
A: The two (2) heat sealed transparent plastic sachets.

Q: Were you able to conduct your examination on these two (2) specimens?
A: Yes sir.

Q: What kind of Test?
A: The qualitative examinations — physical, chemical and confirmatory tests.

Q: How did you conduct the qualitative examinations?
A: The weighing of the samples.

Q: How much is the weight of two heat sealed transparent plastic sachets?
A: It contains 0.01 gram and the other one contains 0.02 grams of white crystalline substance marked as "RSG-1" and "RSG-2" with a total weight of 0.03 grams.

Q: After weighing of the sample what test did you take?
A: We proceeded to the Chemical Test — with the use of Simmons re-agents added to the representative sample produced color blue which indicates the presence of methamphetamine hydrochloride.

Q: So both specimens change to blue color?
A: Yes ma'am.

Q: After conducting the Simmons' Test, what happened next?
A: I conducted the confirmatory test to confirm the identity of the specimen of which thin later chromatography test was applied.

xxx xxx xxx

Q: Your confirmatory [test] gave positive results on both specimens?
A: Yes ma'am.

Q: Do you have a Chemistry Report?
A: Yes ma'am.

INTERPRETER:
Let the records show witness is presented a document denominated as Chemistry Report No. D-094-2011 dated May 30, 2011.

PROS. ATOTUBO:

Q: In this Chemistry Report, what were the specimens submitted?

A: The two (2) heat sealed transparent plastic sachets containing 0.01 gram and 0.02 grams of white crystalline substance with markings "RSG-1" and "RSG-2".

Q: What were your findings?

A: Qualitative examination conducted on the above stated specimens gave positive result to the tests for Methamphetamine Hydrochloride (*shabu*) a dangerous drug.

Q: What is your conclusion?

A: Specimens A and B contain Methamphetamine Hydrochloride, a dangerous drug.

PROS. ATOTUBO:

Your Honor may I request that the Chemistry Report No. D-094-2011 be marked as Exhibit "H" and the Findings as "H-1" and the Conclusion as "H-2"; the 2 specimens be marked as "H-3".

Q: There is here the signature at the top of the printed name of Engr. Paul Jerome Puentespina, whose signature is this?

A: That is mine.

PROS. ATOTUBO:

Your Honor the signature of Engr. Paul Jerome Puentespina be marked as Exhibit "H-4".

PROS. ATOTUBO:

That would be all for the witness.[14]

Nothing in the records would show that the 2 sachets of *shabu* seized from appellant and marked as "RSG-1" and "RSG-2" were presented in court. During the direct testimonies of PO2 Libo-on, PO3 Rebadomia and P/C Insp. Puentespina, the

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[14] TSN, October 17, 2011, pp. 3-9. (Emphasis added.)

prosecution only identified and marked in evidence the following exhibits:

"A" — The Joint Affidavit of Arrest of PO3 Rebadomia and PO2 Libo-on;[15]

"B" — The Request for Drug Test dated May 30, 2011;[16]

"C" — The Request for Laboratory Examination Test dated May 30, 2011;[17]

"D" — The Extract of the Police Blotter Report dated May 30, 2011;[18]

"E" — The Certificate of Inventory;[19]

"F" — The Chain of Custody Form;[20]

"G" — The Chemistry Report No. DT-065-2011;[21]

"H" — The Chemistry Report No. D-094-2011;[22]

"I" — The Aluminum Foil;[23]

"J" — The marked money of ₱500.00 bill with Serial No. QS226583.[24]

Not one of the said prosecution witnesses was made to identify the 2 marked sachets while on the witness stand. Contrary to

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[15] Records (Criminal Case No. 8256-69), p. 122.

[16] *Id.* at 123.

[17] *Id.* at 124.

[18] *Id.* at 125.

[19] *Id.* at 126.

[20] *Id.* at 127.

[21] *Id.* at 128.

[22] *Id.* at 129.

[23] Object evidence not forwarded to the Court of Appeals per Index of Exhibits of Criminal Case Nos. 8255-69 and 8256-69.

[24] *Id.*

the testimony of PO2 Libo-on[25] that the 2 sachets of suspected *shabu* marked as "RSG-1" was previously marked as Exhibits "H-3" and "H-3-1", records only show that Exhibit "H" pertains to Chemistry Report No. D-094-2011,[26] whereas the sub-markings "H-1", "H-2", and "H-4" refer only to the Findings, the Conclusion and the signature of P/C Insp. Puentespina, respectively. There is no evidence on record which was marked as Exhibits "H-3" and "H-3-1."

Not even P/C Insp. Puentespina, the Forensic Chemical Officer and last person in official custody of the said sachets, presented and identified them when he testified on their test results under Chemistry Report No. D-094-2011. Even though the prosecution prayed[27] that the 2 subject specimens be marked as Exhibit "H-3," there is nothing in his testimony which shows that the 2 marked sachets were actually produced in court. In fact, only Exhibits "I" [one (1) piece aluminum foil], "J" [Five Hundred Peso (₱500.00) marked money] and "K" [Twenty-two pesos (₱22.00) cash] are singled out as "[o]bject evidence and cannot be forwarded to the Court of Appeals" in the Index of Exhibits prepared by the Clerk III and certified correct by the Court Legal Researcher, II/Officer-in-Charge of the RTC of Silay City, Branch 69. There is no mention of the marked sachets being part of the evidence submitted to the RTC.

No stipulation was also made as to the identity and existence of the dangerous drugs seized from appellant. As stated in the Pre-Trial Order,[28] the parties admitted only that the trial court has jurisdiction over the cases, and that appellant was the accused therein. Neither did the prosecution proffer and pre-mark during the pre-trial the 2 sachets of *shabu* confiscated from appellant. In the Pre-trial Order,[29] the prosecution pre-marked only the following Exhibits:

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[25] TSN, November 14, 2011, p. 6.

[26] Records (Criminal Case No. 8256-69), p. 129.

[27] TSN, October 17, 2011, pp. 8-9.

[28] Records (Criminal Case No. 8256-69), p. 29.

[29] *Id.*

"A" — The Joint Affidavit of Arrest of PO3 Rayjay Rebadomia and PO2 Ian Libo-on;

"B" — The Request for Drug Test dated May 30, 2011;

"C" — The Request for Laboratory Examination Test dated May 30, 2011;

"D" — The Extract of the Police Blotter Report;

"E" — The Certificate of Inventory;

"F" — The Chain of Custody Form;

"G" — The Initial Report dated May 30, 2011;

"H" — The Chemistry Report No. D-094-2011;

"I" — The Aluminum Foil;

"J" — The marked money of ₱500.00 bill with Serial No. QS226580;

"K" — Cash money in the amount of ₱22.00; and

"L" — The pictures.[30]

To prove appellant's guilt of the crimes charged, the prosecution formally offered in evidence the above-stated Exhibits "A" to "K" including their sub-markings, as well as the testimonies of all its witnesses, all of which were admitted by the trial court, without objection on the part of the defense.[31] However, the 2 sachets marked as "RSG-1" and "RSG-2" were notably absent in the prosecution's Formal Offer of Exhibits.[32]

It is also significant to note that the two Informations separately charged appellant with illegal sale of "Zero Point Zero Three (0.03) grams"[33] of *shabu* and illegal possession of "Zero Point Zero Three (0.03) grams"[34] of *shabu*, whereas per Chemistry

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[30] *Id.* at 30.

[31] *Id.* at 131.

[32] *Id.* at 119-129.

[33] Records (Criminal Case No. 8255-69), p. 1.

[34] Records (Criminal Case No. 8256-69), p. 1.

Report D-094-2011, the specimens submitted were: "Two (2) heat-sealed transparent plastic sachet each containing 0.01 gram and 0.02 gram[s] of white crystalline substance with sub-markings 'RSG-1' and 'RSG-2' ... Total Weight = 0.03 gram[s] xxx".[35] To recall, PO2 Libo-on testified that the sachet marked as "RSG-1" was seized from appellant during the buy-bust operation, while the sachet marked as "RSG-2" was recovered from appellant when she was frisked by PO2 Dorado at the police station.[36] Clearly, there are differences in the weights of drugs confiscated from appellant, as alleged in the Informations, and those which tested positive for *shabu* per the Chemistry Report D-094-2011. Given the fungible nature and unique characteristic of narcotic substances of not being readily identifiable and similar in form to common household substances,[37] the failure of the prosecution to present in court the marked specimens, and to reconcile the noted weight differences, casts serious doubt over the identity and existence of the drugs seized from appellant.

It bears emphasis that Chemistry Report No. D-094-2011[38] is inadequate to establish the existence of the dangerous drugs seized from appellant, because it only tends to prove that the said sachets marked as "RSG-1 and RSG-2" tested positive for *shabu*. Likewise, the Certificate of Inventory[39] and the Chain of Custody Form[40] are insufficient to prove the *corpus delicti* because they merely state that the said marked sachets were seized from appellant, and were then turned over by PO2 Libo-on to the Provincial Crime Laboratory. Anent the photograph of appellant pointing to the items recovered from her, such evidence shows the presence of 2 tiny plastic sachets containing

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[35] *Id.* at 129.

[36] TSN, November 14, 2011, p. 6.

[37] For example, sugar, baking powder or alum powder.

[38] Records (Criminal Case No. 8256-69), p. 129; Exhibit "H".

[39] *Id.* at 126; Exhibit "E".

[40] *Id.* at 127; Exhibit "F".

suspected *shabu*, but not the markings "RSG-1 and RSG-2" which identifies them as the items seized from her. While the foregoing pieces of documentary evidence are crucial in proving the unbroken chain of custody of the drugs seized from appellant, the prosecution failed to establish the identity and existence of the dangerous drugs when it dispensed with the production in court of the very specimens themselves.

The burden of proving the guilt of the accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.[41] When moral certainty as to the culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right irrespective of the reputation of the accused, who enjoys the right to be presumed innocent until the contrary is proved.[42] With the failure of the prosecution to prove with moral certainty the identity and existence of the dangerous drugs seized from her, appellant deserves exoneration from the crimes charged.

Finally, it is not amiss to state that the lower courts should be circumspect and meticulous in scrutinizing the evidence for the prosecution, so as to make sure that the stringent standard of proof beyond reasonable doubt is met.[43] After all, this would redound to the benefit of the criminal justice system by protecting civil liberties and maintaining the respect and confidence of the community in the application of criminal law, as well as inculcating in the prosecutors the need to properly discharge the burden of proving the crime/s charged.[44] The lower courts are further exhorted to be extra vigilant in trying drug cases, and to exercise the utmost diligence and prudence in deliberating upon the guilt of the accused, lest an innocent person is made to suffer unnecessary deprivation of liberty, let alone the severe penalties of drug offenses.

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[41] *People v. T/Sgt. Angus, Jr.*, 640 Phil. 552, 563 (2010).

[42] *Zafra, et al. vs. People*, 686 Phil. 1095, 1109 (2012).

[43] *People of the Philippines v. Enrico Mirondo y Izon*, *supra*.

[44] *Id.*

In light of the foregoing discussions, there is no more necessity to delve into the other issues raised by the parties.

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 24, 2015 of the Court of Appeals in CA-G.R. CEB-CR. HC. No. 01579, which affirmed the Decision of the Regional Trial Court of Silay City, Branch 69, Sixth Judicial Region, in Criminal Case Nos. 8255-69 and 8256-69, is **REVERSED** and **SET ASIDE**. Accordingly, appellant Rusgie Garrucho *y* Serrano is **ACQUITTED** of the charges against her for violation of Sections 5 and 11 (3), Article II of Republic Act No. 9165.

The Director of the Bureau of Corrections (Correctional Institution for Women) is **DIRECTED** to cause the release of appellant, unless she is being lawfully held for another cause, and to inform the Court the date of her release or reason for her continued confinement, within five (5) days from notice.

SO ORDERED.

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

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 19, 2015.

EN BANC

[G.R. No. 205728. July 5, 2016]

THE DIOCESE OF BACOLOD, REPRESENTED BY THE MOST REV. BISHOP VICENTE M. NAVARRA AND THE BISHOP HIMSELF IN HIS PERSONAL CAPACITY, *petitioners, vs.* **COMMISSION ON ELECTIONS AND THE ELECTION OFFICER OF BACOLOD CITY, ATTY. MAVIL V. MAJARUCON,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; RULE 64 IS NOT THE EXCLUSIVE REMEDY TO ASSAIL THE DECISION OF THE COMMISSION ON ELECTIONS (COMELEC) AS RULE 65 APPLIES FOR GRAVE ABUSE OF DISCRETION RESULTING TO OUSTER OF JURISDICTION.—** On respondents' argument on the prematurity of filing the case before this Court, we discussed in our Decision that Rule 64 is not the exclusive remedy for all Commission on Elections' acts as Rule 65 applies for grave abuse of discretion resulting to ouster of jurisdiction. The five (5) cases again cited by respondents are not precedents since these involve election protests or are disqualification cases filed by losing candidates against winning candidates. Petitioners are not candidates. They are asserting their right to freedom of expression.

2. **POLITICAL LAW; ELECTIONS; THE COURT REITERATES THAT THE SUBJECT TARPAULINS ARE NOT ELECTION PROPAGANDA FOR ITS MESSAGES ARE DIFFERENT FROM THE USUAL DECLARATIVE MESSAGES OF CANDIDATES.—** This Court's Decision discussed that the tarpaulin consists of satire of political parties that "primarily advocates a stand on a social issue; only secondarily—even almost incidentally—will cause the election or non-election of a candidate." It is not election propaganda as its messages are different from the usual declarative messages of candidates. The tarpaulin is an expression with political

consequences, and "[t]his court's construction of the guarantee of freedom of expression has always been wary of censorship or subsequent punishment that entails evaluation of the speaker's viewpoint or the content of one's speech."

BRION, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL ISSUANCE OF SEC. 6(C) OF COMELEC RESOLUTION NO. 9615 AND ITS IMPLEMENTATION THROUGH THE NOTICE TO REMOVE CAMPAIGN MATERIALS IS WITHIN THE LAW; COMMISSION ON ELECTIONS (COMELEC); COMELEC'S EXCLUSIVE JURISDICTION TO ENFORCE AND IMPLEMENT ELECTION LAWS.— I disagree with the denial of the respondents' motion for reconsideration because of its jurisprudential effect: the currently prevailing ruling substantially diminishes the Comelec's constitutional and exclusive jurisdiction to enforce and administer all laws and regulations relative to the conduct of an election under Article IX-C, Section 2 (1) of the 1987 Constitution, including the regulation of election propaganda. It also reduces the Comelec's capacity under Article IX-C, Section 2 (7) "to recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted." x x x The size restrictions for election posters in Section 3.3 of Republic Act No. 9006 (RA 9006, otherwise known as the Fair Elections Act) is a lawful exercise of Congress's power to regulate election propaganda. The Comelec's issuance of its implementing rule, Section 6 (c) of Comelec Resolution No. 9615, and its implementation in the present case through the Notice to Remove Campaign Materials issued by Election Officer Mavil V. Majarucon in a Letter dated February 22, 2013, and Comelec Law Director Esmeralda Amora-Ladra in an Order dated February 27, 2013, had not been outside of the Comelec's jurisdiction to enforce and implement election laws.

2. ID.; ID.; ID.; THE PETITIONS CHALLENGING THE CONSTITUTIONALITY OF THE COMELEC'S LETTER AND NOTICE ARE PREMATURE; THE COMELEC SHOULD HAVE BEEN GIVEN THE FIRST OPPORTUNITY TO RESOLVE BEFORE RESORTING

TO JUDICIAL RECOURSE SINCE THE MATTERS BEFORE THE COURT ARE NOTHING MORE THAN THE NOTICE OF AN ELECTION OFFICER AND AN ORDER OF A COMELEC LAW DIRECTOR.— The Court, in exceptional cases, may review the Comelec's administrative acts through the Court's expanded jurisdiction under the second paragraph of Article VIII, Section 1 of the 1987 Constitution. This constitutional authority is different from the *certiorari* petition mentioned in Article IX-B, which pertains to the Comelec's quasi-judicial acts and is instituted through Rule 64 of the Rules of Court. Because the review of the Comelec's administrative act falls under the Court's expanded jurisdiction (under the second paragraph of Article VIII, Section 1), the petition must necessarily reflect a *prima facie* showing of grave abuse of discretion on the part of the Comelec. In other words, the petition must have preliminarily shown that the Comelec's administrative act was performed in such a capricious, and whimsical exercise of judgment 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. Note, at this point, that there can be no *prima facie* showing of grave abuse of discretion unless something has already been done or has taken place under the law; and the petitioner sufficiently alleges the existence of a threatened or immediate injury to itself as a result of the gravely abusive exercise of discretion. In the case of an administrative agency (more so, if it involves an independent constitutional body), a matter cannot be considered ripe for judicial resolution unless administrative remedies have been exhausted. ***Judicial review is appropriate only if, at the very least, those who have the power to address the petitioner's concerns have been given the opportunity to do so.*** In short, the requirement of ripeness does not become less relevant under the courts' expanded judicial power. In this light, I emphasize that ***the petition challenges RA 9006 and Comelec Resolution No. 9165 not because its text, on its face, violates fundamental rights, but because Comelec erroneously applied an otherwise constitutional law.*** The Comelec's administrative act of including the petitioners' poster within the coverage of Comelec Resolution No. 9615 allegedly violated their constitutional rights to freedom of speech and religion. x x x To be sure, this is a matter that the Comelec should have been given the first opportunity to resolve before the petitioners

directly sought judicial recourse. While the freedoms invoked by the petitioners certainly occupy preferential status in our hierarchy of freedoms, the Court cannot second-guess what the Comelec's action would have been, particularly when the matters before us are nothing more than **the Election Officer *Majarucon's* notice** and the **Director Amora-Ladra's order.**

3. ID.; ID.; ID.; ID.; THE INCONSISTENCY IN THE BODY OF THE MAJORITY DECISION AND ITS DISPOSITIVE PORTION REFLECTS THE PREMATURITY OF THE PETITION; THE MAJORITY DECISION APPARENTLY MIXED THE CONCEPTS OF APPLIED AND FACIAL CHALLENGES FOR IT GRANTED A REMEDY FOR AS-APPLIED CHALLENGES UNDER THE REASONING AND ANALYSIS MEANT FOR FACIAL CHALLENGES.— [T]he majority opinion held that the Comelec's interpretation of its powers through the assailed letter and notice is unconstitutional. x x x Under these terms, the majority decision's analysis is inconsistent with the remedy it granted in its dispositive portion. This inconsistency reflects the prematurity of the issues presented in the petition, as well as the manner the ruling has prevented the Comelec *en banc* from exercising its discretion to affirm or correct the actions of its election officers. Note that despite the majority decision's pronouncements regarding the unconstitutionality of the size restriction of posters (which form the basis for the unconstitutionality of the Comelec's administrative act), the majority decision's dispositive declaration of unconstitutionality is directed at the Comelec's administrative acts, without mention of the constitutionality of the laws these administrative acts apply. x x x The majority decision apparently mixed the concepts of applied and facial challenges, such that it granted a remedy for as-applied challenges, under the reasoning and analysis meant for facial challenges. Thus, while the petition seeks to declare the Comelec's administrative acts to be unconstitutional as applied to the petitioners, the majority decision proceeded to analyze the case as the Court typically would in facial challenges: it gave due course to the petition because of the possibility of a chilling effect on speech, and then proceeded to discuss the unconstitutionality of the laws that the challenged administrative acts apply. The majority's uneven approach shows the prematurity of the issues that the

petition presents. ***If indeed, the law is unconstitutional as applied, then this would have been the defense to a possible criminal proceeding against the petitioner. It cannot and should not be used to pre-empt a criminal proceeding.***

4. ID.; ELECTIONS; THE DISPUTED POSTER FALLS UNDER ELECTION PROPAGANDA AS IT CLEARLY ESPOUSES THE ELECTION OF SOME CANDIDATES AND THE NON-ELECTION OF OTHER CANDIDATES BECAUSE OF THEIR STANCE IN THE PASSAGE OF THE RH LAW.— ***[T]he subject poster falls within the definition of election propaganda.*** *It* ***named candidates*** *for the 2013 elections, and was clearly* ***intended to promote the election of a list of candidates it favors*** ***and to oppose the election of candidates in another list.*** It was *displayed* ***in public view***, and as such is ***capable of drawing the attention of the voting public*** passing by the cathedral to its message. Notably, the tarpaulin places the words "***conscience vote***" and associates the names of political candidates who voted against the passage of the RH Law with the positive description "Team Buhay, and associates the names of political candidates who voted for the passage of the RH Law with the negative description "Team Patay." It even distinguishes between the marks used to identify the candidates — the members of Team Buhay are marked with the positive sign check mark and the members of Team Patay are associated with the negative "X" mark. The tarpaulin, obviously, invites voters to vote for members of the Team Buhay and to not vote for the members of the Team Patay because of their participation in the RH Law. The word "conscience vote," along with the positive description and negative description for political candidates during the election period at the time the tarpaulin was posted for public view clearly indicates this. Under these terms, the tarpaulin does not simply advocate support for the RH Law; it asks the public to vote or not to vote for candidates based on their position on the RH Law.

5. ID.; ID.; THE ASSAILED REGULATIONS IN CASE AT BAR INVOLVE A CONTENT-NEUTRAL REGULATION THAT CONTROLS THE INCIDENTS OF SPEECH THE INTERMEDIATE SCRUTINY TEST APPLICABLE.— ***The assailed regulations in the present case involve a content-neutral regulation that controls the incidents of speech.*** Both

the notice and letter sent by the Comelec to the Diocese of Bacolod sought to enforce Section 3.3 of RA 9006 and Section 6 (c) of Comelec Resolution No. 9615 which limits the size of posters that contain election propaganda to not more than two by three feet. ***It does not prohibit anyone from posting materials that contain election propaganda, so long as it meets the size limitations. Limitations on the size of a poster involve a content-neutral regulation involving the manner by which speech may be uttered.*** It regulates how the speech shall be uttered, and does not, in any manner affect or target the actual content of the message. That the incidents of speech are restricted through government regulation do not automatically taint them because they do not restrict the message the poster itself carries. x x x ***The size of the poster impacts on the effectiveness of the communication and the gravity of its message. Although size may be considered a part of the message, this is an aspect that merely highlights the content of the message. It is an incident of speech that government can regulate, provided it meets the requirements for content-neutral regulations.***

6. ID.; ID.; THE SIXE RESTRICTIONS IN THE SUBJECT REGUALTIONS PASS THE INTERMEDIATE SCRUTINY TEST APPLICABLE FOR CONTENT-NEUTRAL REGULATION; REASONS.— The size restrictions in Section 6 (c) of Comelec Resolution No. 9615 and Section 3.3 of RA 9006 pass the intermediate scrutiny applicable to content-neutral regulations, thus: ***First,*** the size limitations for posters containing election propaganda under these regulations are within the constitutional power of Congress to enact and of the Comelec to enforce. Section 2 (7), Article IX-C of the 1987 Constitution specifically allows the time, manner, and place regulation of election propaganda, which includes the size limitation of election posters under RA 9006. As a law concerning conduct during elections, RA 9006 falls well within the election laws that the Comelec has the duty to administer and enforce under Article IX-C, Section 2 (1) of the 1987 Constitution. ***Second,*** the size limitation for posters containing election propaganda furthers the important and substantial governmental interest of ensuring equal opportunity for public information campaigns among candidates, ensuring orderly elections and minimizing election spending. x x x ***Third,*** the

> government's interest in limiting the size of posters containing election propaganda does not add to or restrict the freedom of expression. Its interests in equalizing opportunity for public information campaigns among candidates, minimizing election spending, and ensuring orderly elections do not relate to the suppression of free expression. x x x ***Fourth,*** the restriction on the poster's size affects the manner by which the speech may be uttered, but this restriction is no greater than necessary to further the government's claimed interests.

APPEARANCES OF COUNSEL

Ralph A. Sarmiento, Raymundo T. Pandan, Jr., and *Michelle M. Abella* for petitioners.

The Solicitor General for public respondents.

R E S O L U T I O N

LEONEN, *J.*:

This Motion for Reconsideration[1] filed by respondents prays that this Court reconsider its January 21, 2015 Decision and dismiss the Petition for lack of merit.[2] The dispositive portion of the Decision reads:

> **WHEREFORE**, the instant petition is **GRANTED**. The temporary restraining order previously issued is hereby made permanent. The act of the COMELEC in issuing the assailed notice dated February 22, 2013 letter dated February 27, 2013 is declared unconstitutional.
>
> **SO ORDERED**.[3] (Emphasis in the original)

First, respondents reiterate that the assailed notice and letter are not final orders by the Commission on Elections En Banc in the exercise of its quasi-judicial functions, thus, not subject

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[1] *Rollo,* pp. 284-307.

[2] *Id.* at 306.

[3] *Id.* at 246.

to this Court's review.[4] Respondents contend that they merely implemented the law when they issued the assailed notice and letter. These are reviewable not by this Court but by the Commission on Elections pursuant to Article IX-C, Section 2 (3) of the Constitution on its power to decide "all questions affecting elections."[5] There are also remedies under Rule 34 of the Commission on Elections Rules of Procedure on preliminary investigation for election offenses. Respondents, thus, submit that petitioners violated the rule on exhaustion of administrative remedies.[6]

Second, respondents submit that the tarpaulin is election propaganda that the Commission on Elections may regulate.[7] The tarpaulin falls under the definition of election propaganda under Section 1.4 of Commission on Elections Resolution No. 9615 for three reasons. First, it "contains the names of the candidates and party-list groups who voted for or against the RH Law."[8] Second, "the check mark on 'Team Buhay' and the cross mark on 'Team Patay' clearly suggests that those belonging to 'Team Buhay' should be voted while those under 'Team Patay' should be rejected during the May 13, 2013 elections."[9] Lastly, petitioners posted the tarpaulin on the cathedral's facade to draw attention.[10]

Respondents argue that the "IBASURA RH Law" tarpaulin would have sufficed if opposition to the law was petitioners' only objective. They submit that petitioners "infused their political speech with election propaganda which may be regulated by the COMELEC."[11] They further submit that it is immaterial

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[4] *Id.* at 286-287.

[5] *Id.* at 288.

[6] *Id.* at 289.

[7] *Id.* at 290.

[8] *Id.*

[9] *Id.* at 291.

[10] *Id.*

[11] *Id.*

that the posting was not "in return for consideration" by any candidate or political party since the definition of election propaganda does not specify by whom it is posted.[12] Respondents then discuss the history of the size limitation by mentioning all previous laws providing for a 2' by 3' size limit for posters.[13] According to respondents, petitioners raised violation of freedom of expression and did not question the soundness of this size limitation.[14] Petitioners even cut the tarpaulin in half, thus confirming that the tarpaulin is election propaganda.[15]

Third, respondents argue that size limitation applies to all persons and entities without distinction,[16] thus:

> Notwithstanding that petitioners are not political candidates, the subject tarpaulin is subject to the COMELEC's regulation because petitioners' objective in posting the same is clearly to persuade the public to vote for or against the candidates and party-list groups named therein, depending on their stand on the RH Law, which essentially makes the subject tarpaulin a form of election propaganda.[17]

Respondents argue the general applicability of the Fair Elections Act. Election propaganda should not be interchanged with campaign materials as the latter is only one form of the former.[18] Respondents submit that "[w]hen an election propaganda is posted by a candidate or political party, it becomes a campaign material subject to the COMELEC's regulation under

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[12] *Id.*

[13] *Id.* at 291-294. Respondents cite the following: Rep. Act No. 6388 (1971), Election Code of 1971, Sec. 48; Pres. Decree No. 1296 (1978), 1978 Election Code, Sec. 37; ELECTION CODE, Sec. 82; Rep. Act No. 6646 (1987), Electoral Reforms Law of 1987, Sec. 11; and Rep. Act No. 9006 (2000), Fair Elections Act, Sec. 3, reiterated in COMELEC Res. No. 9615, Sec. 6 (c).

[14] *Id.* at 294.

[15] *Id.* at 295.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 297.

Section 9 of the Fair Elections Act."[19] They argue that "the Fair Elections Act regulates a variety of election-related activities that are not only engaged in by candidates and political parties but also by other individuals and entities" in that Section 4 regulates publications, printing, and broadcast, while Section 5 regulates election surveys.[20] Assuming the Fair Elections Act does not apply to private individuals, Section 82 of the Omnibus Election Code still applies to all.[21] Respondents also quote portions of the 1971 Election Code deliberations, in that the prohibition covers a candidate's follower who writes "Vote for X" on his or her own shirt even if this is not mass-produced since allowing this opens a wide loophole for possible abuse, and the limitation ensures equality of access to all.[22]

Lastly, respondents argue that the size limitation is a valid content-neutral regulation on election propaganda. As such, only a substantial governmental interest is required under the intermediate test.[23] Respondents cite *National Press Club v. Commission on Elections*[24] in that "the supervisory and regulatory functions of the COMELEC under the 1987 Constitution set to some extent a limit on the right to free speech during the election period."[25] The order to remove the tarpaulin for failure to comply with the size limitation had nothing to do with the tarpaulin's message, and "petitioners could still say what they wanted to say by utilizing other forms of media without necessarily infringing the mandates of the law."[26] Respondents cite constitutional provisions as basis for regulating the use of election

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[19] *Id.*

[20] *Id.* at 297-298.

[21] *Id.* at 299.

[22] *Id.* at 299-300.

[23] *Id.* at 303.

[24] 283 Phil. 795 (1992) [Per *J.* Feliciano, *En Banc*].

[25] *Rollo*, p. 303.

[26] *Id.* at 304.

propaganda such as political equality and election spending minimization.[27]

We deny the Motion for Reconsideration.

On respondents' argument on the prematurity of filing the case before this Court, we discussed in our Decision that Rule 64 is not the exclusive remedy for all Commission on Elections' acts as Rule 65 applies for grave abuse of discretion resulting to ouster of jurisdiction.[28] The five (5) cases[29] again cited by respondents are not precedents since these involve election protests or are disqualification cases filed by losing candidates against winning candidates.[30]

Petitioners are not candidates. They are asserting their right to freedom of expression.[31] We acknowledged the "chilling effect" of the assailed notice and letter on this constitutional right in our Decision, thus:

> Nothing less than the electorate's political speech will be affected by the restrictions imposed by COMELEC. Political speech is motivated by the desire to be heard and understood, to move people to action. It is concerned with the sovereign right to change the contours of power whether through the election of representatives in a republican government or the revision of the basic text of the Constitution. The zeal with which we protect this kind of speech does not depend on our evaluation of the cogency of the message. Neither do we assess whether we should protect speech based on the motives of COMELEC.

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[27] *Id.* Respondents cite CONST., Art. IX-C, Secs. 2 (1), 2 (7), 4, and 10; Art. II, Sec. 26; and Art. XIII, Sec. 1.

[28] *Id.* at 182-183.

[29] *Id.* at 286-287. Respondents cite *Ambil v. Commission on Elections*, 398 Phil. 257 (2000) [Per J. Pardo, *En Banc*]; *Repol v. Commission on Elections*, G.R. No. 161418, April 28, 2004, 428 SCRA 321 [Per J. Carpio, *En Banc*]; *Soriano, Jr. v. Commission on Elections*, 548 Phil. 639 (2007) [Per J. Carpio, *En Banc*]; *Blanco v. Commission on Elections*, 577 Phil. 622 (2008) [Per Azcuna, *En Banc*]; and *Cayetano v. Commission on Elections*, 663 Phil. 694 (2011) [Per J. Nachura, *En Banc*].

[30] *Id.* at 185.

[31] *Id.*

We evaluate restrictions on freedom of expression from their effects. We protect both speech and medium because the quality of this freedom in practice will define the quality of deliberation in our democratic society.

COMELEC's notice and letter affect preferred speech. Respondents' acts are capable of repetition. Under the conditions in which it was issued and in view of the novelty of this case, it could result in a "chilling effect" that would affect other citizens who want their voices heard on issues during the elections. Other citizens who wish to express their views regarding the election and other related issues may choose not to, for fear of reprisal or sanction by the COMELEC.

Direct resort to this court is allowed to avoid such proscribed conditions. Rule 65 is also the procedural platform for raising grave abuse of discretion.[32]

The urgency posed by the circumstances during respondents' issuance of the assailed notice and letter — the then issue on the RH Law as well as the then upcoming elections — also rendered compliance with the doctrine on exhaustion of administrative remedies as unreasonable.[33]

All these circumstances surrounding this case led to this Court's pro hac vice ruling to allow due course to the Petition.

The other arguments have also been considered and thoroughly addressed in our Decision.

This Court's Decision discussed that the tarpaulin consists of satire of political parties that "primarily advocates a stand on a social issue; only secondarily — even almost incidentally — will cause the election or non-election of a candidate."[34] It is not election propaganda as its messages are different from the usual declarative messages of candidates. The tarpaulin is an expression with political consequences, and "[t]his court's construction of the guarantee of freedom of expression has always

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[32] *Id.* at 186-187.

[33] *Id.* at 201.

[34] *Id.* at 230.

been wary of censorship or subsequent punishment that entails evaluation of the speaker's viewpoint or the content of one's speech."[35]

We recognize that there can be a type of speech by private citizens amounting to election paraphernalia that can be validly regulated.[36] However, this is not the situation in this case. The twin tarpaulins consist of a social advocacy, and the regulation, if applied in this case, fails the reasonability test.[37]

Lastly, the regulation is content-based. The Decision discussed that "[t]he form of expression is just as important as the information conveyed that it forms part of the expression[,]"[38] and size does matter.[39]

WHEREFORE, the Motion for Reconsideration is **DENIED** with **FINALITY**.

SO ORDERED.

Leonardo-de Castro, del Castillo, Perez, Reyes, and Perlas-Bernabe, JJ., concur.

Sereno, C.J. and *Mendoza, J.*, on official leave.

Carpio, J., reiterated his separate concurring opinion.

Velasco, Jr. and *Bersamin, JJ.*, join the dissent of *J. Brion.*

Brion, J., see dissenting opinion.

Peralta, J., joins the opinion of *J. Carpio.*

Jardeleza, J.,no part.

Caguioa, J., joins/concurs with *J.* Bernabe's original separate concurring opinion.

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[35] *Id.* at 231.

[36] *Id.* at 239.

[37] *Id.*

[38] *Id.* at 211.

[39] *Id.*

DISSENTING OPINION

BRION, *J.*:

I dissent from the *ponencia's* denial of the Motion for Reconsideration filed by respondents Commission on Elections (*Comelec*) and Election Officer Atty. Mavil V. Majarucon asking that the Court reconsider its January 21, 2015 Decision in *Diocese of Bacolod v. Comelec*. The Decision granted petitioner Diocese of Bacolod and Bishop Vicente Navarra's (*petitioners*) Petition, declared the Comelec's Notice dated February 22, 2013, and Letter dated February 27, 2013, as unconstitutional, and made the temporary restraining order earlier issued against it permanent.

The *ponencia* denied the motion for reconsideration for raising arguments already addressed and emphasized the following points:

First, Rule 64 of the Rules of Court is not the exclusive remedy for all Comelec acts, as Rule 65 applies when grave abuse of discretion takes place, resulting in lack or excess of jurisdiction.

The petitioners, in asserting their right to freedom of expression, allege the "chilling effect" of the assailed notice and letter on this freedom, thus justifying their resort to the Court through a Rule 65 petition.

Additionally, the urgency posed by the circumstances during the Comelec's issuance of the assailed notice and letter — the then issue on the RH Law as well as the then coming elections — also rendered the petitioners' compliance with the doctrine of exhaustion of administrative remedies unreasonable.

Second, the disputed tarpaulin is not an election propaganda material. It involves a satire of political parties and primarily advocates a stand on a social issue; the election or non-election of a candidate is merely secondary and incidental to its message.

Third, the Comelec's regulation of poster size is content-based, as the form of expression is just as important as the information conveyed that forms part of the expression.

I disagree with the denial of the respondents' motion for reconsideration because of its jurisprudential effect: the currently prevailing ruling substantially diminishes the Comelec's constitutional and exclusive jurisdiction to enforce and administer all laws and regulations relative to the conduct of an election under Article IX-C, Section 2 (1) of the 1987 Constitution, including the regulation of election propaganda.

It also reduces the Comelec's capacity under Article IX-C, Section 2 (7) "to recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted."

To my mind, these constitutional provisions expressly and clearly allow Congress to craft measures that regulate the time, manner, and place of posting election propaganda, and that enable the Comelec to fully implement these measures.

The size restrictions for election posters in Section 3.3 of Republic Act No. 9006 (RA 9006, otherwise known as the Fair Elections Act) is a lawful exercise of Congress's power to regulate election propaganda. The Comelec's issuance of its implementing rule, Section 6 (c) of Comelec Resolution No. 9615, and its implementation in the present case through the Notice to Remove Campaign Materials issued by Election Officer Mavil V. Majarucon in a Letter dated February 22, 2013, and Comelec Law Director Esmeralda Amora-Ladra in an Order dated February 27, 2013, had not been outside of the Comelec's jurisdiction to enforce and implement election laws.

I cannot also agree with the considerable departure that the majority made from established jurisprudence in reviewing the administrative actions of a constitutional commission and the government's regulation of speech; I do so not for the purposes of instigating a criminal prosecution against the petitioners, as events have made the issue moot and academic,[1] but to correct its impact on jurisprudence and constitutional litigation.

[1] The passage of the election period has effectively made the issues in the present petition moot and academic. Any decision on our part — whether for the validity or invalidity of the Comelec's actions would no longer affect

I discuss below the reasons for my disagreement.

I. The petitions challenging the constitutionality of the Comelec's Letter and Notice are premature and should not have been given due course.

A. The majority in Diocese of Bacolod v. Comelec took cognizance of the Comelec's administrative act without the final imprimatur of the Comelec en banc, and thus deprived it of its jurisdiction to determine the constitutionality of the acts of its election officers.

The Court, in exceptional cases, may review the Comelec's administrative acts through the Court's expanded jurisdiction under the second paragraph of Article VIII, Section 1 of the 1987 Constitution. This constitutional authority is different from the *certiorari* petition mentioned in Article IX-B, which pertains to the Comelec's quasi-judicial acts and is instituted through Rule 64 of the Rules of Court.

Because the review of the Comelec's administrative act falls under the Court's expanded jurisdiction (under the second paragraph of Article VIII, Section 1), the petition must necessarily reflect a *prima facie* showing of grave abuse of discretion on the part of the Comelec.

In other words, the petition must have preliminarily shown that the Comelec's administrative act was performed in such a capricious, and whimsical exercise of judgment 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.

Note, at this point, that there can be no *prima facie* showing of grave abuse of discretion unless something has already been done[2]

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the rights of either the petitioners to post the subject posters, or the Comelec to prosecute election offenses. See J. Brion's Dissenting Opinion in *Diocese of Bacolod v. Comelec*, p. 11.

[2] In the case of a challenged law or official action, for instance, the Court will not consider an issue ripe for judicial resolution, unless something had already been done. *Imbong v. Ochoa, Syjuico v. Abad, Bayan Telecommunications v. Republic*.

or has taken place under the law;[3] and the petitioner sufficiently alleges the existence of a threatened or immediate injury to itself as a result of the gravely abusive exercise of discretion.[4]

In the case of an administrative agency (more so, if it involves an independent constitutional body), a matter cannot be considered ripe for judicial resolution unless administrative remedies have been exhausted.[5] ***Judicial review is appropriate only if, at the very least, those who have the power to address the petitioner's concerns have been given the opportunity to do so***. In short, the requirement of ripeness does not become less relevant under the courts' expanded judicial power.

In this light, I emphasize that the ***petition challenges RA 9006 and Comelec Resolution No. 9165 not because its text, on its face, violates fundamental rights,***[6] ***but because Comelec erroneously applied an otherwise constitutional law***. The Comelec's administrative act of including the petitioners' poster within the coverage of Comelec Resolution No. 9615 allegedly violated their constitutional rights to freedom of speech and religion.

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[3] *Mariano, Jr. v. Commission on Elections*, G.R. No. 118577, March 7, 1995, 242 SCRA 211.

[4] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel*, 589 Phil. 463, 481 (2008).

[5] See *Corales v. Republic*, G.R. No. 186613, August 27, 2013.

[6] This is in contrast to my discussion of a *prima facie* grave abuse of discretion in *Imbong v. Executive Secretary*. In *Imbong*, the petition alleged (and the Court eventually concluded) that the text of the Reproductive Health Law violates the right to life of the unborn child in the Constitution. Congress, in enacting a law that violates a fundamental right, committed a grave abuse of discretion. Thus, citizens have an interest in stopping the implementation of an unconstitutional law that could cause irreparable injury to the countless unborn.

The constitutionality of the text of RA 9006, on the other hand, is not in question in the present case. What the petitioners assail is their inclusion within the coverage of election propaganda regulations in RA 9006 and Comelec Resolution No. 9615.

This issue could have been best decided by the Comelec had the petitioners followed the regular course of procedure in the investigation and prosecution of election offense cases. The ***assailed action of the Comelec, after all, contained a warning against possible prosecution for an election offense that would have had to undergo an entire process before it is filed before the proper tribunal***. This process allows suspected election offenders to explain why an election offense should not be filed against them, and for the Comelec to consider the explanation.

In the interest of orderly procedure and the respect for an independent constitutional commission such as the Comelec, on matters that are *prima facie* within its jurisdiction, ***the expansion of the power of judicial review could not have meant the power to review any and all acts of a department or office within an administrative framework***.

The Comelec under this Article IX-C, Section 2 (3) can certainly decide whether to initiate a preliminary investigation against the petitioners. It can decide based on the arguments and pieces of evidence presented during the preliminary investigation — whether there is probable cause to file an information for an election offense against the petitioners. This determination is even subject to review and reconsideration, as Comelec Resolution No. 9386 (**Rules of Procedure in the Investigation and Prosecution of Election Offense Cases in the Commission on Elections**)[7] clearly provide.

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[7] Section 6 of Comelec Resolution No. 9386 provides:

Section 6. Conduct of Preliminary Investigation. — Within ten (10) days from receipt of the Complaint, the investigating officer shall issue a subpoena to the respondent/s, attaching thereto a copy of the Complaint, Affidavits and other supporting documents, giving said respondents ten (10) days from receipt within which to submit Counter-Affidavits and other supporting documents. The respondent shall have the right to examine all other evidence submitted by the complainant. Otherwise, the Investigating officer shall dismiss the Complaint if he finds no ground to continue with the inquiry. Such Counter-Affidavits and other supporting evidence submitted by the respondent shall be furnished by the latter to the complainant.

To be sure, this is a matter that the Comelec should have been given the first opportunity to resolve before the petitioners directly sought judicial recourse. While the freedoms invoked by the petitioners certainly occupy preferential status in our hierarchy of freedoms, the Court cannot second-guess what the Comelec's action would have been, particularly when the matters before us are nothing more than the **Election Officer** *Majarucon's notice* and the **Director Amora-Ladra's** *order*.

If the respondent cannot be subpoenaed, or if subpoenaed, does not submit Counter-Affidavits within the ten (10) day period, the investigating officer shall base his Resolution on the evidence presented by the complainant.

If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present, but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned.

Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within thirty (30) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

Where the respondent is a minor, the investigating officer shall not conduct the preliminary investigation unless the child respondent shall have first undergone the requisite proceedings before the Local Social Welfare Development Officer pursuant to Republic Act No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006."

No motion, except on the ground of lack of jurisdiction or request for extension of time to submit Counter-Affidavits shall be allowed or granted except on exceptionally meritorious cases. Only one (1) Motion for Extension to file Counter-Affidavit for a period not exceeding ten (10) days shall be allowed. The filing of Reply-Affidavits, Rejoinder-Affidavits, Memoranda and similar pleadings are likewise prohibited.

A Memorandum, Manifestation or Motion to Dismiss is a prohibitive pleading and cannot take the place of a Counter-Affidavit unless the same is made by the respondent himself and verified.

When an issue of a prejudicial question is raised in the Counter-Affidavit, the investigating officer shall suspend preliminary investigation if its existence is satisfactorily established. All orders suspending the preliminary investigation based on existence of prejudicial question issued by the investigating officer shall have the written approval of the Regional Election Director or the Director of the Law Department, as the case may be.

B. The inconsistency in the majority's analysis and its dispositive portion reflect and indicate the prematurity of the petitioners' immediate recourse to the Court.

According to the majority, the present petition was given due course because the Comelec's acts had a chilling effect on speech, which justifies the petitioners' immediate resort to the Court under a Rule 65 *certiorari* petition. It then proceeded to argue that the speech involved does not fall under the classification of election propaganda; to classify the laws empowering the Comelec to regulate the size of election posters' size as a content-based regulation; and to hold that, in any case, size restriction of posters does not pass constitutional muster whether under the compelling state interest test for content-based regulations or intermediate scrutiny test for content-neutral regulations.

Based on these arguments, the majority opinion held that the Comelec's interpretation of its powers through the assailed letter and notice is unconstitutional. Thus, the dispositive portion of the main decision reads:

> WHEREFORE, the instant petition is GRANTED. The temporary restraining order previously issued is hereby made permanent. The act of the COMELEC in **issuing the assailed notice dated February 22, 2013** and **letter dated February 27, 2013, is declared unconstitutional**. [emphasis supplied]

Under these terms, the majority decision's analysis is inconsistent with the remedy it granted in its dispositive portion. This inconsistency reflects the prematurity of the issues presented in the petition, as well as the manner the ruling has prevented the Comelec *en banc* from exercising its discretion to affirm or correct the actions of its election officers.

Note that despite the majority decision's pronouncements regarding the unconstitutionality of the size restriction of posters (which form the basis for the unconstitutionality of the Comelec's administrative act), the majority decision's dispositive declaration of unconstitutionality is directed at the Comelec's administrative acts, without mention of the constitutionality of the laws these administrative acts apply. In marked contrast, Justice Antonio

T. Carpio's Separate Concurring Opinion grants the petition and declares the laws limiting the size of election posters as unconstitutional, thus:

> Accordingly, I vote to GRANT the petition and DECLARE UNCONSTITUTIONAL (1) Section 3.3 of Republic Act No. 9006; (2) Section 6(c) of COMELEC Resolution No. 9615, dated 15 January 2013; and (3) the notices, dated 22 February 2013 and 27 February 2013, of the Commission on Elections for being violative of Section 4, Article III of the Constitution.

The disparity between the discussion in the body of the majority decision and the content of its dispositive portion leads me to ask: is the size restriction constitutional, but unconstitutional as applied to the petitioners? May the Comelec still regulate the size of election posters of candidates, and under what parameters?

In decisions declaring a law's unconstitutionality ***as applied*** to the petitioner, the assailed law remains valid, but its application to the individual challenging it (and subsequently to others similarly situated) is unconstitutional.

If indeed the majority decision had treated the petition in this case as an ***as-applied challenge*** to the constitutionality of Section 3 of RA 9006 and Section 6 (c) of Comelec Resolution No. 9615, then the issues it presented to the Court were premature.

As-applied challenges to the constitutionality of the law prosper only *when there has been an enforcement of the law* to the individual claiming exemption from its application. In other words, the challenged law must have been enforced and has already been applied to the petitioner, *i.e.*, at the very least, the Comelec *en banc* must have rendered its decision to prosecute the petitioners and institute an election offense against them.

Notably, this was not what happened, as the administrative acts of the Comelec's election officer and law department had been restrained before the issue of the unconstitutionality of the letter and order issued against the petitioners could be validly assessed by the Comelec. Thus, the petition assailed the

administrative acts of the Comelec's Law Department and election officer before it could be affirmed by the Comelec, and before any quasi-judicial proceeding for the prosecution of an election offense could be instituted and resolved.

In contrast, ***facial challenges*** may be introduced against a law soon after its passage, typically because these laws pose a chilling effect on the exercise of fundamental rights, such as speech. The petitioners instituting a petition asking for a facial challenge of the law has the burden to prove that the law does not have any constitutional application, that is, that the law is unconstitutional *in all its applications*. Upon meeting this burden, the decision would have declared the challenged law as unconstitutional.

The present petitions, however, challenge the Comelec's administrative acts — not the laws it seeks to implement — and thereby raise issues that are applicable only to them.

The majority decision apparently mixed the concepts of applied and facial challenges, such that it granted a remedy for as-applied challenges, under the reasoning and analysis meant for facial challenges.

Thus, while the petition seeks to declare the Comelec's administrative acts to be unconstitutional as applied to the petitioners, the majority decision proceeded to analyze the case as the Court typically would in facial challenges: it gave due course to the petition because of the possibility of a chilling effect on speech, and then proceeded to discuss the unconstitutionality of the laws that the challenged administrative acts apply.

The majority's uneven approach shows the prematurity of the issues that the petition presents. ***If indeed, the law is unconstitutional as applied, then this would have been the defense to a possible criminal proceeding against the petitioner. It cannot and should not be used to pre-empt a criminal proceeding***.

Indeed, our expanded jurisdiction under Section 1, Article VIII of the 1987 Constitution allows us to determine grave abuse of discretion in the actions of governmental agencies, and has considerably reduced the requirements of standing in constitutional litigation. The recognition of this expanded jurisdiction has led me to theorize, in several previous opinions, that a *prima facie* showing of grave abuse of discretion is sufficient to trigger the Court's expanded jurisdiction. The simplicity of this requirement does not diminish the gravity of the petitioners' burden to preliminarily prove that the Comelec acted in an arbitrary and capricious manner outside of what the law and the Constitution allows it to do.

As I have discussed earlier, the petitioners have failed in their burden of showing this triggering requirement before the Court; as the petition had been prematurely filed, whether via the traditional constitutional litigation route or by way of the Court's expanded jurisdiction.

II. The disputed tarpaulin falls under election propaganda as it clearly espouses the election of some candidates and the non-election of other candidates because of their stance in the passage of the RH Law.

The subject poster carries the following characteristics:

(1) It was posted **during the campaign period**, by private individuals and within a private compound housing the San Sebastian Cathedral of Bacolod.

(2) It was **posted with another tarpaulin** with the message "RH LAW IBASURA."

(3) Both tarpaulins were approximately **six by ten feet in size**, and were posted in front of the Cathedral **within public view**.

(4) The subject poster contains the heading "**conscience vote**" and two ***lists of senators and members of the House of Representatives***. The ***first list*** contains names of legislators who voted against the passage of the Reproductive Health Law, denominated as Team Buhay.

The ***second list*** contains names of legislators who voted for the RH Law's passage, denominated as "Team Patay." The "Team Buhay" list displayed a check mark, while the Team Patay list showed an X mark. All the legislators named in both lists were ***candidates*** during the 2013 national elections.

(5) It does not appear to have been sponsored or paid for by any candidate.

The content of the tarpaulin, as well as the timing of its posting, makes it subject to the regulations in RA 9006 and Comelec Resolution No. 9615.

Comelec Resolution No. 9615 contains rules and regulations implementing RA 9006 during the 2013 national elections. Section 3 of RA 9006 and Section 6 of Comelec Resolution No. 9615 seek to regulate election propaganda, defined in the latter as:

> The term "political advertisement" or "election propaganda" refers to ***any matter broadcasted, published, printed, displayed or exhibited, in any medium,*** which ***contain the name***, image, logo, brand, insignia, color motif, initials, and other symbol or graphic representation that is ***capable of being associated with a candidate or party, and is intended to draw the attention of the public or a segment thereof to promote or oppose, directly or indirectly, the election of the said candidate or candidates to a public office***. In broadcast media, political advertisements may take the form of spots, appearances on TV shows and radio programs, live or taped announcements, teasers, and other forms of advertising messages or announcements used by commercial advertisers.
>
> Political advertising includes matters, not falling within the scope of personal opinion, that appear on any Internet website, including, but not limited to, social networks, blogging sites, and micro-blogging sites, in return for consideration, or otherwise capable of pecuniary estimation. [emphasis supplied]

Based on these definitions, ***the subject poster falls within the definition of election propaganda***. It ***named candidates*** *for the 2013 elections, and was clearly* ***intended to promote***

the election of a list of candidates it favors ***and to*** ***oppose the election of candidates in another list***. It was ***displayed*** ***in public view***, *and as such is* ***capable of drawing the attention of the voting public*** passing by the cathedral to its message.

Notably, the tarpaulin places the words "***conscience vote***" and associates the names of political candidates who voted against the passage of the RH Law with the positive description "Team Buhay, and associates the names of political candidates who voted for the passage of the RH Law with the negative description "Team Patay." It even distinguishes between the marks used to identify the candidates — the members of Team Buhay are marked with the positive sign check mark and the members of Team Patay are associated with the negative "X" mark.

The tarpaulin, obviously, invites voters to vote for members of the Team Buhay and to not vote for the members of the Team Patay because of their participation in the RH Law. The word "conscience vote," along with the positive description and negative description for political candidates during the election period at the time the tarpaulin was posted for public view clearly indicates this. Under these terms, the tarpaulin does not simply advocate support for the RH Law; it asks the public to vote or not to vote for candidates based on their position on the RH Law.

In this light, I strongly object to the *ponencia*'s characterization of the tarpaulin as "primarily advocates a stand on a social issue; [*sic*] only secondarily — even almost incidentally — will cause the election or non-election of a candidate," and declaration that the tarpaulin is "not election propaganda as the messages are different from the usual declarative messages of candidates."

This is a dangerous justification that could, with some creative tinkering by interested parties, blur the distinctions determining what consists an election propaganda to the point of eradicating it. To illustrate, anyone could put a social issue as the justification for voting or not voting for a candidate, and claim that the paraphernalia merely incidentally intends to convince voters of their voting preferences.

Furthermore, requiring a declarative message from the candidate to vote or not vote for a candidate significantly narrows down the coverage of what constitutes as election propaganda, and excludes propaganda that convey the same message, but do not necessarily use a declarative statement.

In these lights, the *ponente's* interpretation of election propaganda could render the entire regulation of election propaganda as defined under Section 3 of RA 9006 inutile, as it creates loopholes that would take any propaganda (and possibly not just election posters) outside the definition of election propaganda. Most certainly, I cannot concur with this position.

III. The regulation of poster size under the Omnibus Election Code is a valid content-neutral regulation of speech.

A. The regulation of poster size as a content-neutral regulation.

The assailed regulations in the present case involve a content-neutral regulation that controls the incidents of speech. Both the notice and letter sent by the Comelec to the Diocese of Bacolod sought to enforce Section 3.3 of RA 9006 and Section 6 (c) of Comelec Resolution No. 9615 which limits the size of posters that contain election propaganda to not more than two by three feet. ***It does not prohibit anyone from posting materials that contain election propaganda, so long as it meets the size limitations.***

Limitations on the size of a poster involve a content-neutral regulation involving the manner by which speech may be uttered. It regulates how the speech shall be uttered, and does not, in any manner affect or target the actual content of the message.

That the incidents of speech are restricted through government regulation do not automatically taint them because they do not restrict the message the poster itself carries. Again, for emphasis, Comelec Resolution No. 9615 and RA 9006 regulate how the message shall be transmitted, and not the contents of the message itself.

Admittedly, ***the size of the poster impacts on the effectiveness of the communication and the gravity of its message. Although size may be considered a part of the message, this is an aspect that merely highlights the content of the message. It is an incident of speech that government can regulate, provided it meets the requirements for content-neutral regulations.***

The message in the subject poster is transmitted through the text and symbols that it contains. We can, by analogy, compare the size of the poster to the volume of the sound of a message.[8] A blank poster, for instance and as a rule, does not convey any message regardless of its size (unless, of course, vacuity itself is the message being conveyed). In the same manner, a sound or utterance, without words or tunes spoken or played, cannot be considered a message regardless of its volume. We communicate with each other by symbols — written, verbal, or illustrated — and these communications are what the freedom of speech protects, not the manner by which these symbols are conveyed.

B. The regulation passes the intermediate scrutiny test applicable for content-neutral regulations.

The size restrictions in Section 6 (c) of Comelec Resolution No. 9615 and Section 3.3 of RA 9006 pass the intermediate scrutiny[9] applicable to content-neutral regulations, thus:

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[8] See: *Regan v. Time*, 468 U.S. 641; 104 S. Ct. 3262; 82 L. Ed. 2d 487; 1984 U.S. LEXIS 147; 52 U.S.L.W. 5084, citing *Kovacs v. Cooper*, 336 U.S. 77 (1949).

[9] Philippine jurisprudence distinguishes between the regulation of speech that is content-based, from regulation that is content-neutral. Content-based regulations regulate speech because of the substance of the message it conveys. In contrast, content-neutral regulations are merely concerned with the incidents of speech: the time, place or manner of the speech's utterance under well-defined standards.

Distinguishing the nature of the regulation is crucial in cases involving freedom of speech, as it determines the test the Court shall apply in determining its validity.

Content-based regulations are viewed with a heavy presumption of unconstitutionality. Thus, the government has the burden of showing that

First, the size limitations for posters containing election propaganda under these regulations are within the constitutional power of Congress to enact and of the Comelec to enforce.

Section 2 (7), Article IX-C of the 1987 Constitution specifically allows the time, manner, and place regulation of election propaganda, which includes the size limitation of election posters under RA 9006. As a law concerning conduct during elections, RA 9006 falls well within the election laws that the Comelec has the duty to administer and enforce under Article IX-C, Section 2(1) of the 1987 Constitution.

Second, the size limitation for posters containing election propaganda furthers the important and substantial governmental interest of ensuring equal opportunity for public information campaigns among candidates, ensuring orderly elections and minimizing election spending.

A cap on the size of a poster ensures, to some extent, uniformity in the medium through which information on candidates may be conveyed to the public. It effectively bars candidates, supporters, or detractors from using posters too large that they result in skewed attention from the public. The limitation also prevents the candidates and their supporting parties from engaging in a battle of poster sizes and, in this sense, serves to minimize election spending and contributes to the maintenance of peace and order during the election period.

Third, the government's interest in limiting the size of posters containing election propaganda does not add to or restrict the

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the regulation is narrowly tailored to meet a compelling state interest, otherwise, the Court will strike it down as unconstitutional.

In contrast, content-neutral regulations are not presumed unconstitutional. They pass constitutional muster once they meet the following requirements: first, that the regulation is within the constitutional power of the Government second, that it furthers an important or substantial governmental interest; third, that the governmental interest is unrelated to the suppression of free expression; and fourth, that the incidental restriction on speech is no greater than is essential to further that interest.

freedom of expression. Its interests in equalizing opportunity for public information campaigns among candidates, minimizing election spending, and ensuring orderly elections do not relate to the suppression of free expression.

Fourth, the restriction on the poster's size affects the manner by which the speech may be uttered, but this restriction is no greater than necessary to further the government's claimed interests.

Size limits to posters are necessary to ensure equality of public information campaigns among candidates, as allowing posters with different sizes gives candidates and their supporters the incentive to post larger posters. This places candidates with more money and/or with deep-pocket supporters at an undue advantage against candidates with more humble financial capabilities.

Notably, the law does not limit the number of posters that a candidate, his supporter, or a private individual may post. If the size of posters becomes unlimited as well, then candidates and parties with bigger campaign funds could effectively crowd out public information on candidates with less money to spend to secure posters — the former's bigger posters and sheer number could effectively take the attention away from the latter's message. In the same manner, a lack of size limitation would also crowd out private, unaffiliated individuals from participating in the discussion through posters, or at the very least, would compel them to erect bigger posters and thus spend more.

Prohibiting size restrictions on posters is also related to election spending, as it would allow candidates and their supporters to post as many and as large posters as their pockets would allow.

FIRST DIVISION

[G.R. No. 209264. July 5, 2016]

DAMASO T. AMBRAY and CEFERINO T. AMBRAY, JR.,* *petitioners, vs.* **SYLVIA A. TSOUROUS, CARMENCITA AMBRAY-LAUREL, HEDY AMBRAY-AZORES, VIVIEN AMBRAY-YATCO, NANCY AMBRAY-ESCUDERO, MARISTELA AMBRAY-ILAGAN, ELIZABETH AMBRAY-SORIANO, MA. LUISA FE AMBRAY-ARCILLA, and CRISTINA AMBRAY-LABIT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; REEXAMINATION OF THE FACTUAL FINDINGS CANNOT BE DONE BY THE COURT IN A PETITION FOR REVIEW ON *CERTIORARI* FOR IT REVIEWS ONLY QUESTIONS OF LAW; EXCEPTIONS, ENUMERATED AND APPLIED.— [A]s a general rule, a re-examination of factual findings cannot be done by the Court acting on a petition for review on *certiorari* because it is not a trier of facts and only reviews questions of law. This rule, however, admits of certain exceptions, namely: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) **when the inference made is manifestly mistaken, absurd or impossible;** (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are

* Estela T. Ambray had already died on August 15, 2002. See *rollo* p. 9.

not disputed by the respondent; (10) **when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record;** and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Finding a confluence of certain exceptions in this case, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court does not apply, and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.

2. ID.; EVIDENCE; RULES ON HOW TO PROVE THE ALLEGATION OF FORGERY.— As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.

3. ID.; ID.; MANNER BY WHICH GENUINENESS OF HANDWRITING MAY BE PROVED.— Under Rule 132, Section 22 of the Rules of Court, the genuineness of handwriting may be proved in the following manner: (1) by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted or been charged; (2) by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party, against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. Corollary thereto, jurisprudence states that the presumption of validity and regularity prevails over allegations of forgery and fraud. As against direct evidence consisting of the testimony of a witness who was phys*ic*ally present at the signing of the contract and who had personal knowledge thereof, the testimony of an expert witness constitutes indirect or circumstantial evidence at best.

4. ID.; ID.; ID.; AS BETWEEN THE NBI REPORT AND THE TESTIMONY OF A WITNESS CORROBORATED BY THE NOTARY PUBLIC, THE COURT ACCORDED GREATER EVIDENTIARY WEIGHT TO THE LATTER.— In this case, the only direct evidence presented by respondents to prove their allegation of forgery is Questioned Documents Report No. 266-397 dated March 24, 1997 issued by National Bureau of Investigation (NBI) Document Examiner II Antonio R. Magbojos (Magbojos), stating that the signatures of Ceferino, Sr. and Estela on the Deed of Sale, when compared to standard sample signatures, are not written by one and the same person. In refutation, petitioners offered in evidence, *inter alia*, the testimony of their mother, Estela, in the falsification case where petitioners were previously acquitted. In the course thereof, she identified the signatures on the Deed of Sale as hers and Ceferino, Sr.'s, which was fully corroborated by Atty. Zosimo Tanalega (Atty. Tanalega), the notary public who notarized the subject Deed of Sale and was present at the time the Ambray spouses affixed their signatures thereon. Between the Questioned Documents Report presented by respondents and the testimony given by Estela in the falsification case in support of petitioners' defense, the Court finds greater evidentiary weight in favor of the latter. Hence, respondent's complaint for annulment of title, reconveyance, and damages in Civil Case No. SP-5831 (01) should be dismissed.

5. ID.; ID.; RULE ON FORMER TESTIMONY; REQUISITES THAT MUST CONCUR FOR THE ADMISSIBILITY OF TESTIMONY AT A FORMER TRIAL OR PROCEEDING RULE TO APPLY.— Case law holds that for the ["rule on former testimony"] to apply, the following requisites must be satisfied: (*a*) the witness is dead or unable to testify; (*b*) his testimony or deposition was given in a former case or proceeding, judicial or administrative, between the same parties or those representing the same interests; (*c*) the former case involved the same subject as that in the present case, although on different causes of action; (*d*) the issue testified to by the witness in the former trial is the same issue involved in the present case and (*e*) the adverse party had an opportunity to cross-examine the witness in the former case. The reasons for the admissibility of testimony taken at a former trial or proceeding are the necessity

for the testimony and its trustworthiness. However, before the former testimony can be introduced in evidence, the proponent must first lay the proper predicate therefor, *i.e.*, the party must establish the basis for the admission of testimony in the realm of admissible evidence.

6. ID.; ID.; ID.; REQUISITES OF THE RULE ON FORMER TESTIMONY, PRESENT IN CASE AT BAR; THE QUESTIONED DEED OF SALE IS VALID AND DULY EXECUTED CONSIDERING THE FORMER TESTIMONY OF A WITNESS IN THE FALSIFICATION CASE.— Records show that Estela died during the pendency of these proceedings before the RTC or on August 15, 2002. Her death transpired before the presentation of the parties' evidence could ensue. However, she was able to testify on direct and cross-examination in the falsification case and affirmed that the alleged forged signatures appearing on the Deed of Sale were, indeed, hers and her deceased husband, Ceferino, Sr.'s. The parties in the falsification case involved respondents and petitioners herein, and the subject matter therein and in this case are one and the same, *i.e.*, the genuineness and authenticity of the signatures of Ceferino, Sr. and Estela. Clearly, the former testimony of Estela in the falsification case, being admissible in evidence in these proceedings, deserves significant consideration. She gave positive testimony that it was Ceferino, Sr. himself who signed the Deed of Sale that conveyed Lot 2-C to petitioners. She likewise verified her signature thereon. By virtue of these declarations, she confirmed the genuineness and authenticity of the questioned signatures. Thus, it follows that the Deed of Sale itself is valid and duly executed, contrary to the finding of the RTC, as affirmed by the CA, that it was of spurious nature.

7. CIVIL LAW; SALE; THE DEED OF SALE IS STILL VALID EVEN WITHOUT SPECIFYING THE METES AND BOUNDS OF THE AREA BEING SOLD.— In particular, the RTC noted, and found it puzzling, that the Deed of Sale did not specifically mention the exact area that was being sold to petitioners, disposing only of "a portion of lot 2" without specifying the metes and bounds thereof. As such, the RTC concluded that Ceferino, Sr. could not have sold a specific portion of Lot 2 to petitioners, having been subdivided only in 1984.

However, Article 1463 of the Civil Code expressly states that "[t]he sole owner of a thing may sell an undivided interest therein." As Ceferino, Sr. was the sole owner of the original Lot 2 from whence came Lot 2-C, he is therefore allowed by law to convey or sell an unspecified portion thereof. Hence, the disposition of Lot 2-C to petitioners, a portion of Lot 2 yet to be subdivided in 1978, was therefore valid.

8. ID.; ID.; DELAY IN THE REGISTRATION OF THE SALE NEITHER AFFECTS NOR INVALIDATES THE SAME.— That Ceferino, Sr. requested the registration of the title of Lot 2-C in his name in 1984, while the property was supposed to have already been sold to petitioners in 1978, was likewise fully explained during trial. Damaso clarified that their parents were apprehensive that he and Ceferino might mortgage or squander the property while they were still alive. Moreover, despite knowledge of the sale, they did not demand for its immediate registration because during their father's lifetime, they never questioned his decisions. This further explains why, despite the disposition in petitioners' favor, it was Ceferino, Sr. himself who leased Lot 2-C to third parties, which Damaso renewed in his father's name after the latter's death. The delay in the transfer of the title over Lot 2-C to petitioners was also occasioned by the fact that Estela kept the Deed of Sale in her custody and gave it to petitioners only later on, by reason of her poor health. Be that as it may, and to reiterate, the delay in the registration of the sale in favor of petitioners neither affects nor invalidates the same, in light of the authenticity of the Deed of Sale itself.

APPEARANCES OF COUNSEL

J.P. Villanueva & Associates for petitioners.
Carlos Mayorico E. Caliwara for respondent Nancy Escudero.
Balagtas P. Ilagan for respondent Sylvia Tsourous, et al.

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 April 25, 2013 and the Resolution[3] dated September 24, 2013 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 95606, affirming the Decision[4] dated June 11, 2010 of the Regional Trial Court of San Pablo City, Branch 32 (RTC) in Civil Case No. SP-5831 (01).

The Facts

The subject matter of the present controversy is a parcel of land described as **Lot 2-C** of subdivision plan Psd-04-009554, covered by Transfer Certificate of Title (TCT) No. T-41382[5] of the Register of Deeds of San Pablo City (Lot 2-C) in the name of petitioners Damaso T. Ambray (Damaso) and Ceferino T. Ambray, Jr. (Ceferino, Jr.; collectively, petitioners).

Petitioners and respondents Sylvia A. Tsourous,[6] Carmencita Ambray-Laurel, Hedy Ambray-Azores, Vivien Ambray-Yatco, Nancy Ambray-Escudero, Maristela Ambray-Ilagan (Maristela), Elizabeth Ambray-Soriano, Ma. Fe Luisa Ambray-Arcilla (Ma. Fe Luisa),[7] and Cristina Ambray-Labit

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[1] *Rollo*, pp. 7-29.

[2] *Id.* at 32-40. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Ramon R. Garcia and Danton Q. Bueser concurring.

[3] *Id.* at 42-43. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Ramon R. Garcia and Manuel M. Barrios concurring.

[4] *Id.* at 44-67. Penned by Judge Agripino G. Morga.

[5] Folder of Exhibits, p. 6, including dorsal portion thereof.

[6] Sylvia A. Tsourous died during the pendency of the case before the RTC and was substituted by her heirs, namely: Kristina Tsourous-Reyes, Mark Tsourous, Keith Tsourous, and Steven Tsourous. See records, Vol. I, pp. 156-159 and 163-164.

[7] Also referred to in the records as "Ma. Luisa Fe." During the proceedings before the RTC, she withdrew as plaintiff, and the complaint was amended to implead her as co-defendant of Damaso and Ceferino, Jr. *Id.* at 181-186.

are siblings. With the exception of Sylvia,[8] they are the children of the late Ceferino Ambray (Ceferino, Sr.) and Estela Trias (Estela), who passed away on February 5, 1987 and August 15, 2002, respectively.

During their lifetime, Ceferino, Sr. and Estela owned several properties, one of which was a parcel of land located in San Pablo City, Laguna denominated as Lot 2 of subdivision plan Pcs-12441, with an area of 4,147 square meters, more or less, covered by TCT No. T-11259[9] of the Register of Deeds of San Pablo City (Lot 2). On December 28, 1977, Ceferino, Sr. mortgaged Lot 2 with Manila Bank for the amount of ₱180,000.00. The mortgage was discharged on September 16, 1984.[10]

Prior to the discharge of the mortgage or sometime in August 1984, Lot 2 was subdivided into three (3) lots: Lot 2-A, Lot 2-B, and the subject property, **Lot 2-C**, resulting in the cancellation of TCT No. T-11259. **Lot 2-C** was registered in Ceferino, Sr.'s name in accordance with his letter[11] dated August 29, 1984 requesting the Register of Deeds of San Pablo City to register Lot 2-C in his name. Thus, TCT No. T-22749[12] was issued covering the said parcel under the name of Ceferino, Sr., married to Estela.[13]

In June 1996, Maristela discovered that TCT No. T-22749 covering Lot 2-C had been cancelled and in its stead, TCT No. T-41382 was issued in the name of petitioners. It appears that by virtue of a notarized Deed of Absolute Sale[14] (Deed of Sale) dated January 16, 1978, Ceferino, Sr., with the consent

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[8] See *id.* at 4.

[9] Folder of Exhibits, pp. 2-3.

[10] *Rollo*, p. 34.

[11] Folder of Exhibits, p. 4.

[12] Folder of Exhibits, p. 5, including dorsal portion thereof.

[13] *Rollo*, p. 34.

[14] *Id.* at 79-80.

of Estela, allegedly sold "a portion of lot 2 of the consolidation subd. plan (LRC) Pcs-12441"[15] to petitioners for a consideration of ₱150,000.00. The Deed of Sale was registered with the Register of Deeds of San Pablo City only on February 5, 1996.[16]

This prompted respondents to file a criminal case for falsification of public document against petitioners, entitled "*People of the Philippines v. Damaso T. Ambray and Ceferino T. Ambray*" and docketed as Criminal Case No. 39153 (falsification case) before the Municipal Trial Court in Cities (MTCC) of San Pablo City. In a Decision[17] dated October 30, 2000, the MTCC acquitted petitioners of the charge for failure of the prosecution to prove their guilt beyond reasonable doubt.

Thereafter, respondents filed the instant complaint[18] for annulment of title, reconveyance, and damages against petitioners and Estela (defendants), docketed as Civil Case No. SP-5831 (01), alleging that TCT No. T-41382 and the Deed of Sale were null and void because the signatures of Ceferino, Sr. and Estela thereon were forgeries.

In a motion to dismiss,[19] defendants claimed that the issue on the authenticity of the signatures of Ceferino, Sr. and Estela on the Deed of Sale had already been passed upon in the falsification case where petitioners were eventually acquitted; hence, the matter was *res judicata*. In an Order[20] dated June 6, 2002, the RTC granted the motion and dismissed the case on said ground.

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[15] *Id.* at 79.

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

[17] *Id.* at 81-86. Penned by Judge Iluminado C. Monzon.

[18] Records, Vol. I, pp. 3-10.

[19] *Id.* at 47-53.

[20] *Id.* at 99-102. Penned by Judge Zorayda Herradura-Salcedo.

On appeal,[21] however, the CA reversed the said disposition in a Decision[22] dated September 29, 2005 in CA-G.R. CV No. 75507, finding that *res judicata* does not apply. Thus, it remanded the case to the RTC for further proceedings.

Before the RTC, petitioners filed their answer[23] and disclosed the death of their co-defendant and mother, Estela, who passed away on August 15, 2002.[24] By way of defense, they averred, *inter alia*, that respondents were aware of the conveyance of Lot 2-C to them through the Deed of Sale. They also claimed that respondents' action has prescribed, and maintained that it was barred by prior judgment and *res judicata*.[25]

Subsequently, citing an Affidavit[26] dated February 18, 2008 executed by Ma. Fe Luisa, the rest of the respondents moved[27] that she be dropped as a plaintiff, which the RTC granted.[28] Thereafter, she was ordered[29] impleaded as a party-defendant in respondents' supplemental complaint. Later, she adopted[30] petitioners' answer with counterclaim in response thereto.

The RTC Ruling

In a Decision[31] dated June 11, 2010, the RTC nullified the Deed of Sale as well as TCT No. T-41382 in the name of petitioners and rendered judgment in favor of respondents as follows:

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[21] See Notice of Appeal dated June 19, 2002; *id.* at 103.

[22] *Id.* at 105-117. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Elvi John S. Asuncion and Mariano C. Del Castillo (now a member of this Court).

[23] *Id.* at 123-128.

[24] See Order dated January 30, 2007; *id.* at 145-146.

[25] *Id.* at 124.

[26] *Id.* at 184-185.

[27] *Id.* at 181-186.

[28] See Order dated April 28, 2008; *id.* at 201-203.

[29] *Id.* at 263-265.

[30] *Id.* at 287.

[31] *Rollo*, pp. 44-67.

a. Declaring Lot 2-C, Psd-04-009554, covered by Transfer Certificate of Title No. T-41382, as common property of the Heirs of Ceferino Ambray, Sr. and Estela Trias, to be divided equally among the heirs;

b. Declaring as null and void the Deed of Absolute Sale dated January 16, 1978, purportedly executed between Ceferino Ambray and Estela Trias, as vendors, and Damaso T. Ambray and Ceferino Ambray, Jr., as vendees, of the portion of Lot 2, Pcs-12441, covered by Transfer Certificate of Title No. T-11259;

c. Declaring as null and void Transfer Certificate of Title No. T-41382 in the name of Damaso T. Ambray, married to Mary Ann Loyola, and Ceferino T. Ambray, Jr.;

d. Directing the defendants Damaso T. Ambray and Ceferino T. Ambray, Jr. to reconvey Lot 2-C, Psd-04-009554 covered by Transfer Certificate of Title No. T-41382 to the co-ownership of the Heirs of Ceferino Ambray, Sr. and Estela Trias, for distribution in equal shares among the said heirs; and

e. Directing the Register of Deeds of San Pablo City, to cancel Transfer Certificate of Title No. T-41382 in the name of Damaso T. Ambray and Ceferino Ambray, Sr., and cause the issuance of a new Transfer Certificate of Title, in the name of the Heirs of Ceferino Ambray, Sr. and Estela Trias.

The RTC found that respondents were able to prove, by a preponderance of evidence, that the Deed of Sale executed by Ceferino, Sr. conveying Lot 2-C in favor of petitioners was spurious and of dubious origin.[32] It held that at the time of its execution in 1978, Ceferino, Sr. could not have sold a *specific* portion of Lot 2 to petitioners, considering that it was subdivided only in 1984. Moreover, after the subdivision of Lot 2 in 1984, Ceferino, Sr. requested the Register of Deeds of San Pablo City to register Lot 2-C in his name, which he would not have done had he already sold Lot 2-C to petitioners.[33]

Furthermore, Ceferino, Sr. leased Lot 2-C to MB Finance Corporation from 1986 to 1989 in his capacity as the owner of

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[32] *Id.* at 66.

[33] *Id.* at 61.

the subject property. Subsequent thereto, as administrator of Ceferino, Sr.'s properties upon the latter's death, Damaso executed a contract renewing the lease of Lot 2-C to MB Finance Corporation. The RTC opined that the foregoing facts militate against petitioners' purported ownership of Lot 2-C pursuant to the Deed of Sale.[34]

Finally, when confronted with the belated registration of the Deed of Sale in 1996, petitioners could only offer the excuse that their mother, Estela, kept the copy thereof until she became sickly and finally gave the same to Damaso. The RTC declared the same to be a mere afterthought.[35]

With respect to the issue of forgery of the signatures of Ceferino, Sr. and Estela on the subject Deed of Sale, the RTC took note of the CA's opinion in CA-G.R. CV No. 75507 that the MTCC, in the falsification case, made no categorical finding as to the existence of falsification. Instead, the MTCC merely concluded that the prosecution failed to establish petitioners' participation in the alleged falsification.[36]

Petitioners and respondents separately appealed[37] to the CA. Petitioners imputed error upon the RTC in declaring null and void the subject Deed of Sale and TCT No. T-41382,[38] while respondents questioned the RTC's refusal to grant damages and attorney's fees in their favor.[39]

The CA Ruling

In a Decision[40] dated April 25, 2013, the CA affirmed the RTC Decision and found that respondents were able to sufficiently

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

[35] *Id.* at 62.

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

[37] CA *rollo*, pp. 82-106 and 136-152.

[38] *Id.* at 139.

[39] *Id.* at 87.

[40] *Rollo*, pp. 32-40.

discharge the required burden of proof that the subject Deed of Sale is spurious.

The CA also denied the award of moral damages for lack of factual basis. Consequently, without moral damages, it found that no exemplary damages may be given.[41] Finally, the CA held that the award of attorney's fees was not warranted under the circumstances of the case, the same being an exception and not the general rule.[42]

Both petitioners[43] and respondents[44] moved for reconsideration of the CA's Decision, which were denied in a Resolution[45] dated September 24, 2014; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in affirming the RTC's nullification of the Deed of Sale dated January 16, 1978 and TCT No. T-41382 covering Lot 2-C in the name of petitioners.

The Court's Ruling

The petition is meritorious.

At the outset, it should be pointed out that, as a general rule, a re-examination of factual findings cannot be done by the Court acting on a petition for review on *certiorari* because it is not a trier of facts and only reviews questions of law.[46] This rule, however, admits of certain exceptions, namely: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) **when the inference made is manifestly**

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

[42] *Id.* at 39.

[43] CA *rollo*, pp. 236-243.

[44] *Id.* at 246-255.

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

[46] See *Maersk-Filipinas Crewing, Inc. v. Avestruz*, G.R. No. 207010, February 18, 2015, 751 SCRA 161, 171, citing *Jao v. BCC Products Sales, Inc.*, 686 Phil. 36, 41 (2012).

mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) **when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record**; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[47] Finding a confluence of certain exceptions in this case, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court does not apply, and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.[48]

At the core of the present controversy is the validity of the Deed of Sale, the execution of which purportedly conveyed Lot 2-C in favor of petitioners. To gauge the veracity thereof, it is imperative to pass upon the genuineness of the signatures of the seller, Ceferino, Sr., and his wife, Estela, who gave her consent to the sale, as appearing thereon, which respondents, in the present complaint, assert to be forgeries.

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more

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[47] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005), citing *Insular Life Assurance Company, Ltd. v. CA*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86.

[48] *Maersk-Filipinas Crewing, Inc. v. Avestruz*, *supra* note 46, at 172.

convincing than that which is offered in opposition to it. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.[49]

Under Rule 132, Section 22 of the Rules of Court, the genuineness of handwriting may be proved in the following manner: (1) by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted or been charged; (2) by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party, against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.[50] Corollary thereto, jurisprudence states that the presumption of validity and regularity prevails over allegations of forgery and fraud. As against direct evidence consisting of the testimony of a witness who was physically present at the signing of the contract and who had personal knowledge thereof, the testimony of an expert witness constitutes indirect or circumstantial evidence at best.[51]

In this case, the only direct evidence presented by respondents to prove their allegation of forgery is Questioned Documents Report No. 266-397[52] dated March 24, 1997 issued by National

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[49] *Gepulle-Garbo v. Garabato*, G.R. No. 200013, January 14, 2015, 746 SCRA 189, 198-199.

[50] Section 22. *How genuineness of handwriting proved.* — The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

[51] *Bautista v. CA*, 479 Phil. 787, 792-793 (2004), citing *Vda. de Bernardo v. Restauro*, 452 Phil. 745, 751-752 (2003).

[52] Folder of Exhibits, pp. 9-10.

Bureau of Investigation (NBI) Document Examiner II Antonio R. Magbojos (Magbojos), stating that the signatures of Ceferino, Sr. and Estela on the Deed of Sale, when compared to standard sample signatures, are not written by one and the same person.

In refutation, petitioners offered in evidence, *inter alia*, the testimony of their mother, Estela, in the falsification case where petitioners were previously acquitted. In the course thereof, she identified[53] the signatures on the Deed of Sale as hers and Ceferino, Sr.'s, which was fully corroborated[54] by Atty. Zosimo Tanalega (Atty. Tanalega), the notary public who notarized the subject Deed of Sale and was present at the time the Ambray spouses affixed their signatures thereon.

Between the Questioned Documents Report presented by respondents and the testimony given by Estela in the falsification case in support of petitioners' defense, the Court finds greater evidentiary weight in favor of the latter. Hence, respondent's complaint for annulment of title, reconveyance, and damages in Civil Case No. SP-5831(01) should be dismissed.

While the principle of *res judicata* in the concept of conclusiveness of judgment, as espoused by petitioners,[55] is of doubtful application in this case — considering that the MTCC, in the falsification case, failed to categorically pronounce that the Deed of Sale was not falsified and merely concluded that petitioners had no participation in any alleged falsification — the Court nonetheless observes that petitioners, through the testimony of Estela thereat, were able to establish the genuineness and due execution of the subject Deed of Sale which effectively conveyed title over Lot 2-C to them. Estela's testimony constitutes direct evidence of the authenticity of the signatures on the Deed of Sale, having personal knowledge thereof, which undeniably prevails over the written findings of a purported handwriting

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[53] See Transcript of Stenographic Notes (TSN) dated September 10, 1998; *rollo,* pp. 107-108.

[54] *Id.* at 89-91.

[55] *Id.* at 19-21.

expert that can only be considered indirect or circumstantial evidence.

Notably, the admissibility of Estela's former testimony in the present case finds basis in Section 47, Rule 130 of the Rules on Evidence or the "rule on former testimony" which provides:

> Section 47. *Testimony or deposition at a former proceeding.*— The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.

Case law holds that for the said rule to apply, the following requisites must be satisfied: (*a*) the witness is dead or unable to testify; (*b*) his testimony or deposition was given in a former case or proceeding, judicial or administrative, between the same parties or those representing the same interests; (*c*) the former case involved the same subject as that in the present case, although on different causes of action; (*d*) the issue testified to by the witness in the former trial is the same issue involved in the present case and (*e*) the adverse party had an opportunity to cross-examine the witness in the former case.[56] The reasons for the admissibility of testimony taken at a former trial or proceeding are the necessity for the testimony and its trustworthiness. However, before the former testimony can be introduced in evidence, the proponent must first lay the proper predicate therefor, *i.e.*, the party must establish the basis for the admission of testimony in the realm of admissible evidence.[57]

Records show that Estela died during the pendency of these proceedings before the RTC or on August 15, 2002. Her death transpired before the presentation of the parties' evidence could ensue. However, she was able to testify on direct and cross-examination in the falsification case and affirmed that the alleged forged signatures appearing on the Deed of Sale were, indeed,

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[56] *Samalio v. CA*, 494 Phil. 456, 463 (2005).

[57] See *Republic v. Sandiganbayan*, 678 Phil. 358, 414 (2011).

hers and her deceased husband, Ceferino, Sr.'s. The parties in the falsification case involved respondents and petitioners herein, and the subject matter therein and in this case are one and the same, *i.e.*, the genuineness and authenticity of the signatures of Ceferino, Sr. and Estela.

Clearly, the former testimony of Estela in the falsification case, being admissible in evidence in these proceedings, deserves significant consideration. She gave positive testimony that it was Ceferino, Sr. himself who signed the Deed of Sale that conveyed Lot 2-C to petitioners. She likewise verified her signature thereon. By virtue of these declarations, she confirmed the genuineness and authenticity of the questioned signatures. Thus, it follows that the Deed of Sale itself is valid and duly executed, contrary to the finding of the RTC, as affirmed by the CA, that it was of spurious nature.

Further lending credence to the validity of the Deed of Sale is the well-settled principle that a duly notarized contract enjoys the *prima facie* presumption of authenticity and due execution as well as the full faith and credence attached to a public instrument. To overturn this legal presumption, evidence must be clear, convincing, and more than merely preponderant to establish that there was forgery that gave rise to a spurious contract.[58]

Hence, for the above-state reasons, whatever inferences the RTC had observed tending to defeat the existence of a valid sale in favor of petitioners are rendered inconsequential.

In particular, the RTC noted, and found it puzzling, that the Deed of Sale did not specifically mention the exact area that was being sold to petitioners, disposing only of "a portion of lot 2" without specifying the metes and bounds thereof. As such, the RTC concluded that Ceferino, Sr. could not have sold a specific portion of Lot 2 to petitioners, having been subdivided only in 1984. However, Article 1463 of the Civil Code expressly

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[58] *Bautista v. CA, supra* note 51. See also *Bernardo v. Ramos*, 433 Phil. 8 (2002); and *Manzano v. Perez, Sr.*, 414 Phil. 728 (2001).

states that "[t]he sole owner of a thing may sell an undivided interest therein." As Ceferino, Sr. was the sole owner of the original Lot 2 from whence came Lot 2-C, he is therefore allowed by law to convey or sell an unspecified portion thereof. Hence, the disposition of Lot 2-C to petitioners, a portion of Lot 2 yet to be subdivided in 1978, was therefore valid.

That Ceferino, Sr. requested the registration of the title of Lot 2-C in his name in 1984, while the property was supposed to have already been sold to petitioners in 1978, was likewise fully explained during trial. Damaso clarified[59] that their parents were apprehensive that he and Ceferino might mortgage or squander the property while they were still alive. Moreover, despite knowledge of the sale, they did not demand for its immediate registration because during their father's lifetime, they never questioned his decisions. This further explains why, despite the disposition in petitioners' favor, it was Ceferino, Sr. himself who leased Lot 2-C to third parties, which Damaso renewed in his father's name after the latter's death. The delay in the transfer of the title over Lot 2-C to petitioners was also occasioned by the fact that Estela kept the Deed of Sale in her custody and gave it to petitioners only later on, by reason of her poor health.[60] Be that as it may, and to reiterate, the delay in the registration of the sale in favor of petitioners neither affects nor invalidates the same, in light of the authenticity of the Deed of Sale itself.

In fine, the CA and the RTC both erred in finding that the Deed of Sale was of spurious origin. The authenticity and due execution of the Deed of Sale must be upheld against the assumptions made by the RTC in its Decision. Accordingly, TCT No. T-41382 covering Lot 2-C in the name of petitioners remain valid.

WHEREFORE, the petition is **GRANTED**. The assailed April 25, 2013 Decision and the September 24, 2013 Resolution

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[59] TSN, August 3, 2009, pp. 14-15.

[60] *Id.* at 19-21.

of the Court of Appeals in CA-G.R. CV No. 95606 are hereby **REVERSED** and **SET ASIDE**. The instant complaint for annulment of title, reconveyance, and damages is **DISMISSED**.

SO ORDERED.

Leonardo-de Castro (Acting C.J.),[**] *Bersamin,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on official leave.

FIRST DIVISION

[G.R. No. 213568. July 5, 2016]

ALICIA P. LOGARTA, *petitioner, vs.* **CATALINO M. MANGAHIS,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY REGISTRATION DECREE (PD 1529); NATURE OF ADVERSE CLAIM; BEFORE AN ADVERSE CLAIM MAY BE REGISTERED, THERE MUST BE NO OTHER PROVISION IN LAW FOR THE REGISTRATION OF CLAIMANT'S ALLEGED RIGHT TO THE PROPERTY.— An adverse claim is a type of *involuntary dealing* designed to protect the interest of a person over a piece of real property by apprising third persons that there is a controversy over the ownership of the land. It seeks to preserve and protect the right of the adverse claimant during the pendency of the controversy, where registration of such interest or right is **not otherwise provided for** by the Property Registration Decree. An adverse claim serves as a notice to

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[**] Per Special Order No. 2358 dated June 28, 2016.

third persons that any transaction regarding the disputed land is subject to the outcome of the dispute. x x x [B]efore a notice of adverse claim is registered, it must be shown that there is no other provision in law for the registration of the claimant's alleged right in the property. In *Register of Deeds of Quezon City v. Nicandro,* the Court held that where the basis of the adverse claim was a perfected contract of sale which is specifically governed by Section 57 of the Land Registration Act, or Act No. 496, the filing of an adverse claim was held ineffective for the purpose of protecting the vendee's right. Similarly, in *L.P. Leviste & Company, Inc. v. Noblejas,* the Court emphasized that if the basis of the adverse claim is a perfected contract of sale, the proper procedure is to register the vendee's right as prescribed by Sections 51 and 52 of PD 1529, and not under Section 70 which is ineffective for the purpose of protecting the vendee's right since it does not have the effect of a conveyance.

2. **ID.; ID.; REGISTRATION OF A CONDITIONAL DEED OF SALE IS GOVERNED BY SECTION 54 OF PD 1529; IT MUST BE REGISTERED AS SUCH AND NOT AS AN ADVERSE CLAIM.—** In the case at hand, a cursory perusal of the MOA shows that it is essentially a conditional sale where Carmona Realty's payment is subject to the submission of certain documents by Peña, respondent's authorized representative. x x x It is settled that in a deed of conditional sale, ownership is transferred after the full payment of the installments of the purchase price or **the fulfillment of the condition and the execution of a definite or absolute deed of sale.** Verily, the efficacy or obligatory force of the vendor's obligation to transfer title in a conditional sale is subordinated to the happening of a future and uncertain event, such that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. Given the foregoing, the MOA is essentially a dealing *affecting less than the ownership* of the subject property that is governed by Section 54 of PD 1529, x x x Moreover, being a conditional sale, the MOA is a voluntary instrument which, as a rule, must be registered as such and not as an adverse claim.

3. **ID.; ID.; VOLUNTARY INSTRUMENTS ARE GENERALLY REGISTERED BY PRESENTING THE OWNER'S DUPLICATE COPY OF THE TITLE FOR ANNOTATION;**

WHEN THE REGISTERED OWNER FAILS OR REFUSES TO SURRENDER HIS DUPLICATE COPY OF THE TITLE, CLAIMANT MAY FILE A STATEMENT OF HIS ADVERSE CLAIM WITH THE REGISTER OF DEEDS.— [T]he prevailing rule is that voluntary instruments such as contracts of sale, contracts to sell, and conditional sales are registered by presenting the owner's duplicate copy of the title for annotation, pursuant to Sections 51 to 53 of PD 1529. The reason for requiring the production of the owner's duplicate certificate in the registration of a voluntary instrument is that, being a willful act of the registered owner, it is to be presumed that he is interested in registering the instrument and would willingly surrender, present or produce his duplicate certificate of title to the Register of Deeds in order to accomplish such registration. The *exception* to this rule is when the registered owner refuses or fails to surrender his duplicate copy of the title, in which case the claimant may file with the Register of Deeds a statement setting forth his adverse claim.

4. **ID.; ID.; ID.; ID.; WHEN THERE WAS NO SHOWING THAT THE REGISTERED OWNER FAILED OR REFUSED TO PRESENT THE OWNER'S DUPLICATE COPY OF THE TITLE, CANCELLATION OF THE ANNOTATION MUST BE MADE PURSUANT TO SECTION 54 OF PD 1529 AND NOT SECTION 70.—** In the case at hand, there was no showing that respondent refused or failed to present the owner's duplicate of TCT No. CLO-763, which would have prompted Carmona Realty to cause the annotation of the MOA as an adverse claim instead of a voluntary dealing. On this score, therefore, the RTC and the CA erred in ordering the cancellation of the subject entries on the strength of Section 70 of PD 1529 which authorizes regional trial courts to cancel adverse claims after the lapse of thirty (30) days from registration. Being a voluntary dealing affecting less than the ownership of the subject property, Section 54 of PD 1529 — which states that the cancellation of annotations involving interests less than ownership is within the power of the Register of Deeds — should have been applied. Accordingly, the RTC and the CA should have dismissed the petition for cancellation of the subject entries for being the wrong remedy.

APPEARANCES OF COUNSEL

A.A. Marqueda Law Offices for petitioner.
Emmanuel E. Murillo for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated December 13, 2013 and the Resolution[3] dated June 27, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 98819, which affirmed the Order[4] dated June 27, 2011 and the Amended Order[5] dated December 29, 2011 of the Regional Trial Court of Biñan, Laguna, Branch 25 (RTC) in LRC Case No. B-4122, directing the cancellation of Entry No. 626131, Entry No. 626132, Entry No. 626133, and Entry No. 626134 on Transfer Certificate of Title (TCT) No. CLO-763.

The Facts

Respondent Catalino M. Mangahis (respondent) is the registered owner of a parcel of land in Barangay Malitlit, Sta. Rosa, Laguna, with an area of 28,889 square meters, and covered by TCT No. CLO-763 (subject property).[6] He authorized a certain Venancio Zamora (Zamora) to sell the subject property, who, in turn, delegated his authority to Victor Peña (Peña).[7]

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[1] *Rollo*, pp. 10-21.

[2] *Id.* at 55-64. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Myra V. Garcia-Fernandez and Victoria Isabel A. Paredes concurring.

[3] *Id.* at 72-73.

[4] *Id.* at 30-34. Penned by Presiding Judge Teodoro N. Solis.

[5] *Id.* at 48-53.

[6] *Id.* at 55.

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

On January 23, 2001, Peña entered into a Memorandum of Agreement[8] (MOA) with Carmona Realty and Development Corporation (Carmona Realty), represented by petitioner Alicia P. Logarta (petitioner), for the sale to Carmona Realty of contiguous parcels of land in Malitlit, Sta. Rosa, Laguna (Malitlit Estate) which included the subject property. The Malitlit Estate had a total area of 1,194,427 square meters and Carmona Realty agreed to deposit in escrow the total consideration of ₱1,476,834,000.00 within thirty (30) days from the execution of the MOA.[9] The release of the escrow deposits was subject to Peña's submission of a number of documents, among others, the order of conversion from the Department of Agrarian Reform (DAR) allowing the use of the Malitlit Estate for residential, industrial, commercial, or a combination of the foregoing uses, the transfer of the TCTs and the Certificates of Land Ownership (CLOAs) in Carmona Realty's name, and the release waiver and quitclaim executed by complainants and/or order of dismissal of pending cases involving any of the lands constituting the Malitlit Estate.[10] The parties also agreed to make the same effective unless Carmona Realty withdraws from it by reason of *force majeure* or fails to make the escrow deposits within the period specified therein, in which case the MOA shall be considered automatically null and void.[11]

On March 28, 2003, the MOA was annotated[12] on TCT No. CLO-763, pursuant to the Sworn Statement to Request for Annotation[13] executed by petitioner and the Secretary's Certificate[14] issued by Marianito R. Atienza, Carmona Realty's Corporate Secretary. Thus, Entry Nos. 626131-626134 (the subject entries) were made on TCT No. CLO-763:

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[8] Records, pp. 159-163.

[9] *Id.* at 160-161.

[10] *Id.* at 161-162.

[11] *Id.* at 162.

[12] *Id.* at 57.

[13] *Id.* at 164.

[14] *Id.* at 165.

Entry No. 626131. Secretary's Certificate

No. 626132. Letter;

No. 626133. **Sworn Statement to Request Annotation of Memorandum of Agreement**. Executed by Alicia P. Logarta on 26 March 2003, ratified before Notary Public Anthony B. Escobar, as per Doc. No. 499, Page No. 100, Book No. 1, Series of 2003.

No. 626134. Memorandum of Agreement. Executed by and between Victor Peña and Carmona Realty and Development Corporation on 23 January 2001, ratified before Notary Public Ma. Loreto U. Navarro, as per Doc. No. 68, Page No. 14, Book No. XVIII, Series of 2001, filed in Env. No. CLO-213.

Date of instrument: March 26, 2003

Date of inscription: March 28, 2003 at 1:05 p.m.

On August 8, 2008, respondent filed a petition[15] to cancel the subject entries on the ground that the MOA was a private document that had no legal effect because the Notary Public before whom it was acknowledged was not commissioned as such in the City of Manila for the year 2001. In the same petition, respondent also sought the revocation of Zamora's authority to sell the subject property.[16]

In opposition,[17] petitioner contended that the MOA was duly notarized in Makati City where the Notary Public, Atty. Loreto Navarro, was commissioned.[18] She also maintained that Peña had the authority to enter into the MOA at the time it was executed, considering that respondent expressed his intention to revoke the same only in the petition.[19]

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[15] See Petition for Cancellation of Lien/Encumbrance Filed on March 26, 2003 and Inscribed on March 28, 2003; *rollo*, pp. 22-24.

[16] *Id.* at 23.

[17] See Comment/Opposition dated December 8, 2008; records, pp. 73-78.

[18] *Id.* at 74.

[19] *Id.* at 75-76.

During the trial, respondent's brother and authorized[20] representative, Emiliano M. Mangahis, asserted that the subject entries should be cancelled because the purpose for which they were made is no longer present since petitioner did nothing to enforce the MOA.[21] On the other hand, petitioner argued that she is not the proper party to the case as she merely acted as representative of Carmona Realty in the MOA.[22]

The RTC Ruling

In an Order[23] dated June 27, 2011, the RTC granted the petition and ordered the cancellation of the subject entries. It found that the subject entries are adverse claims which ceased to be effective 30 days after registration and should, therefore, be cancelled, pursuant to Section 70 of Presidential Decree No. (PD) 1529,[24] otherwise known as the "Property Registration Decree," which states:

Section 70. *Adverse claim*. — Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, **if no other provision is made in this Decree for registering the same**, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be **effective for a period of thirty days from the date of**

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[20] *Id.* at 124.

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

[22] *Id.* at 57.

[23] *Id.* at 30-34.

[24] Entitled "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES," approved on June 11, 1978.

registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest: Provided, however, that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

xxx xxx xxx (Emphases supplied)

The RTC also remarked that the MOA no longer has any force and effect, considering that Carmona Realty failed to make the escrow deposits stipulated therein which rendered the same automatically null and void.[25] It further explained that petitioner has other remedies which she can pursue if Peña failed to comply with his obligations under the MOA. In any case, however, the adverse claim cannot be inscribed on TCT No. CLO-763 forever.[26]

Dissatisfied, petitioner moved for reconsideration,[27] arguing that the subject entries do not constitute an adverse claim but a voluntary dealing which is governed by Section 54 of PD 1529.[28] She also contended that the RTC erred in declaring that the MOA no longer had any force and effect, considering that there was no such allegation in respondent's petition and no evidence to such effect was presented during trial.[29]

In an Amended Order[30] dated December 29, 2011, the RTC denied petitioner's motion for reconsideration and reiterated its directive to cancel the subject entries. Aggrieved, petitioner appealed to the CA.[31]

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[25] *Rollo*, p. 33.

[26] *Id.* at 34.

[27] *Id.* at 35-47.

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

[29] *Id.* at 39-41.

[30] *Id.* at 48-53.

[31] Records, pp. 273-275.

The CA Ruling

In a Decision[32] dated December 13, 2013, the CA dismissed petitioner's appeal and affirmed the RTC ruling. It agreed with the trial court that the subject entries are akin to an annotation of adverse claim which is a measure designed to protect the interest of a person over a piece of real property and governed by Section 70 of PD 1529.[33] The CA reiterated the RTC's observation that the MOA no longer had any force and effect, absent any showing that Carmona Realty had made the escrow deposits stipulated therein or that there was a mutual agreement between the parties to extend its effectivity.[34]

Petitioner moved for reconsideration,[35] which was, however, denied by the CA in its Resolution[36] dated June 27, 2014; hence, the present petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA and the RTC erred in ordering the cancellation of the subject entries.

The Court's Ruling

The Court finds the petition meritorious.

An adverse claim is a type of *involuntary dealing*[37] designed to protect the interest of a person over a piece of real property by apprising third persons that there is a controversy over the ownership of the land.[38] It seeks to preserve and protect the right of the adverse claimant during the pendency of the

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[32] *Rollo*, pp. 55-64.

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

[34] *Id.* at 62-63.

[35] *Id.* at 65-70.

[36] *Id.* at 72-73.

[37] Sections 69-77 of PD 1529.

[38] *Arrazola v. Bernas*, 175 Phil. 452, 456-457 (1978).

controversy,[39] where registration of such interest or right is **not otherwise provided for** by the Property Registration Decree.[40] An adverse claim serves as a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute.[41] Section 70 of PD 1529 states:

> **Section 70.** *Adverse claim.* — Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, **if no other provision is made in this Decree for registering the same**, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.
>
> The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be **effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition** therefor by the party in interest: Provided, however, that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.
>
> Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered cancelled. If, in any case, the court, after notice and hearing, shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in his discretion.

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[39] *Id.*

[40] Agcaoili, Oswaldo D., *Property Registration Decree and Related Laws*, 2006 Ed., p. 539.

[41] *Arrazola v. Bernas*, *supra* note 38, at 457.

Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect. (Emphases supplied)

Thus, before a notice of adverse claim is registered, it must be shown that there is no other provision in law for the registration of the claimant's alleged right in the property.[42] In *Register of Deeds of Quezon City v. Nicandro*, [43] the Court held that where the basis of the adverse claim was a perfected contract of sale which is specifically governed by Section 57 of the Land Registration Act, or Act No. 496, the filing of an adverse claim was held ineffective for the purpose of protecting the vendee's right.[44] Similarly, in *L.P. Leviste & Company, Inc. v. Noblejas*,[45] the Court emphasized that if the basis of the adverse claim is a perfected contract of sale, the proper procedure is to register the vendee's right as prescribed by Sections 51[46] and 52[47] of

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[42] *L.P. Leviste & Company, Inc. v. Noblejas*, 178 Phil. 422, 431 (1979); *Register of Deeds of Quezon City v. Nicandro*, 111 Phil. 989, 997 (1961).

[43] *Register of Deeds of Quezon City v. Nicandro, id.*

[44] *Id.* at 997.

[45] 178 Phil. 422 (1979).

[46] **Section 51**. *Conveyance and other dealings by registered owner.* — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. **He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law**. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration. The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies. (Emphasis supplied)

[47] **Section 52**. *Constructive notice upon registration.* — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

PD 1529, and not under Section 70 which is ineffective for the purpose of protecting the vendee's right since it does not have the effect of a conveyance.[48]

In the case at hand, a cursory perusal of the MOA[49] shows that it is essentially a conditional sale where Carmona Realty's payment is subject to the submission of certain documents by Peña, respondent's authorized representative. Its relevant provisions state:

WITNESSETH, That:

xxx xxx xxx

WHEREAS, the FIRST PARTY represents, that subject to the payment of an agreed compensation to the CLOA holders/ARB[s], the Land Bank, and the National Irrigation Authority, FIRST PARTY is willing and able to have all titles, rights, interests and claims, transferred, ceded, conveyed, assigned or waived in favor of the SECOND PARTY who has accepted the offer to sell and has agreed to acquire and purchase the property, subject to the terms and conditions set forth under this Agreement.

xxx xxx xxx

III
ESCROW DEPOSIT OF PURCHASE PRICE

3.1 Within thirty (30) days from the execution of this Memorandum of Agreement, the SECOND PARTY or its assignee or nominee shall deposit in escrow with a bank or financial institution which is mutually acceptable to the Parties, the total amount of x x x. Said amount shall be subject to release by the escrow agent/bank and/or withdrawal in favor of the Parties specified in Section II above, upon presentation of the documents specified herein below, and as set forth in the Escrow instructions given by both parties to the Escrow agent/bank.

3.2. To the FIRST PARTY:

All releases of the amounts under escrow in favor of the FIRST PARTY of the full amount of x x x, shall be subject to the submission by the FIRST PARTY of the following documents:

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[48] *L.P. Leviste & Company, Inc. v. Noblejas*, *supra* note 42, at 431-432.

[49] Records, pp. 159-163.

1) Order of Conversion x x x

xxx xxx xxx

IV
TRANSFER OF TITLE TO THE SECOND PARTY

4.1. The SECOND PARTY shall be entitled to have the subject CLOAs-TCTs cancelled and in lieu of the same, new TCTs shall be issued in the name of the SECOND PARTY or its assignee free from any liens or encumbrances as provided herein,

xxx xxx xxx

VI
EFFECTIVITY OF THIS AGREEMENT

This Agreement shall take effect upon execution hereof and shall continue in force unless the SECOND PARTY withdraws from this Agreement by reason of force majeure or it fails to make the escrow deposits within the period as specified herein, in which event, this Agreement shall be considered automatically null and void, unless extended by mutual agreement of the parties.[50]

It is settled that in a deed of conditional sale, ownership is transferred after the full payment of the installments of the purchase price or **the fulfillment of the condition and the execution of a definite or absolute deed of sale**.[51] Verily, the efficacy or obligatory force of the vendor's obligation to transfer title in a conditional sale is subordinated to the happening of a future and uncertain event, such that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed.[52] Given the foregoing, the MOA is essentially a dealing *affecting less than the ownership* of the subject property that is governed by Section 54 of PD 1529, to wit:

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[50] *Id.* at 159-162. Emphases omitted.

[51] *Joseph & Sons Enterprises, Inc. v. CA*, 227 Phil. 625, 634 (1986).

[52] *Ventura v. Heirs of Spouses Endaya*, 718 Phil. 620, 630-631 (2013), citing *Sps. Serrano and Herrera v. Caguiat*, 545 Phil. 660, 667 (2007).

Section 54. *Dealings less than ownership, how registered.* — No new certificate shall be entered or issued pursuant to any instrument which does not divest the ownership or title from the owner or from the transferee of the registered owners. All interests in registered land less than ownership shall be registered by filing with the Register of Deeds the instrument which creates or transfers or claims such interests and by a brief memorandum thereof made by the Register of Deeds upon the certificate of title, and signed by him. A similar memorandum shall also be made on the owner's duplicate. **The cancellation or extinguishment of such interests shall be registered in the same manner**. (Emphasis supplied)

Moreover, being a conditional sale, the MOA is a voluntary instrument which, as a rule, must be registered as such and not as an adverse claim. In *Philippine Charity Sweepstakes Office v. New Dagupan Metro Gas Corporation*,[53] the Court explained that:

Apart from the foregoing, the more important consideration was the improper resort to an adverse claim. In *L.P. Leviste & Co. v. Noblejas*, this Court emphasized that the availability of the special remedy of an adverse claim is subject to the absence of any other statutory provision for the registration of the claimant's alleged right or interest in the property. **That if the claimant's interest is based on a perfected contract of sale or any voluntary instrument executed by the registered owner of the land, the procedure that should be followed is that prescribed under Section 51 in relation to Section 52 of P.D. No. 1529.** Specifically, the owner's duplicate certificate must be presented to the Register of Deeds for the inscription of the corresponding memorandum thereon and in the entry day book. **It is only when the owner refuses or fails to surrender the duplicate certificate for annotation that a statement setting forth an adverse claim may be filed with the Register of Deeds**. Otherwise, the adverse claim filed will not have the effect of a conveyance of any right or interest on the disputed property that could prejudice the rights that have been subsequently acquired by third persons.

What transpired in *Gabin* is similar to that in *Leviste*. In *Gabin*, the basis of the claim on the property is a deed of absolute sale. In *Leviste*, what is involved is a contract to sell. Both are voluntary

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[53] 690 Phil. 504 (2012).

instruments that should have been registered in accordance with Sections 51 and 52 of P.D. No. 1529 as there was no showing of an inability to present the owner's duplicate of title.

It is patent that the contrary appears in this case. Indeed, New Dagupan's claim over the subject property **is based on a conditional sale, which is likewise a voluntary instrument**. However, New Dagupan's use of the adverse claim to protect its rights is far from being incongruent in view of the undisputed fact that Peralta failed to surrender the owner's duplicate of TCT No. 52135 despite demands.[54] (Emphases supplied; citations omitted.)

Thus, the prevailing rule is that voluntary instruments such as contracts of sale, contracts to sell, and conditional sales are registered by presenting the owner's duplicate copy of the title for annotation, pursuant to Sections 51 to 53 of PD 1529.[55] The reason for requiring the production of the owner's duplicate

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[54] *Id.* at 530-531.

[55] **Section 51**. *Conveyance and other dealings by registered owner*. — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. **He may use such forms or deeds, mortgages, leases or other voluntary instruments as are sufficient in law**. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration. The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

Section 52. *Constructive notice upon registration*. — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

Section 53. *Presentation of owner's duplicate upon entry of new certificate*. — **No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown**.

certificate in the registration of a voluntary instrument is that, being a willful act of the registered owner, it is to be presumed that he is interested in registering the instrument and would willingly surrender, present or produce his duplicate certificate of title to the Register of Deeds in order to accomplish such registration.[56] The *exception* to this rule is when the registered owner refuses or fails to surrender his duplicate copy of the title, in which case the claimant may file with the Register of Deeds a statement setting forth his adverse claim.[57]

In the case at hand, there was no showing that respondent refused or failed to present the owner's duplicate of TCT No. CLO-763, which would have prompted Carmona Realty to cause the annotation of the MOA as an adverse claim instead of a voluntary dealing. On this score, therefore, the RTC and the CA erred in ordering the cancellation of the subject entries on the strength of Section 70 of PD 1529 which authorizes regional trial courts to cancel adverse claims after the lapse of thirty (30) days from registration. Being a voluntary dealing affecting less than the ownership of the subject property, Section 54 of PD 1529 — which states that the cancellation of annotations involving interests less than ownership is within the power of the Register of Deeds — should have been applied. Accordingly,

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The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchases for value and in good faith.

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title or a forged deed or other instrument, shall be null and void. (Emphases supplied)

[56] *L.P. Leviste & Company, Inc. v. Noblejas*, *supra* note 42, at 430-431.

[57] See *id.* at 431.

the RTC and the CA should have dismissed the petition for cancellation of the subject entries for being the wrong remedy.

WHEREFORE, the petition is **GRANTED**. The Decision dated December 13, 2013 and the Resolution dated June 27, 2014 of the Court of Appeals in CA-G.R. CV No. 98819, which affirmed the Order dated June 27, 2011 and the Amended Order dated December 29, 2011 of the Regional Trial Court of Biñan, Laguna, Branch 25 in LRC Case No. B-4122 are hereby **SET ASIDE**. The Petition to cancel Entry No. 626131, Entry No. 626132, Entry No. 626133, and Entry No. 626134 on Transfer Certificate of Title No. CLO-763 filed by respondent Catalino M. Mangahis is **DISMISSED**.

SO ORDERED.

Leonardo-de Castro[**] *(Acting Chairperson), Bersamin,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on official leave.

EN BANC

[G.R. No. 213660. July 5, 2016]

DR. WENIFREDO T. OÑATE, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (EO 292); ONLY THE OFFICE OF THE SOLICITOR GENERAL (OSG) IS GENERALLY

[**] Per Special Order No. 2358 dated June 28, 2016.

AUTHORIZED TO REPRESENT A STATE COLLEGE IN ANY LITIGATION, PROCEEDING OR MATTER REQUIRING THE SERVICES OF LAWYERS; RATIONALE.— Camarines Norte State College was created by Republic Act No. 7352. Under Executive Order (*E.O.*) No. 292, or the *Administrative Code of 1987*, a state college is classified as a chartered institution. As such, only the OSG is authorized to represent CNSC and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. COA Circular No. 95-011 stresses that public funds shall not be utilized for the payment of services of a private legal counsel or law firm to represent government agencies in court or to render legal services for them. Despite this, the same circular provides that in the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances, the written conformity and acquiescence of the OSG or the Office of the Government Corporate Counsel (*OGCC*), as the case may be, and the written concurrence of the COA shall first be secured **before** the hiring or employment of a private lawyer or law firm. The prohibition covers the hiring of private lawyers to render any form of legal service — whether or not the legal services to be performed involve an actual legal controversy or court litigation. The purpose is to curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered to the government, which is in line with the COA's constitutional mandate to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties.

2. ID.; ID.; ID.; ID.; FAILURE TO SECURE THE CONSENT OF THE OSG AND THE COMMISSION ON AUDIT (COA) BEFORE THE HIRING OF PRIVATE LAWYER RENDERED THE PRESIDENT OF A STATE COLLEGE AND ITS BOARD OF TRUSTEES PERSONALLY AND SOLIDARILLY LIABLE FOR THE REIMBURSEMENT OF THE AMOUNT PAID TO PRIVATE COUNSEL; PARTIAL COMPLIANCE IT NOT A VALID DEFENSE.— The Court has invariably sustained the statutory authority of the OSG and the OGCC as well as the necessity of COA

concurrence in the cases of government-owned and/or controlled corporations, local government units, and even a state college like the CNSC. We see no legal justification to deviate from the settled jurisprudence. Here, the COA noted, and Dr. Oñate never disputed, that while the OSG authorization was obtained the CNSC belatedly requested for the COA's concurrence on May 27, 2010, which is less than a week prior to the expiration of the contract on June 1, 2010. The rule is absolute; partial compliance or honest mistake due to ignorance of the law is not and can never be a valid defense. Nonetheless, petitioner must not be entirely accountable for the refund of the disallowed amount. Evidence on record indubitably shows that he was properly armed with the necessary CNSC Board approval before he secured the legal services of Atty. Arejola. Consistent with COA Circular No. 86-255, as amended, in relation to Section 103 of Presidential Decree No. 1445 (*Government Auditing Code of the Philippines*) as well as Section 52, Chapter 9, Title I-B, Book V and Section 43, Chapter V, Book VI of the Administrative Code, the board of trustees who approved Board Referendum No. 2, s. 2009, which granted authority to Dr. Oñate to enter into a retainer's contract with Atty. Arejola but did not require the prior conformity of the OSG and written concurrence of the COA, should also be held liable for the unauthorized disbursement of public funds. Indeed, when a government entity engages the legal services of private counsel or law firm, it must do so with the necessary authorization required by law; otherwise, its officials bind themselves to be personally liable for compensating such legal services.

APPEARANCES OF COUNSEL

Alex A. Arejola for petitioner.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court (*Rules*), to reverse the Commission

on Audit (*COA*) Decision No. 2014-126[1] dated June 20, 2014, which ruled that the payment of the legal services of Atty. Alex A. Arejola shall be the personal liability of petitioner Dr. Wenifredo T. Oñate (*Dr. Oñate*).

Sometime in June 2009, a retainership contract[2] was entered into by and between Atty. Alex A. Arejola and Camarines Norte State College (*CNSC*), as represented by its President, Dr. Oñate. Pursuant thereto, Atty. Arejola was engaged to act as the legal counsel of CNSC for a period of one (1) year,[3] renewable every year, at a monthly retainer fee of ₱10,000.00 net of tax and appearance fee of ₱500.00 and ₱1,500.00 for every hearing attended within and outside, respectively, of Camarines Norte. The terms of reference of the legal consultant were as follows:

1. To prosecute the administrative case(s) against erring CNSC faculty or staff before the CSC and/or Committee designated for the purpose of hearing the Administrative Case; to draft the formal charge, pleadings, memoranda; to appear and actively prosecute the case, in case of appeal to the Civil Service Commission or Court of Appeals;

2. To represent, appear and submit pleadings, if necessary, in behalf of the CNSC in all cases, administrative or court cases pending in any judicial or quasi-judicial agency;

3. To give legal advise (*sic*) in all matters referred to him by the President or Vice President at appropriate instances subject to consultation, verification or clarification with the Legal Service of the Commission on Higher Education;

4. To represent the President in cases against him, in action or cases inherently related to his performance of his functions; and

5. To perform such other functions inherently related to his function as Legal Counsel of CNSC, and submit monthly work accomplishment

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[1] *Rollo*, pp. 59-62.

[2] *Rollo*, pp. 20-23.

[3] The inclusive dates were actually longer since it was stipulated that the contract shall be effective from June 1, 2009 up to June 30, 2010, or thirteen (13) months.

reports to justify payment of compensation as legal consultant and counsel.[4]

In a letter[5] dated July 8, 2010, the Office of the Solicitor General (*OSG*) granted the request for deputation of Atty. Arejola as special attorney of the OSG authorized to represent CNSC and/or its officials and employees in all civil, criminal and administrative cases, but subject to the existing rules and regulations of the Department of Budget and Management (*DBM*) and respondent COA. However, in COA Legal Retainer Review (*LRR*) No. 2010-158[6] dated December 2, 2010, Dr. Oñate's request for written concurrence was denied for violation of COA Circular No. 86-255[7] dated April 2, 1986, as amended by COA Circular No. 95-011[8] dated December 4, 1995, which was espoused in *Polloso v. Hon. Gangan*.[9] Accordingly, on February 15, 2011, the COA issued a Notice of Disallowance,[10] which found the following persons liable for the disallowed amount of ₱184,649.25:

Atty. Alex A. Arejola	—	Claimant/Legal Counsel
Arthur Z. Elizes	—	Accountant III
Madelon B. Lee	—	Accountant III
Yodelito Icaro	—	MAA III
Ela Regondola	—	VP for Admin
Emma Sumaway	—	Budget Officer

[4] *Rollo*, p. 24.

[5] The authority superseded the deputation issued on May 19, 2010 and retroacted to the period June 1, 2009 to June 30, 2010 (*Id.* at 25-26).

[6] *Rollo*, pp. 28-29, 45-46.

[7] Inhibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases.

[8] Prohibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases.

[9] 390 Phil. 1101 (2000).

[10] *Rollo*, pp. 30-40.

Yolanda Gahol	—	Budget Officer
Dr. Wenifredo T. Oñate	—	College President[11]

Dr. Oñate moved to reconsider the decision,[12] but the COA Commissioners affirmed the questioned LRR. Relying on *Polloso v. Hon. Gangan and Santayana v. Alampay*,[13] it was held that the payment for the legal services of Atty. Arejola shall be the personal liability of Dr. Oñate as the official concerned who secured and who actually benefited therefrom. Hence, this petition praying that the COA Decision finding him solely liable be set aside.

The petition is granted.

Camarines Norte State College was created by Republic Act No. 7352.[14] Under Executive Order (*E.O.*) No. 292, or the *Administrative Code of 1987*, a state college is classified as a chartered institution.[15] As such, only the OSG is authorized to represent CNSC and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers.[16]

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[11] *Id.* at 40.

[12] *Id.* at 47.

[13] 494 Phil. 1 (2005).

[14] AN ACT CONVERTING THE PRESENT CAMARINES NORTE NATIONAL HIGH SCHOOL IN THE MUNICIPALITY OF DAET INTO A STATE COLLEGE TO BE KNOWN AS THE CAMARINES NORTE STATE COLLEGE, INTEGRATING FOR THE PURPOSE THE ABANO PILOT ELEMENTARY SCHOOL IN DAET, MERCEDES SCHOOL OF FISHERIES IN MERCEDES, CAMARINES NORTE NATIONAL AGRICULTURAL SCHOOL IN LABO AND THE CAMARINES NORTE NATIONAL SCHOOL OF ARTS AND TRADES IN JOSE PANGANIBAN, ALL IN THE PROVINCE OF CAMARINES NORTE, AND APPROPRIATING FUNDS THEREFOR (Enacted on April 2, 1992).

[15] Section 2 of the Introductory Provisions of E.O. No. 292 provides:

(12) *Chartered institution* — refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the **state universities and colleges** and the monetary authority of the State. (Emphasis supplied).

[16] Chapter 12, Title III, Book IV of E.O. No. 292 states:

COA Circular No. 95-011 stresses that public funds shall not be utilized for the payment of services of a private legal counsel or law firm to represent government agencies in court or to render legal services for them. Despite this, the same circular provides that in the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances, the written conformity and acquiescence of the OSG or the Office of the Government Corporate Counsel (*OGCC*), as the case may be, and the written concurrence of the COA shall first be secured **before** the hiring or employment of a private lawyer or law firm. The prohibition covers the hiring of private lawyers to render any form of legal service — whether or not the legal services to be performed involve an actual legal controversy or court litigation.[17] The purpose is to curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered to the government, which is in line with the COA's constitutional mandate to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties.[18]

The Court has invariably sustained the statutory authority of the OSG and the OGCC as well as the necessity of COA concurrence in the cases of government-owned and/or controlled corporations,[19]

Section 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. x x x

[17] *Polloso v. Hon. Gangan, supra* note 9, at 1109.

[18] *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. COA*, G.R. No. 185544, January 13, 2015, 745 SCRA 269, 292, citing *Polloso v. Hon. Gangan, supra* note 9, at 1111.

[19] See National Power Corporation in *Polloso v. Hon. Gangan*, *supra* note 9; *Phividec Industrial Authority in Phividec Industrial Authority v.*

local government units,[20] and even a state college[21] like the CNSC. We see no legal justification to deviate from the settled jurisprudence. Here, the COA noted, and Dr. Oñate never disputed, that while the OSG authorization was obtained the CNSC belatedly requested for the COA's concurrence on May 27, 2010,[22] which is less than a week prior to the expiration of the contract on June 1, 2010. The rule is absolute; partial compliance or honest mistake due to ignorance of the law[23] is not and can never be a valid defense.

Nonetheless, petitioner must not be entirely accountable for the refund of the disallowed amount. Evidence on record indubitably shows that he was properly armed with the necessary CNSC Board approval before he secured the legal services of Atty. Arejola. Consistent with COA Circular No. 86-255, as amended, in relation to Section 103 of Presidential Decree No. 1445 (*Government Auditing Code of the Philippines*)[24] as well as

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Capitol Steel Corporation, 460 Phil. 493 (2003); San Jose Water District in *San Jose Water District v. Corpus*, G.R. No. 164334, August 3, 2004 (En Banc Resolution); National Electrification Administration in *Santayana v. Alampay*, 494 Phil. 1 (2005); Land Bank of the Philippines in *Land Bank of the Philippines v. Panlilio-Luciano*, G.R. No. 165428, July 13, 2005 (2nd Division Resolution), *Land Bank of the Philippines v. Heirs of Fernando Alsua*, G.R. No. 167361, July 27, 2005 (2nd Division Resolution), *Land Bank of the Philippines v. Martinez*, 556 Phil. 809 (2007), and *Hernandez-Nievera, et al. v. Hernandez, et al.*, 658 Phil. 1 (2011); Koronadal Water District in *Vargas, et al. v. Atty. Ignes, et al.*, 637 Phil. 1 (2010); *Clark Development Corporation in The Law Firm of Laguesma Magsalin Consulta and Gastardo v. COA, supra*; and Isabela Water District in *Almadovar v. Pulido-Tan*, G.R. No. 213330, November 16, 2015. However, see also *GSIS v. Hon. Court of Appeals* (8th Div.), *et al.*, 603 Phil. 676 (2009).

[20] See *Municipality of Bauan (Province of Batangas) v. Grand Asian Shipping Lines*, Inc., G.R. No. 179094, September 7, 2011 (3rd Division Resolution).

[21] See *Gumaru v. Quirino State College*, 552 Phil. 481 (2007).

[22] *Rollo*, p. 27.

[23] Allegedly, petitioner did not know or was not duly advised of the COA rule (See *Rollo*, p. 8).

[24] SEC. 103. *General liability for unlawful expenditures.* — Expenditures of government funds or uses of government property in violation of law or

Section 52,[25] Chapter 9, Title I-B, Book V and Section 43,[26] Chapter V, Book VI of the Administrative Code, the board of trustees who approved Board Referendum No. 2, s. 2009,[27] which granted authority to Dr. Oñate to enter into a retainer's contract with Atty. Arejola but did not require the prior conformity of the OSG and written concurrence of the COA, should also be held liable for the unauthorized disbursement of public funds.[28] Indeed, when a government entity engages the legal services of private counsel or law firm, it must do so with the necessary authorization required by law; otherwise, its officials bind themselves to be personally liable for compensating such legal services. Moreover, while the private counsel or law firm, in this case Atty. Arejola, is likewise responsible for receiving the subject amount, such liability is without prejudice to the

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regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

[25] **SECTION 52**. *General Liability for Unlawful Expenditures*. — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

[26] **SECTION 43**. *Liability for Illegal Expenditures*. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be vo*id.* Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received. x x x

[27] Entitled *GRANTING AUTHORITY TO CNSC PRESIDENT DR. WENIFREDO T. OÑATE TO ENTER INTO A RETAINER'S CONTRACT BETWEEN THE CAMARINES NORTE STATE COLLEGE AND ATTY. ALEX A. AREJOLA* and presented on July 2, 2009 (*Rollo*, pp. 13-14).

[28] The members of the CNSC Board were: Nenalyn P. Defensor (Chairperson-designate and Presiding Officer), Wenifredo T. Oñate (Vice-Chairperson), Mar A. Roxas (Member), Cynthia A. Villar (Member), Romeo C. Escandor (Member), Jose V. Dayao (Member), Rene N. Abrera (Member), Elmer C. Nagera (Member), Benjamin C. Dimaano (Member), and Ramon C. Belante, Sr. (Member) (*Rollo*, p. 14).

filing an action, if necessary, against the parties involved in the unlawful release of public funds.[29]

WHEREFORE, the petition is **GRANTED**. COA Decision No. 2014-126 dated June 20, 2014 is **AFFIRMED WITH MODIFICATION**. Petitioner Dr. Wenifredo T. Oñate, the CNSC Board of Trustees, and the other persons found liable for the disallowed amount of ₱184,649.25 in LRR No. 2010-158 dated December 2, 2010, are personally and solidarily liable for the reimbursement of the amount paid for the legal services rendered by Atty. Alex A. Arejola.

In the interest of due process, however, considering that the board of trustees were not impleaded in the case, the Commission on Audit is **DIRECTED** to **ORDER** them to file a memorandum and/or call a hearing to allow the presentation of evidence that may exempt them from any liability.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.*, concur.

Sereno, C.J. and *Mendoza, J.*, on official leave.

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[29] See *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. COA, supra* note 18.

FIRST DIVISION

[G.R. No. 220978. July 5, 2016]

CENTURY PROPERTIES, INC., *petitioner, vs.* **EDWIN J. BABIANO and EMMA B. CONCEPCION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT CONTRACT; VIOLATION OF "CONFIDENTIALITY OF DOCUMENTS AND NON-COMPETE CLAUSE" IN THE EMPLOYMENT CONTRACT JUSTIFIES THE FORFEITURE OF EMPLOYEE'S UNPAID COMMISSION.— [T]he CA erred in limiting the "Confidentiality of Documents and Non-Compete Clause" only to acts done after the cessation of the employer-employee relationship or to the "post-employment" relations of the parties. As clearly stipulated, the parties wanted to apply said clause during the pendency of Babiano's employment, and CPI correctly invoked the same before the labor tribunals to resist the former's claim for unpaid commissions on account of his breach of the said clause while the employer-employee relationship between them still subsisted. Hence, there is now a need to determine whether or not Babiano breached said clause while employed by CPI, which would then resolve the issue of his entitlement to his unpaid commissions. A judicious review of the records reveals that in his resignation letter dated February 25, 2009, Babiano categorically admitted to CPI Chairman Jose Antonio that on February 12, 2009, he sought employment from First Global, and five (5) days later, was admitted thereto as vice president. From the foregoing, it is evidently clear that when he sought and eventually accepted the said position with First Global, he was still employed by CPI as he has not formally resigned at that time. Irrefragably, this is a glaring violation of the "Confidentiality of Documents and Non-Compete Clause" in his employment contract with CPI, thus, justifying the forfeiture of his unpaid commissions.

2. ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.— Anent the nature of Concepcion's engagement, based on case law, the presence of the following elements evince the existence

of an employer-employee relationship: (*a*) the power to hire, *i.e.*, the selection and engagement of the employee; (*b*) the payment of wages; (*c*) the power of dismissal; and (*d*) the employer's power to control the employee's conduct, or the so called "control test." The control test is commonly regarded as the most important indicator of the presence or absence of an employer-employee relationship. Under this test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.

3. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS IN CASE AT BAR; IT CANNOT BE NEGATED BY THE MERE EXPEDIENT OF REPUDIATING IT IN A CONTRACT; CASE AT BAR.— [T]he Court finds that Concepcion was an employee of CPI considering that: (*a*) CPI continuously hired and promoted Concepcion from October 2002 until her resignation on February 23, 2009, thus, showing that CPI exercised the power of selection and engagement over her person and that she performed functions that were necessary and desirable to the business of CPI; (*b*) the monthly "subsidy" and cash incentives that Concepcion was receiving from CPI are actually remuneration in the concept of wages as it was regularly given to her on a monthly basis without any qualification, save for the "complete submission of documents on what is a sale policy"; (*c*) CPI had the power to discipline or even dismiss Concepcion as her engagement contract with CPI expressly conferred upon the latter "the right to discontinue [her] service anytime during the period of engagement should [she] fail to meet the performance standards," among others, and that CPI actually exercised such power to dismiss when it accepted and approved Concepcion's resignation letter; and most importantly, (*d*) as aptly pointed out by the CA, CPI possessed the power of control over Concepcion because in the performance of her duties as Project Director — particularly in the conduct of recruitment activities, training sessions, and skills development of Sales Directors — she did not exercise independent discretion thereon, but was still subject to the direct supervision of CPI, acting through Babiano. Besides, while the employment agreement of Concepcion was denominated as a

"Contract of Agency for Project Director," it should be stressed that the existence of employer-employee relations could not be negated by the mere expedient of repudiating it in a contract. In the case of *Insular Life Assurance Co., Ltd. v. NLRC*, it was ruled that one's employment status is defined and prescribed by law, and not by what the parties say it should be[.]

4. REMEDIAL LAW; APPEALS; A PARTY WHO DID NOT APPEAL CANNOT OBTAIN ANY AFFIRMATIVE RELIEF; EXCEPTION, APPLIED; THE COURT OF APPEALS CORRECTLY RECOMPUTED EMPLOYEE'S UNPAID COMMISSION DESPITE HER FAILURE TO SEEK A REVIEW OF THE NLRC'S DECISION.— As a general rule, a party who has not appealed cannot obtain any affirmative relief other than the one granted in the appealed decision. However, jurisprudence admits an exception to the said rule, such as when strict adherence thereto shall result in the impairment of the substantive rights of the parties concerned. x x x In the present case, the CA aptly pointed out that the NLRC failed to account for all the unpaid commissions due to Concepcion for the period of August 9, 2008 to August 8, 2011. Indeed, Conception's right to her earned commissions is a substantive right which cannot be impaired by an erroneous computation of what she really is entitled to. Hence, following the dictates of equity and in order to arrive at a complete and just resolution of the case, and avoid a piecemeal dispensation of justice over the same, the CA correctly recomputed Concepcion's unpaid commissions, notwithstanding her failure to seek a review of the NLRC's computation of the same.

APPEARANCES OF COUNSEL

Divina Law for petitioner.

The Law Firm of Culvera & Associates for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 8, 2015 and the Resolution[3] dated October 12, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 132953, which affirmed with modification the Decision[4] dated June 25, 2013 and the Resolution[5] dated October 16, 2013 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 05-001615-12, and ordered petitioner Century Properties, Inc. (CPI) to pay respondents Edwin J. Babiano (Babiano) and Emma B. Concepcion (Concepcion; collectively, respondents) unpaid commissions in the amounts of ₱889,932.42 and ₱591,953,05, respectively.

The Facts

On October 2, 2002, Babiano was hired by CPI as Director of Sales, and was eventually[6] appointed as Vice President for Sales effective September 1, 2007. As CPI's Vice President for Sales, Babiano was remunerated with, *inter alia*, the following benefits: (*a*) monthly salary of ₱70,000.00; (*b*) allowance of ₱50,000.00; and (*c*) 0.5% override commission for completed sales. His employment contract[7] also contained a "Confidentiality

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[1] *Rollo*, pp. 10-32.

[2] *Id.* at 37-51. Penned by Associate Justice Florito S. Macalino with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles concurring.

[3] *Id.* at 53-56.

[4] *Id.* at 276-290. Penned by Commissioner Romeo L. Go with Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco concurring.

[5] *Id.* at 310-311.

[6] Prior to his promotion as Vice President for Sales, Babiano was first promoted as Project Director in June 2006. See *id.* at 3 and 277.

[7] Dated September 1, 2007. *Id.* at 76-79.

of Documents and Non-Compete Clause"[8] which, among others, barred him from disclosing confidential information, and from working in any business enterprise that is in direct competition with CPI "while [he is] employed and for a period of one year from date of resignation or termination from [CPI]." Should Babiano breach any of the terms thereof, his "forms of compensation, including commissions and incentives will be forfeited."[9]

During the same period, Concepcion was initially hired as Sales Agent by CPI and was eventually[10] promoted as Project Director on September 1, 2007.[11] As such, she signed an employment agreement, denominated as "Contract of Agency for Project Director"[12] which provided, among others, that she would directly report to Babiano, and receive a monthly subsidy of ₱60,000.00, 0.5% commission, and cash incentives.[13] On March 31, 2008, Concepcion executed a similar contract[14] anew with CPI in which she would receive a monthly subsidy of ₱50,000.00, 0.5% commission, and cash incentives as per company policy. Notably, it was stipulated in both contracts that no employer-employee relationship exists between Concepcion and CPI.[15]

After receiving reports that Babiano provided a competitor with information regarding CPI's marketing strategies, spread false information regarding CPI and its projects, recruited CPI's personnel to join the competitor, and for being absent without

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[8] *Id.* at 78.

[9] *Id.* See also *id.* at 38-39 and 277.

[10] Prior to her promotion as Project Director, records show that Concepcion was first promoted as Sales Officer in June 2003, and as Sales Director in August 2006. See *id.* at 38 and 278.

[11] See *id.* at 38 and 279.

[12] *Id.* at 115.

[13] *Id.*

[14] *Id.* at 114.

[15] See *id.* at 114 and 115.

official leave (AWOL) for five (5) days, CPI, through its Executive Vice President for Marketing and Development, Jose Marco R. Antonio (Antonio), sent Babiano a Notice to Explain[16] on February 23, 2009 directing him to explain why he should not be charged with disloyalty, conflict of interest, and breach of trust and confidence for his actuations.[17]

On February 25, 2009, Babiano tendered[18] his resignation and revealed that he had been accepted as Vice President of First Global BYO Development Corporation (First Global), a competitor of CPI.[19] On March 3, 2009, Babiano was served a Notice of Termination[20] for: (*a*) incurring AWOL; (*b*) violating the "Confidentiality of Documents and Non-Compete Clause" when he joined a competitor enterprise while still working for CPI and provided such competitor enterprise information regarding CPI's marketing strategies; and (*c*) recruiting CPI personnel to join a competitor.[21]

On the other hand, Concepcion resigned as CPI's Project Director through a letter[22] dated February 23, 2009, effective immediately.

On August 8, 2011, respondents filed a complaint[23] for non-payment of commissions and damages against CPI and Antonio before the NLRC, docketed as NLRC Case No. NCR-08-12029-11, claiming that their repeated demands for the payment and release of their commissions remained unheeded.[24]

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[16] *Id.* at 83.

[17] See *id.* at 83 and 226-227.

[18] See Letter dated February 25, 2009; *id.* at 361-362.

[19] See *id.* at 39 and 130.

[20] *Id.* at 84.

[21] *Id.* See also *id.* at 227.

[22] *Id.* at 116.

[23] Not attached to the *rollo*.

[24] See *rollo*, p. 39. See also Position Paper dated November 19, 2011 filed by respondents; *id.* at 148.

For its part, CPI maintained[25] that Babiano is merely its agent tasked with selling its projects. Nonetheless, he was afforded due process in the termination of his employment which was based on just causes.[26] It also claimed to have validly withheld Babiano's commissions, considering that they were deemed forfeited for violating the "Confidentiality of Documents and Non-Compete Clause."[27] On Concepcion's money claims, CPI asserted that the NLRC had no jurisdiction to hear the same because there was no employer-employee relations between them, and thus, she should have litigated the same in an ordinary civil action.[28]

The LA Ruling

In a Decision[29] dated March 19, 2012, the Labor Arbiter (LA) ruled in CPI's favor and, accordingly, dismissed the complaint for lack of merit.[30] The LA found that: (*a*) Babiano's acts of providing information on CPI's marketing strategies to the competitor and spreading false information about CPI and its projects are blatant violations of the "Confidentiality of Documents and Non-Compete Clause" of his employment contract, thus, resulting in the forfeiture of his unpaid commissions in accordance with the same clause;[31] and (*b*) it had no jurisdiction over Concepcion's money claim as she was not an employee but a mere agent of CPI, as clearly stipulated in her engagement contract with the latter.[32]

Aggrieved, respondents appealed[33] to the NLRC.

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[25] See CPI's Position Paper dated November 28, 2011; *id.* at 118-144.

[26] See *id.* at 124.

[27] See *id.* at 125-130. See also *id.* at 40.

[28] See *id.* at 137-139. See also *id.* at 40.

[29] *Id.* at 220-237. Penned by LA Eduardo G. Magno.

[30] *Id.* at 237.

[31] See *id.* at 230-233.

[32] See *id.* at 233-237.

[33] See Memorandum of Appeal dated April 18, 2012; *id.* at 238-246.

The NLRC Ruling

In a Decision[34] dated June 25, 2013, the NLRC reversed and set aside the LA ruling, and entered a new one ordering CPI to pay Babiano and Concepcion the amounts of ₱685,211.76 and ₱470,754.62, respectively, representing their commissions from August 9, 2008 to August 8, 2011, as well as 10% attorney's fees of the total monetary awards.[35]

While the NLRC initially concurred with the LA that Babiano's acts constituted just cause which would warrant the termination of his employment from CPI, it, however, ruled that the forfeiture of all earned commissions of Babiano under the "Confidentiality of Documents and Non-Compete Clause" is confiscatory and unreasonable and hence, contrary to law and public policy.[36] In this light, the NLRC held that CPI could not invoke such clause to avoid the payment of Babiano's commissions since he had already earned those monetary benefits and, thus, should have been released to him. However, the NLRC limited the grant of the money claims in light of Article 291 (now Article 306)[37] of the Labor Code which provides for a prescriptive period of three (3) years. Consequently, the NLRC awarded unpaid commissions only from August 9, 2008 to August 8, 2011 — *i.e.*, which was the date when the complaint was filed.[38] Meanwhile, contrary to the LA's finding, the NLRC ruled that Concepcion was CPI's employee, considering that CPI: (*a*) repeatedly hired and promoted her since 2002; (*b*) paid her wages despite referring to it as "subsidy"; and (*c*) exercised the power of dismissal and control over her.[39] Lastly, the NLRC granted respondents' claim for attorney's fees since they

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[34] *Id.* at 276-290.

[35] *Id.* at 289.

[36] *Id.* at 282.

[37] See Department of Labor and Employment Department Advisory No. 01, series of 2015, entitled "RENUMBERING THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," approved on July 21, 2015.

[38] See *id.* at 282-284.

[39] See *id.* at 284-287.

were forced to litigate and incurred expenses for the protection of their rights and interests.[40]

Respondents did not assail the NLRC findings. In contrast, only CPI moved for reconsideration,[41] which the NLRC denied in a Resolution[42] dated October 16, 2013. Aggrieved, CPI filed a petition for *certiorari*[43] before the CA.

The CA Ruling

In a Decision[44] dated April 8, 2015, the CA affirmed the NLRC ruling with modification increasing the award of unpaid commissions to Babiano and Concepcion in the amounts of ₱889,932.42 and P591,953.05, respectively, and imposing interest of six percent (6%) per annum on all monetary awards from the finality of its decision until fully paid.[45]

The CA held that Babiano properly instituted his claim for unpaid commissions before the labor tribunals as it is a money claim arising from an employer-employee relationship with CPI. In this relation, the CA opined that CPI cannot withhold such unpaid commissions on the ground of Babiano's alleged breach of the "Confidentiality of Documents and Non-Compete Clause" integrated in the latter's employment contract, considering that such clause referred to acts done after the cessation of the employer-employee relationship or to the "post-employment" relations of the parties. Thus, any such supposed breach thereof is a civil law dispute that is best resolved by the regular courts and not by labor tribunals.[46]

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[40] See *id.* at 288.

[41] See motion for reconsideration dated July 10, 2013; *id.* at 292-307.

[42] *Id.* at 310-311.

[43] See Petition [with Extremely Urgent Application for Temporary Restraining Order and/or Preliminary Injunction dated November 27, 2013]; *id.* at 313-343.

[44] *Id.* at 37-51.

[45] See *id.* at 50.

[46] See *id.* at 44-47.

Similarly, the CA echoed the NLRC's finding that there exists an employer-employee relationship between Concepcion and CPI, because the latter exercised control over the performance of her duties as Project Director which is indicative of an employer-employee relationship. Necessarily therefore, CPI also exercised control over Concepcion's duties in recruiting, training, and developing directors of sales because she was supervised by Babiano in the performance of her functions. The CA likewise observed the presence of critical factors which were indicative of an employer-employee relationship with CPI, such as: (*a*) Concepcion's receipt of a monthly salary from CPI; and (*b*) that she performed tasks besides selling CPI properties. To add, the title of her contract which was referred to as "Contract of Agency for Project Director" was not binding and conclusive, considering that the characterization of the juridical relationship is essentially a matter of law that is for the courts to determine, and not the parties thereof. Moreover, the totality of evidence sustains a finding of employer-employee relationship between CPI and Concepcion.[47]

Further, the CA held that despite the NLRC's proper application of the three (3)-year prescriptive period under Article 291 of the Labor Code, it nonetheless failed to include all of respondents' earned commissions during that time — *i.e.*, August 9, 2008 to August 8, 2011 — thus, necessitating the increase in award of unpaid commissions in respondents' favor.[48]

Undaunted, CPI sought for reconsideration,[49] which was, however, denied in a Resolution[50] dated October 12, 2015; hence, this petition.

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[47] See *id.* at 47-48.

[48] See *id.* at 46-47 (for Babiano) and 48-49 (for Concepcion).

[49] See motion for reconsideration [of the Decision dated 8 April 2015] dated May 14, 2015; *id.* at 58-74.

[50] *Id.* at 53-56.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA erred in denying CPI's petition for certiorari, thereby holding it liable for the unpaid commissions of respondents.

The Court's Ruling

The petition is partly meritorious.

I.

Article 1370 of the Civil Code provides that "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."[51] In *Norton Resources and Development Corporation v. All Asia Bank Corporation*,[52] the Court had the opportunity to thoroughly discuss the said rule as follows:

> The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids**.** The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.[53] (Emphases and underscoring supplied)

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[51] *The Wellex Group, Inc. v. U-Land Airlines Co., Ltd.*, G.R. No. 167519, January 14, 2015, 745 SCRA 563, 601, citing *Norton Resources Dev't. Corp. v. All Asia Bank Corp.*, 620 Phil. 381, 388 (2009); further citation omitted.

[52] *Id.*

[53] *Id.* at 388-389; citations omitted.

Thus, in the interpretation of contracts, the Court must first determine whether a provision or stipulation therein is ambiguous. Absent any ambiguity, the provision on its face will be read as it is written and treated as the binding law of the parties to the contract.[54]

In the case at bar, CPI primarily invoked the "Confidentiality of Documents and Non-Compete Clause" found in Babiano's employment contract[55] to justify the forfeiture of his commissions, *viz.*:

Confidentiality of Documents and Non-Compete Clause

All records and documents of the company and all information pertaining to its business or affairs or that of its affiliated companies are confidential and no unauthorized disclosure or reproduction or the same will be made by you any time during or after your employment.

And in order to ensure strict compliance herewith, you shall not work for whatsoever capacity, either as an employee, agent or consultant with any person whose business is in direct competition with the company while you are employed and for a period of one year from date of resignation or termination from the company.

In the event the undersigned breaches any term of this contract, the undersigned agrees and acknowledges that damages may not be an adequate remedy and that in addition to any other remedies available to the Company at law or in equity, the Company is entitled to enforce its rights hereunder by way of injunction, restraining order or other relief to enjoin any breach or default of this contract.

The undersigned agrees to pay all costs, expenses and attorney's fees incurred by the Company in connection with the enforcement of the obligations of the undersigned. The undersigned also agrees to pay the Company all profits, revenues and income or benefits derived by or accruing to the undersigned resulting from the undersigned's breach of the obligations hereunder. This Agreement shall be binding upon the undersigned, all employees, agents, officers,

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[54] See *The Wellex Group, Inc. v. U-Land Airlines, Co., Ltd., supra* note 51, at 601-602.

[55] *Rollo*, pp. 76-79.

directors, shareholders, partners and representatives of the undersigned and all heirs, successors and assigns of the foregoing.

Finally, if undersigned breaches any terms of this contract, forms of compensation including commissions and incentives will be forfeited.[56] (Emphases and underscoring supplied)

Verily, the foregoing clause is not only clear and unambiguous in stating that Babiano is barred to "work for whatsoever capacity x x x with any person whose business is in direct competition with [CPI] while [he is] employed and for a period of one year from date of [his] resignation or termination from the company," it also expressly provided in no uncertain terms that should Babiano "[breach] any term of [the employment contract], forms of compensation including commissions and incentives will be forfeited." Here, the contracting parties — namely Babiano on one side, and CPI as represented by its COO-Vertical, John Victor R. Antonio, and Director for Planning and Controls, Jose Carlo R. Antonio, on the other — indisputably wanted the said clause to be effective even during the existence of the employer-employee relationship between Babiano and CPI, thereby indicating their intention to be bound by such clause by affixing their respective signatures to the employment contract. More significantly, as CPI's Vice President for Sales, Babiano held a highly sensitive and confidential managerial position as he "was tasked, among others, to guarantee the achievement of agreed sales targets for a project and to ensure that his team has a qualified and competent manpower resources by conducting recruitment activities, training sessions, sales rallies, motivational activities, and evaluation programs."[57] Hence, to allow Babiano to freely move to direct competitors during and soon after his employment with CPI would make the latter's trade secrets vulnerable to exposure, especially in a highly competitive marketing environment. As such, it is only reasonable that CPI and Babiano agree on such stipulation in the latter's employment

[56] *Id.* at 78.

[57] See *id.* at 38.

contract in order to afford a fair and reasonable protection to CPI.[58] Indubitably, obligations arising from contracts, including employment contracts, have the force of law between the contracting parties and should be complied with in good faith.[59] Corollary thereto, parties are bound by the stipulations, clauses, terms, and conditions they have agreed to, provided that these stipulations, clauses, terms, and conditions are not contrary to law, morals, public order or public policy,[60] as in this case.

Therefore, the CA erred in limiting the "Confidentiality of Documents and Non-Compete Clause" only to acts done after the cessation of the employer-employee relationship or to the "post-employment" relations of the parties. As clearly stipulated, the parties wanted to apply said clause during the pendency of Babiano's employment, and CPI correctly invoked the same before the labor tribunals to resist the former's claim for unpaid commissions on account of his breach of the said clause while the employer-employee relationship between them still subsisted. Hence, there is now a need to determine whether or not Babiano breached said clause while employed by CPI, which would then resolve the issue of his entitlement to his unpaid commissions.

A judicious review of the records reveals that in his resignation letter[61] dated February 25, 2009, Babiano categorically admitted to CPI Chairman Jose Antonio that on February 12, 2009, he sought employment from First Global, and five (5) days later, was admitted thereto as vice president. From the foregoing, it is evidently clear that when he sought and eventually accepted the said position with First Global, he was still employed by CPI as he has not formally resigned at that time. Irrefragably, this is a glaring violation of the "Confidentiality of Documents

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[58] See *Tiu v. Platinum Plans Phil., Inc.*, 545 Phil. 702, 709-710 (2007).

[59] *Global Resource for Outsourced Workers (GROW), Inc. v. Velasco*, 693 Phil. 158, 168 (2012).

[60] See *Magsaysay Maritime Corporation v. Simbajon*, G.R. No. 203472, July 9, 2014, 729 SCRA 631, 642, citing *Wallem Maritime Services, Inc. v. Tanawan*, 693 Phil. 416, 426 (2012).

[61] *Rollo*, pp. 361-362.

and Non-Compete Clause" in his employment contract with CPI, thus, justifying the forfeiture of his unpaid commissions.

II.

Anent the nature of Concepcion's engagement, based on case law, the presence of the following elements evince the existence of an employer-employee relationship: (*a*) the power to hire, *i.e.*, the selection and engagement of the employee; (*b*) the payment of wages; (*c*) the power of dismissal; and (*d*) the employer's power to control the employee's conduct, or the so called "control test." The control test is commonly regarded as the most important indicator of the presence or absence of an employer-employee relationship.[62] Under this test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[63]

Guided by these parameters, the Court finds that Concepcion was an employee of CPI considering that: (*a*) CPI continuously hired and promoted Concepcion from October 2002 until her resignation on February 23, 2009,[64] thus, showing that CPI exercised the power of selection and engagement over her person and that she performed functions that were necessary and desirable to the business of CPI; (*b*) the monthly "subsidy" and cash incentives that Concepcion was receiving from CPI are actually remuneration in the concept of wages as it was regularly given to her on a monthly basis without any qualification, save for the "complete submission of documents on what is a sale policy";[65] (*c*) CPI had the power to discipline or even dismiss Concepcion as her engagement contract with

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[62] See *South Davao Dev't. Co., Inc. v. Gamo*, 605 Phil. 604, 613 (2009).

[63] *Television and Production Exponents, Inc. v. Servaña*, 566 Phil. 564, 572 (2008).

[64] Prior to her promotion as Project Director, records show that Concepcion was first promoted as Sales Officer in June 2003, and as Sales Director in August 2006. See *rollo*, pp. 38 and 278.

[65] See *id.* at 114-115.

CPI expressly conferred upon the latter "the right to discontinue [her] service anytime during the period of engagement should [she] fail to meet the performance standards,"[66] among others, and that CPI actually exercised such power to dismiss when it accepted and approved Concepcion's resignation letter; and most importantly, (*d*) as aptly pointed out by the CA, CPI possessed the power of control over Concepcion because in the performance of her duties as Project Director — particularly in the conduct of recruitment activities, training sessions, and skills development of Sales Directors — she did not exercise independent discretion thereon, but was still subject to the direct supervision of CPI, acting through Babiano.[67]

Besides, while the employment agreement of Concepcion was denominated as a "Contract of Agency for Project Director," it should be stressed that the existence of employer-employee relations could not be negated by the mere expedient of repudiating it in a contract. In the case of *Insular Life Assurance Co., Ltd. v. NLRC,*[68] it was ruled that one's employment status is defined and prescribed by law, and not by what the parties say it should be, *viz.*:

> It is axiomatic that the existence of an employer-employee relationship cannot be negated by expressly repudiating it in the management contract and providing therein that the "employee" is an independent contractor when the terms of the agreement clearly show otherwise. **For, the employment status of a person is defined and prescribed by law and not by what the parties say it should be**. In determining the status of the management contract, the "four-fold test" on employment earlier mentioned has to be applied.[69] (Emphasis and underscoring supplied)

Therefore, the CA correctly ruled that since there exists an employer-employee relationship between Concepcion and CPI,

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[66] *Id.*

[67] See *id.* at 47-48 at 114-115.

[68] 350 Phil. 918 (1998).

[69] *Id.* at 926.

the labor tribunals correctly assumed jurisdiction over her money claims.

III.

Finally, CPI contends that Concepcion's failure to assail the NLRC ruling awarding her the amount of ₱470,754.62 representing unpaid commissions rendered the same final and binding upon her. As such, the CA erred in increasing her monetary award to ₱591,953.05.[70]

The contention lacks merit.

As a general rule, a party who has not appealed cannot obtain any affirmative relief other than the one granted in the appealed decision. However, jurisprudence admits an exception to the said rule, such as when strict adherence thereto shall result in the impairment of the substantive rights of the parties concerned. In *Global Resource for Outsourced Workers, Inc. v. Velasco*:[71]

> Indeed, a party who has failed to appeal from a judgment is deemed to have acquiesced to it and can no longer obtain from the appellate court any affirmative relief other than what was already granted under said judgment. **However, when strict adherence to such technical rule will impair a substantive right, such as that of an illegally dismissed employee to monetary compensation as provided by law, then equity dictates that the Court set aside the rule to pave the way for a full and just adjudication of the case**.[72] (Emphasis and underscoring supplied)

In the present case, the CA aptly pointed out that the NLRC failed to account for all the unpaid commissions due to Concepcion for the period of August 9, 2008 to August 8, 2011.[73] Indeed, Concepcion's right to her earned commissions is a substantive right which cannot be impaired by an erroneous computation

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[70] *Rollo*, pp. 28-30.

[71] *Supra* note 59.

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

[73] *Rollo*, p. 48.

of what she really is entitled to. Hence, following the dictates of equity and in order to arrive at a complete and just resolution of the case, and avoid a piecemeal dispensation of justice over the same, the CA correctly recomputed Concepcion's unpaid commissions, notwithstanding her failure to seek a review of the NLRC's computation of the same.

In sum, the Court thus holds that the commissions of Babiano were properly forfeited for violating the "Confidentiality of Documents and Non-Compete Clause." On the other hand, CPI remains liable for the unpaid commissions of Concepcion in the sum of ₱591,953.05.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated April 8, 2015 and the Resolution dated October 12, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 132953 are hereby **MODIFIED** in that the commissions of respondent Edwin J. Babiano are deemed **FORFEITED**. The rest of the CA Decision stands.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Bersamin,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on official leave.

SECOND DIVISION

[G.R. No. 200042. July 7, 2016]

FELIZARDO T. GUNTALILIB, *petitioner, vs.* **AURELIO Y. DELA CRUZ and SALOME** V**. DELA CRUZ,** *respondents.*

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[*] Per Special Order No. 2358 dated June 28, 2016.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; AMENDMENT OF PLEADING IS A MATTER OF RIGHT AT ANYTIME BEFORE A RESPONSIVE PLEADING IS SERVED; NO MOTION TO ADMIT AND NO HEARING WERE REQUIRED BECAUSE IT IS NOT A CONTENTIOUS MOTION.—** [P]etitioner's claim that the trial court should not have admitted respondents' Amended Complaint since the original Complaint on which it was based is void for being a mere scrap of paper as it contained a defective verification and certification against forum-shopping, is fundamentally absurd. A party to a civil case is precisely given the opportunity to amend his pleadings, under certain conditions, in order to correct the mistakes found therein; if one were to follow petitioner's reasoning, then the rule on amendment of pleadings might just as well be scrapped, for then no pleading would be susceptible of amendment. In the present case, respondents' Complaint was amended even before petitioner could file any responsive pleading thereto; under the 1997 Rules, a party may amend his pleading once as a matter of right at any time before a responsive pleading is served. No motion to admit the same was required; as the amendment is allowed as a matter of right, prior leave of court was unnecessary. Indeed, even if such a motion was filed, no hearing was required therefor, because it is not a contentious motion.

2. **CIVIL LAW; LAND REGISTRATION; ANNULMENT OF TITLE; THE SUBJECT CIVIL CASE IS NOT MERELY AN ACTION FOR QUIETING OF TITLE BUT A CASE FOR ANNULMENT AND CANCELLATION OF TITLE.—** Moving on to the substantive issues raised, the Court finds without merit petitioner's claim that respondents' quieting of title case constitutes a prohibited attack on his predecessor Bernardo Tumaliuan's unnumbered OCT as well as the proceedings in LRC Case No. 6544. It is true that "the validity of a certificate of title cannot be assailed in an action for quieting of title; an action for annulment of title is the more appropriate remedy to seek the cancellation of a certificate of title." Indeed, it is settled that a certificate of title is not subject to collateral attack. However, while respondents' action is denominated as one for quieting of title, it is in reality an action to annul and

cancel Bernardo Tumaliuan's unnumbered OCT. The allegations and prayer in their Amended Complaint make out a case for annulment and cancellation of title, and not merely quieting of title: they claim that their predecessor's OCT 213, which was issued on August 7, 1916, should prevail over Bernardo Tumaliuan's unnumbered OCT which was issued only on August 29, 1916; that petitioner and his co-defendants have knowledge of OCT 213 and their existing titles; that through fraud, false misrepresentations, and irregularities in the proceedings for reconstitution (LRC Case No. 6544), petitioner was able to secure a copy of his predecessor's supposed unnumbered OCT; and for these reasons, Bernardo Tumaliuan's unnumbered OCT should be cancelled. Besides, the case was denominated as one for "Quieting of Titles x x x; **Cancellation of Unnumbered OCT**/Damages." It has been held that "[t]he underlying objectives or reliefs sought in both the quieting-of-title and the annulment-of-title cases are essentially the same — adjudication of the ownership of the disputed lot and nullification of one of the two certificates of title." Nonetheless, petitioner should not have been so simplistic as to think that Civil Case No. 6975 is merely a quieting of title case. It is more appropriate to suppose that one of the effects of cancelling Bernardo Tumaliuan's unnumbered OCT would be to quiet title over Lot 421; in this sense, quieting of title is subsumed in the annulment of title case.

APPEARANCES OF COUNSEL

Manuel Law Office for petitioner.
Dominica Dumangeng-Rosario for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside: 1) the August 10, 2011 Decision[2] of the Court of Appeals (CA)

[1] *Rollo*, pp. 10-51.

[2] *Id.* at 53-61; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Jose C. Reyes, Jr. and Antonio L. Villamor.

in CA-G.R. SP No. 115963 dismissing the Petition for *Certiorari* in said case and affirming the January 12, 2010[3] and June 21, 2010[4] Orders of the Regional Trial Court (RTC) of Bayombong, Nueva Vizcaya, Branches 28 and 27, respectively, in Civil Case No. 6975; and 2) the CA's January 5, 2012 Resolution[5] denying herein petitioner's Motion for Reconsideration.

Factual Antecedents

On July 14, 2009, respondents Aurelio and Salome dela Cruz filed a Complaint[6] for "Quieting of Titles x x x; Annulment and Cancellation of Unnumbered OCT/Damages," against petitioner Felizardo Guntalilib and other heirs of Bernardo (or Bernardino) Tumaliuan. The case was docketed as Civil Case No. 6975 and assigned to Branch 28 of the RTC of Bayombong, Nueva Vizcaya.

The subject property is Lot 421 located in Nueva Vizcaya consisting of 8,991 square meters and which, as respondents claimed in their Complaint, was originally registered on August 7, 1916 as Original Certificate of Title (OCT) No. 213. Respondent Aurelio's grandfather, Juan dela Cruz, later acquired the property in 1919, and Transfer Certificate of Title (TCT) No. R-3 was issued in his name; when he passed away, the property was inherited by Aurelio's father, Leonor, and, in lieu of TCT R-3, TCT 14202 was issued in Leonor's favor. Later on, Leonor conveyed the property to Aurelio and his brother, Joseph, and TCT T-46087 was then issued in their favor. In turn, Joseph waived ownership in favor of Aurelio by deed of quitclaim dated December 31, 2001, in which case a new title, TCT T-126545, was issued in Aurelio's name as sole owner.

Respondents claimed further that all this time, the dela Cruz family was in full possession, occupation and enjoyment of the

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[3] *Id.* at 116-118; penned by Judge Fernando F. Flor, Jr.

[4] *Id.* at 140-142; penned by Judge Rogelio P. Corpuz.

[5] *Id.* at 62-63.

[6] *Id.* at 64-78.

property, and petitioner and his co-heirs have never set foot on the property; that later on, Lot 421 was subdivided and new titles were issued in lieu of TCT T-126545; and that Aurelio sold portions thereof to several individuals, but he remains the registered owner of the remaining portion.

Respondents likewise alleged that on February 20, 2008, petitioner filed in court a petition, docketed as LRC Case No. 6544 and assigned to the Bayombong, Nueva Vizcaya RTC, Branch 29, for reconstitution or issuance of a new certificate of title in lieu of an allegedly lost unnumbered OCT which was issued on August 29, 1916 in the name of petitioner's predecessor, Bernardo Tumaliuan, and covering the very same property, or Lot 421, which they owned; that said petition was eventually granted, and the Nueva Vizcaya Register of Deeds was ordered to issue another owner's duplicate copy of their predecessor's supposed unnumbered OCT; and that said unnumbered OCT constituted a cloud upon their titles that must necessarily be removed.

Petitioner and his co-defendants filed a Motion to Dismiss[7] Civil Case No. 6975, arguing that the Complaint stated no cause of action; that the case constituted a collateral attack on their unnumbered OCT; that respondents failed to implead all the heirs of Bernardo Tumaliuan, who are indispensable parties to the case; and that the Complaint's verification and certification on non-forum shopping were defective.

Respondents filed a Motion for Admission of Amended Complaint,[8] with attached Amended Complaint[9] for "Quieting of Titles x x x; Cancellation of Unnumbered OCT/Damages." Apart from incorporating the same allegations contained in their original Complaint, respondents further alleged in said Amended Complaint that their mother title, OCT 213 which was issued on August 7, 1916, should prevail over the petitioner's

[7] *Id.* at 79-87.

[8] *Id.* at 88-89.

[9] *Id.* at 90-106.

unnumbered OCT which was issued only on August 29, 1916; that petitioner and his co-heirs had prior knowledge of the dela Cruzes' previous and existing titles, and were never in possession of Lot 421; and that through fraud, false misrepresentations, and irregularities in the proceedings for reconstitution (LRC Case No. 6544), petitioner was able to secure a copy of his predecessor's supposed unnumbered OCT. Respondents prayed, thus:

> WHEREFORE, premises considered, it is most respectfully prayed that after trial in this case, this Honorable Court issue a judgment in favor of Plaintiffs and against defendants, as follows:
>
> 1. Quieting [of] title and ownership over Lot No. 421 and portions thereof, in favor of Plaintiffs, particularly TCT No. 147078; TCT No. 142232; TCT No. 142233; TCT No. 142235; TCT No. 142236; TCT No. 142237; TCT No. 142239; and TCT Nos. 142241 thru 142245 and all such titles of individuals who acquired title to portions of Lot No. 421 from Plaintiffs;
>
> 2. An order directing the cancellation of the Unnumbered Original Certificate of Title to Lot 421 in the name of Bernardo Tumaliuan;
>
> 3. An order directing defendants to pay plaintiffs moral damages in the amount of ₱100,000.00;
>
> 4. Ordering defendants to reimburse plaintiffs for their attorney's fees, appearance fee and costs of this suit.
>
> 5. Any such other relief as may be just and fair under the attendant circumstances.[10]

Petitioner and his co-defendants opposed the Motion for Admission of Amended Complaint, arguing in their Opposition (*Ad Cautelam*)[11] that the motion was a mere scrap of paper because it did not comply with Sections 4, 5 and 6 of Rule 15 of the 1997 Rules of Civil Procedure[12] (1997 Rules), as no

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[10] *Id.* at 104.

[11] *Id.* at 108-115.

[12] On Motions.

date of hearing was set and the motion was addressed to the Clerk of Court alone; that the verification and certification on non-forum shopping contained in the original Complaint, being defective, could not be cured by the subsequent filing of the Amended Complaint; and that the Amended Complaint was improper and prohibited, as it is essentially aimed at setting aside the Decision in LRC Case No. 6544 issued by a court of concurrent jurisdiction.

On January 12, 2010, the trial court in Civil Case No. 6975 issued an Order[13] admitting respondents' Amended Complaint and denying petitioner's Motion to Dismiss. It held that —

> Assuming arguendo that this Court shall treat the Motion for Admission of Amended Complaint as not filed, this Court is still duty bound to recognize the right of herein plaintiff under Rule 10 Section 2 where plaintiffs are allowed as a matter of right to file their amended complaint anytime before a responsive pleading is filed. Considering that a Motion to Dismiss is not a responsive pleading, this Court has no other recourse but to allow plaintiffs to submit their amended complaint.
>
> With respect to the contention of the defendants that the complaint did not raise any cause of action, this Court x x x is in the belief that the plaintiff may be entitled to the relief sought for after

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> Sec. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> Sec. 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.
>
> Sec. 6. Proof of service necessary. — No written motion set for hearing shall be acted upon by the court without proof of service thereof.

[13] *Rollo*, pp. 116-118.

exhaustively trying the case on the merits. On that note, considering the quantum of documentary evidence adduced by the plaintiff herein, this Court is inclined to try the case on the merits.

With respect to the contention of the defendants that the complaint failed to include and implead all indispensable parties, this Court construes the cited case of Teresita V. Orbeta *vs.* Paul B. Sendiong x x x that the High Court contemplated "the absence of an indispensable party" and not the "absence of all indispensable parties". As this Court is in the belief that plaintiff had impleaded some indispensable parties, then a trial on the merits should proceed.

Defendants likewise had raised as an issue that a Decision rendered by Regional Trial Court Branch 29, Bayombong, Nueva Vizcaya, particularly LRC Case No. 6544 x x x rendered on July 21, 2008 should bar any inquiry with regard to the issue of the ownership of one of the parcels of land subject of this instant case.

Placing a parcel [of land] under the mantle of the Torrens System does not mean that ownership thereof can no longer be disputed. Ownership is different from a certificate of title x x x.

In LRC Case No. 6544, Regional Trial Court Branch 29 adjudicated on the issuance of another Certificate of Title in favor of petitioner, now defendant in this case, Felizardo T. Guntalilib. In this instant case, the issue of ownership is being brought to the fore. This distinction should be heavily noted. Moreover, on closer inquiry, this Court notes the point raised by the Registry of Deeds of Nueva Vizcaya in its Motion for Reconsideration to the Decision rendered in LRC Case No. 6544 x x x:

xxx xxx xxx

To this Court, it would appear that the issue of ownership remains unsettled and this instant case will squarely address this issue.

To make out an action to quiet title under the foregoing provision (Article 476 of the Civil Code), the initiatory pleading has only to set forth allegations showing that (1) the plaintiff has "title to real property or any interest therein" and (2) the defendant claims an interest therein adverse to the plaintiff's arising from an instrument, record, claim, encumbrance, or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable or unenforceable." x x x

A perusal of the allegations of the initiatory pleadings reveals that an action to quiet title is proper and this Court shall properly proceed to try this case on the merits.

A reading of the Opposition by the defendants reveals alarming allegations and imputations.

Defendants aver that Mr. Aristotle Mercado, Legal Researcher of this Branch, is allegedly one of the buyers of the property subject of this instance case from plaintiffs. Consequently, defendants doubt if the Motion filed by the plaintiffs on September 17, 2009 had been read by the undersigned Judge and as it appears was "kept from the Honorable presiding Judge and the defendants so that the matter can be submitted for the Court's consideration and approval immediately upon receipt hereof."

Defendants likewise aver that plaintiffs deliberately absented themselves in the proceedings of September 22, 2009 for unknown reasons.

This Court would like to remind defendants to exercise restraint and caution in imputing allegations which are unsubstantiated. A perusal of the records would reveal that the plaintiffs had furnished defendants with a copy of plaintiffs' Motion filed on September 17, 2009 per Registry Receipt No. 234.

To impute on Mr. Mercado as a buyer of the plaintiffs and of allegedly executing acts prejudicial to defendants' interest and of directly accusing plaintiffs of deliberately absenting themselves from the proceedings of September 22, 2009 are reasons enough for this Court to warn defendants to exercise restraint in accusing parties, be it adversary or court personnel.

WHEREFORE, premises considered, this Court hereby admits the Amended Complaint filed by plaintiffs herein. The Motion to Dismiss filed by defendants is DENIED.

SO ORDERED.[14]

Petitioner filed a Motion for Reconsideration;[15] meanwhile, the case was re-raffled to Branch 27 of the RTC of Bayombong,

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[14] *Id.*

[15] *Id.* at 119-127.

Nueva Vizcaya. On June 21, 2010, the trial court issued an Order[16] denying petitioner's Motion for Reconsideration and ordering the defendants in the case to file their answer.

Ruling of the Court of Appeals

Petitioner filed an original Petition for *Certiorari*[17] with prayer for injunctive relief before the CA, which was docketed as CA-G.R. SP No. 115963. In seeking reversal of the trial court's January 12, 2010 and June 21, 2010 Orders, petitioner essentially reiterated the arguments contained in his Motion to Dismiss, adding that the trial court should not have admitted respondents' Amended Complaint since the original Complaint was a mere scrap of paper as it was defective in form and substance; that since in the first instance the Complaint was a mere scrap of paper, then there is no Complaint to be amended; and that the assailed Orders were null and void.

On August 10, 2011, the CA issued the assailed Decision affirming the trial court's assailed Orders, pronouncing thus:

> The RTC found the allegations in the initiatory pleading proper in the action to quiet title, thus, was "inclined to try the merits of the case". In a motion to dismiss for failure to state a cause of action, the inquiry is into the sufficiency and not the veracity, of the material allegations. If the allegations of the complaint are sufficient in form and substance but their veracity and correctness are assailed, it is incumbent upon the court to deny the motion to dismiss and require the defendant to answer and go to trial to prove his defense. The veracity of the assertions of the parties can be ascertained at the trial of the case on the merits. Further, Section 3 of Rule 16 of the Rules of Court, the rule in point, provides:
>
> "xxx xxx xxx
>
> Sec. 3. *Resolution of motion*. — After the hearing, the court may dismiss the action, or claim, deny the motion, or order the amendment of the pleading.

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[16] *Id.* at 140-142.

[17] *Id.* at 148-177.

xxx xxx xxx

As gleaned from the above-quoted provision, there are three (3) courses of action which the trial court may take in resolving a motion to dismiss, *i.e.*, to grant, to deny, or to allow amendment of the pleading. We find no grave error on the part of the trial court in denying the motion to dismiss as the allegations are sufficient to support a cause of action for quieting of title.

Parenthetically, under Rule 65 of the Revised Rules of Civil Procedure, for a *certiorari* proceeding to prosper, there should be a concurrence of the essential requisites, to wit: (a) the tribunal, board or officer exercising judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction, and (b) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding.

Petitioner's claim that it had no other plain, speedy and adequate remedy is baseless. He can still file an answer, proceed to trial and meet the issues head-on. An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits. The general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is not intended to correct every controversial interlocutory ruling. Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered.

Quite obviously, this petition filed by petitioner with us is not the proper remedy to assail the trial court's denial of his motion to dismiss. We reiterate that the special civil action of *certiorari* is a remedy designed to correct errors of jurisdiction including commission of grave abuse of discretion amounting to lack or excess of jurisdiction and not errors of judgment. The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. To justify the grant of such extraordinary remedy, the abuse of discretion must be grave and patent, and it must be shown that discretion was exercised arbitrarily or despotically. In this case, no

such circumstances attended the denial of petitioner's Motion to Dismiss.

Petitioner further alleged that the trial court committed a procedural infirmity when it gave due course to the Motion for Admission of Amended Complaint despite non-compliance with Sections 4, 5 and 6 of the Rules of Court and admitted private respondent's Amended Complaint.

Private respondent's amendment of the complaint was made pursuant to Section 2, Rule 10 of the Rules of Court. Under the said provision, formal and substantial amendments to a pleading may be made at anytime before a responsive pleading has been filed. Such amendment is a matter of right. This means that prior to the filing of an answer, the plaintiff has the absolute right to amend the complaint.

xxx xxx xxx

For obvious reasons, petitioner has not filed an answer to controvert the allegations raised by private respondent. A motion to dismiss is not a responsive pleading, thus, private respondent may amend its complaint. It cannot be said that the petitioner's rights have been violated by changes made in the complaint if he has yet to file an answer thereto. In such an event, petitioner has not presented any defense that can be altered or affected by the amendment of the complaint in accordance with Section 2 of Rule 10.

Case law dictates that the right granted to the plaintiff under procedural law to amend the complaint before an answer has been served is not precluded by the filing of a motion to dismiss or any other proceeding contesting its sufficiency. Were we to conclude otherwise, the right to amend a pleading under Section 2, Rule 10 will be rendered nugatory and ineffectual, since all that a defendant has to do to foreclose this remedial right is to challenge the adequacy of the complaint before he files an answer. Moreover, amendment of pleadings is favored and should be liberally allowed in the furtherance of justice in order to determine every case as far as possible on its merits without regard to technicalities. This principle is generally recognized to speed up trial and save party litigants from incurring unnecessary expense, so that a full hearing on the merits of every case may be had and multiplicity of suits avoided. Consequently, the amendment should be allowed in this case as a matter of right in accordance with the rules.

As for petitioner's application for injunction, we find no compelling reason to pass upon it as petitioner failed to convince us of the necessity of this relief.

WHEREFORE, premises considered, the petition under consideration is DISMISSED and the assailed Order dated January 12, 2010 and the Order dated June 21, 2010 are hereby AFFIRMED.

SO ORDERED.[18]

Petitioner filed a Motion for Reconsideration,[19] which the CA denied in its subsequent January 5, 2012 Resolution. Hence, the present Petition.

Meanwhile, on June 29, 2012, the trial court issued an Order,[20] stating thus:

In this continuation of pre-trial, Atty. Rosario and Atty. Manuel appeared. The spouses plaintiffs and the representatives of the defendants, who are defendant [sic] themselves namely, Felizardo and Mario Guntalilib were also around.

It is observed that in the previous proceedings, the court and the parties encountered difficulty in knowing who are the registered owners in addition to the plaintiff spouses Dela Cruz and also the identification of the defendant heirs. To the mind of the court, it would be more convenient in proceeding with the pre-trial with the complete identification of the present registered owners and also those heirs so that complete relief would accordingly be given to the parties. The court directed the plaintiffs to amend the complaint within 30 days from today to identify the registered owners and for the defendants to make available the names of the heirs. The counsels suggested that before further proceedings could be had, the plaintiffs should identify the other registered owners of the property and the defendants to identify the heirs.

SO ORDERED.[21]

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[18] *Id.* at 56-59.

[19] *Id.* at 218-228.

[20] *Id.* at 258.

[21] *Id.*

Issues

In a March 31, 2014 Resolution,[22] this Court resolved to give due course to the instant Petition, which contains the following assignment of errors:

I. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR OF LAW IN FAILING TO DECLARE THE COURT *A QUO*'S ORDERS NULL AND VOID BASED ON THE FOLLOWING GROUNDS:

(i) THE RELIEF SOUGHT BY RESPONDENTS IN THE PRESENT ACTION, WHICH IS, TO ANNUL AND REVERSE THE DECISION OF RTC-BRANCH 29, THAT ORDERED THE ISSUANCE OF OCT WITH DECREE NO. 54584 IN THE NAME OF BERNARDINO TUMALIUAN, IS IMPROPER FOR AN ACTION TO QUIET TITLE, THUS, THE COMPLAINT STATES NO CAUSE OF ACTION, WARRANTING THE PROMPT AND TIMELY DISMISSAL OF THE CASE.

(ii) THE ORIGINAL, AS WELL AS THE AMENDED COMPLAINT OF RESPONDENTS FAILED TO INCLUDE ALL INDISPENSABLE PARTIES, THUS, THE COURTS *A QUO* DO NOT HAVE JURISDICTION OVER THE PERSON OF THESE OMITTED INDIVIDUALS, WARRANTING THE PROMPT DISMISSAL OF THE CASE.

(iii) FOLLOWING THE DOCTRINE OF NON-INTERFERENCE, THE COURTS A QUO HAVE NO JURISDICTION TO INTERVENE WITH THE PROCEEDINGS OF A COURT OF EQUAL JURISDICTION, MUCH LESS ANNUL THE FINAL JUDGMENT OF A CO-EQUAL BRANCH, *I.E.*, RTC BRANCH-29. THUS RESPONDENTS' COMPLAINT DESERVES OUTRIGHT DISMISSAL.

II. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR OF LAW WHEN IT DECLARED THAT THERE IS A PLAIN, SPEEDY AND ADEQUATE REMEDY AVAILABLE TO PETITIONER IN THIS PRESENT CASE.

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[22] *Id.* at 289-290.

III. RESPONDENTS' RIGHT TO AMEND THEIR COMPLAINT BY VIRTUE OF SECTION 2, RULE 20 MUST YIELD TO THE CLEAR AND CATEGORICAL DIRECTIVE OF SECTION 5, RULE 7 OF THE RULES OF COURT, WHICH STATES THAT "FAILURE TO COMPLY WITH THE REQUIREMENTS ON VERIFICATION AND CERTIFICATION AGAINST FORUM-SHOPPING SHALL NOT BE CURABLE BY MERE AMENDMENT OF THE COMPLAINT BUT SHALL BE A CAUSE FOR THE DISMISSAL OF THE CASE WITHOUT PREJUDICE.

IV. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR OF LAW WHEN IT DECLARED THAT AMENDMENT OF PLEADINGS IS FAVORED AND SHOULD BE LIBERALLY ALLOWED IN CONTRAVENTION WITH THE CLEAR AND UNEQUIVOCAL PROVISIONS OF THE RULES AND JURISPRUDENCE.[23]

Petitioner's Arguments

In his Petition and Counter-Manifestation[24] seeking reversal of the assailed CA dispositions and nullification of the January 12, 2010 and June 21, 2010 Orders in Civil Case No. 6975, petitioner insists that respondents' Complaint for quieting of title constitutes a prohibited collateral attack of the unnumbered OCT of Bernardo Tumaliuan and an unjustified interference with and assault on the Decision of a co-equal court in LRC Case No. 6544; that for failure to implead all indispensable parties, namely, the heirs of Bernardo Tumaliuan and subsequent buyers of portions of the subject property sold by respondents, respondents' case should be dismissed as all proceedings taken therein are null and void, following the Court's ruling in *Dr. Orbeta v. Sendiong*[25] and *Speed Distributing Corporation v. Court of Appeals*[26] to the effect that the failure to implead all indispensable parties to a case renders all actions of the court

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

[24] *Id.* at 260-269; the Court noted petitioner's request that this Counter-Manifestation be treated as his Reply to respondents' Comment.

[25] 501 Phil. 479 (2005).

[26] 469 Phil. 739 (2004).

null and void; that Civil Case No. 6975 is in effect an attempt to annul the Decision in LRC Case No. 6544; that contrary to the CA's declaration, a Petition for *Certiorari* with the appellate court was the only speedy and adequate remedy available to him, considering that the proceedings in Civil Case No. 6975 are fundamentally null and void since the case is precisely being used to collaterally and illegally attack Bernardo Tumaliuan's title and the Decision in LRC Case No. 6544; and that the rule of procedure on verification and certification against forum-shopping should override the rule on amendment; in other words, the trial court should not have admitted respondents' Amended Complaint since the original Complaint on which it was based was a mere scrap of paper as it contained a defective verification and certification against forum-shopping, and being so, there is no valid complaint to speak of which required amendment.

Respondents' Arguments

In their Compliance with incorporated Comment[27] and Memorandum,[28] respondents contend that the failure to implead all the heirs of Bernardo Tumaliuan was cured by the trial court's June 29, 2012 Order which reflects the parties' agreement arrived at during the pre-trial that respondents shall amend their complaint to include all the heirs upon being furnished the names thereof by petitioner and his co-defendants; directing respondents to further amend their complaint within 30 days in order to include the registered owners of the subject property; and for the defendants to disclose the names of all heirs of Bernardo Tumaliuan. They add that an action by one party asserting his own title to and seeking nullification of another title covering the same property is deemed to be one for quieting of title,[29] and the nullification of petitioner's title is merely an incidental result in such action; that since petitioner has not filed his Answer, they were entitled to amend their complaint as a matter of right,

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[27] *Rollo*, pp. 254-257.

[28] *Id.* at 327-350.

[29] Citing *Realty Sales Enterprises, Inc. v. Intermediate Appellate Court*, 238 Phil. 317 (1987) and *Galindo v. Heirs of Roxas*, 489 Phil. 462 (2005).

and no motion to admit their Amended Complaint was even necessary;[30] and that the CA committed no reversible error in declaring that petitioner's resort to an original Petition for *Certiorari* was unwarranted.

Our Ruling

The Court denies the Petition.

Petitioner's claim that respondents' Amended Complaint must be disallowed for failure to implead all indispensable parties has been rendered moot by the parties' agreement that respondents shall further amend their complaint after petitioner and his co-defendants furnish them with the complete list of Bernardo Tumaliuan's heirs. Pursuant to this agreement, the trial court issued its June 29, 2012 Order, which petitioner does not assail.

Next, petitioner's claim that the trial court should not have admitted respondents' Amended Complaint since the original Complaint on which it was based is void for being a mere scrap of paper as it contained a defective verification and certification against forum-shopping, is fundamentally absurd. A party to a civil case is precisely given the opportunity to amend his pleadings, under certain conditions, in order to correct the mistakes found therein; if one were to follow petitioner's reasoning, then the rule on amendment of pleadings might just as well be scrapped, for then no pleading would be susceptible of amendment. In the present case, respondents' Complaint was amended even before petitioner could file any responsive pleading thereto; under the 1997 Rules, a party may amend his pleading once as a matter of right at any time before a responsive pleading is served.[31] No motion to admit the same was required; as the amendment is allowed as a matter of right, prior leave of court was

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[30] Citing *Marcos-Araneta v. Court of Appeals*, 585 Phil. 38 (2008).

[31] Rule 10, Section 2, on Amended and Supplemental Pleadings.

Sec. 2. Amendments as a matter of right. — A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) days after it is served.

unnecessary.[32] Indeed, even if such a motion was filed, no hearing was required therefor, because it is not a contentious motion.

On the final procedural matter that must be tackled, suffice it to state, as the CA did, that as a general rule, the denial of a motion to dismiss cannot be questioned through a special civil action for *certiorari*.

> An order denying a motion to dismiss is interlocutory and neither terminates nor finally disposes of a case; it is interlocutory as it leaves something to be done by the court before the case is finally decided on the merits.
>
> The denial of a motion to dismiss generally cannot be questioned in a special civil action for *certiorari*, as this remedy is designed to correct only errors of jurisdiction and not errors of judgment. Neither can a denial of a motion to dismiss be the subject of an appeal which is available only after a judgment or order on the merits has been rendered. Only when the denial of the motion to dismiss is tainted with grave abuse of discretion can the grant of the extraordinary remedy of *certiorari* be justified.[33]

Such a rule applies especially when, as in this case, the petition is completely lacking in merit.

Moving on to the substantive issues raised, the Court finds without merit petitioner's claim that respondents' quieting of title case constitutes a prohibited attack on his predecessor Bernardo Tumaliuan's unnumbered OCT as well as the proceedings in LRC Case No. 6544. It is true that "the validity of a certificate of title cannot be assailed in an action for quieting of title; an action for annulment of title is the more appropriate remedy to seek the cancellation of a certificate of title."[34] Indeed, it is settled that a certificate of title is not subject to collateral attack. However, while respondents' action is denominated as one for quieting of title, it is in reality an action to annul and cancel Bernardo Tumaliuan's unnumbered OCT. The allegations

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[32] *Marcos-Araneta v. Court of Appeals*, *supra* note 30 at 56.

[33] *Biñan Rural Bank v. Carlos*, G.R. No. 193919, June 15, 2015.

[34] *Leonero v. Spouses Barba and Marcos-Barba*, 623 Phil. 706, 710 (2009).

and prayer in their Amended Complaint make out a case for annulment and cancellation of title, and not merely quieting of title: they claim that their predecessor's OCT 213, which was issued on August 7, 1916, should prevail over Bernardo Tumaliuan's unnumbered OCT which was issued only on August 29, 1916; that petitioner and his co-defendants have knowledge of OCT 213 and their existing titles; that through fraud, false misrepresentations, and irregularities in the proceedings for reconstitution (LRC Case No. 6544), petitioner was able to secure a copy of his predecessor's supposed unnumbered OCT; and for these reasons, Bernardo Tumaliuan's unnumbered OCT should be cancelled. Besides, the case was denominated as one for "Quieting of Titles x x x; **Cancellation of Unnumbered OCT**/Damages."

It has been held that "[t]he underlying objectives or reliefs sought in both the quieting-of-title and the annulment-of-title cases are essentially the same — adjudication of the ownership of the disputed lot and nullification of one of the two certificates of title."[35] Nonetheless, petitioner should not have been so simplistic as to think that Civil Case No. 6975 is merely a quieting of title case. It is more appropriate to suppose that one of the effects of cancelling Bernardo Tumaliuan's unnumbered OCT would be to quiet title over Lot 421; in this sense, quieting of title is subsumed in the annulment of title case.

WHEREFORE, the Petition is **DENIED**. The August 10, 2011 Decision and January 5, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 115963 are **AFFIRMED**.

SO ORDERED.

Carpio[*] *(Chairperson), Brion,* and *Leonen, JJ.,* concur.

Mendoza, J., on official leave.

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[35] *Pilar Development Corporation v. Court of Appeals*, G.R. No. 155943, August 28 2013, 704 SCRA 43, 53, citing *Stilianopulos v. City of Legaspi*, 374 Phil. 879, 897 (1999).

[*] Per Special Order No. 2357 dated June 28, 2016.

SECOND DIVISION

[G.R. No. 205839. July 7, 2016]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **NARCISO L. KHO,** *respondent.*

[G.R. No. 205840. July 7, 2016]

MA. LORENA FLORES and ALEXANDER CRUZ, *petitioners, vs.* **NARCISO L. KHO,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; BANKS AND BANKING; NATURE OF BANKING BUSINESS.— The business of banking is imbued with public interest; it is an industry where the general public's trust and confidence in the system is of paramount importance. Consequently, banks are expectedly to exert the highest degree of, if not the ***utmost,*** diligence. They are obligated to treat their depositors' accounts with meticulous care, always keeping in mind the fiduciary nature of their relationship. Banks hold themselves out to the public as experts in determining the genuineness of checks and corresponding signatures thereon. Stemming from their primordial duty of diligence, one of a bank's prime duties is to ascertain the genuineness of the drawer's signature on check being encashed. This holds especially true for manager's checks.

2. ID.; ID.; WHERE THE BANK'S NEGLIGENCE IS THE PROXIMATE CAUSE OF THE LOSS BY FAILING TO RECOGNIZE A FORGED OR COUNTERFEIT MANAGER'S CHECK, IT SHOULD SUFFER THE RESULTING DAMAGE.— A manager's check is a bill of exchange drawn by a bank upon itself, and is accepted by its issuance. It is an order of the bank to pay, drawn upon itself, committing in effect its total resources, integrity, and honor behind its issuance. The check is signed by the manager (or some other authorized officer) for the bank. In this case the

signatories were Macarandan and Benitez. The genuine **check No. 07410** remained in Kho's possession the entire time and Land Bank admits that the check it cleared was a fake. When Land Bank's CCD forwarded the deposited check to its Araneta branch for inspection, its officers had every opportunity to recognize the forgery of their signatures or the falsity of the check. Whether by error or neglect, the bank failed to do so, which led to the withdrawal and eventual loss of the ₱25,000,000.00. This is the proximate cause of the loss. Land Bank breached its duty of diligence and assumed the risk of incurring a loss on account of a forged or counterfeit check. Hence, it should suffer the resulting damage.

3. ID.; ID.; ID.; CLIENT'S ACT OF FURNISHING ANOTHER PERSON WITH A PHOTOCOPY OF THE MANAGER'S CHECK AS WELL AS HIS FAILURE TO INFORM THE BANK THAT THE TRANSACTION DID NOT PUSH THROUGH CANNOT JUSTIFY THE BANK'S CONFIRMATION AND CLEARING OF A FAKE CHECK.— While his act of giving Medel a photocopy of the check may have allowed the latter to create a duplicate, this cannot possibly excuse Land Bank's failure to recognize that the check itself – *not just the signatures* – is a fake instrument. More importantly, Land Bank itself furnished Kho the photocopy without objecting to the latter's intention of giving it to Medel. Kho's failure to inform Land Bank that the deal did not push through as of January 2, 2006, *does not justify Land Bank's confirmation and clearing of a fake check bearing the forged signatures of its own officers.* Whether or not the deal pushed through, *the check remained in Kho's possession.* He was entitled to a reasonable expectation that the bank would not release any funds corresponding to the check.

APPEARANCES OF COUNSEL

Albert P. Revilles for petitioner LBP, Flores and Cruz
Feir Ramos and *Associates Law Office* for respondent *Kho.*

D E C I S I O N

BRION, *J.*:

These are consolidated petitions for review on *certiorari* assailing the Court of Appeals' (*CA*) August 30, 2012 decision and February 14, 2013 Resolution in **CA-G.R. CV No. 93881**.[1] The CA set aside the Regional Trial Court's (*RTC*) dismissal of **Civil Case No. Q-06-57154**[2] and remanded the case for further proceedings.

Antecedents

The respondent Narciso Kho is the sole proprietor of United Oil Petroleum, a business engaged in trading diesel fuel. Sometime in December 2006, he entered into a verbal agreement to purchase lubricants from Red Orange International Trading (*Red Orange*), represented by one Rudy Medel. Red Orange insisted that it would only accept a Land Bank manager's check as payment.

On December 28, 2005, Kho, accompanied by Rudy Medel, opened **Savings Account No. 0681-0681-80** at the Araneta Branch of petitioner Land Bank of the Philippines (*Land Bank*).[3] His initial **₱25,993,537.37** deposit[4] consisted of the following manager's checks:

1	UCPB Del Monte Branch Check No. 19107	PHP 15,000,000
2	E-PCI Banawe Branch Check No. 26200720	PHP 2,900,000
3	I.E. Bank Retiro Branch Check No. 1466	PHP 8,093,537.37

[1] Both penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr.

[2] RTC, Quezon City, Branch 81 through Presiding Judge Ma. Theresa L. De La Torre-Yadao; G.R. No. 205840, *rollo*, pp. 58-73.

[3] *Id.* at 68.

[4] *Id.* at 59, 68.

These checks were scheduled for clearance on January 2, 2006.

Kho also purchased Land Bank **Manager's Check No. 07410** leveraged by his newly opened savings account. Recem Macarandan, the Acting Operations Supervisor of the Araneta branch, and Leida Benitez, the Document Examiner, *prepared and signed* the check.[5]

The check was postdated to January 2, 2006, and scheduled for actual delivery on the same date after the three checks were expected to have been cleared. It was valued at ₱25,000,000.00 and made payable to Red Orange.[6]

Kho requested a photocopy of the manager's check to provide Red Orange with proof that he had available funds for the transaction. The branch manager, petitioner Ma. Lorena Flores, accommodated his request. Kho gave the photocopy of the check to Rudy Medel.[7]

On January 2, 2006, Kho returned to the bank and picked up check No. 07410. Accordingly, ₱25,000,000.00 was debited from his savings account.

Unfortunately, his deal with Red Orange did not push through.

On January 3, 2006, an employee of the Bank of the Philippine Islands (*BPI*) called Land Bank, Araneta Branch, to inform them that Red Orange had deposited check No. 07410 for payment. Flores confirmed with BPI that Land Bank had issued the check to Kho.[8]

On January 4, 2006, the Central Clearing Department (*CCD*) of the Land Bank Head Office faxed a copy of the deposited check to the Araneta branch for payment. The officers of the Araneta branch *examined the fax copy and thought that the*

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

[6] *Id.* at 42.

[7] *Id.* at 42, 68.

[8] *Id.* at 62.

details matched the check purchased by Kho. Thus, Land Bank **confirmed the deposited check**.[9]

On January 5, 2006, Flores informed Kho by phone that Check No. 07410 was cleared and paid by the BPI, Kamuning branch.[10]

Shocked, Kho informed Flores that he never negotiated the check because the deal did not materialize. More importantly, *the actual check was still in his possession*.[11]

Kho immediately went to Land Bank with the **check No. 07410.** They discovered that what was deposited and encashed with BPI was a spurious manager's check.[12] Kho demanded the cancellation of his manager's check and the release of the remaining money in his account (then ₱995,207.27).[13] However, Flores refused his request because she had no authority to do so at the time.

Kho returned to the Land Bank, Araneta branch on January 12, 2006, with the same demands. He was received by petitioner Alexander Cruz who was on his second day as the Officer in Charge (*OIC*) of the Araneta branch.[14] Cruz informed him that there was a standing freeze order on his account because of the (then) ongoing investigation on the fraudulent withdrawal of the manager's check.[15]

On January 16, 2006, Kho sent Land Bank a final demand letter for the return of his ₱25,000,000.00 and the release of the ₱995,207.27 from his account but the bank did not comply.

Hence, on January 23, 2006, Kho filed a *Complaint for Specific Performance and Damages* against Land Bank, represented by

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[9] *Id.* at 62, 63.

[10] *Id.* at 69.

[11] *Id.* at 49, 69.

[12] *Id.*

[13] *Id.* at 43, 52, and 60.

[14] *Id.* at 64.

[15] *Id.*

its Araneta Avenue Branch Manager Flores and its OIC Cruz. He also impleaded Flores and Cruz in their personal capacities. The complaint was docketed as **Civil Case No. Q-06-57154**.

Kho asserted that the manager's **check No. 07410** was still in his possession and that he had no obligation to inform Land Bank whether or not he had already negotiated the check.[16]

On the other hand, Land Bank argued that Kho was negligent because he handed Medel a photocopy of the manager's check and that this was the proximate cause of his loss.[17]

On April 30, 2009, the RTC dismissed the complaint.[18]

Citing *Associated Bank v. Court of Appeals*, the RTC reasoned that the failure of the purchaser/drawer to exercise ordinary care that substantially contributed to the making of the forged check precludes him from asserting the forgery.[19] It held that (1) Kho's act of giving Medel a photocopy of the check and (2) his failure to inform the bank that the transaction with Red Orange did not push through were the proximate causes of his loss.[20]

The RTC also found that Flores and Cruz acted in good faith in performing their duties as officers of Land Bank when they refused to cancel the manager's check and disallowed Kho from withdrawing from his account.[21]

Kho appealed to the CA where the case was docketed as **CA-G.R. CV No. 93881.**

On August 30, 2012, the CA set aside the RTC's decision and remanded the case for further proceedings.

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[16] *Id.* at 69.

[17] *Id.*

[18] *Id.* at 58.

[19] *Id.* at 50, 70.

[20] *Id.* at 51, 71-72.

[21] *Id.* at 72.

The CA pointed out that Land Bank was conducting an investigation to determine whether there was a fraudulent negotiation of the manager's check No. 07410. It held that the outcome of the investigation — which was not yet available during the trial — is crucial to the resolution of the case. It noted that the RTC's ruling on Kho's negligence in dealing with Medel preempted the outcome of Land Bank's investigation.[22] Thus, it remanded the case to the RTC with the directive to consider the outcome of the investigation.

Dissatisfied, Land Bank, Flores, and Cruz, filed separately petitions for review on *certiorari* before this Court.

The Arguments

Land Bank asserts that neither party denied the spurious nature of the manager's check that was deposited with BPI. Therefore, the conclusion of its investigation as to the fraudulent negotiation of **check No. 07410** is immaterial to the resolution of the case.[23]

Land Bank adopts the RTC's conclusion that Kho is precluded from asserting the forgery of **check No. 07410** because his negligence substantially contributed to his loss.[24]

The bank highlights the following instances of Kho's negligence:

(1) Kho transacted with Rudy Medel, a person he barely knew, without verifying Medel's actual relationship with Red Orange. In fact, Kho even mistook him as "Rudy Rodel" in his complaint;

(2) Kho accorded Medel an unusual degree of trust. He brought Medel with him to the bank and carelessly gave the latter a photocopy of the manager's check; and

(3) When he picked up **check No. 07410** on January 2, 2006, Kho did not even bother to inform Land Bank

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[22] *Id.* at 56.

[23] *Rollo*, G.R. No. 205839, p. 37.

[24] *Id.* at 38.

> that his transaction with Red Orange did not push through. He could have prevented or detected the duplication of the check if he had simply notified the bank.[25]

Flores and Cruz maintain that they did not incur any personal liability to Kho because they were only performing their official duties in good faith. They insist that their alleged wrongdoing, if there was any, were corporate acts performed within the scope of their official authority; therefore, only Land Bank should be made liable for the consequences.[26]

For his part, Kho adopts the CA's arguments and reasoning in **CA-G.R. CV No. 93881**.[27]

Our Ruling

At the outset, we agree with Land Bank's contention that the result of its investigation is not indispensable to resolving this case. After all, it was not conducted by an independent party but by a party-litigant. We cannot expect the report to yield a completely impartial result. At best, the investigation report will be of doubtful probative value.

More importantly, all the facts necessary to decide the case are already available. Although they have reached different legal conclusions, both the RTC and the CA agree that:

- On December 28, 2005, Kho opened an account with Land Bank in order to leverage a business deal with Red Orange;
- He purchased Land Bank Manager's check No. 07410 worth ₱25,000,000.00 payable to Red Orange and dated January 2, 2006;
- He also gave Rudy Medel a photocopy of the check that the bank had given him;

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[25] *Id.* at 39.

[26] *Rollo*, G.R. No. 205840, p. 32.

[27] *Rollo*, G.R. No. 205839, p. 166; *id.* at 110.

- After his visit to the Bank, the deal with Medel and Red Orange did not push through;
- He picked up check No. 07410 from the bank on January 2, 2006, without informing the bank that the deal did not materialize;
- Afterwards, Red Orange presented a spurious copy of check No. 07410 to BPI, Kamuning for payment;
- Land Bank cleared the check;
- However, Kho never negotiated the actual check. It was in his possession the whole time.

This case can already be resolved based on these undisputed facts. Therefore, the CA erred when it remanded the case for further proceedings.

That said, we cannot agree that the proximate causes of the loss were Kho's act of giving Medel a photocopy of check No. 07410 and his failure to inform Land Bank that his deal with Red Orange did not push through.

Proximate cause — which is determined by a mixed consideration of logic, common sense, policy, and precedent — is "*that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred*."[28]

We cannot understand how both the RTC and the CA overlooked the fact that Land Bank's officers cleared the counterfeit check. We stress that the signatories of the genuine **check No. 07410** *were Land Bank's officers themselves*.

The business of banking is imbued with public interest; it is an industry where the general public's trust and confidence in

[28] *Bank of the Philippine Islands v. Court of Appeals*, 383 Phil. 538, 556 (2000); *Philippine Bank of Commerce v. Court of Appeals*, 336 Phil. 667, 679 (1997).

the system is of paramount importance.[29] Consequently, banks are expected to exert the highest degree of, if not the ***utmost***, diligence. They are obligated to treat their depositors' accounts with meticulous care, always keeping in mind the fiduciary nature of their relationship.[30]

Banks hold themselves out to the public as experts in determining the genuineness of checks and corresponding signatures thereon.[31] Stemming from their primordial duty of diligence, one of a bank's prime duties is to ascertain the genuineness of the drawer's signature on check being encashed.[32] This holds especially true for manager's checks.

A manager's check is a bill of exchange drawn by a bank upon itself, and is accepted by its issuance. It is an order of the bank to pay, drawn upon itself, committing in effect its total resources, integrity, and honor behind its issuance. The check is signed by the manager (or some other authorized officer) for the bank. In this case, the signatories were Macarandan and Benitez.

The genuine **check No. 07410** remained in Kho's possession the entire time and Land Bank admits that the check it cleared was a fake. When Land Bank's CCD forwarded the deposited check to its Araneta branch for inspection, its officers had every opportunity to recognize the forgery of their signatures or the falsity of the check. Whether by error or neglect, the bank failed to do so, which led to the withdrawal and eventual loss of the ₱25,000,000.00.

This is the proximate cause of the loss. Land Bank breached its duty of diligence and assumed the risk of incurring a loss

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[29] *Bank of the Philippine Islands v. Court of Appeals*, *supra* note 28, at 554; *Gempesaw v. Court of Appeals*, G.R. No. 92244, February 9, 1993, 218 SCRA 682, 697.

[30] *Simex International v. Court of Appeals*, 262 Phil. 387, 396 (1990).

[31] *Banco de Oro Savings and Mortgage Bank v. Equitable Banking Group*, 241 Phil. 187, 200 (1988).

[32] *Philippine National Bank v. Quimpo*, 242 Phil. 324, 328 (1988).

on account of a forged or counterfeit check. Hence, it should suffer the resulting damage.

We cannot agree with the Land Bank and the RTC's positions that Kho is precluded from invoking the forgery. A drawer or a depositor of the bank is precluded from asserting the forgery if the drawee bank can prove his failure to exercise ordinary care and if this negligence substantially contributed to the forgery or the perpetration of the fraud.

In *Gempesaw v. Court of Appeals*,[33] Natividad Gempesaw, a businesswoman, completely placed her trust in her bookkeeper. Gempesaw allowed her bookkeeper to prepare the checks payable to her suppliers. She signed the checks without verifying their amounts and their corresponding invoices. Despite receiving her banks statements, Gempesaw never verified the correctness of the returned checks nor confirmed if the payees actually received payment. This went on for over two years, allowing her bookkeeper to forge the indorsements of over 82 checks.

Gempesaw failed to examine her records with reasonable diligence before signing the checks and after receiving her bank statements. Her gross negligence allowed her bookkeeper to benefit from the subsequent forgeries for over two years.

Gempesaw's negligence precluded her from asserting the forgery. Nevertheless, we adjudged the drawee Bank liable to share evenly in her loss for its failure to exercise utmost diligence, which amounted to a breach of its contractual obligations to the depositor.[34]

In *Associated Bank v. Court of Appeals*,[35] the province of Tarlac (*the depositor*) released 30 checks payable to the order of a government hospital to a retired administrative officer/ cashier of the hospital. The retired officer forged the hospital's indorsement and deposited the checks into his personal account.

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[33] *Supra* note 29.

[34] *Id.* at 697.

[35] G.R. No. 107382, January 31, 1996, 252 SCRA 620.

This took place for over three years resulting in the accumulated loss of ₱203,300.00. We found the province of Tarlac grossly negligent, to the point of substantially contributing to its loss.[36]

Nevertheless, we apportioned the loss evenly between the province of Tarlac and the drawee bank because of the bank's failure to pay according to the terms of the check. It violated its duty to charge the customer's account only for properly payable items.[37]

Kho's negligence does not even come close to approximating those of Gempesaw or of the province of Tarlac. While his act of giving Medel a photocopy of the check may have allowed the latter to create a duplicate, this cannot possibly excuse Land Bank's failure to recognize that the check itself — *not just the signatures* — is a fake instrument. More importantly, Land Bank itself furnished Kho the photocopy without objecting to the latter's intention of giving it to Medel.

Kho's failure to inform Land Bank that the deal did not push through as of January 2, 2006, *does not justify Land Bank's confirmation and clearing of a fake check bearing the forged signatures of its own officers*. Whether or not the deal pushed through, *the check remained in Kho's possession*. He was entitled to a reasonable expectation that the bank would not release any funds corresponding to the check.

Lastly, we agree with the RTC's finding that neither Flores nor Cruz is liable to Kho in their private capacities. Their refusal to honor Kho's demands was made in good faith pursuant to the directives of the Land Bank's management.

As a pillar of economic development, the banking industry is impressed with public interest. The general public relies on banks' sworn duty to serve with utmost diligence. Public trust and confidence in banks is critical to a healthy, stable, and well-functioning economy. Let this serve as a reminder for banks to

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[36] *Id.* at 634.

[37] *Id.* at 631.

always act with the highest degree of diligence and the most meticulous attention to detail.

WHEREFORE, we **PARTLY GRANT** the petitions. The Court of Appeals' August 30, 2012 decision and February 14, 2013 resolution in **CA-G.R. CV No. 93881** are **SET ASIDE**. The Regional Trial Court's April 30, 2009 decision in **Civil Case No. Q-06-57154** is **REVERSED**.

Petitioner Land Bank of the Philippines is **ORDERED**:

(1) to **PAY** Narciso Kho the sum of TWENTY FIVE MILLION PESOS (₱25,000,000.00), plus interest at the legal rate reckoned from the filing of the complaint; and

(2) to **ALLOW** Narciso Kho to withdraw his remaining funds from **Savings Account No. 0681-0681-80**.

SO ORDERED.

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

Mendoza, J., on official leave.

SECOND DIVISION

[G.R. Nos. 205963-64. July 7, 2016]

AMANDO A. INOCENTES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, HON. ROLAND B. JURADO, in his capacity as Chairperson, Sandiganbayan, Fifth Division, HON. CONCHITA CARPIO-MORALES, in her capacity as OMBUDSMAN, as Complainant; AND HON. FRANCIS H. JARDELEZA, OFFICE OF THE SOLICITOR GENERAL (OSG), in its capacity as counsel for the People,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019 AS AMENDED BY R.A. 8249); A BRANCH MANAGER OF GSIS FIELD OFFICE WITH SALARY GRADE 26 FALLS WITHIN THE JURISDICTION OF SANDIGANBAYAN.—** On the issue on jurisdiction, it is of no moment that Inocentes does not occupy a position with a salary grade of 27 since he was the branch manager of the GSIS' field office in Tarlac City, a government-owned or -controlled corporation, at the time of the commission of the offense, which position falls within the coverage of the Sandiganbayan's jurisdiction. The applicable law provides that violations of R.A. No. 3019 committed by presidents, directors or trustees, or *managers of government-owned or -controlled corporations*, and state universities shall be within the exclusive original jurisdiction of the Sandiganbayan. We have clarified the provision of law defining the jurisdiction of the Sandiganbayan by explaining that the Sandiganbayan maintains its jurisdiction over those officials specifically enumerated in (a) to (g) of Section 4 (1) of P.D. No. 1606, as amended, regardless of their salary grades. Simply put, those that are classified as Salary Grade 26 and below may still fall within the jurisdiction of the Sandiganbayan, provided they hold the positions enumerated by the law. In this category, it is the position held, not the salary grade, which determines the jurisdiction of the Sandiganbayan.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; A REDETERMINATION OF JUDICIAL FINDING OF PROBABLE CAUSE IS FUTILE WHEN THE ACCUSED VOLUNTARILY SURRENDERS TO THE JURISDICTION OF THE COURT.—** We are aware, however, that Inocentes availed of this remedy after he had posted bail before the Sandiganbayan which, in our jurisdiction, is tantamount to voluntary surrender. Simply put, questioning the findings of probable cause by the Sandiganbayan at this point would be pointless as it has already acquired jurisdiction over Inocentes. It is well-settled that jurisdiction over the person of the accused is acquired upon (1) his arrest or apprehension, with or without a warrant, or (2) his voluntary appearance or submission to the jurisdiction of the court. For this reason, in

Cojuangco, Jr. v. Sandiganbayan we held that even if it is conceded that the warrant issued was void (for nonexistence of probable cause), the accused waived all his rights to object by appearing and giving a bond, *viz*.: x x x By posting bail, herein petitioner cannot claim exemption from the effect of being subject to the jurisdiction of respondent court. **While petitioner has exerted efforts to continue disputing the validity of the issuance of the warrant of arrest despite his posting bail, his claim has been negated when he himself invoked the jurisdiction of respondent court through the filing of various motions that sought other affirmative reliefs.** Therefore, at this point, we no longer find it necessary to dwell on whether there was grave abuse on the part of the Sandiganbayan in finding the existence of probable cause to issue a warrant of arrest. Had Inocentes brought this matter before he posted bail or without voluntarily surrendering himself, the outcome could have been different. But, for now, whether the findings of probable cause was tainted with grave abuse of discretion — thereby making the warrant of arrest void — does not matter anymore as even without the warrant the Sandiganbayan still acquired jurisdiction over the person of Inocentes.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; DELAY OF ALMOST SEVEN (7) YEARS BEFORE THE INFORMATIONS WERE FILED WITH THE SANDIGANBAYAN IS A CLEAR VIOLATION OF PETITIONER'S RIGHT TO SPEEDY DISPOSITION OF HIS CASES.— According to the Sandiganbayan, the complaint in the case at bar was filed sometime in 2004. After the preliminary investigation, on September 15, 2005, the Office of the Ombudsman issued a resolution finding probable cause to charge Inocentes. Following the denial of his motion for reconsideration on November 14, 2005, the prosecution filed the informations with the RTC of Tarlac City. However, on **March 14, 2006,** the Office of the Ombudsman ordered the withdrawal of the informations filed before the RTC. From this point, it took almost **six (6) years** (or only on **May 2, 2012**) before the informations were filed before the Sandiganbayan. To our mind, even assuming that transfers of records from one court to another oftentimes entails significant delays, the period of six (6) years is too long solely for the transfer of records

> from the RTC in Tarlac City to the Sandiganbayan. This is already an inordinate delay in resolving a criminal complaint that the constitutionally guaranteed right of the accused to due process and to the speedy disposition of cases. Thus, the dismissal of the criminal case is in order. x x x [T]he delay of at least seven (7) years before the informations were filed skews the fairness which the right to speedy disposition of cases seeks to maintain. Undoubtedly, the delay in the resolution of this case prejudiced Inocentes since the defense witnesses he would present would be unable to recall accurately the events of the distant past.

APPEARANCES OF COUNSEL

Velasco Madriaga Law Offices for petitioner.

D E C I S I O N

BRION, *J.*:

We resolve the Petition[1] filed under Rule 65 of the Rules of Court by petitioner Amando A. Inocentes (*Inocentes*), assailing the Resolutions dated February 8, 2013[2] and October 24, 2012[3] of the Sandiganbayan in Criminal Case Nos. SB-12-CRM-0127-0128 entitled *People of the Philippines v. Amando A. Inocentes, et al*.

THE FACTUAL ANTECEDENTS

Inocentes, together with four (4) others, was charged with violating Section 3 (e) or Republic Act (R.A.) No. 3019,[4] as amended. The informations read:

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[1] For *Certiorari*, Prohibition, and Mandamus with Prayer for Temporary Restraining Order and Preliminary Injunction. *Rollo*, pp. 3-23.

[2] *Id.* at 26-34; penned by Associate Justice Amparo M. Cabotaje-Tang, and concurred in by Associate Justice Roland B. Jurado and Associate Justice Alexander G. Gesmundo.

[3] *Id.* at 36-57.

[4] Otherwise known as the Anti-Graft and Corrupt Practices Act.

That on or about October 2001 or immediately prior or subsequent thereto, in Tarlac City, Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Amando A. Inocentes, Celestino Cabalitasan, Ma. Victoria Leonardo and Jerry Balagtas, all public officers, being the Branch Manager, Division Chief III, Property Appraiser III, and Senior General Insurance Specialist, respectively, of the Government Service Insurance System, Tarlac City Field Office, committing the crime herein charged in relation to and in taking advantage of their official functions, conspiring and confederating with Jose De Guzman, through manifest partiality, evident bad faith or gross inexcusable negligence; did then and there willfully, unlawfully and criminally [gave] undue preference, benefit or advantage to accused Jose De Guzman by processing and approving the housing loans of Four Hundred Ninety-One (491) borrowers of [Jose De Guzman]'s housing project under the GSIS *Bahay Ko Program*, with a total amount of loans amounting to Two Hundred Forty-One Million Fifty-Three Thousand Six Hundred Pesos (Php241,053,600.00), knowing fully well that the said borrowers/ grantees were not qualified and were not under the territorial jurisdiction of the Tarlac City Field Office, thereby giving said borrowers/grantees unwarranted benefit and causing damage and prejudice to the government and to public interest in the aforesaid amount.

CONTRARY TO LAW.[5]

and

[. . .] processing, approving and granting loans under the GSIS Bahay Ko Program to Fifty-Three (53) borrowers of [Jose De Guzman]'s land development project known as Teresa Homes amounting to Fifty-Two Million and One Hundred Seven Thousand Pesos (Php52,107,000.00), despite the knowledge of the fact that the lots covered were intended for commercial purposes and by causing the over-appraisal in the amount of Thirty-Three Million Two Hundred Forty Thousand Eight Hundred Forty-Eight Pesos and Thirty-Six Centavos (Php33,242,848.36) of the land and buildings offered as collaterals, thus causing undue injury to the Government.

CONTRARY TO LAW.[6]

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[5] *Rollo*, pp. 60-62.

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

On May 10, 2012, the Sandiganbayan issued a minute resolution finding probable cause and ordered the issuance of a warrant of arrest against all the accused.[7] To avoid incarceration, *Inocentes immediately posted bail*.

On July 10, 2012, Inocentes filed an omnibus motion (1) for judicial determination of probable cause; (2) to quash the informations filed against him; and (3) to dismiss the case for violating his right to the speedy disposition of this case (*omnibus motion*).[8] In this motion, he argued as follows:

First, the informations filed against him were fatally defective because they did not allege the specific acts done by him which would have constituted the offense. All that was alleged in the informations was that he conspired and cooperated in the alleged crime.

Second, there is no evidence showing how he cooperated or conspired in the commission of the alleged offense. The findings of the investigating unit revealed that the connivance was perpetuated by the marketing agent and the borrowers themselves by misrepresenting their qualifications. The GSIS Internal Audit Service Group Report even said that it was the marketing agent who had the opportunity to tamper and falsify the documents submitted before Inocentes' office.

Third, the informations filed against him should be quashed because the Sandiganbayan does not have jurisdiction over the case. At the time of the commission of the alleged offense, Inocentes held a position with a Salary Grade of 26. He likewise claims that he cannot fall under the enumeration of managers of GOCCs because his position as department manager cannot be placed in the same category as the president, general manager, and trustee of the GSIS.

Fourth, Innocentes insisted that the case against him must be dismissed because his right to the speedy disposition of this

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[7] *Id.* at 59.

[8] *Id.* at 68-81.

case had been violated since seven (7) years had lapsed from the time of the filing of the initial complaint up to the time the information was filed with the Sandiganbayan.

After the Office of the Special Prosecutor (*OSP*) filed its opposition and Inocentes filed his reply, the Sandiganbayan issued the first assailed resolution. The Sandiganbayan maintained its jurisdiction over the case because Section 4 of P.D. 1606, as amended by R.A. No. 8249,[9] *specifically* includes managers of GOCCs — whose position may not fall under Salary Grade 27 or higher — who violate R.A. No. 3019. It also ruled that the informations in this case sufficiently allege all the essential elements required to violate Section 3(e) of R.A. No. 3019.

Further, it said that it already determined the existence of probable cause when it issued the warrant of arrest in its minute resolution dated May 10, 2012.

Lastly, it held that the delay in this case was excusable considering that the records of this case were transferred from the Regional Trial Court in Tarlac City, where the case was first filed.

In his motion for reconsideration, Inocentes reiterated the same arguments he raised in his omnibus motion. In addition, he asserted that the present case against him should be dismissed because the Office of the Ombudsman dismissed the estafa case against him for the same transactions. He also filed a supplemental motion attaching a copy of the affidavit of a certain Monico Imperial to show (1) that there existed political persecutions within the GSIS against the critics of then President and General Manager Winston F. Garcia, and (2) that the GSIS branch manager relies on the recommendation of his subordinates in approving or disapproving real estate loan applications.

The Sandiganbayan remained unconvinced. On the contents of the affidavit, it agreed with the prosecution that these are matters of defense that must stand scrutiny in a full-blown trial.

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[9] An Act Further Defining the Jurisdiction of the Sandiganbayan.

With respect to the dismissal of the estafa case against him, the Sandiganbayan said that the dismissal of that case does not necessarily result in the dismissal of the present case because the same act may give rise to two (2) or more separate and distinct offenses.

To contest the denial of his motion for reconsideration, Inocentes filed the present petition asserting, among others, that the quantum of evidence required to establish probable cause for purposes of holding a person for trial and/or for the issuance of a warrant of arrest was not met in this case. He argued that absent any allegation of his specific acts or evidence linking him to the anomalous transactions, probable cause can hardly exist because it would be imprudent to insinuate that Inocentes knew of the criminal design when all he did was only to approve the housing loan applications. Obviously relying on his subordinates, Inocentes claimed that he could not have conspired with them when he had no personal knowledge of any defect.

On April 10, 2013, we required the respondents to comment on Inocentes' petition, and deferred action on the issuance of a temporary restraining order and/or writ of preliminary injunction.

In its comment, the OSP counters that what Inocentes asks at this point is for this Court to examine and weigh all the pieces of evidence and thereafter absolve him of all charges without undergoing trial.

The OSP said that the Office of the Ombudsman did not act arbitrarily in conducting the preliminary investigation and finding probable cause. Moreover, the Sandiganbayan likewise found probable cause after considering all the pleadings and documents submitted before it and saw no sound reason to set aside its finding.

On the other hand, the Office of the Solicitor General filed a manifestation saying that it will no longer submit its comment as the OSP, pursuant to its expanded mandate under R.A.

No. 6770,[10] shall represent the People before this Court and the Sandiganbayan.

OUR RULING

We find the present petition meritorious.

Preliminary Considerations

The Constitution, under Section 1, Article VIII, empowers the courts to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[11] This is an overriding authority that cuts across all branches and instrumentalities of government and is implemented through the petition for *certiorari* that Rule 65 of the Rules of Court provides.[12]

Inocentes, through this remedy, comes before this Court asserting that there was grave abuse on the part of the Sandiganbayan when it exercised its discretion in denying his omnibus motion. This extraordinary writ *solely* addresses lower court actions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. Grave abuse of discretion is a circumstance beyond the legal error committed by a decision-making agency or entity in the exercise of its jurisdiction; this circumstance affects even the authority to render judgment.[13]

Under these terms, if the Sandiganbayan merely *legally erred* while acting within the confines of its jurisdiction, then its ruling, even if erroneous, is not the proper subject of a petition for *certiorari*. If, on the other hand, the Sandiganbayan ruling was *attended by grave abuse of discretion amounting to lack or*

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[10] Otherwise known as the Ombudsman Act of 1989.

[11] *Reyes v. Belisario*, G.R. No. 154652, August 14, 2009, 596 SCRA 31, 45.

[12] *Ibid.*

[13] *Id.* at 46-47.

excess of jurisdiction, then this ruling is fatally defective on jurisdictional ground and should be declared null and void.[14]

In the present case, the Sandiganbayan denied Inocentes' omnibus motion (1) to judicially determine the existence of probable cause; (2) quash the information that was filed against him; and/or (3) dismiss the case against him for violation of his right to speedy trial. In determining whether the Sandiganbayan committed grave abuse in the exercise of its discretion, we shall review the Sandiganbayan's judgment denying the omnibus motion in the light of each cited remedy and the grounds presented by Inocentes to support them.

The Sandiganbayan hardly committed any grave abuse of discretion in denying the motion to quash the information.

Inocentes is unyielding in his position that the informations filed against him should be quashed based on the following grounds: (1) that all the information alleged is that Inocentes conspired and confederated with his co-accused without specifying how his specific acts contributed to the alleged crime; and (2) that the Sandiganbayan has no jurisdiction over Inocentes because he was occupying a position with a salary grade less than 27.

On the contention that the informations did not detail Inocentes' individual participation in the conspiracy, we have underscored before the fact that under our laws conspiracy should be understood on two levels, *i.e.*, a mode of committing a crime or a crime in itself.[15]

In *Estrada v. Sandiganbayan*,[16] we explained that when conspiracy is charged as a crime, the act of conspiring and all the elements must be set forth in the information, but when it is not and conspiracy is considered as a mode of committing

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[14] *People v. Romualdez*, 581 Phil. 462, 479 (2008).

[15] *Lazarte v. Sandiganbayan*, 600 Phil. 475, 493 (2009).

[16] 427 Phil. 820 (2002). See also *Enrile v. People*, G.R. No. 213455, August 11, 2015, sc.judiciary.gov.ph.

the crime, there is less necessity of reciting its particularities in the information because conspiracy is not the gravamen of the offense, to *wit*:

To reiterate, when conspiracy is charged as a crime, the act of conspiring and all the elements of said crime must be set forth in the complaint or information.

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The requirements on sufficiency of allegations are different when conspiracy is not charged as a crime in itself but only as the mode of committing the crime as in the case at bar. There is *less necessity* of reciting its particularities in the information *because conspiracy is not the gravamen of the offense charged*. The conspiracy is significant only because it changes the criminal liability of all the accused in the conspiracy and makes them answerable as co-principals regardless of the degree of their participation in the crime. The liabilities of the conspirators is collective and each participant will be equally responsible for the acts of others, for the act of one is the act of all. In *People v. Quitlong*, we ruled how conspiracy as the mode of committing the offense should be alleged in the information, *viz*.:

> *A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts.*
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Again, following the stream of our own jurisprudence, it is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word, "conspire,"

or its derivatives or synonyms, such as confederate, connive, collude, etc.; or (2) by allegations basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[17] [italics supplied]

With these guidelines in mind, Inocentes' challenge with respect to the informations filed against him necessarily fails as he could gather that he is one of those GSIS officials who conspired in approving the anomalous transactions. Accordingly, the informations filed against Inocentes in this case are valid because they adequately provide the material allegations to apprise him of the nature and cause of the charge.

On the issue on jurisdiction, it is of no moment that Inocentes does not occupy a position with a salary grade of 27 since he was the branch manager of the GSIS' field office in Tarlac City, a government-owned or -controlled corporation, at the time of the commission of the offense, which position falls within the coverage of the Sandiganbayan's jurisdiction.

The applicable law provides that violations of R.A. No. 3019 committed by presidents, directors or trustees, or *managers of government-owned or -controlled corporations*, and state universities shall be within the exclusive original jurisdiction of the Sandiganbayan.[18] We have clarified the provision of law defining the jurisdiction of the Sandiganbayan by explaining that the Sandiganbayan maintains its jurisdiction over those officials specifically enumerated in (a) to (g) of Section 4(1) of P.D. No. 1606, as amended, regardless of their salary grades.[19] Simply put, those that are classified as Salary Grade 26 and below may still fall within the jurisdiction of the Sandiganbayan, provided they hold the positions enumerated by the law.[20] In

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[17] *Id.* at 859-862.

[18] P.D. 1606, as amended by R.A. 8249, Section 4 (1) (g).

[19] *Inding v. Sandiganbayan*, 478 Phil. 506, 507 (2004).

[20] *People v. Sandiganbayan*, 613 Phil. 407, 409 (2009).

this category, it is the position held, not the salary grade, which determines the jurisdiction of the Sandiganbayan.[21]

Furthermore, as the Sandiganbayan correctly held, even low-level management positions fall under the jurisdiction of the Sandiganbayan. We settled this point in *Lazarte v. Sandiganbayan*[22] and *Geduspan v. People*.[23]

Based on the foregoing, we find that the Sandiganbayan was correct in denying Inocentes' motion to quash; hence, there was no grave abuse in the exercise of its discretion regarding this matter.

A redetermination of a judicial finding of probable cause is futile when the accused voluntarily surrenders to the jurisdiction of the court.

In the present case, the Office of the Ombudsman and the Sandiganbayan separately found that probable cause exists to indict and issue a warrant of arrest against Inocentes. However, what Inocentes brings before this Court right now is only the finding of the Sandiganbayan of probable cause for the issuance of a warrant of arrest.

Under our jurisdiction, any person may avail of this remedy since it is well-established in jurisprudence that the court may, in the protection of one's fundamental rights, dismiss the case if, upon a personal assessment of evidence, it finds that the evidence does not establish probable cause.[24]

In *People v. Castillo*,[25] we discussed the two kinds of determination of probable cause, thus:

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[21] *Alzaga v. Sandiganbayan*, 536 Phil. 726, 731 (2006).

[22] *Supra*, note 15.

[23] G.R. No. 158187, February 11, 2005, 451 SCRA 187, 192-193.

[24] *Mendoza v. People*, G.R. No. 197293, April 21, 2014, sc.judiciary.gov.ph.

[25] 607 Phil. 754, 755 (2009).

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.

Corollary to the principle that a judge cannot be compelled to issue a warrant of arrest if he or she deems that there is no probable cause for doing so, the judge in turn should not override the public prosecutors' determination of probable cause to hold an accused for trial on the ground that the evidence presented to substantiate the issuance of an arrest warrant was insufficient. It must be stressed that in our criminal justice system, the public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court, and that courts **must respect** the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.

Thus, absent a finding that an information is invalid on its face or that the prosecutor committed manifest error or grave abuse of discretion, a judge's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether the arrest warrants should be issued against the accused. [emphasis supplied; citations omitted]

Under this ruling, we made it clear that the judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, he makes a determination of probable cause independently of the prosecutor's finding.[26] Despite the fact that courts should avoid reviewing an executive determination of probable cause, we are not completely powerless to review this matter under our expanded judicial power under the Constitution.

We are aware, however, that Inocentes availed of this remedy after he had posted bail before the Sandiganbayan which, in our jurisdiction, is tantamount to voluntary surrender.[27] Simply put, questioning the findings of probable cause by the Sandiganbayan at this point would be pointless as it has already acquired jurisdiction over Inocentes.

It is well-settled that jurisdiction over the person of the accused is acquired upon (1) his arrest or apprehension, with or without a warrant, or (2) his voluntary appearance or submission to the jurisdiction of the court. For this reason, in *Cojuangco, Jr. v. Sandiganbayan*[28] we held that even if it is conceded that the warrant issued was void (for nonexistence of probable cause), the accused waived all his rights to object by appearing and giving a bond, *viz.*:

> On this score, the rule is well-settled that the giving or posting of bail by the accused is tantamount to submission of his person to the jurisdiction of the court. [. . .]
>
> By posting bail, herein petitioner cannot claim exemption from the effect of being subject to the jurisdiction of respondent court. **While petitioner has exerted efforts to continue disputing the validity of the issuance of the warrant of arrest despite his posting bail, his claim has been negated when he himself invoked the jurisdiction of respondent court through the filing of various**

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[26] *Supra* note 24.

[27] See *People v. Go*, G.R. No. 168539, March 25, 2014, sc.judiciary.gov.ph.

[28] G.R. No. 134307, December 21, 1998, 300 SCRA 367.

motions that sought other affirmative reliefs.[29] [omission and emphasis ours]

Therefore, at this point, we no longer find it necessary to dwell on whether there was grave abuse on the part of the Sandiganbayan in finding the existence of probable cause to issue a warrant of arrest. Had Inocentes brought this matter before he posted bail or without voluntarily surrendering himself, the outcome could have been different. But, for now, whether the findings of probable cause was tainted with grave abuse of discretion — thereby making the warrant of arrest void — does not matter anymore as even without the warrant the Sandiganbayan still acquired jurisdiction over the person of Inocentes.

The Sandiganbayan should have granted Inocentes' motion to dismiss for violation of his right to speedy disposition of cases; it took seven long years before the information was filed before it.

The Office of the Ombudsman, for its failure to resolve the criminal charges against Inocentes for seven (7) years, violated Inocentes' constitutional right to due process and to a speedy disposition of the case against him, as well as its own constitutional duty to act promptly on complaints filed before it.

A person's right to a speedy disposition of his case is guaranteed under Section 16, Article III of the Constitution:

> All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings,

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[29] *Id.* at 387.

either judicial or quasi-judicial.[30] In this accord, any party to a case may demand expeditious action of all officials who are tasked with the administration of justice.[31]

In *Tatad v. Sandiganbayan*,[32] we held that the long delay of close to three (3) years in the termination of the preliminary investigation conducted by the Tanodbayan constituted a violation not only of the constitutional right of the accused under the broad umbrella of the due process clause, but also of the constitutional guarantee to "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights, *viz*.:

We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years cannot be deemed reasonable or justifiable in the light of the circumstance obtaining in the case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and gruelling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act

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[30] *Roquero v. Chancellor of UP-Manila*, G.R. No. 181851, March 9, 2010, 614 SCRA 723; *Binay v. Sandiganbayan*, 374 Phil. 413, 446-447 (1999);

[31] *Ibid.*

[32] G.R. Nos. 72335-39, March 21, 1988, 159 SCRA 70.

No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and gruelling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.[33] [emphasis ours]

The Sandiganbayan insists that the delay in this case is justifiable because the informations were initially filed before the RTC in Tarlac City. However, after going over the records of the case, we find that the period of time in between the incidents that could have contributed to the delay were unreasonable, oppressive, and vexatious.

According to the Sandiganbayan, the complaint in the case at bar was filed sometime in 2004. After the preliminary investigation, on September 15, 2005, the Office of the Ombudsman issued a resolution finding probable cause to charge Inocentes. Following the denial of his motion for reconsideration on November 14, 2005, the prosecution filed the informations with the RTC of Tarlac City. However, on **March 14, 2006**, the Office of the Ombudsman ordered the withdrawal of the informations filed before the RTC. From this point, it took almost **six (6) years** (or only on **May 2, 2012**) before the informations were filed before the Sandiganbayan.

To our mind, even assuming that transfers of records from one court to another oftentimes entails significant delays, the period of six (6) years is too long solely for the transfer of records from the RTC in Tarlac City to the Sandiganbayan. This is already an inordinate delay in resolving a criminal complaint that the constitutionally guaranteed right of the accused to due process and to the speedy disposition of cases. Thus, the dismissal of the criminal case is in order.[34]

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

[34] *Anchangco, Jr. v. Ombudsman*, G.R. No. 122728, February 13, 1997, 268 SCRA 301, 302.

Moreover, the prosecution cannot attribute the delay to Inocentes for filing numerous motions because the intervals between these incidents are miniscule compared to the six-year transfer of records to the Sandiganbayan.

The prosecution likewise blames Inocentes for not seasonably invoking his right to a speedy disposition of his case. It claims that he has no right to complain about the delay when the delay is because he allegedly slept on his rights.

We find this argument unworthy of merit, in the same way we did in *Coscolluela v. Sandiganbayan*:

> Records show that they could not have urged the speedy resolution of their case because they were unaware that the investigation against them was still ongoing. They were only informed of the March 27, 2003 resolution and information against them only after the lapse of six (6) long years, or when they received a copy of the latter after its filing with the SB on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated. This serves as a plausible reason as to why petitioners never followed up on the case altogether. Instructive on this point is the Court's observation in *Duterte v. Sandiganbayan*, to wit:
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> > Petitioners in this case, however, could not have urged the speedy resolution of their case because they were completely unaware that the investigation against them was still ongoing. Peculiar to this case, we reiterate, is the fact that petitioners were merely asked to comment, and not file counter-affidavits which is the proper procedure to follow in a preliminary investigation. After giving their explanation and after four long years of being in the dark, petitioners, naturally, had reason to assume that the charges against them had already been dismissed.
> >
> > On the other hand, the Office of the Ombudsman failed to present any plausible, special or even novel reason which could justify the four-year delay in terminating its investigation. Its excuse for the delay — the many layers of review that the case had to undergo and the meticulous scrutiny it had to entail — has lost its novelty and is no longer appealing, as was the invocation in the Tatad case. The incident before us does not involve complicated factual and legal issues, specially (sic) in

view of the fact that the subject computerization contract had been mutually cancelled by the parties thereto even before the Anti-Graft League filed its complaint.

Being the respondents in the preliminary investigation **proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:**

A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.[35]

Plainly, the delay of at least seven (7) years before the informations were filed skews the fairness which the right to speedy disposition of cases seeks to maintain. Undoubtedly, the delay in the resolution of this case prejudiced Inocentes since the defense witnesses he would present would be unable to recall accurately the events of the distant past.

Considering the clear violation of Inocentes' right to the speedy disposition of his case, we find that the Ombudsman gravely abused its discretion in not acting on the case within a reasonable time after it had acquired jurisdiction over it.

WHEREFORE, premises considered, Inocentes' petition is **GRANTED**. The resolutions dated February 8, 2013 and October 24, 2012 of the Sandiganbayan in Criminal Case Nos. SB-12-CRM-0127-0128 are hereby **REVERSED** and **SET ASIDE**. For violating Inocentes' right to a speedy disposition of his case, the Sandiganbayan is hereby **ORDERED** to **DISMISS** the case against him.

SO ORDERED.

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

Mendoza, J., on official leave.

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[35] G.R. No. 191411, July 15, 2013, 701 SCRA 188, 197-199.

SECOND DIVISION

[G.R. No. 210878. July 7, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONALYN ABENES *y* PASCUA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DRUGS; ELEMENTS ESTABLISHED IN CASE AT BAR.— In the prosecution of illegal sale of drugs to prosper, the following elements must be proven: "(1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment for it." In the present case, these elements were satisfied by the prosecution's evidence. The prosecution witnesses positively identified appellant as the seller of the white crystalline substance which was found to be methamphetamine hydrochloride or *shabu*. Appellant sold the drug to SPO1 Badua, a police officer who acted as poseur-buyer for a sum of ₱1,000.00. The prosecution's witnesses likewise positively and categorically testified that the transaction or sale actually transpired. The subject *shabu* weighing 0.02 grams and the money amounting to ₱1,000.00 were also identified by the witnesses when presented in court.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS, NOT SUFFICIENTLY ESTABLISHED; FAILURE OF THE PROSECUTION TO SHOW THE INDENTITY OF THE DANGEROUS DRUGS SUBJECT MATTER OF ILLEGAL POSSESSION IS FATAL FOR IT HAS NOT PROVEN THE INDISPENSABLE ELEMENT OF *CORPUS DELICTI*.— [W]e are of the considered view, however, that the quantum of evidence needed to convict, that is proof beyond reasonable doubt, has not been adequately established by the prosecution in the charge of illegal possession of dangerous drug under Section 11, Article II of RA 9165 in Criminal Case No. 29607-R. x x x [T]here was no clear identification of the item allegedly seized from the possession of appellant after the sale. Of all the people who came into direct contact with the sachet of *shabu* purportedly seized from appellant, it was only PO1 Moyao who

could directly and possibly observe the uniqueness thereof in court. According to SPO1 Badua and SPO1 Lag-ey, it was PO1 Moyao who took initial custody of the seized plastic sachet when appellant was frisked at the time of arrest and who allegedly marked the same with initials. But for no apparent reason, PO1 Moyao was not even presented in court to identify the plastic sachet and more importantly to acknowledge the alleged marking thereon as her own. "In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. It is therefore of prime importance that in these cases, the identity of the dangerous drug be likewise established beyond reasonable doubt." With the material omission to indubitably show the identity of the dangerous drug, subject matter in the charge of illegal possession, we rule and so hold that the evidence for the prosecution casts serious doubt as to the guilt of the appellant for it has not proven the indispensable element of *corpus delicti*.

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

DEL CASTILLO, *J.*:

Assailed in this appeal is the August 22, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04923, which affirmed the February 14, 2011 Decision[2] of the Regional Trial Court (RTC), Branch 61, Baguio City, finding Jonalyn Abenes *y* Pascua (appellant) guilty beyond reasonable doubt of violation of Section 5 (illegal sale of dangerous drugs) and

[1] CA *rollo*, pp. 80-92; penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr.

[2] Records, pp. 155-159; penned by Judge Antonio C. Reyes.

Section 11 (illegal possession of dangerous drugs), Article II of Republic Act (RA) No. 9165 or The Comprehensive Dangerous Drugs Act of 2002.

The parties' respective version of the incident was summarized by the CA as follows:

Version of the Prosecution

On July 4, 2009, at around 5:00 in the afternoon, SPO1 Reynaldo Badua [SPO1 Badua] received a tip from a female informant that appellant was involved in the sale of *shabu*. An hour later, after the informant was able to contact appellant, SPO1 Badua, PO1 Albert Lag-ey [PO1 Lag-ey] and [PO1 Geliza Moyao] PO1 Moyao prepared a buy-bust operation. As arranged by the informant, she and SPO1 Badua, the designated poseur-buyer, was to meet with appellant in front of Leisure Lodge, Upper Magsaysay Avenue, Baguio City to buy ₱1,000.00 worth of *shabu*.

At around 6:30 in the evening, the buy-bust team proceeded to the target area. After about 30 minutes from arrival, appellant approached SPO1 Badua and the informant. The informant introduced SPO1 Badua to appellant as the interested buyer. SPO1 Badua then handed to appellant the buy-bust money; the latter handed in turn a plastic sachet containing while crystalline substance.

Upon seeing that the exchange had already taken place, PO1 Lag-ey and PO1 Moyao, who were strategically positioned some two meters away, approached appellant and placed her under arrest. Appellant was informed of her constitutional rights and was subjected to a body search. Another plastic sachet containing white crystalline substance was found on appellant's person.

Thereafter the two plastic sachets were marked on site. Appellant was then brought to the police station where the arresting officers likewise prepared their affidavit, Inventory, Booking Sheet, Qualitative Examination Request and Urine Request.

The confiscated specimen tested positive for the presence of methylamphetamine hydrochloride.

Version of the Defense

At around 3:00 o'clock in the afternoon of July 4, 2009, JONALYN ABENES traveled from their home in La Trinidad, Benguet to

Magsaysay Avenue in Baguio City where she has been working as a GRO together with her friend Jing Jing since the year 2004. Upon reaching the place, she headed to the room being occupied by Jing Jing at the Leisure Lodge. She asked her friend to go with her if she knows someone who sells *shabu*. After Jing Jing answered that she does not know of anybody selling *shabu*, [a] woman invited her to Katipunan Inn located at the back of Center Mall. Jing Jing acceded and the two of them went with this woman to Katipunan Inn where they got a room. Inside, the woman brought out *shabu* which the three of them consumed.

Thereafter, the accused was told by Jing Jing and the woman to return to the overpass. Accused left the duo, but instead of going to the overpass, she went to Leisure Lodge to freshen up at Jing Jing's room. As she was freshening up, someone knocked at the door. She opened the door and saw a man and woman who were looking for Jing Jing. She told the two that Jing Jing was not in the room. They asked her who she was and after she gave her name, the two introduced themselves as police officers and informed her that they have arrested Jing Jing and that she is being pointed to by [Jing jing] as the source of shabu. She angrily told the police officers that the *shabu* taken from Jing Jing did not come from her but the police officers would not believe her. They handcuffed her and brought her down from the Leisure Lodge. As they were going downstairs, she saw Jing Jing asking for forgiveness for pointing to her as the *shabu* source.[3]

Ruling of the Regional Trial Court

Giving credence to the prosecution witnesses who are presumed to have performed their duties in a regular manner, the RTC ruled the prosecution has sufficiently proven that appellant was caught in *flagrante delicto* selling dangerous drug to a law enforcement agent who posed as buyer and while being frisked, another plastic sachet containing white crystalline substance was found in her possession. When these items were subjected to chemistry examination, they were found positive for the presence of methamphetamine hydrochloride commonly known as *shabu*, a dangerous drug. The RTC rejected appellant's claim of frame-up. It took serious consideration of appellant's admission that she was indeed into illegal drugs. It thus found

[3] CA *rollo*, pp. 83-84.

appellant guilty beyond reasonable doubt as charged. The dispositive portion of the Decision reads:

> WHEREFORE, judgment is rendered finding the accused GUILTY, as follows:
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> a) In Criminal Case No. 29607-R, she is hereby sentenced to suffer a prison term of Twelve (12) Years and One (1) day to Twenty (20) Years and to pay a fine of Three Hundred Thousand (₱300,000.00) Pesos, and
>
> b) In Criminal Case No. 29608-R, she is hereby sentenced to Life Imprisonment and to pay a fine of One Million (₱1,000,000.00) Pesos.
>
> The dangerous drugs subject of these cases are ordered destroyed in accordance with law.
>
> SO ORDERED.[4]

Ruling of the Court of Appeals

Appellant appealed to the CA faulting the trial court in finding her guilty despite the prosecution's failure to prove the same beyond reasonable doubt and non-compliance with Section 21 of RA 9165 and its Implementing Rules and Regulations resulting to a broken chain of custody over the confiscated drugs.

By its assailed Decision of August 22, 2013, the CA affirmed the RTC Decision after finding the same to be in accordance with law and the evidence. The CA ruled that the prosecution has clearly established that the sachets containing white crystalline substance offered as evidence before the lower court are the same sachets confiscated from the appellant during the buy-bust operation. Moreover, the CA observed that the integrity and evidentiary value of the confiscated drugs were duly preserved as the chain of custody of the same has been clearly established with supporting evidence. Thus:

> WHEREFORE, the Decision appealed from, being in accordance with law and the evidence, is hereby AFFIRMED.

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[4] Records, p. 159.

SO ORDERED.[5]

Our Ruling

The appeal is partly meritorious.

In the prosecution of illegal sale of drugs to prosper, the following elements must be proven: "(1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment for it."[6]

In the present case, these elements were satisfied by the prosecution's evidence. The prosecution witnesses positively identified appellant as the seller of the white crystalline substance which was found to be methamphetamine hydrochloride or *shabu*. Appellant sold the drug to SPO1 Badua, a police officer who acted as poseur-buyer for a sum of ₱1,000.00. The prosecution's witnesses likewise positively and categorically testified that the transaction or sale actually transpired. The subject *shabu* weighing 0.02 grams and the money amounting to ₱1,000.00 were also identified by the witnesses when presented in court.

Appellant makes capital on the prosecution's alleged failure to comply with the requirements of law[7] with respect to the

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[5] CA *rollo*, p. 91.

[6] *People v. Rusiana*, 618 Phil. 55, 63 (2009).

[7] REPUBLIC ACT NO. 9165, Article II, 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:

(1) The apprehending team having initial custody and control of the drug shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

proper marking, inventory and taking of photograph of the seized specimen. However, it does not escape the Court's attention that appellant failed to contest the admissibility in evidence of the seized item during trial. In fact, at no instance did she manifest or even hint that there were lapses on the part of the police officers in handling the seized item which affected its integrity and evidentiary value. "[O]bjection to the admissibility of evidence cannot be raised for the first time on appeal."[8] In the present case, the police operatives' alleged non-compliance with Section 21, Article II of RA 9165 was raised for the first time on appeal before the CA. In any event, it is "settled that an accused may still be found guilty, despite the failure to faithfully observe the requirements provided under Section 21 of RA 9165, for as long as the chain of custody remains unbroken."[9] Here, it is beyond cavil that the prosecution was able to establish the necessary links in the chain of custody of the specimen subject of the sale from the moment it was seized from appellant, the delivery of the same to the crime laboratory up to the time it was presented during trial as proof of the *corpus delicti*. As aptly observed by the CA:

> Prosecution witness SPO1 Reynaldo Badua consistently testified that he had the initial control of the sachet of *shabu* subject of the illegal sale case. He also stated that he marked the same with "RCB" he, together with the sachet subject of the illegal possession case personally brought the two (2) sachets of *shabu* to the crime laboratory for qualitative examination x x x.[10]

While we uphold the finding of guilt beyond reasonable doubt of appellant by the trial court and affirmed by the CA in the illegal sale of *shabu* in Criminal Case No. 29608-R, we are of the considered view, however, that the quantum of evidence needed to convict, that is proof beyond reasonable doubt, has

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[8] *People v. Domado*, 635 Phil. 74, 86 (2010).

[9] *People v. Amarillo*, 692 Phil. 698, 711 (2012).

[10] CA *rollo*, p. 87.

not been adequately established by the prosecution in the charge of illegal possession of dangerous drug under Section 11, Article II of RA 9165 in Criminal Case No. 29607-R.

We have carefully scrutinized the evidence presented by the prosecution especially the testimonies of SPO1 Badua and PO1 Lag-ey and miserably, they were not able to provide a clear identification of the illegal drug seized from appellant's possession.

We quote pertinent portions of SPO1 Badua's testimony:

Q I have with me a brown envelope, Mr. witness, with markings, and inside this envelope are two plastic sachets. Will you please go over these two and tell this Court which of these two are handed to you by Jonalyn?
A This is the one, Ma'am.

Q Why do you say that this is the sachet that was handed to you by Jonalyn?
A Because my initial RCB is there.

xxx xxx xxx

Q Who arrested the subject, Mr. witness?
A PO3 Lag-ey and PO1 Moyao.

Q Now, after arresting Jonalyn what did they do?
A Officer Lag-ey narrated to her her constitutional rights and PO1 Moyao frisked her.

Q PO1 Moyao is a female?
A Yes, Ma'am.

Q And what did she say [sic] in the person of Jonalyn if you know?
A She was able to seize one transparent sachet.

Q How about you what did you do with that sachet which was sold to you by Jonalyn?
A I marked, Ma'am.

xxx xxx xxx

Q What did officer Moyao do with that sachet?
A After he retrieved the sachet he marked at the site.[11]

For his part, SPO1 Albert Lag-ey testified:

Q Was Jonalyn Abenes subjected to a body searched?
A Yes, Ma'am.

Q Who did that?
A PO1 Moyao, Ma'am.

Q And what did [she] find on the person of Jonalyn Abenes?
A She recovered another item.

Q And what did she do with this item?
A After PO1 Moyao marked it she turned over to PO3 Badua.[12]

On cross-examination, SPO1 Lag-ey testified:

Q Now, another item was allegedly seized by Officer Moyao?
A Yes sir.

Q And according to you, it was marked by Officer Moyao at the place of operation?
A Yes, sir.

Q And do you know what Officer Moyao did with that item which he seized from Jonalyn Abenes?
A His initials, sir.[13]

From the foregoing revelations, there was no clear identification of the item allegedly seized from the possession of appellant after the sale. Of all the people who came into direct contact with the sachet of *shabu* purportedly seized from appellant, it was only PO1 Moyao who could directly and possibly observe the uniqueness thereof in court. According to SPO1 Badua and SPO1 Lag-ey, it was PO1 Moyao who took initial custody of the seized plastic sachet when appellant was frisked at the time of arrest and who allegedly marked the same with initials. But

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[11] TSN, March 10, 2010, pp. 15-19.

[12] TSN, January 26, 2010, pp. 14-15.

[13] TSN, March 9, 2010, pp. 15-16.

for no apparent reason, PO1 Moyao was not even presented in court to identify the plastic sachet and more importantly to acknowledge the alleged marking thereon as her own.

"In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. It is therefore of prime importance that in these cases, the identity of the dangerous drug be likewise established beyond reasonable doubt."[14] With the material omission to indubitably show the identity of the dangerous drug, subject matter in the charge of illegal possession, we rule and so hold that the evidence for the prosecution casts serious doubt as to the guilt of the appellant for it has not proven the indispensable element of *corpus delicti*. While as a rule we desist from disturbing the findings and conclusions of the trial court especially when affirmed by the appellate court, we must bow to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt since the fundamental law presumes that the accused is innocent. This presumption must prevail until the end unless overcome by strong, clear and compelling evidence. The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence.[15] While admittedly, appellant's defense of denial and frame-up is inherently weak and commonly used in drug-related cases, we are not unmindful of the settled principle that conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.

WHEREFORE, in view of the foregoing, the instant appeal is **PARTLY GRANTED**. The August 22, 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04923 affirming the February 14, 2011 Decision of the Regional Trial Court, Branch 61, Baguio City is **AFFIRMED with modification.** Appellant Jonalyn Abenes *y* Pascua is **ACQUITTED** of illegal possession of dangerous drug under Section 11, Article II of

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[14] *People v. Obmiramis*, 594 Phil. 561, 569-570 (2008).

[15] *Cacao v. Prieto*, 624 Phil. 634, 649 (2010).

Republic Act No. 9165, the crime charged in Criminal Case No. 29607-R on ground of reasonable doubt.

SO ORDERED.

Carpio[*] (*Chairperson*), *Brion*, and *Leonen, JJ.*, concur.

Mendoza, J., on official leave.

SECOND DIVISION

[G.R. No. 212346. July 7, 2016]

RICHARD V. FUNK, *petitioner, vs.* **SANTOS VENTURA HOCORMA FOUNDATION, INC., FEDERICO O. ESCALER, JOSE M. ZARAGOZA, DOMINGO L. MAPA, ERNESTO C. PEREZ and ARISTON ESTRADA, SR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FINAL AND EXECUTORY JUDGMENT; TWO MODES BY WHICH A JUDGMENT MAY BE EXECUTED.— Under Section 6, Rule 39 of the Rules of Court, a final and executory judgment or order may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. Thus, under the rules, there are two modes by which a judgment may be executed: *first*, on ***motion*** if made within five years from the date of entry of the judgment sought to be executed; and *second*, by an ***independent action*** to revive the

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[*] Per Special Order No. 2357 dated June 28, 2016.

judgment within the statute of limitations, which is ten years from the date of entry.

2. ID.; ID.; ID.; PRINCIPLE OF IMMUTABILITY OF JUDGMENT APPLIED SINCE NONE OF THE EXCEPTIONS EXISTS IN CASE AT BAR.— We stress that the present case does not involve a litigant who filed a late motion for reconsideration or appeal. Glaringly, Atty. Funk ***did not*** appeal or move for reconsideration. Having failed to contest the February 16, 2009 RTC order, Atty. Funk cannot now question its correctness. On this note, we remind Atty. Funk that no procedural rule is more settled than the courts' strict adherence to the fundamental principle that a decision or an *order* that has acquired finality becomes immutable and unalterable. A definitive final judgment or *final order*, ***however erroneous***, is no longer subject to change or revision. The principle of immutability of judgments is the cornerstone of our justice system; without this iron rule, litigations will not end. Indeed, the application of this principle is of utmost necessity both for the parties as well as for the courts. While the rule on immutability of judgments admits of exceptions, namely: (1) the correction of clerical errors; (2) the *nunc pro tunc* entries that cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, none of these exceptions are present in the present case.

3. ID.; ID.; ID.; *RES JUDICATA* UNDER THE CONCEPT OF BAR BY FORMER JUDGMENT; REQUISITES, OBTAIN IN THE PRESENT CASE.— The concept of *bar by prior judgment* as enunciated in Section 47 (b) of Rule 39 of the Rules of Court 47 applies. *Bar by prior judgment* means that when a right or fact had already been judicially tried on the merits and determined by a court of competent jurisdiction, the *final* judgment or *order* shall be conclusive upon the parties and those in privity with them and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action. The requisites for *res judicata* under the concept of *bar by prior judgment* are: (1) The former judgment or order must be final; (2) It must be a judgment on the merits; (3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) There must be between

the first and second actions, identity of parties, subject matter, and cause of action. The denial of the *first motion for execution* bars the *second motion for execution* because all the requisites of *bar by prior judgment* are present[.]

4. ID.; ID. ACTION TO REVIVE JUDGMENT; CONCEPT.— ***An action for revival judgment is a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five years without it being executed upon motion of the prevailing party.*** After the lapse of the five-year period, the judgment is reduced to a mere right of action, which judgment must be enforced, as all other ordinary actions, by the institution of a complaint in the regular form. Such action must be filed within ten (10) years from the date the judgment has become final. In concrete terms, the prevailing party, who for some reason or another, failed to move for execution within five years from the date of entry of the judgment, can file an action to have the judgment revived. The rule allowing the filing of an action within ten years from the date of entry merely gives substance to the Civil Code provisions on the prescription of an *action upon a judgment.*

5. ID.; ID.; ID.; AN ACTION TO REVIVE JUDGMENT IS NOT ALLOWED WHERE THE PREVAILING PARTY HAD ALREADY AVAILED OF A MOTION FOR EXECUTION WITHIN FIVE YEARS FROM DATE OF ENTRY OF JUDGMENT SOUGHT TO BE EXECUTED.— While Section 6 of Rule 39 does not expressly state that the two modes of execution are mutually exclusive, it is not difficult to discern why no action upon a judgment can be filed once the prevailing party had availed of the first mode of execution. For the same reason that a second motion for execution *raising the same issues or items* is barred by the denial of the first motion for execution, so is an independent action *raising the same issues or items* is barred. The *bar by prior* judgment principle would equally apply. To be more specific, an independent action to execute the costs of suit and the taxes withheld would be the same as the *first motion for execution* that had raised these issues. Since the denial of the *first motion for execution* has become final and immutable, Atty. Funk is barred from filing an independent action raising exactly the same issues.

APPEARANCES OF COUNSEL

David Cui-David Buenaventura and Ang Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by Atty. Richard V. Funk (*Atty. Funk*) to challenge the November 5, 2013 decision[2] and the April 29, 2014 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 97527.

The CA denied Atty. Funk's appeal from the order of the Regional Trial Court (*RTC*), Branch 66, Makati City, denying his *second motion for execution*.[4]

ANTECEDENTS

In **1983**, Atty. Funk represented Teodoro Santos (*Santos*) in a collection case against Philbank Corporation and in a transfer of properties to respondent Santos Ventura Hocorma Foundation, Inc. (the Foundation). The agreed attorney's fees were 25% and 10% of the market value of the properties.[5]

Teodoro Santos executed a special power of attorney (*SPA*) to authorize Atty. Funk to collect his fees from the Foundation.[6]

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[1] *Rollo*, pp. 3-30. The petition is filed under Rule 45 of the Rules of Court.

[2] *Id.* at 33-44. Associate Justice Stephen C. Cruz penned the assailed decision and resolution with the concurrence of Associate Justice Ramon M. Bato, Jr. and Associate Justice Myra V. Garcia-Fernandez (*Special Eleventh Division*).

[3] *Id.* at 46-47.

[4] RTC Civil Case 89-5622.

[5] *Rollo*, pp. 33-34, see footnote 3 of the Court of Appeals' November 5, 2013 decision.

[6] *Santos Ventura Hocorma Foundation, Inc. v. Richard V. Funk*, 539 Phil. 125, 127 (2006). The facts revealed that Teodoro Santos hired Atty.

The Foundation failed to fully pay the attorney's fees despite demand. Atty. Funk thus filed the case for the collection of his attorney's fees with the RTC.[7]

On **February 14, 1994**, the RTC ordered the Foundation to pay Atty. Funk attorney's fees in the amount of ₱150,000.00 for the collection case and ₱500,000.00 for the transfer of properties. On Atty. Funk's motion for reconsideration, the RTC increased the attorney's fees to ₱918,919.50. The RTC also declared Atty. Funk co-owner of 10% of the properties whose market values were not established in court.[8]

On appeal, the CA affirmed the RTC decision but held that Atty. Funk had no right of co-ownership over the properties. The Foundation appealed to this Court in a case docketed as **G.R. No. 131260** (*mother case*).[9]

On **December 6, 2006**, we denied the Foundation's appeal and held that the issues it raised (whether the Foundation's Board of Trustees approved the SPA and whether the attorney's fees were reasonable) were questions of fact which we cannot review.[10] We thus denied the Foundation's appeal and thereby effectively sustained the findings of the RTC and the CA.

Under these findings, the minutes of the Foundation's board meetings indicated that: (1) the SPA executed by Santos, when presented to the Board of Trustees on December 13, 1983, was unanimously confirmed, acknowledged, and approved; and (2)

Funk to "protect his other assets because he was afraid that his properties might be the subject of attachments, garnishments and executions should there be future litigations." But it was not clear why the Foundation was established, or how Teodoro Santos was related to the Foundation. The Foundation may have been set up to hold Teodoro Santos's assets for estate planning purposes. In any case, the Board of Trustees' confirmation of the SPA rendered discussion on this matter superfluous.

[7] *Rollo*, p. 34.

[8] *Id.*

[9] *Supra* note 6.

[10] *Id.* at 129.

the Foundation even undertook to implement the retainer agreements between Atty. Funk and Santos.[11]

Our decision in the mother case became final and executory.[12] Atty. Funk then filed a *partial motion for execution* (the *first motion for execution*) with the RTC.[13] During the hearing on the motion, the Foundation paid the attorney's fees in the total amount of **₱1,450,501.02**.[14]

The Foundation, however, remitted **₱167,735.48** to the Bureau of Internal Revenue (BIR) as *withholding taxes*. It likewise withheld the *bill of costs* (filing fees, commissioner's fee, stenographer's fee, and other court fees) in the total amount of **₱20,281.00**.[15]

In an order dated February 16, 2009, the RTC upheld the remittance of the withholding of taxes, and denied the inclusion of the bill of costs because of Atty. Funk's supposed failure to comply with Section 8, Rule 142 of the Rules of Court.[16]

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[11] *Id.* at 130.

[12] *Rollo*, p. 42, see footnote 24 of the CA decision.

[13] Dated August 31, 2007. *Id.* at 34.

[14] *Id.* The RTC heard the motion on June 18, 2008. The payments were made with manager's check amounting to ₱912,831.57, another check in the amount of P37,669.45, plus ₱500,000.00. The amount of the checks represented Atty. Funk's share in the market value of the properties. It is unclear under the facts whether the ₱500,000.00 was paid in cash.

[15] *Id.* at 34-35. The bill of costs is itemized as follows: filing fees — ₱7,676.00; commissioner's fee — ₱5,000.00; stenographer's fee — ₱3,000.00; costs in the RTC, CA and & SC — ₱4,605.00.

[16] Section 8, Rule 142 of the RULES OF COURT, provides:

> Section 8. Costs, *how taxed*. — In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution.

Interpreting the February 16, 2009 RTC order as a command to directly elevate his case to this Court, Atty. Funk filed with the Second Division an *urgent motio*n for the Clerk of Court to include costs in the execution.[17]

On **March 30, 2009**, we denied the *urgent motion* and resolved to expunge it from the record because "the [mother case had] been decided on 06 December 2006 and entry of judgment [had] been made on 14 June 2007 x x x"[18] Atty. Funk moved but failed to obtain a reconsideration of our March 30, 2009 Resolution.[19]

Atty. Funk went back to the RTC and filed an *urgent motion for execution of costs (*the *second motion for execution*). The respondents opposed the motion. They argued that the February 16, 2009 RTC order denying the bill of costs and affirming the withholding of taxes had become final since Atty. Funk did not move for its reconsideration nor file an appeal.[20]

THE RTC RULING

On **October 23, 2009**, the RTC denied Atty. Funk's *second motion for execution*, stating among others that:

> Anent the amount withheld by the [respondents] and remitted to the [BIR], the same has been sustained by the BIR itself in its Opinion (dated September 10, 2008) issued per [Atty. Funk's] request. Having obtained an unfavorable ruling, [he] cannot turn [his] back on the same for in doing so, [he] not only defies the said ruling but contradicts [himself] in the process. Thusly, [the respondents] are under no obligation to remit to [Atty. Funk] the Php167,735.48 they withheld from the amount owing to [the latter] and remitted to the BIR as this act was upheld by the BIR x x x.
>
> **WHEREFORE**, premises considered and for lack of merit, the instant Motion for Execution for Costs in the amount of Php20,281.00

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[17] *Rollo*, p. 35.

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

[19] *Id.* at 36.

[20] *Id.*

(covering the bill of costs) and Php167,735.48 (covering the tax withheld and remitted to the BIR) are [*sic*] denied.

SO ORDERED.[21]

Atty. Funk moved but failed to secure a reconsideration of the RTC order. Hence, he appealed to the CA.[22]

THE CA RULING

The CA upheld the denial of the *second motion for execution* and agreed with the RTC that: (1) the February 16, 2009 RTC order denying the inclusion of the bill of costs had become final for Atty. Funk's failure to move for reconsideration or to appeal; (2) in any case, Atty. Funk did not comply with Section 8, Rule 142 of the Rules of Court, *i.e.*, the need to move for the execution of the costs of suit after [sic] five days from the date the judgment had become final and executory; and (3) the BIR's opinion that the Foundation properly withheld ₱167,735.48 as taxes, is binding on Atty. Funk.[23]

The CA denied Atty. Funk's motion for reconsideration; thus, the present petition.[24]

THE PETITION

Atty. Funk posits in his petition that:

First, the CA erred in applying Section 8, Rule 142 of the Rules of Court.[25]

Citing the 1960 case of *Romulo v. Desalla*,[26] Atty. Funk points out that the finality of the decision where costs were granted does not bar the execution of the costs "for the payment of

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[21] *Id.*

[22] *Id.* at 37.

[23] *Id.* at 40-44.

[24] *Id.* at 45-47.

[25] *Id.* at 13-16.

[26] 108 Phil. 346 (1960).

[costs], the law prescribes that certain steps be first taken, such as the assessment by the clerk of court, and the appeal, if any, from that assessment to the court, and unless these steps are taken, the judgment as to costs cannot be executed."[28]

He contends that there is no basis in the RTC and CA's holding that the "costs of suits should be filed after five days when the decision becomes final and executory" and that the Rule only states that "[i]n superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party."[29]

Second, contrary to the CA ruling, the motions for execution were filed on time.[30] Section 6, Rule 39 of the Rules of Court provides that a final and executory judgment or order may be executed on motion within *five years from the date of its entry*.

Atty. Funk explains that the entry of judgment in the mother case was made on June 14, 2007, and that he filed the *first motion for execution* on August 31, 2007, and the *second motion for execution* in October 2009.[31] Clearly, both motions were filed within the five-year period.

Third, the BIR's opinion that the Foundation properly withheld and remitted the taxes on the attorney's fees is not binding on the courts.[32]

Atty. Funk posits that his fees should not have been subjected to withholding taxes. Rather, the sum withheld should have been included in his gross income for taxable year 2008. Only

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[27] Note from the Publisher: Copied verbatim from the official copy. Missing Footnote Text and Footnote Reference.

[28] *Id.* at 350.

[29] *Rollo*, pp. 15-16.

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

[31] *Id.* at 18. The records do not show the exact date when Atty. Funk filed the second motion for execution. We note, however, that the RTC resolved to deny the motion on October 23, 2009.

[32] *Id.* at 23-29.

after deductions of expenses should the resulting net income, if any, be taxed.[33] Atty. Funk also criticizes the CA and the RTC's reliance on the BIR opinion without examining its correctness.[34]

Atty. Funk thus prays that we order the RTC to direct the respondents to pay the costs of suit and refund the amount remitted to the BIR.[35]

THE RESPONDENTS' COMMENT

The respondents counter that the denial of the bill of costs is correct as Atty. Funk failed to comply with Section 8, Rule 142 of the Rules of Court, *i.e.*, he failed to raise the issue of the bill of costs in a timely manner. They insist that the February 16, 2009 RTC order had become final because of Atty. Funk's failure to move for its reconsideration or to appeal.[36]

The respondents further contend that Atty. Funk is estopped from questioning the BIR opinion as it was he who sought its issuance. It was only after the BIR opined against his interests did he question the opinion's correctness. In any case, the opinion of the BIR — the agency that has the expertise on taxation — is entitled to great respect.[37]

ISSUES

The present petition brings to the fore two issues: (1) whether the costs of suit can still be executed; and (2) whether Atty. Funk can recover the amount withheld as taxes.

OUR RULING

We deny the petition.

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[33] *Id.* at 23-24. Atty. Funk's arguments on this point are paraphrased for brevity and clarity.

[34] *Id.* at 25-29.

[35] *Id.* at 29.

[36] *Id.* at 52-55.

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

The Execution of the Costs of Suit

To resolve the first issue, we examine the effects of the February 16, 2009 RTC order that denied the *first motion for execution*.

The respondents point out and *Atty. Funk does not dispute* that he did not move for reconsideration or appeal the February 16, 2009 RTC order. Still, he argues that the order did not become final because the costs of suit may be executed under Section 6, Rule 39 of the Rules of Court. He also cites *Romulo*, which purportedly held that costs may be executed despite the finality of the judgment that awarded the costs. He insists that he could, as he did, file with the RTC the *second motion for execution.*

The Denial of the First Motion for Execution

The RTC held that Atty. Funk failed to comply with Section 8, Rule 142 of the Rules of Court, which states:

> Section 8. Costs, *how taxed*. — In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. **In superior courts, costs shall be taxed by the clerk of the corresponding court on *five days' written notice* given by the prevailing party to the adverse party**. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. **The costs shall be inserted in the judgment *if taxed before its entry*, and payment thereof shall be enforced by execution**.[38] [emphasis ours]

The RTC ruled that Atty. Funk should have given written notice to the respondents five days *after* the decision became final and executory. Although the RTC used the word *after*, what it meant was that Atty. Funk should have given the written notice *within* five days from the date the judgment became final and executory, *i.e.*, date of its entry.[39] Hence, the RTC denied

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[38] *Id.* at 35.

the *first motion for execution* filed on August 31, 2007, or more than two months from the date of entry — June 14, 2007 — of our judgment in the mother case. The CA affirmed the RTC ruling *in toto*.

The RTC and the CA incorrectly applied Section 8 of Rule 142.

To execute the costs of suit in superior courts (*i.e.*, courts other than the first level courts), Section 8 of Rule 142 does not require the prevailing party to notify the adverse party within five days from the entry of judgment. *What Section 8 mandates is that the adverse party must be given at least five days written notice before costs may be taxed or assessed.* The obvious purpose of the notice is to give opportunity to the adverse party to object to the costs. The clerk of court will thereafter tax or assess the costs, which assessment may be appealed by either party to the court where execution is sought.

Further, the last sentence of Section 8 of Rule 142 contemplates a scenario where costs may be taxed or assessed even, *before* the entry of judgment. This possibility contradicts the RTC and CA's conclusion that notice must be given within five days from the date of entry of judgment.

In reality, to require the prevailing party to move for the execution of costs within five days from the date of entry would render nugatory the prescriptive periods for execution of judgments under Section 6 of Rule 39 of the Rules of Court. We elaborate on the significance of these periods *vis-à-vis* the execution of costs in our discussion below.

The Denial of the Second Motion for Execution

That the RTC and the CA erroneously denied the *first motion for execution* does not mean that the denial of the *second motion for execution* was also incorrect. We sustain the denial of the *second motion for execution* on the following grounds:

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[39] *Id.* at 42. See footnote 24 of the CA decision.

First, the February 16, 2009 RTC order was a *final order*. Atty. Funk's failure to timely contest the order resulted in its immutability.

Under Section 6, Rule 39 of the Rules of Court, a final and executory judgment or order may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.[40]

Thus, under the rules, there are two modes by which a judgment may be executed: *first*, on ***motion*** if made within five years from the date of entry of the judgment sought to be executed; and second, by an ***independent action*** to revive the judgment within the statute of limitations, which is ten years from the date of entry.[41]

Atty. Funk availed of the first mode. However, the February 16, 2009 RTC order denying his *first motion for execution* was a ***final order***. His failure to move for reconsideration or appeal resulted in the order's finality or immutability.

A final order is one that disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.[42] The February 16, 2009 RTC order completely disposed of the issues of the execution of costs and withholding of taxes.

To recall, the respondents had paid the attorney's fees in the total amount of **₱1,450,501.02**.[43] The only issues left unresolved

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[40] Section 6, Rule 39 of the RULES OF COURT.

[41] Article 1144 of the Civil Code provides, among others, that an action upon a judgment must be brought within ten years from the time the right of action accrues. Under 1152 of the Civil Code, the period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final, which under Section 2 of Rule 36 of the Rules of Court, is the date of its entry.

[42] *Republic v. Heirs of Oribello, Jr.*, 705 Phil. 614, 624 (2013), citing *RCBC v. Magwin Marketing Corp.*, 450 Phil. 720, 737 (2003).

[43] *Supra* note 14.

were the propriety of the execution of the costs of suit and the withholding of taxes. In its February 16, 2009 order, the RTC ruled that: (1) Atty. Funk could not move for the execution of the costs of suit because he failed to comply with Section 8 of Rule 142; and (2) the BIR opinion was binding on Atty. Funk.

In this way, the RTC resolved all pending matters when it denied the *first motion for execution*. Atty. Funk's remedy was either to move for reconsideration or appeal the February 16, 2009 RTC order.

Section 1, Rule 41 of the Rules of Court provides:

> Section 1. *Subject of appeal*. — ***An appeal may be taken from*** a judgment or ***final order that completely disposes of the case, or of a particular matter*** therein when declared by these Rules to be appealable. [emphasis ours]

We stress that the present case does not involve a litigant who filed a late motion for reconsideration or appeal. Glaringly, Atty. Funk ***did not*** appeal or move for reconsideration. Having failed to contest the February 16, 2009 RTC order, Atty. Funk cannot now question its correctness.

On this note, we remind Atty. Funk that no procedural rule is more settled than the courts' strict adherence to the fundamental principle that a decision or an *order* that has acquired finality becomes immutable and unalterable. A definitive final judgment or *final order*, ***however erroneous***, is no longer subject to change or revision. The principle of immutability of judgments is the cornerstone of our justice system; without this iron rule, litigations will not end.[44] Indeed, the application of this principle is of utmost necessity both for the parties as well as for the courts.[45]

While the rule on immutability of judgments admits of exceptions, namely: (1) the correction of clerical errors; (2) the *nunc pro tunc* entries that cause no prejudice to any party;

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[44] *Apo Fruits Corporation v. Court of Appeals*, 622 Phil. 215, 230-231 (2009).

[45] *Id.*

(3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable,[46] none of these exceptions are present in the present case.

Further, Atty. Funk committed another procedural error when he directly elevated his case to this Court by moving for execution with the Second Division. Not only did his failure to move for reconsideration (with the RTC) or appeal (to the CA) result in the finality of the February 16, 2009 order; he also *bypassed the hierarchy of courts*.

Second, Section 6, Rule 39 of the Rules of Court bars a *second or subsequent motion for execution* that raise the ***same issues*** or the ***same items*** in the judgment sought to be executed.

Section 6 of Rule 39 provides:

> Section 6. *Execution by motion or by independent action*. — ***A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action***. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. [emphasis and italics ours]

To be clear, Section 6 of Rule 39 does not prohibit a *second motion for execution*. We recognize that there may be instances where the prevailing party can validly or reasonably file a second or subsequent motion for execution.

For example, the losing party in a damages suit may partially question the money judgment against him. While he might agree with the award of actual damages, he may refuse to pay the unrealized income claimed by the prevailing party. Thus, he will appeal the award of unrealized income and let the award of actual damages become final and executory (assuming he does not pay the amount of actual damages outright). In such case, the prevailing party can already move for the execution

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[46] *Id.*

of the actual damages within five years from the finality of the judgment on actual damages while the award of unrealized income is on appeal.

If the award of unrealized income is later affirmed by the appellate court and the ruling becomes final and executory, the prevailing party can file another motion for execution, this time to implement the award of unrealized income within five years from the finality of the ruling on unrealized income.

However, the filing of a subsequent motion for execution cannot be allowed if the denial of the first motion for execution had become final, and the subsequent motion for execution raises *the same issues* or *items* already passed upon. By *items*, we mean the particular, separable, and identifiable portions of the judgment.

The concept of *bar by prior judgment* as enunciated in Section 47(b) of Rule 39 of the Rules of Court[47] applies. *Bar by prior judgment* means that when a right or fact had already been judicially tried on the merits and determined by a court of competent jurisdiction, the *final* judgment or *order* shall be conclusive upon the parties and those in privity with them and

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[47] *Supapo v. Spouses de Jesus*, G.R. No. 198356, April 20, 2015, *Res judicata* has two concepts: (1) bar by prior judgment as enunciated in Rule 39, Section 47 (b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47 (c);

Section 47 (b) of the Rules of Court provides:

> 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:
>
> xxx xxx xxx
>
> (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.
>
> xxx xxx xxx

constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action.[48]

The requisites for *res judicata* under the concept of *bar by prior judgment* are:

(1) The former judgment or order must be final;

(2) It must be a judgment on the merits;

(3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and

(4) There must be between the first and second actions, identity of parties, subject matter, and cause of action.[49]

The denial of the *first motion for execution* bars the *second motion for execution* because all the requisites of *bar by prior judgment* are present, namely:

1. The February 16, 2009 order became *final* because Atty. Funk did not move for reconsideration or appeal;

2. The February 16, 2009 order was a *judgment on the merits* because the RTC definitively held: (a) that Atty. Funk was not entitled to the execution of the costs of suit because of his failure to comply with the Section 8, Rule 142 of the Rules of Court; and (b) that the BIR opinion was binding to him;

3. The RTC had the *jurisdiction* to resolve the *first motion for execution* because it was the court of origin;[50] and

4. The *first* and *second* motions for execution involved the *same parties* (Atty. Funk and the respondents), *subject matter* (the costs of suit and withholding of taxes), and *cause of action* (the execution of the costs of suit and taxes allegedly wrongly withheld).

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[48] *Id.*, citing *Rizal Commercial Banking Corporation v. Royal Cargo Corporation*, 617 Phil. 764, 774 (2009).

[49] *Id.*

[50] Section 1, Rule 39, RULES OF COURT.

Third, the case of *Romulo* is not applicable to the present case.

Atty. Funk invokes a line in *Romulo* stating that "*even if the decision wherein costs were granted, had already become final, that does not hold true for the costs x x x*."[51] From this isolated reading of the decision, he concludes that the costs of suit may be executed anytime within the periods provided under Section 6 of Rule 39.

Atty. Funk's contention is inaccurate as he takes our holding in *Romulo* out of context.

We made the above observation because the clerk of court in that case issued the writ of execution, which included the costs of suit, without assessing whether the bill of costs was accurate. The adverse party was likewise not given the opportunity to contest the bill of costs. Thus, we nullified the writ of execution.[52]

We held that even if the decision wherein costs were granted had already become final, that does not hold true for the costs because it would be unfair for the losing party to shoulder the costs that were not checked for accuracy by the clerk of court. This was the context of the line invoked by Atty. Funk. We did not rule that the costs of suit may, in all instances, be executed anytime within the periods under Section 6 of Rule 39.

Action to Revive Judgment

For the sake of judicial economy, we resolve a question that, although not raised by the parties, will inevitably result from our discussions above: *May Atty. Funk still file an independent action (second mode) to execute the costs of suit and taxes withheld?*

We answer in the negative.

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[51] *Supra* note 25, at 350.

[52] *Id.* at 351.

An action for revival judgment is a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five years without it being executed upon motion of the prevailing party.[53] After the lapse of the five-year period, the judgment is reduced to a mere right of action, which judgment must be enforced, as all other ordinary actions, by the institution of a complaint in the regular form. Such action must be filed within ten (10) years from the date the judgment has become final.[54]

In concrete terms, the prevailing party, who for some reason or another, failed to move for execution within five years from the date of entry of the judgment, can file an action to have the judgment revived. The rule allowing the filing of an action within ten years from the date of entry merely gives substance to the Civil Code provisions on the prescription of an *action upon a judgment*.[55]

While Section 6 of Rule 39 does not expressly state that the two modes of execution are mutually exclusive, it is not difficult to discern why no action upon a judgment can be filed once the prevailing party had availed of the first mode of execution. For the same reason that a second motion for execution raising the same issues or items is barred by the denial of the first motion for execution, so is an independent action *raising the same issues or items* is barred. The *bar by prior judgment* principle would equally apply.

To be more specific, an independent action to execute the costs of suit and the taxes withheld would be the same as the *first motion for execution* that had raised these issues. Since the denial of the *first motion for execution* has become final

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[53] *Saligumba v. Palanog*, 593 Phil. 420, 426 (2008), citing *Panotes v. City Townhouse Development Corporation*, G.R. No. 154739, 23 January 2007, 512 SCRA 269; *Filipinas Investment and Finance Corporation v. Intermediate Appellate Court*, G.R. Nos. 66059-60, 4 December 1989, 179 SCRA 728; *Azotes v. Blanco*, 85 Phil. 90 (1949).

[54] *Terry v. People*, 373 Phil. 444, 450 (1999).

[55] *Supra* note 39.

and immutable, Atty. Funk is barred from filing an independent action raising exactly the same issues.

The Withholding of Taxes

We emphasize that the RTC squarely ruled on the issue of withholding of taxes in its February 16, 2009 order. Since the order had become final and immutable, it follows that the ruling on withholding of taxes has likewise become final and immutable.

Finally, we note that the sum withheld has been remitted to the BIR. The money is already in the hands of the Government. The Court would bypass established rules of procedure on refund of taxes under the National Internal Revenue Code if we declare outright that Atty. Funk is entitled to a refund.[56]

WHEREFORE, premises considered, we **DENY** the petition and thereby **AFFIRM** the November 5, 2013 decision and the April 29, 2014 resolution of the Court of Appeals in CA-G.R. CV No. 97527.

SO ORDERED.

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

Mendoza, J., on official leave.

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[56] Section 229 of the National Internal Revenue Code states:

Section 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

FIRST DIVISION

[A.C. No. 9492. July 11, 2016]

PLUTARCO E. VAZQUEZ, *complainant, vs.* **ATTY. DAVID LIM QUECO KHO,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DISBARMENT; A DISBARMENT CASE IS NOT THE PROPER VENUE TO ATTACK A LAWYER'S CITIZENSHIP.— This disbarment case centers on whether Atty. Kho violated his lawyer's oath that he shall do no falsehood and that he shall not engage in unlawful, dishonest, immoral, or deceitful conduct. According to complainant, a violation occurred when respondent declared in his verified Certificate of Acceptance of Nomination that he was a natural-born Filipino citizen. Although the question of one's citizenship is not open to collateral attack, the Court acknowledges the IBP-CBD's pronouncement that it had to make a limited finding thereon, since the alleged dishonesty hinged on this issue. We have constantly ruled that an attack on a person's citizenship may only be done through a direct action for its nullity. A disbarment case is definitely not the proper venue to attack someone's citizenship. For the lack of any ruling from a competent court on respondent's citizenship, this disbarment case loses its only leg to stand on and, hence, must be dismissed.

D E C I S I O N

SERENO, *C.J.*:

This case for disbarment was filed by complainant Plutarco E. Vazquez (Vazquez) against respondent Atty. David Lim Queco Kho (Atty. Kho). In his verified Complaint[1] filed with this Court on 11 July 2012, Vazquez alleges that Atty. Kho violated the

[1] *Rollo*, pp. 8-11.

lawyer's oath that he "will do no falsehood."[2] He further claims that respondent transgressed Rule 1.01 of the Code of Professional Responsibility.[3]

FACTS

Vazquez and Atty. Kho were both members of the Coalition of Associations of Senior Citizens in the Philippines (Coalition), an accredited party-list group that participated in the national elections of 10 May 2010. The Complaint arose from an allegedly false statement made in respondent's Certificate of Acceptance of Nomination for the Coalition. Complainant contested the truth of the statement made under oath that Atty. Kho was a natural-born Filipino citizen.[4]

In his Complaint, Vazquez asserted that respondent was a Chinese national. He reasoned that when Atty. Kho was born on 29 April 1947 to a Chinese father (William Kho) and a Filipina mother (Juana Lim Queco), respondent's citizenship followed that of his Chinese father pursuant to the 1935 Constitution. Moreover, Vazquez argued that since respondent has elected Filipino citizenship, the act presupposed that the person electing was either an alien, of doubtful status, or a national of two countries.[5]

Upon receipt of the Complaint, the Court through its First Division issued a Resolution[6] dated 26 November 2012 requiring Atty. Kho to file his comment on the Complaint within 10 days from receipt of the Notice. Alleging he received the Court's Resolution on 18 February 2013, he filed his Comment[7] on 27 February 2013. As to the alleged falsity of his statement, Atty.

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[2] *Id.* at 8.

[3] A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[4] *Rollo*, pp. 8-9.

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

[6] *Id.* at 16.

[7] *Id.* at 18-24.

Kho countered that when he was born on 29 April 1947, his Filipina mother was not yet married to his Chinese father, and that his parents only got married on 8 February 1977 or some 30 years after his birth. He then averred that according to the 1935 Constitution, his citizenship followed that of his Filipina mother, and thus he was a natural-born Filipino citizen.[8]

On the matter of his electing Filipino citizenship, respondent explained that since he was already a natural-born Filipino, his subsequent election of Philippine citizenship on 25 February 1970 was superfluous and had no effect on his citizenship. Having established his natural-born status, he concluded that he had not committed any falsehood in his Certificate of Acceptance of Nomination, and that complainant had no cause of action to have him disbarred.[9]

Apart from defending his natural-born status, Atty. Kho also moved to dismiss the Complaint on the ground of forum shopping. He claimed that Vazquez had filed three (3) cases in which the latter raised the issue of respondent's citizenship: (1) the present disbarment case; (2) a quo warranto proceeding with the House of Representatives Electoral Tribunal (HRET); and (3) a criminal complaint for perjury lodged with the City Prosecutor of Quezon City. Atty. Kho alleged that both the quo warranto and the perjury cases had already been dismissed by the HRET[10] and the City Prosecutor respectively.[11] Finally, he raised jurisdictional questions, arguing that the proper remedy to attack his citizenship was not a disbarment case, but rather *quo warranto*.[12]

In answer to respondent's Comment, Vazquez filed with the Court a Reply to Comment[13] on 11 March 2013. He claimed therein that at the time of election of Philippine citizenship by

[8] *Id.* at 20.

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

[10] *Id.* at 34.

[11] *Id.* at 35-37.

[12] *Id.* at 22.

[13] *Id.* at 38-43.

respondent on 25 February 1970, the latter's mother was already a Chinese national by virtue of her marriage to respondent's father who was Chinese. Complainant also opposed respondent's assertion that the latter's parents were not yet married when he was born on 29 April 1947.[14] Complainant further cited respondent's Certificate of Live Birth, which stated that the latter's parents were married at the time he was born.[15]

That being so, complainant averred that at the time Atty. Kho was born, his mother was already a Chinese national. Thus, complainant concluded that respondent's election of Filipino citizenship was fatally defective, since the latter's parents were both Chinese at the time of his election.[16] Furthermore, complainant alleged that the marriage of respondent's parents on 8 February 1977 was just a ploy to put a semblance of legitimacy to his prior election of Filipino citizenship. Lastly, complainant denied the forum shopping charge, saying the three cases he had filed against respondent had different causes of action and were based on different grounds.[17]

On 8 April 2013, the Court issued a Resolution referring the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation or decision.[18] At the IBP Commission on Bar Discipline (IBP-CBD), the case was docketed as CBD Case No. 13-3885. Commissioner Victor Pablo C. Trinidad (Commissioner Trinidad) was designated as investigating commissioner. In a Notice dated 14 August 2013, he set the case for mandatory conference/hearing on 19 September 2013 and ordered the parties to submit their mandatory conference briefs.[19]

With both parties present at the scheduled mandatory conference/hearing, Commissioner Trinidad ordered them to

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[14] *Id.* at 38.

[15] *Id.* at 44.

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

[17] *Id.* at 41.

[18] *Id.* at 47.

[19] Records of the IBP-CBD, p. 1.

submit their respective position papers within ten (10) days, after which the case would be deemed submitted for report and recommendation.[20] Only the respondent submitted a conference brief[21] and position paper.[22]

IBP's REPORT AND RECOMMENDATION

On 3 November 2013, Commissioner Trinidad promulgated his Report and Recommendation (Report)[23] finding Atty. Kho "innocent of the charges" and recommended that the case be dismissed for utter lack of merit. Upon weighing the evidence presented by both parties, Commissioner Trinidad found no merit to the allegation that respondent had committed dishonesty and deceitfulness when he indicated in his verified Certificate of Acceptance of Nomination that he was a natural-born citizen.[24]

Commissioner Trinidad said that respondent Atty. Kho, as a natural-born Filipino citizen, fell under the category of someone who was born of a Filipino mother before 17 January 1973, and who elected Philippine citizenship upon reaching the age of majority.[25] On the matter of jurisdiction, the IBP-CBD said that it had jurisdiction to hear the matter, since the issue was whether respondent violated his lawyer's oath and the relevant provisions of the Code of Professional Responsibility. Although it acknowledged that citizenship cannot be attacked collaterally, it ruled that it had to make a finding thereon, since the alleged dishonesty hinged on that very matter. The IBP-CBD clarified though, that its ruling was limited and "cannot strip or sustain the respondent of his citizenship."[26]

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[20] *Id.* at 8.

[21] *Id.* at 10-11.

[22] *Id.* at 22-31.

[23] Report and Recommendation of the IBP-CBD, 10 pages; penned by Commissioner Victor Pablo C. Trinidad.

[24] *Id.* at 2.

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

[26] *Id.* at 5.

Lastly, the IBP-CBD found Vazquez guilty of forum shopping since in all the three cases he had filed, he was questioning whether or not respondent was a natural-born citizen. It said that the actions filed by complainant involved the same transactions, the same essential facts and circumstances, as well as identical subject matter and issues.[27]

On 10 August 2014, the IBP Board of Governors passed Resolution No. XXI-2014-519, which adopted and approved the Report and Recommendation of the Investigating Commissioner dismissing the case against Atty. Kho.

THE RULING OF THE COURT

We adopt and approve the IBP Report and Recommendation and dismiss the instant administrative case against respondent for lack of merit.

This disbarment case centers on whether Atty. Kho violated his lawyer's oath that he shall do no falsehood and that he shall not engage in unlawful, dishonest, immoral, or deceitful conduct. According to complainant, a violation occurred when respondent declared in his verified Certificate of Acceptance of Nomination that he was a natural-born Filipino citizen. Although the question of one's citizenship is not open to collateral attack,[28] the Court acknowledges the IBP-CBD's pronouncement that it had to make a limited finding thereon, since the alleged dishonesty hinged on this issue.

We have constantly ruled that an attack on a person's citizenship may only be done through a direct action for its nullity.[29] A disbarment case is definitely not the proper venue to attack someone's citizenship. For the lack of any ruling from

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

[28] *Go v. Bureau of Immigration and Deportation*, G.R. No. 191810, 22 June 2015.

[29] *Co v. House of Representatives Electoral Tribunal*, 276 Phil. 758 (1991); *Go v. Bureau of Immigration and Deportation*, G.R. No. 191810, 22 June 2015.

a competent court on respondent's citizenship, this disbarment case loses its only leg to stand on and, hence, must be dismissed.

WHEREFORE, the instant Administrative Complaint for violation of the lawyer's oath and the Code of Professional Responsibility filed against **Atty. David Lim Queco Kho** is hereby **DISMISSED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 189312. July 11, 2016]

FE B. SAGUINSIN, *petitioner, vs.* **AGAPITO LIBAN, CESARIO LIBAN, EDDIE TANGUILAN, PACENCIA MACANANG, ISIDRO NATIVIDAD, TIMMY SIBBALUCA and ISIDRO SIBBALUCA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; WHEN THE APPELLATE COURT CONFIRMED THE FACTUAL FINDINGS OF THE AGRARIAN COURT, SUCH FINDINGS ARE CONCLUSIVE AND BINDING UPON THIS COURT.— The existence of tenancy over the subject property has already been declared by the DAR, the OP and the CA. It was only the DARRO which declared otherwise, solely relying on Cristino's declaration in the Affidavit of Non-Tenancy. Like the DAR, OP and the CA, we find that Cristino's Affidavit of Non-Tenancy is self-serving and merely executed to comply with the requisites for the sale to petitioner. We note

too, that per the MARO Memorandum dated October 16, 1990, petitioner acknowledged that respondents have been *bona fide* tenant-tillers of the property even before its sale to her was consummated. In appeals in agrarian cases, it is a long-standing rule that when the appellate court has confirmed that the findings of fact of the agrarian courts are borne out by the records, such findings are conclusive and binding on this Court. Further, the well-settled rule is that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, since "the Supreme Court is not a trier of facts." It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented.

2. ID.; ID.; ID.; ISSUES; THAT THE PROPERTY WAS NOT TENANTED OR OUTSIDE THE COVERAGE OF OPERATION LAND TRANSFER CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— In the proceedings below, petitioner never alleged that the property was not tenanted or outside the coverage of the OLT. This argument was raised only before the CA in her petition for review. Neither did she assail the finding that the property is rice and/or corn land. She alleged that respondents failed to prove that the land was devoted to the production of rice and corn only in her Reply dated July 19, 2010. Points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule.

3. LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 27 (PD 27); WHEN THE BUYER WAS AWARE THAT THE PROPERTY WAS TENANTED AT THE TIME OF SALE, SHE CANNOT USE THE DEFENSE OF BUYER IN GOOD FAITH.— Petitioner cannot use the defense of being a good faith buyer, since she raised this issue only in the present petition for review. Nevertheless, we cannot hold that petitioner is a buyer in good faith. A purchaser in good faith is one who buys a property without notice that some other person has a right to, or interest in, the property and pays full and fair price at the time of purchase or before he has notice of the claim or interest of other persons in the property. Petitioner in this case was aware that the property was tenanted at the time of sale.

4. ID.; ID.; RIGHT OF RETENTION; BY CLAIMING HER RETENTION RIGHTS, PETITIONER IMPLIEDLY AKNOWLEDGED THAT THE SUBJECT PROPERTY IS COVERED BY PD 27; SALE MADE IN VIOLATION OF P.D. 27 IS VOID.— Another factor which militates against petitioner's claim is the very application for retention Isabel filed which she substituted for. Isabel's application for retention is an acknowledgement that the property is covered by the OLT under P.D. No. 27, as in fact she indicated in her application that the sale to petitioner was contrary to P.D. No. 27. In her Petition for Clarificatory Order, petitioner claimed that retention should be granted in her favor being the recognized transferee of whatever right Cristino might have had over the property. Thus, she also impliedly acknowledged that the property is covered by P.D. No. 27. It is illogical for someone to invoke a right and at the same time claim that the requisites for the exercise of the said right are not present. Petitioner cannot claim retention rights and deny coverage under P.D. No. 27. x x x In sum, the property, being tenanted rice and/or corn land, is under the coverage of the OLT, and could not have been validly sold after October 21, 1972. The sale between Cristino and petitioner on October 12, 1976, having been made in violation of P.D. No. 27 and its implementing guidelines is void. Petitioner, not being the owner of the property, does not have the right of retention over the property. Consequently, ownership reverts to Cristino.

5. ID.; ID.; ID.; THE ORIGINAL OWNER'S RETENTION RIGHT MAY BE EXERCISED BY THE HEIRS IF THEY CAN PROVE THEIR ENTITLEMENT THERETO.— Under Section 3 of DAR Administrative Order No. 4, Series of 1991, cited by the CA, the heirs may exercise the original landowner's right to retention if they can prove that the decedent had no knowledge of OLT Coverage over the subject property. As such, the intent must be proven by the heirs seeking to exercise the right. In this case, the heirs did not have the opportunity to prove Cristino's intent because the DARRO, without requiring proof of such intent, granted the application for retention filed by Isabel, Cristino's widow. x x x Cristino's heirs, if there be any, may still apply for, and exercise the right of retention if they can show entitlement thereto.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] dated May 20, 2009 and August 25, 2009, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 98049. The CA affirmed the Decision[4] of the Office of the President dated December 28, 2006 in OP Case No. 06-H-301 which reversed and set aside the Orders of the Department of Agrarian Reform (DAR) Secretary dated June 28, 2005[5] and June 22, 2006[6] granting the application for retention of Isabel Sibbaluca (Isabel) as substituted by Fe Saguinsin (petitioner).

The Facts

On June 23, 1952, Cristino Sibbaluca (Cristino) purchased from one Pedro Espero a parcel of land with an area of 10.9524 hectares, located in Bacayan, Baggao, Cagayan.[7]

On October 21, 1972, Presidential Decree (PD) No. 27[8] was promulgated. Under this law, the Operation Land Transfer (OLT) was launched to implement and enforce the provisions on transferring ownership to qualified tenant-farmers or farmer beneficiaries of the rice or corn land they are cultivating under

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[1] *Rollo*, pp. 11-29.

[2] *Id.* at 31-46. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Magdangal M. De Leon and Ramon R. Garcia concurring.

[3] *Id.* at 47.

[4] *Id.* at 113-116. Penned by Executive Secretary Eduardo R. Ermita.

[5] *Id.* at 95-101. Penned by Secretary Rene C. Villa.

[6] *Id.* at 105-107. Penned by OIC-Secretary Nasser C. Pangandaman.

[7] Title to the property was transferred in Cristino's name, TCT No. T-1336. *Id.* at 32, 81-82; DAR records, pp. 171-172.

[8] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to them the Ownership of the Land they Till and Providing the Instruments and Mechanism Therefor.

a system of sharecrop or lease tenancy, with the landowner having retention of not more than seven hectares of agricultural land.[9] Cristino's property was placed under the coverage of the OLT.

On March 21, 1975, Cristino sold seven hectares of the lot covered by Transfer Certificate of Title (TCT) No. T-1336 to Lito Sibbaluca[10] (Lito); and on October 12, 1976, he sold the remaining 3.9524 hectare property (property) to petitioner.[11] For the sale to petitioner, Cristino executed an Affidavit[12] certifying that the property was not tenanted (Affidavit of Non-Tenancy).

On December 4, 1987 and February 19, 1988, Emancipation Patents[13] (EPs) were issued in favor of the farmer-beneficiaries of the property including Agapito Liban, Cesario Liban, Frederito Tanguilan, Eustaquio Macanang, Jr., Pacita Vda. De Macanang, Isidro Natividad, Saturnino Sibbaluca and Isidro Sibbaluca.[14]

On May 24, 1991, Isabel, the widow of Cristino, filed an application for retention of the property[15] sold to petitioner under Republic Act (RA) No. 6657.[16] In her application, Isabel stated:

I have the honor to apply for retention of the landholding pursuant to R.A. 6657 particularly described as Title No. T-36360 situated in Bacagan, Baggao, Cagayan containing an area of 3.9524 hectares which said lot was sold by my late husband, Cristino Sibbaluca in

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[9] *Taguinod v. Court of Appeals*, G.R. No. 154654, September 14, 2007, 533 SCRA 403, 405.

[10] *Rollo*, p. 82; DAR records, p. 170.

[11] *Rollo*, pp. 60, 82. TCT No. T-1336 was cancelled and TCT No. T-32688 was issued in favor of Lito Sibbaluca while TCT No. T-36360 was issued in favor of petitioner. See DAR records, p. 170; *rollo*, p. 61.

[12] *Id.* at 62.

[13] *Id.* at 117-136.

[14] *Id.* The farmer-beneficiaries or their successors-in-interest are the respondents in this case.

[15] *Rollo*, p. 63.

[16] The Comprehensive Agrarian Reform Law of 1988.

favor of Fe Sagionsin [*sic*] sometime in 1976 [*sic*] in [*sic*] contrary to the provision of P.D. No. 27.[17]

In a Resolution[18] dated October 7, 1991, the Provincial Agrarian Reform Office (PARO) recommended the following: (1) granting the application of Isabel; (2) causing the recall and cancellation of the Certificate of Land Transfer (CLT) and/or EPs awarded to the farmer-beneficiaries; and (3) the execution of a leasehold contract between the landowner and the farmer-beneficiaries.[19] The PARO ruled that the sale of the property to petitioner does not affect the coverage of the land under the OLT because the property still belonged to spouses Cristino and Isabel in 1972 when PD No. 27 took effect.[20]

In an Order[21] dated January 30, 1995, the DAR Regional Office (DARRO) OIC Director affirmed the PARO Order and authorized Isabel to withdraw any amortization deposited by the tenants to the Land Bank of the Philippines.[22] In addition, he declared the sale between Cristino and petitioner "null and void, x x x being contrary to the provisions of DAR Memo Circular No. 8, Series of 1974, which prohibits the transfer of ownership of tenanted rice/corn lands after October 21, 1972."[23] In the same Order, the DARRO Director stated that the Municipal Agrarian Reform Office (MARO) of Baggao, Cagayan placed the land under OLT "finding that [the property] is devoted to the production of palay and [is] tenanted x x x."[24]

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[17] *Rollo*, p. 63.

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

[19] *Id.* at 65.

[20] *Id.* at 64.

[21] *Id.* at 66-68.

[22] *Id.* at 68.

[23] *Id.* at 67.

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

Before the Order dated January 30, 1995 was issued, Isabel died and no heir substituted her in the subsequent proceedings.[25]

On May 12, 1998, petitioner filed a Petition for Clarificatory Order[26] with the DARRO, alleging that she owns the property subject of Isabel's application by virtue of a contract of sale dated October 12, 1976.[27] She prayed that the retention be granted in her favor since she is the transferee of Cristino.[28] The DARRO ruled in petitioner's favor on August 24, 1998,[29] affirming with modification the Order dated January 30, 1995, but striking off Isabel as applicant and substituting her with petitioner.[30] According to the DARRO, the right to retention is available to petitioner being the legal owner of the property.[31]

Respondents sought reconsideration,[32] alleging that (1) no hearing and/or investigation was conducted in the course of the petition for retention, thus their constitutional right to due process was violated,[33] and (2) the sale of the property to petitioner was void because it violated PD No. 27 and Memorandum Circular (MC) No. 18-81 in relation to MC No. 2-A.[34] Thus, petitioner had no personality to be granted the right of retention.[35]

The DARRO denied the motion for reconsideration.[36] It declared that the property was not tenanted at the time it was

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[25] *Id.* at 73.

[26] *Id.* at 69-71.

[27] *Id.* at 69.

[28] *Id.* at 71.

[29] *Id.* at 72-74.

[30] *Id.* at 74.

[31] *Id.* at 73.

[32] *Id.* at 75-76.

[33] *Id.* at 75.

[34] *Id.* at 76.

[35] *Id.*

[36] Resolution dated November 12, 1999. CA *rollo*, pp. 40-44.

sold to petitioner as indicated in the contract of sale and the Affidavit of Non-Tenancy. Thus, MC No. 2-A was not violated. Being the owner of the property, petitioner had the personality to be granted a right of retention.[37] Besides, the area of the property, being only 3.9524 hectares, is well within the retention limit granted by law.[38]

Respondents appealed the resolution to the DAR,[39] but the DAR Secretary dismissed the appeal.[40] He ruled that a violation of MC No. 8 is not one of the grounds to deprive a landowner of her right to retention.[41] Thus, even if the sale between Cristino and petitioner is null and void, the land would still be deemed owned by Cristino for purposes of determining whether Cristino and/or Isabel is entitled to retention.[42] Since the DAR recognized the right of retention of Isabel over the property, its sale to petitioner did not violate PD No. 27 and RA No. 6657. The tenants of the property are not prejudiced by the act of selling the property because what was sold is part of the retained area.[43] The DAR Secretary also found that the property was within the coverage of PD No. 27 for being tenanted rice and corn land.[44] Respondents moved for the reconsideration of the Order, but the DAR Secretary denied their motion for lack of merit.[45]

Respondents filed an appeal with the Office of the President (OP).[46] They claimed that the earlier sale by Cristino of the seven hectares to Lito was already an implied exercise of the

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[37] *Id.* at 43.

[38] *Id.* at 44.

[39] *Id.* at 45-57.

[40] Order dated June 28, 2005. *Rollo*, pp. 95-100.

[41] *Id.* at 99.

[42] *Id.*

[43] *Rollo*, p. 100.

[44] *Id.* at 99.

[45] Order dated June 22, 2006. *Id.* at 105-106.

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

retention limit of spouses Cristino and Isabel. What was sold to petitioner is already over and above the retention limit of seven hectares, and thus petitioner, as substitute for Isabel, can no longer exercise the retention right.[47]

In its Decision,[48] the OP granted the appeal and denied the application for retention of Isabel as substituted by petitioner. According to the OP, the right of retention granted to landowners is not absolute, and the voluntary conveyance made after the effectivity of PD No. 27, such as the sale in this case, could be considered as an implied relinquishment of such right.[49] The OP also found that the Deed of Sale and Affidavit of Non-Tenancy stating that the property was not tenanted at the time of sale were self-serving and could not overcome the findings of the DAR officials who found that the property was occupied by farmer-beneficiaries.[50]

Petitioner thus appealed to the CA.[51]

On May 20, 2009, the CA affirmed the OP Decision.[52] According to the CA, it was not proven that Cristino had no knowledge of the OLT coverage of his property,[53] and that Cristino may be presumed to have already exercised his right of retention over the first seven hectares of land he earlier sold to Lito.[54] Thus, the subsequent sale of the property to petitioner should no longer form part of the seven hectare limit provided under PD No. 27.[55] Further, the CA, like the OP, sustained the

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[47] *Id.* at 109.

[48] *Id.* at 113-116.

[49] *Id.* at 116.

[50] *Id.* at 115.

[51] CA *rollo*, pp. 11-22.

[52] *Rollo*, pp. 31-46.

[53] Pursuant to DAR Administrative Order No. 4, Series of 1991, *Id.* at 42-43.

[54] *Id.* at 44.

[55] *Id.*

findings of the agrarian reform officials that the property was tenanted,[56] and thus, the sale was prohibited under MC No. 18-81 in relation to MC No. 2-A.

On August 25, 2009, the CA denied petitioner's motion for reconsideration.[57] Hence, this petition.

Petitioner maintains that she has a right of retention over the property sold to her by Cristino because: (a) the land is not covered by PD No. 27; (b) the land is within the retention limit and not subject to distribution;[58] (c) she is a purchaser in good faith;[59] and (d) the property is already registered in her name.[60] Respondents, on the other hand, argue that petitioner has no right of retention over the property, being a mere successor-in-interest resulting from an illegal conveyance because: (a) the property is tenanted; and (b) Cristino had already exercised his right of retention when he sold the seven hectares to Lito in 1975.[61]

The Court's Ruling

We deny the petition.

Validity of the sale and petitioner's right of retention

The requisites for coverage under the OLT Program pursuant to PD No. 27 are the following: (a) the land must be devoted to rice or corn crops; and (b) a system of share-crop or lease-tenancy obtains in the land.[62]

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[56] *Rollo*, p. 45.

[57] *Id.* at 47.

[58] *Id.* at 23.

[59] *Id.* at 24.

[60] *Id.*

[61] Appeal Memorandum dated January 20, 2010, *rollo*, pp. 163-172. In its Resolution dated February 22, 2010, the Court noted the Appeal Memorandum as respondents' comment to the petition, *rollo*, p. 188.

[62] *Vales v. Galinato*, G.R. No. 180134, March 5, 2014, 718 SCRA 100, 110.

Petitioner insists that at the time of the sale on October 12, 1976, the property was not tenanted as evidenced by the Deed of Sale and the Affidavit of Non-Tenancy executed by Cristino declaring that the property was not tenanted.[63] Moreover, she now claims that respondents failed to prove that the land was primarily devoted to rice and corn.[64] Therefore, the sale of the property in her favor did not violate PD No. 27.

The existence of tenancy over the subject property has already been declared by the DAR, the OP and the CA. It was only the DARRO which declared otherwise, solely relying on Cristino's declaration in the Affidavit of Non-Tenancy. Like the DAR, OP and the CA, we find that Cristino's Affidavit of Non-Tenancy is self-serving and merely executed to comply with the requisites for the sale to petitioner. We note too, that per the MARO Memorandum dated October 16, 1990,[65] petitioner acknowledged that respondents have been *bona fide* tenant-tillers of the property even before its sale to her was consummated.[66]

In appeals in agrarian cases, it is a long-standing rule that when the appellate court has confirmed that the findings of fact of the agrarian courts are borne out by the records, such findings are conclusive and binding on this Court.[67] Further, the well-

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[63] *Rollo*, pp. 18-19.

[64] *Id.* at 197.

[65] DAR records, pp. 27-28.

[66] Portions of the MARO's report and recommendation dated October 16, 1990 read:

> After giving consideration to the arguments of both farmers-respondents and landowner-complainant, I am of the opinion that the five hectare retention, should Isabel Sibbaluca would submit her application will be given due course and favorable consideration and that would validate the sale of subject parcel between Cristino Sibbaluca and Fe Saguinsin. **Fe Saguinsin has manifested her willingness to maintain the aforesaid farmers-respondents as her tenants as they are** bonafide tenant-tillers of the landholding long before the sale was consum[m]ated[.] (DAR records, p. 27)

[67] *Maylem v. Ellano*, G.R. No. 162721, July 13, 2009, 592 SCRA 440, 448-449, citing *Perez-Rosario v. Court of Appeals*, G.R. No. 140796, June 30, 2006, 494 SCRA 66, 89.

settled rule is that only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court, since "the Supreme Court is not a trier of facts."[68] It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented.[69]

In the proceedings below, petitioner never alleged that the property was not tenanted or outside the coverage of the OLT.[70] This argument was raised only before the CA in her petition for review.[71] Neither did she assail the finding that the property is rice and/or corn land. She alleged that respondents failed to prove that the land was devoted to the production of rice and corn only in her Reply dated July 19, 2010.[72] Points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule.[73]

The existence of tenancy and the use of land for planting rice and/or corn having been established, we find no reason to overturn the same. Thus, the land is within the coverage of the OLT under PD No. 27.

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[68] *New Sampaguita Builders Construction, Inc. v. Philippine National Bank*, G.R. No. 148753, July 30, 2004, 435 SCRA 565, 580, citing *Far East Bank & Trust Co. v. Court of Appeals*, G.R. No. 123569, April 1, 1996, 256 SCRA 15, 18.

[69] *Bautista v. Puyat Vinyl Products, Inc*., G.R. No. 133056, August 28, 2001, 363 SCRA 794, 798, citing *Trade Unions of the Philippines v. Laguesma*, G.R. No. 95013, September 21, 1994, 236 SCRA 586, 591.

[70] *Rollo*, pp. 69-71.

[71] *Id.* at 54.

[72] *Id.* at 197.

[73] *Esteban v. Marcelo*, G.R. No. 197725, July 31, 2013, 703 SCRA 82, 91-92, citing *Nunez v. SLTEAS Phoenix Solutions, Inc*., G.R. No. 180542, April 12, 2010, 618 SCRA 134, 145.

Pursuant to PD No. 27, the DAR issued MC Nos. 2[74] and 2-A,[75] series of 1973, and MC No. 8,[76] series of 1974.[77] MC No. 2-A which amended MC No. 2 provides the following explicit prohibition, among others:

> h. **Transfer of ownership after October 21, 1972, except to the actual tenant-farmer tiller**. If transferred to him, the cost should be that prescribed by Presidential Decree No. 27. (Emphasis supplied.)

While MC No. 8 subsequently repealed or modified MC Nos. 2 and 2-A, and other circulars or memoranda inconsistent with it, providing that:

> 4. No act shall be done to undermine or subvert the intent and provisions of Presidential Decrees, Letters of Instructions, Memoranda and Directives, such as the following and/or similar acts:
>
> xxx xxx xxx
>
> f) **Transferring ownership to tenanted rice and/or corn lands after October 21, 1972, except to the actual tenant-farmers or tillers** but in strict conformity to the provisions of Presidential Decree No. 27 and the requirements of the DAR. (Emphasis supplied.)

Petitioner cannot use the defense of being a good faith buyer, since she raised this issue only in the present petition for review. Nevertheless, we cannot hold that petitioner is a buyer in good faith. A purchaser in good faith is one who buys a property without notice that some other person has a right to, or interest in, the property and pays full and fair price at the time of purchase

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[74] Dated June 18, 1973.

[75] Supplement to Memorandum Circular No. 2 dated June 18, 1973.

[76] Interim Policy of Status Quo Relationship between Landowners and their Tenant-Tillers.

[77] *Taguinod v. Court of Appeals*, *supra* note 9. Pursuant to PD No. 27, DAR is empowered to promulgate rules and regulations for the implementation of PD No. 27.

or before he has notice of the claim or interest of other persons in the property.[78] Petitioner in this case was aware that the property was tenanted at the time of sale.[79]

Another factor which militates against petitioner's claim is the very application for retention Isabel filed which she substituted for. Isabel's application for retention is an acknowledgement that the property is covered by the OLT under PD No. 27, as in fact she indicated in her application that the sale to petitioner was contrary to PD No. 27.[80] In her Petition for Clarificatory Order, petitioner claimed that retention should be granted in her favor being the recognized transferee of whatever right Cristino might have had over the property.[81] Thus, she also impliedly acknowledged that the property is covered by PD No. 27. It is illogical for someone to invoke a right and at the same time claim that the requisites for the exercise of the said right are not present. Petitioner cannot claim retention rights and deny coverage under PD No. 27.

Petitioner's allegation that her title is conclusive evidence of her ownership of the property[82] is misplaced. We have held that a certificate of title cannot always be considered as conclusive evidence of ownership:

> Moreover, placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed.

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[78] *Homeowners Savings and Loan Bank v. Felonia*, G.R. No. 189477, February 26, 2014, 717 SCRA 358, 367.

[79] *Rollo*, pp. 18-19.

[80] *Id.* at 63. If Isabel believed that the property is not covered by the OLT, then she would have filed an application for exemption. In *Daez v. Court of Appeals*, G.R. No. 133507, February 17, 2000, 325 SCRA 856, 862-863, we ruled that if either of the requisites for coverage under the OLT is absent, a landowner may apply for an exemption. Thus, exemption for the coverage of OLT lies if: (1) the land is not devoted to rice or corn crops even if it is tenanted; or (2) the land is untenanted even though it is devoted to rice or corn crops.

[81] *Rollo*, p. 71.

[82] *Id.* at 21.

Ownership is different from a certificate of title, the latter only serving as the best proof of ownership over a piece of land. The certificate cannot always be considered as conclusive evidence of ownership. In fact, mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate, or that the registrant may only be a trustee, or that other parties may have acquired interest over the property subsequent to the issuance of the certificate of title. Needless to say, registration does not vest ownership over a property, but may be the best evidence thereof.[83] (Emphasis supplied.)

In sum, the property, being tenanted rice and/or corn land, is under the coverage of the OLT, and could not have been validly sold after October 21, 1972. The sale between Cristino and petitioner on October 12, 1976, having been made in violation of PD No. 27 and its implementing guidelines is void.[84] Petitioner, not being the owner of the property, does not have the right of retention over the property. Consequently, ownership reverts to Cristino.[85]

Cristino's right of retention

The ownership reverting to Cristino notwithstanding, we cannot make a determination whether Cristino, or his heirs may still exercise the right to retention. We take exception to the OP and the CA's findings that (1) Cristino's heirs cannot exercise the right of retention because Cristino had no intention to retain the property, and (2) Cristino is presumed to have already

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[83] *Lacbayan v. Samoy, Jr.*, G.R. No. 165427, March 21, 2011, 645 SCRA 677, 689-690, citing *Lee Tek Sheng v. Court of Appeals*, G.R. No. 115402, July 15, 1998, 292 SCRA 544. See also *Alde v. Bernal*, G.R. No. 169336, March 18, 2010, 616 SCRA 60, 70.

[84] *Sta. Monica Industrial and Development Corporation v. DAR Regional Director for Region III*, G.R. No. 164846, June 18, 2008, 555 SCRA 97, 106, citing *Heirs of Guillermo A. Batongbacal v. Court of Appeals*, G.R. No. 125063, September 24, 2002, 389 SCRA 517, 525; *Borromeo v. Mina*, G.R. No. 193747, June 5, 2013, 697 SCRA 516, 527.

[85] See *Taguinod v. Court of Appeals*, G.R. No. 154654, September 14, 2007, 533 SCRA 403, 421.

exercised his right of retention over the first seven hectares sold to Lito.[86]

We find no basis for these declarations. Under Section 3 of DAR Administrative Order No. 4, Series of 1991, cited by the CA, the heirs may exercise the original landowner's right to retention if they can prove that the decedent had no knowledge of OLT Coverage over the subject property. As such, the intent must be proven by the heirs seeking to exercise the right. In this case, the heirs did not have the opportunity to prove Cristino's intent because the DARRO, without requiring proof of such intent, granted the application for retention filed by Isabel, Cristino's widow.

Further, Isabel, or Cristino's heirs, if any, were not given the opportunity to present evidence when the issue of intent to retain was raised in the proceedings below, since petitioner has already substituted Isabel. The record shows that respondents presented no evidence or legal basis to prove the so-called implied exercise of retention. This was a mere allegation on the part of the respondents, a matter which Cristino's heirs, if any, failed to rebut, as they were never part of the proceedings. We note that Isabel died after she filed the application for retention,[87] and no heir or legal representative of Cristino participated in the proceedings thereafter.

When a party to a pending action dies and the claim is not extinguished, the Rules of Court require a substitution of the deceased in accordance with Section 16[88] of Rule 3. In *De la*

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

[87] *Id.* at 73.

[88] Sec. 16. *Death of a party; duty of counsel.* — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

Cruz v. Joaquin,[89] we explained the importance of the substitution of a deceased party:

> The rule on the substitution of parties was crafted to protect every party's right to due process. The estate of the deceased party will continue to be properly represented in the suit through the duly appointed legal representative. Moreover, no adjudication can be made against the successor of the deceased if the fundamental right to a day in court is denied.[90]

Thus, in all proceedings, the legal representatives must appear to protect the interests of the deceased.[91] Because Isabel was never substituted by her heirs or legal representative in this case, no adjudication can be had on Cristino's right of retention as a matter of due process.

Cristino's heirs, if there be any, may still apply for, and exercise the right of retention if they can show entitlement thereto.

WHEREFORE, in view of the foregoing, the petition is **DENIED** for lack of merit. The Decision and Resolution dated May 20, 2009 and August 25, 2009, respectively, rendered by the CA in CA-G.R. SP No. 98049 are **AFFIRMED** only insofar as the CA ruled that petitioner Fe Saguinsin has no right of retention over the 3.9524 hectare property.

SO ORDERED.

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

Reyes, J., on official leave.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

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[89] G.R. No. 162788, July 28, 2005, 464 SCRA 576.

[90] *Id.* at 584.

[91] *Id.* at 586, citing *Vda. de Dela Cruz v. Court of Appeals*, G.R. No. L-41107, February 28, 1979, 88 SCRA 695, 702.

FIRST DIVISION

[G.R. No. 189878. July 11, 2016]

WILSON FENIX, REZ CORTEZ and ANGELITO SANTIAGO, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS and the PEOPLE OF THE PHILIPPINES**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANT OF ARREST; THREE OPTIONS OF THE JUDGE IN THE RESOLUTION OF WHETHER OR NOT A WARRANT OF ARREST MAY BE ISSUED; WHEN THE JUDGE DISMISSES THE CASE OR REQUIRES THE PROSECUTOR TO PRESENT ADDITIONAL EVIDENCE, SUCH ACTION IS NOT IN DEROGATION OF THE PROSECUTOR'S AUTHORITY TO DETERMINE THE EXISTENCE OF PROBABLE CAUSE REASONS.— [J]udges may very well (1) dismiss the case if the evidence on record has clearly failed to establish probable cause; (2) issue a warrant of arrest upon a finding of probable cause; or (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause. When judges dismiss a case or require the prosecutor to present additional evidence, they do so not in derogation of the prosecutor's authority to determine the existence of probable cause. First, judges have no capacity to review the prosecutor's determination of probable cause. That falls under the office of the DOJ Secretary. Second, once a complaint or an Information has been filed, the disposition of the case is addressed to the sound discretion of the court, subject only to the qualification that its action must not impair the substantial rights of the accused or the right of the People to due process of law. Third, and most important, the judge's determination of probable cause has a different objective than that of the prosecutor. The judge's finding is based on a determination of the existence of facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed

by the person sought to be arrested. The prosecutor, on the other hand, determines probable cause by ascertaining the existence of facts sufficient to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof.

2. ID.; ID.; ID.; CASE AT BAR.— In this case, it bears stressing that the RTC never considered any evidence other than that which the panel had already passed upon. The only difference was that unlike the RTC, the panel did not give any serious consideration to the counter-affidavits of Ong and Santiago, the recantation of Santos or the affidavit of Bishop Bacani. That the Trial court did so spelled the difference between the divergent findings. As aptly pointed out by the RTC, there was no justification for the rejection of the counter-affidavits upon the failure to subscribe and swear to them before the panel. Under Section 3(a) and (c), 59 Rule 112 of the Rules of Court, counter-affidavits may be subscribed and sworn to before any prosecutor or government official authorized to administer oaths or, in their absence or unavailability, before any notary public. Notably, the counter-affidavits of Ong and Santiago, the recantation of Santos, and the affidavit of Bishop Bacani were all subsribed and worn to before government prosecutors.

3. ID.; ID.; PRELIMINARY INVESTIGATION; NATURE OF CLARIFICATORY HEARING; FAILURE OF THE WITNESS TO APPEAR AT THE SCHEDULED CLARIFICATORY HEARING DID NOT RESULT IN THE EXCLUSION OF HIS AFFIDAVIT OR COUNTER-AFFIDAVITS ALREADY SUBMITTED BY THE PARTIES.— [T]he conduct of a clarificatory hearing is not indispensable; rather, it is optional on the part of the investigating prosecutor as evidenced by the use of the term "may." That hearing fulfills only the purpose of aiding the investigating prosecutor in determining the existence of probable cause for the filing of a criminal complaint before the courts. The clarificatory hearing does not accord validity to the preliminary investigation by the prosecutor, nor does its absence render the proceedings void. Necessarily, the failure of Ong and Santiago to appear at the scheduled clarificatory hearing might have caused some slight inconvenience to the investigating prosecutor, but it did not result in the exclusion of the affidavits or counter-affidavits already submitted by

the parties. In fact, under the rules, an investigating prosecutor may resolve a complaint based only on the evidence presented by the complainant if the respondent cannot be subpoenaed or, if subpoenaed, does not submit a counter-affidavit within the prescribed period.

4. CRIMINAL LAW; REVISED PENAL CODE; SERIOUS ILLEGAL DETENTION; ELEMENTS.— The elements of the crime of serious illegal detention are the following: (1) the offender is a private individual; (2) the individual kidnaps or detains another or in any manner deprives the latter of liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injury is inflicted upon the person kidnapped or detained, or threats to kill that person are made; or (d) the person kidnapped or detained is a minor, a female, or a public officer.

5. ID.; ID.; ID.; THERE IS NO ILLEGAL DETENTION WHERE THE SUPPOSED VICTIM CONSENTS TO THE CONFINEMENT; PRINCIPLE APPLIED IN CASE AT BAR.— In *People v. Soberano*, We ruled that the act of holding a person for an illegal purpose necessarily implies an unlawful phys*ic*al or mental restraint against the person's will, coupled with a willful intent to so confine the victim. The culprit must have taken the victim away against the latter's will, as lack of consent is a fundamental element of the offense, and the involuntariness of the seizure and detention is the very essence of the crime. Given that principle, there is no illegal detention where the supposed victim consents to the confinement. x x x Based on Bishop Bacani's affidavit, Ong, Santiago, Cortez, Doble and Santos all sought sanctuary at the San Carlos Seminary. They were brought there out of fear for their security following the magnitude of the impact of Ong's revelation. It was because of fear that Doble and Santos were brought to the seminary, and not because of petitioners and Ong who were in the same predicament. All of them voluntarily entered the seminary to seek protection and eventually left it on their own accord.

APPEARANCES OF COUNSEL

Saguisag Carao and Associates for petitioners.

Jacinto Magtanong Esguerra and Uy Law Offices for petitioner W. Fenix.

The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

In this petition for review on certiorari under Rule 45 of the Rules of Court, We uphold the power of judges to dismiss a criminal case when the evidence on record clearly fails to establish probable cause for the issuance of a warrant of arrest.

The petition challenges the Court of Appeals (CA) Decision[1] and Resolution[2] in CA-G.R. SP No. 98187. The assailed CA Decision annulled the Orders[3] issued by the Regional Trial Court of Makati City, Branch 139 (RTC), which dismissed Criminal Case No. 05-1768 for lack of probable cause for the issuance of warrants of arrest against petitioners who had been charged with serious illegal detention. The assailed CA Resolution denied petitioners' motion for reconsideration.

FACTS

Complaint

In a Complaint Affidavit dated 15 June 2005, Technical Sergeant Vidal D. Doble, Jr. (Doble), a member of the Intelligence Service of the Armed Forces of the Philippines (ISAFP), charged

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[1] Dated 20 April 2009; *rollo*, pp. 33-54. The Decision issued by the CA Third Division was penned by Associate Justice Normandie B. Pizarro, with Associate Justices Martin S. Villarama, Jr. (retired Member of this Court) and Jose C. Reyes, Jr. concurring.

[2] Dated 13 October 2009; *Id.* at 55-56.

[3] Dated 17 April 2006 and 19 December 2006; CA *rollo*, pp. 65-73, 76-89. The Orders were penned by Benjamin T. Pozon, Presiding Judge, RTC of Makati, Branch 139.

petitioners, together with former Deputy Director of the National Bureau of Investigation (NBI) Samuel Ong (Ong), with serious illegal detention committed on 10-13 June 2005.[4]

According to Doble, on the morning of 10 June 2005, petitioner Angelito Santiago (Santiago) brought him to the San Carlos Seminary, Guadalupe, Makati City, where they met petitioner Rez Cortez (Cortez) and Bishop Teodoro C. Bacani, Jr. (Bishop Bacani). While there, Doble heard Ong over the radio making a press statement about the existence of an audio tape of a conversation between then President Gloria Macapagal-Arroyo and a Commission on Elections (COMELEC) commissioner regarding the alleged rigging of the 2004 presidential elections.[5]

On the afternoon of the same day, Ong arrived at the seminary and told Doble that the latter would be presented to the media as the source of the audio tape. From there, Ong and his men proceeded to transfer him from one room to another and closely monitored and guarded his movements. When he approached Santiago and said "*PARE, AYOKO NA, SUKO NA KO*,"[6] the latter told him to stay put and not go out of the room.

On the morning of 13 June 2005, Doble informed a group of priests who had gone to his room that he was being held against his will. The priests brought him to another room in another building away from Ong and the latter's men. At about 2:30 in the afternoon, Doble was fetched by Bishop Socrates Villegas and turned over to the custody of ISAFP in Camp Aguinaldo, Quezon City.

Doble's Complaint Affidavit was referred to the Chief State Prosecutor, Department of Justice (DOJ), for appropriate legal action.[7] Also attached to the referral were the affidavits of Doble's witnesses, namely: Arlene Sernal-Doble, wife of

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[4] CA *rollo*, pp. 97-99.

[5] *Id.* at 98, 100.

[6] *Id.* at 98.

[7] *Id.* at 97.

Doble;[8] Reynaldo D. Doble, brother of Doble;[9] and Marietta C. Santos (Santos), companion of Doble during his alleged illegal detention.[10]

The DOJ constituted an Investigating Panel of Prosecutors[11] (panel), which sent subpoenas[12] for the submission of counter-affidavits.

Counter-allegations

Cortez denied the allegations in his counter-affidavit.[13] He averred that he had stayed at the San Carlos Seminary from noon of 10 June 2005 to the afternoon of the following day to provide moral support for Ong. During his stay there, Cortez supposedly met Doble and Santos only once in the presence of Bishop Bacani.

Ong also submitted his counter-affidavit.[14] According to him, sometime in March 2005, Santiago gave him an audio tape that came from the latter's friend, Doble. Ong was told that the audio tape was a product of the wiretap of calls made to COMELEC Commissioner Virgilio Garcillano, and that several of those calls had been made by President Gloria Macapagal-Arroyo. Before taking steps to make the audio tape public, Ong looked for someone who could arrange for sanctuary for him and Doble. Ong was introduced to Cortez, who made arrangements for them to be accommodated at the San Carlos Seminary on 10 June 2005.

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[8] *Id.* at 100-103.

[9] *Id.* at 106-109, 104-105.

[10] *Id.* at 110-113, 114-115.

[11] Composed of 1st Assistant Provincial Prosecutor Jaime L. Umpa as chairperson and Special Prosecutors Juan Pedro C. Navera and Irwin E. Maraya as members. (*Id.* at 306, n. 6.)

[12] CA *rollo*, pp. 130-135.

[13] *Id.* at 142-144.

[14] *Id.* at 147-153.

Ong denied the allegation that he had armed men guarding Doble during their three-day stay in the seminary. In fact, he and Santiago were both unarmed, while Doble had his .45-caliber pistol. All of them were free to roam around the seminary. Around noon of 13 June 2005, Ong was informed that Bishop Socrates Villegas fetched Doble upon the request of a woman claiming to be Doble's wife, as well as of their two children. Ong was later brought out of the seminary by Bishop Bacani and other bishops, and taken to a safehouse in the south.

In his counter-affidavit,[15] Santiago essentially corroborated the statements of Ong. Annexed to the counter-affidavits of Ong and Santiago was an Affidavit dated 23 July 2005 executed by Santos,[16] as well as an Affidavit dated 10 August 2005 executed by Bishop Bacani.[17]

In her affidavit, Santos recanted all her previous affidavits in support of Doble's complaint. According to her, she was only made to sign the affidavits at the ISAFP office. She made clear that she and Doble had voluntarily sought sanctuary in San Carlos Seminary on 10 June 2005, and that at no point were their movements restricted or closely monitored. They were only transferred from room to room as a safety measure after an ISAFP agent had been seen around the premises.

In his affidavit, Bishop Bacani narrated that he had agreed to give sanctuary to Ong and the latter's group at *Bahay Pari*[18] on 10 June 2005. The other persons in the group were Doble, and Santos whom he assumed was Doble's wife. At no time did the two intimate to Bishop Bacani that they were being detained against their will. Rather, they feared that government forces would find them. Bishop Bacani also stated that no armed

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[15] *Id.* at 156-160.

[16] *Id.* at 116-120.

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

[18] Located inside the San Carlos Formation Complex, where the San Carlos Seminary is also situated. (Affidavit dated 10 August 2005 executed by Bishop Bacani, CA *rollo*, pp. 301-302.)

guards accompanied Doble and Santos in their room during their stay at *Bahay Pari*.

Resolution of the Panel

In a Resolution dated 9 September 2005,[19] the panel found probable cause to charge petitioners and Ong with serious illegal detention as defined and penalized under Article 267[20] of the Revised Penal Code. It ruled that the evidence on hand sufficiently established the fact that the offense had indeed been committed against Doble, who was a public officer detained for more than three days.

The panel did not give any serious consideration to the counter-affidavits, with annexes, executed by Ong and Santiago. Allegedly, they had failed, despite notice, to appear and affirm those counter-affidavits before the panel. The panel was supposedly deprived of the opportunity to ask clarificatory questions to test the credibility of Ong and Santiago. On the other hand, it took note of the admission of Cortez that he had

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[19] CA *rollo*, pp. 161-168.

[20] Art. 267. *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer;

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

gone to the seminary to give moral support to Ong, an act that allegedly made him a conspirator in the commission of the crime.

PROCEEDINGS BEFORE THE RTC

Accordingly, an Information[21] for the crime of serious illegal detention was filed before the RTC on 9 September 2005 and docketed as Criminal Case No. 05-1768. Attached to the Information filed before the court were the affidavit and supplemental affidavit of Doble and the affidavit of Arlene Sernal-Doble.[22]

Petitioners and Ong filed a petition for review of the panel's Resolution before the DOJ,[23] but then DOJ Secretary Raul M. Gonzalez denied it in the Resolution dated 13 January 2006.[24] Aggrieved, petitioners and Ong filed a motion to dismiss before the RTC urging the court to personally evaluate the Resolution of the panel and all pieces of evidence, especially the affidavit of Bishop Bacani, to determine the existence of probable cause for the issuance of warrants of arrest.[25]

After an exchange of pleadings, the RTC directed the panel to submit all the documents that were mentioned in the latter's Resolution dated 9 September 2005, but were not attached to the Information filed before the court.[26] Specifically, the court directed the submission of the sworn statements of Santos and Reynaldo and the counter-affidavits with annexes executed by Ong, Santiago and Cortez.[27] The panel submitted its compliance on 27 September 2005.[28]

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[21] CA *rollo*, pp. 169-170.

[22] *Id.* at 68-69.

[23] *Id.* at 177.

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

[25] *Id.* at 181-191.

[26] *Id.* at 69.

[27] *Id.*

[28] *Id.* at 69-70.

In the Order dated 17 April 2006,[29] the RTC dismissed Criminal Case No. 05-1768 for lack of probable cause for the issuance of warrants of arrest against petitioners and Ong. It saw no justifiable reason why the panel did not give serious consideration to the counter-affidavits of Ong and Santiago. It also recognized the importance of the recantation of Santos. It held that, other than Doble, Santos was the one who truly knew about the incident, as she was with him the whole time.

According to the RTC, recantations are indeed looked upon with disfavor because they can be easily procured through intimidation, threat or promise of reward. There was, however, no showing that the recantation of Santos was attended by any of these vices of consent. At any rate, the court considered it a responsibility to go over all pieces of evidence before the issuance of warrants of arrest, considering the "political undertones" of the case.[30] It also found no reason to ignore the affidavit of Bishop Bacani. It regarded him as a disinterested witness who had personal knowledge of the circumstances surrounding the alleged illegal detention, for he was the one who gave sanctuary to Doble and Santos.

The court noted that there was no evidence or allegation whatsoever regarding the involvement of Fenix in the alleged detention.

The panel filed a Motion for Reconsideration on 2 May 2006.[31] The following day, it also filed a motion calling for the voluntary inhibition of Presiding Judge Benjamin T. Pozon allegedly due to bias and prejudice as shown by the arbitrary dismissal of the case.[32] Finding no just and valid ground therefor, the court denied the motion for inhibition in an Order dated 18 December 2006.[33]

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[29] *Id.* at 65-73.

[30] *Id.* at 72.

[31] *Id.* at 199-206.

[32] *Id.* at 90-96.

[33] *Id.* at 74-75.

The RTC issued another Order dated 19 December 2006[34] denying the motion for reconsideration. It upheld its independent authority to conduct its own evaluation of the evidence for the purpose of determining the existence of probable cause for the issuance of warrants of arrest and the dismissal of the case for failure to establish probable cause.

PROCEEDINGS BEFORE THE CA

The OSG filed a petition for certiorari[35] before the CA within the 20-day extension previously prayed for.[36] Petitioners and Ong moved for the dismissal of the petition for late filing,[37] invoking Section 4,[38] Rule 65 of the Rules of Court. According to this provision, no extension of time to file a petition shall be granted except for compelling reasons, and in no case exceeding 15 days. The CA admitted[39] the petition and denied

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[34] *Id.* at 76-89.

[35] *Id.* at 31-63.

[36] *Id.* at 2-4.

[37] *Id.* at 215-220, 222-228.

[38] Before Section 4, Rule 65 of the Rules of Court was amended by A.M. No. 07-7-12-SC dated 4 December 2007, the provision in A.M. No. 00-2-03-SC (2000) read:

> Sec. 4. *When and where petition filed*. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60)-day period shall be counted from notice of the denial of said motion.
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> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.
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> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

[39] CA *rollo*, p. 214.

the motion to dismiss, citing the interest of substantial justice.[40]

On 20 April 2009, the CA issued the assailed Decision[41] ruling that the RTC committed grave abuse of discretion in dismissing Criminal Case No. 05-1768. The appellate court annulled the RTC Orders dated 17 April 2006 and 19 December 2006 and reinstated the Information for serious illegal detention. Nevertheless, the CA sustained the RTC Order dated 18 December 2006 denying the motion for inhibition.

The CA ruled that while a judge is required to personally determine the existence of probable cause for the issuance of a warrant of arrest, this determination must not extend to the issue of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial. In this case, the CA found that the RTC had delved into the evaluation of the evidence, which should have been held in abeyance until after a full-blown trial on the merits.

The appellate court also stressed that the late filing of the OSG's petition had to be disregarded to correct a patent injustice committed against the People through the precipitate dismissal of Criminal Case No. 05-1768.

Petitioners and Ong filed a motion for reconsideration,[42] but it was denied in the challenged Resolution dated 13 October 2009.[43] Meanwhile, Ong passed away on 22 May 2009.[44]

PROCEEDINGS BEFORE THE COURT

Petitioners come before us raising various issues for our consideration. While the petition was originally denied in the

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[40] *Id.* at 240-241, 256-257.

[41] *Id.* at 305-326.

[42] *Id.* at 333-349.

[43] *Id.* at 361-362.

[44] Mark Merueñas, "Garci tape whistleblower Samuel Ong passes away" <http://www.gmanetwork.com/news/story/162468/news/nation/garci-tape-whistleblower-samuel-ong-passes-away> (Last accessed on 15 April 2016).

Court Resolution dated 15 February 2010,[45] it was reinstated on 18 August 2010 pursuant to the grant of the motion for reconsideration filed by petitioners.[46]

Upon order of the Court, the OSG filed a Manifestation in Lieu of Comment[47] dated 24 November 2010. The OSG abandoned the legal theory it had previously espoused and prayed that the petition be given due course in view of its merit. According to the OSG, in dismissing Criminal Case No. 05-1768, the RTC dutifully acted within the parameters of its authority under Section 6 (a),[48] Rule 112 of the Rules of Court. The RTC did not merely rely on the findings and recommendations of the panel, but took into consideration certain supervening events such as the recantation of Santos, the panel's refusal to consider the counter-affidavits of Ong and Santiago, and the affidavit of Bishop Bacani. From the point of view of the OSG, this act was called for pursuant to the court's mandate and could not be regarded as an unlawful intrusion into the executive functions and prerogatives of the panel. Thus, it opined that the RTC had committed no grave abuse of discretion.

Despite the orders[49] from this Court, the DOJ's comment to the petition was not filed and, hence, was deemed waived. The

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[45] *Rollo*, pp. 58-59.

[46] *Id.* at 199.

[47] *Id.* at 221-248.

[48] Section 6. *When Warrant of Arrest May Issue*. — (a) *By the Regional Trial Court*. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

[49] *Rollo*, pp. 251-252, 254.

petition was given due course in the Resolution dated 13 February 2013.[50]

ISSUE

The instant petition seeks a review of the Decision and the Resolution issued by the CA under its certiorari jurisdiction.[51] In this light, the case shall be decided by resolving the single issue of whether the appellate court erred in finding that the RTC had committed grave abuse of discretion in dismissing Criminal Case No. 15-1768.

OUR RULING

We grant the petition.

The power of the judge to determine probable cause for the issuance of a warrant of arrest is enshrined in Section 2, Article III of the Constitution:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

That this power is provided under no less than the Bill of Rights and the same section enunciating the inviolable right of persons to be secure in their persons only shows that the power is strictly circumscribed. It implies that a warrant of arrest shall issue only upon a judge's personal determination of the evidence against the accused. Thus, when Informations are filed before the courts and the judges are called upon to determine the existence of probable cause for the issuance of a warrant of arrest, what should be foremost in their minds is not anxiety over stepping on executive toes, but their constitutional mandate

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[50] *Id.* at 268-269.

[51] See *Montoya v. Transmed Manila Corp.*, 613 Phil. 696 (2009).

to order the detention of a person rightfully indicted or to shield a person from the ordeal of facing a criminal charge not committed by the latter.

Further supporting the proposition that judges only have to concern themselves with the accused and the evidence against the latter in the issuance of warrants of arrest is Section 6(a), Rule 112 of the Rules of Court, which provides:

> Section 6. *When Warrant of Arrest May Issue*. — (a) *By the Regional Trial Court*. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

Indeed, under the above-cited provision, judges may very well (1) dismiss the case if the evidence on record has clearly failed to establish probable cause; (2) issue a warrant of arrest upon a finding of probable cause; or (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause.[52] When judges dismiss a case or require the prosecutor to present additional evidence, they do so not in derogation of the prosecutor's authority to determine the existence of probable cause.

First, judges have no capacity to review the prosecutor's determination of probable cause.[53] That falls under the office of the DOJ Secretary. Second, once a complaint or an Information

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[52] *People v. Hon. Dela Torre-Yadao*, G.R. Nos. 162144-54, 13 November 2012, 685 SCRA 264.

[53] *Mendoza v. People*, G.R. No. 197293, 21 April 2014, 722 SCRA 647.

has been filed, the disposition of the case is addressed to the sound discretion of the court, subject only to the qualification that its action must not impair the substantial rights of the accused or the right of the People to due process of law.[54] Third, and most important, the judge's determination of probable cause has a different objective than that of the prosecutor. The judge's finding is based on a determination of the existence of facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested.[55] The prosecutor, on the other hand, determines probable cause by ascertaining the existence of facts sufficient to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof.[56]

To be sure, in the determination of probable cause for the issuance of a warrant of arrest, the judge is not compelled to follow the prosecutor's certification of the existence of probable cause. As we stated in *People v. Inting*,[57] "[i]t is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the [p]rosecutor's certification which are material in assisting the [j]udge to make his determination."[58]

In this case, it bears stressing that the RTC never considered any evidence other than that which the panel had already passed upon. The only difference was that unlike the RTC, the panel did not give any serious consideration to the counter-affidavits of Ong and Santiago, the recantation of Santos or the affidavit of Bishop Bacani. That the trial court did so spelled the difference between the divergent findings.

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[54] *Crespo v. Mogul*, 235 Phil. 465 (1987).

[55] *Allado v. Diokno*, G.R. No. 113630, 5 May 1994, 232 SCRA 192.

[56] *Agdeppa v. Ombudsman*, G.R. No. 146376, 23 April 2014, 723 SCRA 293.

[57] 265 Phil. 817 (1990).

[58] *Id.* at 821.

As aptly pointed out by the RTC, there was no justification for the rejection of the counter-affidavits upon the failure to subscribe and swear to them before the panel. Under Section 3(a) and (c),[59] Rule 112 of the Rules of Court, counter-affidavits may be subscribed and sworn to before any prosecutor or government official authorized to administer oaths or, in their absence or unavailability, before any notary public. Notably, the counter-affidavits of Ong and Santiago, the recantation of Santos, and the affidavit of Bishop Bacani were all subscribed and sworn to before government prosecutors.[60]

Also, the failure of Ong and Santiago to appear before the panel did not justify the exclusion of their duly submitted counter-affidavits and annexes. Section 3 (e), Rule 112 of the Rules of Court provides:

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[59] Section 3. *Procedure*. — The preliminary investigation shall be conducted in the following manner:

> (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. **The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or in their absence or unavailability, before a notary public**, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.
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> xxx xxx xxx
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> (c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. **The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section**, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit. (Emphases supplied)

[60] The counter-affidavits of Ong and petitioner Santiago were subscribed and sworn to before Quezon City Assistant City Prosecutor Edgardo T. Paragua; the recantation of Santos before Assistant Provincial Prosecutor Liam Omar Basa; and the affidavit of Bishop Bacani before Makati City Assistant City Prosecutor Lody Tancioco (*Rollo*, p. 19.).

Section 3. *Procedure*. — The preliminary investigation shall be conducted in the following manner:

xxx xxx xxx

(e) **The investigating officer may set a hearing if there are facts and issues to be clarified** from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned. (Emphasis supplied)

Under the provision, the conduct of a clarificatory hearing is not indispensable; rather, it is optional on the part of the investigating prosecutor as evidenced by the use of the term "may."[61] That hearing fulfills only the purpose of aiding the investigating prosecutor in determining the existence of probable cause for the filing of a criminal complaint before the courts. The clarificatory hearing does not accord validity to the preliminary investigation by the prosecutor, nor does its absence render the proceedings void. Necessarily, the failure of Ong and Santiago to appear at the scheduled clarificatory hearing might have caused some slight inconvenience to the investigating prosecutor, but it did not result in the exclusion of the affidavits or counter-affidavits already submitted by the parties. In fact, under the rules, an investigating prosecutor may resolve a complaint based only on the evidence presented by the complainant if the respondent cannot be subpoenaed or, if subpoenaed, does not submit a counter-affidavit within the prescribed period.[62]

The panel's act of resolving the complaint against petitioners and Ong primarily on the basis of Doble's evidence, and in spite of the timely submission of the counter-affidavits, was clearly committed with grave abuse of discretion. The panel's Resolution is not before us, but it is nevertheless worthwhile to state that had the RTC adopted the conclusion *in toto*, the latter would have been party to the grave abuse of discretion, thereby justifying a grant of the certiorari petition before the CA.

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[61] *De Ocampo v. Secretary of Justice*, 515 Phil. 702 (2006).

[62] Rules of Court, Rule 112, Section 3 (d).

We have stressed that the court's dismissal of a case for lack of probable cause for the issuance of a warrant of arrest must be done when the evidence on record plainly fails to establish probable cause; that is, when the records readily show uncontroverted and, thus, established facts that unmistakably negate the existence of the elements of the crime charged.[63]

The elements of the crime of serious illegal detention are the following: (1) the offender is a private individual; (2) the individual kidnaps or detains another or in any manner deprives the latter of liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injury is inflicted upon the person kidnapped or detained, or threats to kill that person are made; or (d) the person kidnapped or detained is a minor, a female, or a public officer.[64]

In *People v. Soberano*,[65] We ruled that the act of holding a person for an illegal purpose necessarily implies an unlawful physical or mental restraint against the person's will, coupled with a willful intent to so confine the victim. The culprit must have taken the victim away against the latter's will, as lack of consent is a fundamental element of the offense, and the involuntariness of the seizure and detention is the very essence of the crime.[66] Given that principle, there is no illegal detention where the supposed victim consents to the confinement.[67]

In this case, the following disinterested narration of Bishop Bacani clearly shows that Doble and Santos were not seized and detained against their will on 10-13 June 2005:

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[63] *De los Santos-Dio v. CA*, G.R. Nos. 178947 & 179079, 26 June 2013, 699 SCRA 614.

[64] *People v. Siongco*, 637 Phil. 488 (2010).

[65] 346 Phil. 449 (1997).

[66] *Id.*

[67] *Id.*

1. On June 10, 2005, [Cortez] requested me to give sanctuary to [Ong] and another person after a projected press conference to be held somewhere. Considering the importance for the national interest of what [Ong] was to reveal, I favorably considered the matter. After consulting with the director of Bahay Pari, and getting his consent, I agreed to do so.

2. Later in the afternoon of that same day, I learned to my surprise that [Ong] was being interviewed in a van outside Bahay Pari by Mr. Arnold Clavio.

3. In the meantime I noticed a man and a woman standing in the lobby of Bahay Pari. After the departure of the van where [Ong] was being interviewed, I learned that the man was the other person I was requested to give sanctuary to. Presuming that the woman was his wife, since they seemed familiar with each other, I had them brought to a room in Bahay Pari. In no way did they show any sign that they were coerced to come, especially since [Ong] had gone away.

4. Much later, [Ong] arrived and I also had him brought to a room of his own far away from the room of the couple, whom I was to know later [as Doble] and [Santos].

5. At dusk, I was disturbed to learn that an unknown man, not a resident of Bahay Pari was seen inside our premises. We tried to get hold of the man but he escaped. Fearing harm for the couple, I rushed to their room and was relieved to find that they were safe. [Doble] said he recognized the man, but it seemed [the man] did not recognize him in the dark.

6. [Doble] and his companion mostly [kept] to their room and there did not seem to be any direct contact between him and [Ong] or [Cortez], the latter two having kept to their side of the house, while [Doble] and his companion kept to their room. Once in a while I would check on [Doble] and [Santos] to find out if they were alright. At no time did they ever intimate to me in any way that they were being detained against their will. [Santos] even ventured at least once to come and get food from our refectory. They feared rather that government forces might get them, and so they even transferred to another room where they would not be exposed (I was told) to sniper fire or observation from the neighboring buildings.

7. On June 11, I bade goodbye to [Doble] and told him that I would be going somewhere to officiate a wedding, and that I would return at around noon the following day. Again, he showed no sign that he wanted to leave Bahay Pari. That would have been a perfect opportunity for him to leave our place and obtain his freedom if he had wanted to. I could even have brought him out of our place.

8. The following day, Sunday, was uneventful. I again told [Doble] and [his] companion that I was leaving to have dinner with my family. His friend, [Santiago], asked to leave with me, and we left the premises of the San Carlos Formation Complex uneventfully.

9. When, at around 8:00 A.M. the following morning (Monday), I was told that the wife of [Doble] was at the San Carlos Formation Complex gate, I confronted [Doble] and [Santos], and asked them why they did not tell me they were not husband and wife. They answered nothing.

10. When I heard allegations that [Doble] was being detained against his will, I set him apart, outside Bahay Pari, and then to San Carlos Seminary, and then asked him to tell me if he had indeed been detained against his will. In no way, whatsoever did he indicate that he was detained by anybody against his will. In fact, it would have been all to his advantage to say so if he had really been detained. And at that time he was free to just walk out of the gate if he had wanted to. Later on, he did leave with Bishop Socrates Villegas, who came in to intervene.

11. While [Doble] was away from Bahay Pari, [Santos] asked to leave Bahay Pari. She told me that [Doble] texted her, asking her to leave because there might be some trouble. After [ascertaining from] her that she could safely leave, I had her accompanied to an exit gate. But before leaving, I interviewed her and she repeatedly affirmed that she and [Doble] were not kidnapped. I got her to affirm the same in front of another priest and another witness. She was able to leave safely, escaping detection by government authorities.

12. It was very clear to me from the beginning of his entry in Bahay Pari to the time that I last saw him in San Carlos Seminary after having brought him there myself that [Doble]

was not detained by [Ong] or other persons allied with him. In no way did [Doble] signify to me or to anybody else in Bahay Pari that he was being detained against his will. He willingly came and received sanctuary in Bahay Pari. The ones he seemed to be wary of were the government authorities.

13. In his room, [Doble] was accompanied only by [Santos]. So far as I know there were no armed persons with him. In fact, according to two persons with me in Bahay Pari, [Doble] was the one who had a gun which they saw. We had one or two security guards around the premises, not with [Doble], but their purpose was apparently to protect [Ong] and [Doble] from intruders.[68]

Based on Bishop Bacani's affidavit, Ong, Santiago, Cortez, Doble and Santos all sought sanctuary at the San Carlos Seminary. They were brought there out of fear for their security following the magnitude of the impact of Ong's revelation. It was because of fear that Doble and Santos were brought to the seminary, and not because of petitioners and Ong who were in the same predicament. All of them voluntarily entered the seminary to seek protection and eventually left it on their own accord.

The contents of this statement by Bishop Bacani were neither controverted nor denied by Doble or his witnesses. Some points were even corroborated by Doble himself in his complaint, in which he stated that he met Bishop Bacani at the San Carlos Seminary and was transferred from one room to another, albeit for a different reason. The room transfers and the reason therefor as stated by Bishop Bacani were also corroborated by Santos in her recantation affidavit.

After the RTC received and examined all the sets of evidence passed upon by the panel, including those of petitioners and Ong, it correctly found no probable cause to order their arrest. Accordingly, it dismissed the criminal charge of serious illegal detention. As discussed, that power was lodged with the RTC, which validly exercised it without grave abuse of discretion.

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[68] CA *rollo*, pp. 301-302.

Considering the foregoing, we deem it unnecessary to delve into the matter of the late filing of the petition for certiorari before the CA. While the Court does not approve of the nonobservance of the rules meant to facilitate the dispensation of justice, the CA's grant of due course to the petition eventually paved the way for the final and appropriate resolution of this case.

WHEREFORE, the petition is **GRANTED**. The CA Decision dated 20 April 2009 and Resolution dated 13 October 2009 in CA-G.R. SP No. 98187 are hereby **REVERSED** and **SET ASIDE.**

The Orders of the Regional Trial Court of Makati City, Branch 139, dated 17 April and 19 December 2006 dismissing Criminal Case No. 05-1768 are **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194121. July 11, 2016]

TORRES-MADRID BROKERAGE, INC., *petitioner, vs.* **FEB MITSUI MARINE INSURANCE CO., INC. and BENJAMIN P. MANALASTAS, doing business under the name of BMT TRUCKING SERVICES**, *respondents.*

SYLLABUS

1. CIVIL LAW; COMMON CARRIERS; A BROKERAGE MAY BE CONSIDERED A COMMON CARRIER IF IT ALSO UNDERTAKES TO DELIVER THE GOODS FOR ITS

CUSTOMERS.— In *A.F. Sanchez Brokerage Inc. v. Court of Appeals,* we held that a customs broker – whose principal business is the preparation of the correct customs declaration and the proper shipping documents – is still considered a common carrier if it also undertakes to deliver the goods for its customers. The law does not distinguish between one whose principal business activity is the carrying of goods and one who undertakes this task only as an ancillary activity. x x x Despite TMBI's present denials, we find that the delivery of the goods is an integral, albeit ancillary, part of its brokerage services. TMBI admitted that it was contracted to facilitate, process, and clear the shipments from the customs authorities, withdraw them from the pier, then transport and deliver them to Sony's warehouse in Laguna. x x x That TMBI does not own trucks and has to subcontract the delivery of its clients' goods, is immaterial. As long as an entity holds itself to the public for the transport of goods as a business, it is considered a common carrier regardless of whether it owns the vehicle used or has to actually hire one. Lastly, TMBI's customs brokerage services – including the transport/delivery of the cargo – are available to anyone willing to pay its fees. Given these circumstances, we find it undeniable that TMBI is a common carrier.

2. ID.; ID.; THEFT OR ROBBERY OF THE GOODS IS NOT CONSIDERED A FORTUITOUS EVENT OR A *FORCE MAJEURE*; INSTANCES WHERE A COMMON CARRIER MAY BE ABSOLVED OF LIABILITY FOR A RESULTING LOSS.— [In cases of] theft or robbery – a common carrier is presumed to have been at fault or to have acted negligently, unless it can prove that it observed *extraordinary diligence.* Simply put, the theft or the robbery of the goods is not considered a fortuitous event or a *force majeure*. Nevertheless, a common carrier may absolve itself of liability for a resulting loss: (1) if it proves that it exercised *extraordinary* diligence in transporting and safekeeping the goods; or (2) if it stipulated with the shipper/owner of the goods to limit its liability for the loss, destruction, or deterioration of the goods to a degree less than extraordinary diligence.

3. ID.; ID.; THAT THE CARGO DISAPPEARED DURING TRANSIT WHILE UNDER THE CUSTODY OF A SUBCONTRACTOR DID NOT DIMINISH NOR TERMINATE THE PRINCIPAL COMMON CARRIER'S RESPONSIBILITY OVER THE CARGO; ITS FALURE TO

ESTABLISH THAT IT HAD ACTED WITH EXTRAORDINARY DILIGENCE RENDERS IT LIABLE FOR BREACH OF CONTRACT.— In the present case, the shipper, Sony, engaged the services of TMBI, a common carrier, to facilitate the release of its shipment and deliver the goods to its warehouse. In turn, TMBI subcontracted a portion of its obligation – the delivery of the cargo – to another common carrier, BMT. Despite the subcontract, TMBI remained responsible for the cargo. Under Article 1736, a common carrier's extraordinary responsibility over the shipper's goods lasts from the time these goods are unconditionally placed in the possession of, and received by, the carrier for transportation, **until they are delivered, actually or constructively, by the carrier to the consignee.** That the cargo disappeared during transit while under the custody of BMT – TMBI's subcontractor – did not diminish nor terminate TMBI's responsibility over the cargo. Article 1735 of the Civil Code presumes that it was at fault. Instead of showing that it had acted with *extraordinary diligence*, TMBI simply argued that it was not a common carrier bound to observe extraordinary diligence. Its failure to successfully establish this premise carries with it the presumption of fault or negligence, thus rendering it liable to Sony/Mitsui for breach of contract.

4. ID.; ID.; THE COMMON CARRIER AND ITS SUBCONTRACTOR ARE NOT SOLIDARILY LIABLE SINCE THE FORMER'S LIABILITY STEMS FROM ITS BREACH OF CONTRACT.— We disagree with the lower courts' ruling that TMBI and BMT are solidarily liable to Mitsui for the loss as joint tortfeasors. The ruling was based on Article 2194 of the Civil Code: Art. 2194. The responsibility of two or more persons **who are liable for quasi-delict** is solidary. Notably, TMBI's liability to Mitsui does not stem from a quasi-delict (*culpa aquiliana*) but from its breach of contract (*culpa contractual*). The tie that binds TMBI with Mitsui is contractual, albeit one that passed on to Mitsui as a result of TMBI's contract of carriage with Sony to which Mitsui had been subrogated as an insurer who had paid Sony's insurance claim. The legal reality that results from this contractual tie precludes the application of quasi-delict based Article 2194.

5. ID.; ID.; *CULPA CONTRACTUAL* DISTINGUISHED FROM *CULPA AQUILIANA*.— We have repeatedly distinguished between an action for breach of contract (*culpa contractual)*

and an action for quasi-delict (*culpa aquiliana).* In *culpa contractual,* the plaintiff only needs to establish the existence of the contract and the obligor's failure to perform his obligation. It is not necessary for the plaintiff to prove or even allege that the obligor's non-compliance was due to fault or negligence because Article 1735 already presumes that the common carrier is negligent. The common carrier can only free itself from liability by proving that it observed *extraordinary diligence.* It cannot discharge this liability by shifting the blame on its agents or servants. On the other hand, the plaintiff in *culpa aquiliana* must clearly establish the defendant's fault or negligence because this is the very basis of the action. Moreover, if the injury to the plaintiff resulted from the act or omission of the defendant's employee or servant, the defendant may absolve himself by proving that he observed the diligence of a good father of a family to prevent the damage.

6. ID.; ID.; THE SUBCONTRACTOR IS LIABLE TO PRINCIPAL COMMON CARRIER FOR BREACH OF THEIR CONTRACT OF CARRIAGE.— We do not hereby say that TMBI must absorb the loss. By subcontracting the cargo delivery to BMT, TMBI entered into its own contract of carriage with a fellow common carrier. The cargo was lost after its transfer to BMT's custody based on its contract of carriage with TMBI. Following Article 1735, BMT is presumed to be at fault. Since BMT failed to prove that it observed *extraordinary diligence* in the performance of its obligation to TMBI, it is liable to TMBI for breach of their contract of carriage. In these lights, TMBI is liable to Sony (subrogated by Mitsui) for breaching the contract of carriage. In turn, TMBI is entitled to reimbursement from BMT due to the latter's own breach of its contract of carriage with TMBI. The proverbial buck stops with BMT who may either: (a) absorb the loss, or (b) proceed after its missing driver, the suspected culprit, pursuant to Article 2181.

APPEARANCES OF COUNSEL

Estella and Virtudazo Law Firm for petitioner.

Astorga and Repol Law Offices for FEB Mitsui Marine Insurance Co., Inc.

Tabaquero Albano Lopez & Associates for Benjamin P. Manalastas.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari* challenging the Court of Appeals' *(CA)* October 14, 2010 decision in **CA-G.R. CV No. 91829.**[1]

The CA affirmed the Regional Trial Court's *(RTC)* decision in **Civil Case No. 01-1596,** and found petitioner Torres-Madrid Brokerage, Inc. *(TMBI)* and respondent Benjamin P. Manalastas jointly and solidarily liable to respondent FEB Mitsui Marine Insurance Co., Inc. *(Mitsui)* for damages from the loss of transported cargo.

Antecedents

On October 7, 2000, a shipment of various electronic goods from Thailand and Malaysia arrived at the Port of Manila for Sony Philippines, Inc. *(Sony).* Previous to the arrival, Sony had engaged the services of TMBI to *facilitate, process, withdraw, and deliver* the shipment from the port to its warehouse in Biñan, Laguna.[2]

TMBI – who did not own any delivery trucks – subcontracted the services of Benjamin Manalastas' company, BMT Trucking Services *(BMT)*, to transport the shipment from the port to the Biñan warehouse.[3] Incidentally, TMBI notified Sony who had no objections to the arrangement.[4]

Four BMT trucks picked up the shipment from the port at about 11:00 a.m. of October 7, 2000. However, BMT could not immediately undertake the delivery because of the truck

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[1] Penned by Associate Justice Remedios Salazar-Fernando and concurred in by Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias.

[2] *Rollo,* pp. 44, 85, and 91.

[3] *Id*. at 43, 44.

[4] *Id*. at 13.

ban and because the following day was a Sunday. Thus, BMT scheduled the delivery on October 9, 2000.

In the early morning of October 9, 2000, the four trucks left BMT's garage for Laguna.[5] However, only three trucks arrived at Sony's Biñan warehouse.

At around 12:00 noon, the truck driven by Rufo Reynaldo Lapesura *(NSF-391)* was found abandoned along the Diversion Road in Filinvest, Alabang, Muntinlupa City.[6] Both the driver and the shipment were missing.

Later that evening, BMT's Operations Manager Melchor Manalastas informed Victor Torres, TMBI's General Manager, of the development.[7] They went to Muntinlupa together to inspect the truck and to report the matter to the police.[8]

Victor Torres also filed a complaint with the National Bureau of Investigation *(NBI)* against Lapesura for "*hijacking*."[9] The complaint resulted in a recommendation by the NBI to the Manila City Prosecutor's Office to prosecute Lapesura for qualified theft.[10]

TMBI notified Sony of the loss through a letter dated October 10, 2000.[11] It also sent BMT a letter dated March 29, 2001, demanding payment for the lost shipment. BMT refused to pay, insisting that the goods were "*hijacked*."

In the meantime, Sony filed an insurance claim with the Mitsui, the insurer of the goods. After evaluating the merits of the claim, Mitsui paid Sony **PHP7,293,386.23** corresponding to the value of the lost goods.[12]

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[5] *Id.* at 50.

[6] *Id.* at 44.

[7] *Id.* at 47, 50.

[8] *Id.* at 48, 50

[9] *Id.* at 48, 50, 97.

[10] *Id.* at 98.

[11] *Id.* at 48.

[12] *Id.* at 46.

After being subrogated to Sony's rights, Mitsui sent TMBI a demand letter dated August 30, 2001 for payment of the lost goods. TMBI refused to pay Mitsui's claim. As a result, Mitsui filed a complaint against TMBI on November 6, 2001.

TMBI, in turn, impleaded Benjamin Manalastas, the proprietor of BMT, as a third-party defendant. TMBI alleged that BMT's driver, Lapesura, was responsible for the theft/hijacking of the lost cargo and claimed BMT's negligence as the proximate cause of the loss. TMBI prayed that in the event it is held liable to Mitsui for the loss, it should be reimbursed by BMT.

At the trial, it was revealed that BMT and TMBI have been doing business with each other since the early 80's. It also came out that there had been a previous hijacking incident involving Sony's cargo in 1997, but neither Sony nor its insurer filed a complaint against BMT or TMBI.[13]

On August 5, 2008, the RTC found TMBI and Benjamin Manalastas jointly and solidarily liable to pay Mitsui PHP 7,293,386.23 as actual damages, attorney's fees equivalent to 25% of the amount claimed, and the costs of the suit.[14] The RTC held that TMBI and Manalastas were common carriers and had acted negligently.

Both TMBI and BMT appealed the RTC's verdict.

TMBI denied that it was a common carrier required to exercise *extraordinary* diligence. It maintains that it exercised the diligence of a good father of a family and should be absolved of liability because the truck was *"hijacked"* and this was a fortuitous event.

BMT claimed that it had exercised *extraordinary* diligence over the lost shipment, and argued as well that the loss resulted from a fortuitous event.

On October 14, 2010, the CA affirmed the RTC's decision but reduced the award of attorney's fees to PHP 200,000.

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[13] *Id*. at 48.

[14] *Id*. at 43.

The CA held: (1) that "*hijacking*" is not necessarily a fortuitous event because the term refers to the general stealing of cargo during transit;[15] (2) that TMBI is a common carrier engaged in the business of transporting goods for the general public for a fee;[16] (3) even if the "*hijacking*" were a fortuitous event, TMBI's failure to observe extraordinary diligence in overseeing the cargo and adopting security measures rendered it liable for the loss;[17] and (4) even if TMBI had not been negligent in the handling, transport and the delivery of the shipment, TMBI still breached its contractual obligation to Sony when it failed to deliver the shipment.[18]

TMBI disagreed with the CA's ruling and filed the present petition on December 3, 2010.

The Arguments

TMBI's Petition

TMBI insists that the *hijacking* of the truck was a fortuitous event. It contests the CA's finding that neither force nor intimidation was used in the taking of the cargo. Considering Lapesura was never found, the Court should not discount the possibility that he was a victim rather than a perpetrator.[19]

TMBI denies being a common carrier because it does not own a single truck to transport its shipment and it does not offer transport services to the public for compensation.[20] It emphasizes that Sony knew TMBI did not have its own vehicles and would subcontract the delivery to a third-party.

Further, TMBI now insists that the service it offered was limited to the processing of paperwork attendant to the entry

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[15] *Id*. at 53.

[16] *Id*. at 54.

[17] *Id*. at 55.

[18] *Id*. at 57.

[19] *Id*. at 24.

[20] *Id*. at 26.

of Sony's goods. It denies that delivery of the shipment was a part of its obligation.[21]

TMBI solely blames BMT as it had full control and custody of the cargo when it was lost.[22] BMT, as a common carrier, is presumed negligent and should be responsible for the loss.

BMT's Comment

BMT insists that it observed the required standard of care.[23] Like the petitioner, BMT maintains that the hijacking was a fortuitous event – a *force majeure* – that exonerates it from liability.[24] It points out that Lapesura has never been seen again and his fate remains a mystery. BMT likewise argues that the loss of the cargo necessarily showed that the taking was with the use of force or intimidation.[25]

If there was any attendant negligence, BMT points the finger on TMBI who failed to send a representative to accompany the shipment.[26] BMT further blamed TMBI for the latter's failure to adopt security measures to protect Sony's cargo.[27]

Mitsui's Comment

Mitsui counters that neither TMBI nor BMT alleged or proved during the trial that the taking of the cargo was accompanied with grave or irresistible threat, violence, or force.[28] Hence, the incident cannot be considered "force majeure" and TMBI remains liable for breach of contract.

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[21] *Id*. at 33.

[22] *Id*. at 36.

[23] *Id*. at 143.

[24] *Id*.

[25] *Id*. at 145.

[26] *Id*. at 146.

[27] *Id*. at 147.

[28] *Id*. at 73.

Mitsui emphasizes that TMBI's theory – that force or intimidation must have been used because Lapesura was never found – was only raised for the first time before this Court.[29] It also discredits the theory as a mere conjecture for lack of supporting evidence.

Mitsui adopts the CA's reasons to conclude that TMBI is a common carrier. It also points out Victor Torres' admission during the trial that TMBI's brokerage service includes the eventual delivery of the cargo to the consignee.[30]

Mitsui invokes as well the legal presumption of negligence against TMBI, pointing out that TMBI simply entrusted the cargo to BMT without adopting any security measures despite: (1) a previous hijacking incident when TMBI lost Sony's cargo; and (2) TMBI's knowledge that the cargo was worth more than 10 million pesos.[31]

Mitsui affirms that TMBI breached the contract of carriage through its negligent handling of the cargo, resulting in its loss.

The Court's Ruling

A brokerage may be considered a common carrier if it also undertakes to deliver the goods for its customers

Common carriers are persons, corporations, firms or associations engaged in the business of transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.[32] By the nature of their business and for reasons of public policy, they are bound to observe extraordinary diligence in the vigilance over the goods and in the safety of their passengers.[33]

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[29] *Id*. at 74.

[30] *Id*. at 77.

[31] *Id*. at 75.

[32] CIVIL CODE, Art. 1732.

[33] *Id*., Art. 1733.

In *A.F. Sanchez Brokerage Inc. v. Court of Appeals*,[34] we held that a customs broker – whose principal business is the preparation of the correct customs declaration and the proper shipping documents – is still considered a common carrier if it also undertakes to deliver the goods for its customers. The law does not distinguish between one whose principal business activity is the carrying of goods and one who undertakes this task only as an ancillary activity.[35] This ruling has been reiterated in *Schmitz Transport & Brokerage Corp. v. Transport Venture, Inc.*,[36] *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corporation*,[37] and *Westwind Shipping Corporation v. UCPB General Insurance Co., Inc.*[38]

Despite TMBI's present denials, we find that the delivery of the goods is an integral, albeit ancillary, part of its brokerage services. TMBI admitted that it was contracted to facilitate, process, and clear the shipments from the customs authorities, withdraw them from the pier, then transport and deliver them to Sony's warehouse in Laguna.[39]

Further, TMBI's General Manager Victor Torres described the nature of its services as follows:

ATTY. VIRTUDAZO: Could you please tell the court what is the nature of the business of [TMBI]?

Witness MR. Victor Torres of Torres Madrid: We are engaged in customs brokerage business. We acquire the release documents from the Bureau of Customs and **eventually deliver the cargoes to the consignee's warehouse** and we are engaged in that kind of business, sir.[40]

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[34] 488 Phil. 430, 441 (2004).

[35] *De Guzman v. Court of Appeals,* 250 Phil. 613, 618 (1988).

[36] 496 Phil. 437, 450 (2005).

[37] 654 Phil. 67 (2011).

[38] G.R. No. 200289, 25 November 2013, 710 SCRA 544, 558-559.

[39] See TMBI's Answer to the Complaint at *Rollo,* p. 91 in relation to p. 85.

[40] TSN dated October 17, 2005, p. 9; *rollo,* p. 77.

That TMBI does not own trucks and has to subcontract the delivery of its clients' goods, is immaterial. As long as an entity holds itself to the public for the transport of goods as a business, it is considered a common carrier regardless of whether it owns the vehicle used or has to actually hire one.[41]

Lastly, TMBI's customs brokerage services – including the transport/delivery of the cargo – are available to anyone willing to pay its fees. Given these circumstances, we find it undeniable that TMBI is a common carrier.

Consequently, TMBI should be held responsible for the loss, destruction, or deterioration of the goods it transports unless it results from:

(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;

(2) Act of the public enemy in war, whether international or civil;

(3) Act of omission of the shipper or owner of the goods;

(4) The character of the goods or defects in the packing or in the containers;

(5) Order or act of competent public authority.[42]

For all other cases — such as theft or robbery – a common carrier is presumed to have been at fault or to have acted negligently, unless it can prove that it observed *extraordinary diligence*.[43]

Simply put, the theft or the robbery of the goods is not considered a fortuitous event or a *force majeure*. Nevertheless, a common carrier may absolve itself of liability for a resulting loss: (1) if it proves that it exercised *extraordinary* diligence

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[41] *Westwind Shipping Corporation v. UCPB General Insurance Co., Inc., supra* note 38, at 559.

[42] CIVIL CODE, Art. 1734.

[43] *Id.*, Art. 1735.

in transporting and safekeeping the goods;[44] or (2) if it stipulated with the shipper/owner of the goods to limit its liability for the loss, destruction, or deterioration of the goods to a degree less than extraordinary diligence.[45]

However, a stipulation diminishing or dispensing with the common carrier's liability for acts committed by thieves or robbers who do not act with grave or irresistible threat, violence, or force is void under Article 1745 of the Civil Code **for being contrary to public policy**.[46] Jurisprudence, too, has expanded Article 1734's five exemptions. *De Guzman v. Court of Appeals*[47] interpreted Article 1745 to mean that a robbery attended by "grave or irresistible threat, violence or force" is a fortuitous event that absolves the common carrier from liability.

In the present case, the shipper, Sony, engaged the services of TMBI, a common carrier, to facilitate the release of its shipment and deliver the goods to its warehouse. In turn, TMBI subcontracted a portion of its obligation – the delivery of the cargo – to another common carrier, BMT.

Despite the subcontract, TMBI remained responsible for the cargo. Under Article 1736, a common carrier's extraordinary responsibility over the shipper's goods lasts from the time these goods are unconditionally placed in the possession of, and received by, the carrier for transportation, **until they are delivered, actually or constructively, by the carrier to the consignee.**[48]

That the cargo disappeared during transit while under the custody of BMT – TMBI's subcontractor – did not diminish nor terminate TMBI's responsibility over the cargo. Article 1735 of the Civil Code presumes that it was at fault.

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[44] *Id*.

[45] *Id*., Art. 1744.

[46] *Id*., Art. 1745.

[47] *Supra* note 35.

[48] Art. 1737, CIVIL CODE.

Instead of showing that it had acted with *extraordinary diligence*, TMBI simply argued that it was not a common carrier bound to observe extraordinary diligence. Its failure to successfully establish this premise carries with it the presumption of fault or negligence, thus rendering it liable to Sony/Mitsui for breach of contract.

Specifically, TMBI's current theory – that the hijacking was attended by force or intimidation – is untenable.

First, TMBI alleged in its Third Party Complaint against BMT that Lapesura was responsible for hijacking the shipment.[49] Further, Victor Torres filed a criminal complaint against Lapesura with the NBI.[50] These actions constitute direct and binding admissions that Lapesura stole the cargo. Justice and fair play dictate that TMBI should not be allowed to change its legal theory on appeal.

Second, neither TMBI nor BMT succeeded in substantiating this theory through evidence. Thus, the theory remained an unsupported allegation no better than speculations and conjectures. The CA therefore correctly disregarded the defense of *force majeure*.

TMBI and BMT are not solidarily liable to Mitsui

We disagree with the lower courts' ruling that TMBI and BMT are solidarily liable to Mitsui for the loss as joint tortfeasors. The ruling was based on Article 2194 of the Civil Code:

> Art. 2194. The responsibility of two or more persons **who are liable for quasi-delict** is solidary.

Notably, TMBI's liability to Mitsui does not stem from a quasi-delict (*culpa aquiliana*) but from its breach of contract (*culpa contractual*). The tie that binds TMBI with Mitsui is contractual, albeit one that passed on to Mitsui as a result of

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[49] *Rollo*, pp. 109-110.

[50] *Id*. at 48, 50, 97.

TMBI's contract of carriage with Sony to which Mitsui had been subrogated as an insurer who had paid Sony's insurance claim. The legal reality that results from this contractual tie precludes the application of quasi-delict based Article 2194.

A third party may recover from a common carrier for quasi-delict but must prove actual negligence

We likewise disagree with the finding that BMT is directly liable to Sony/Mitsui for the loss of the cargo. While it is undisputed that the cargo was lost under the actual custody of BMT (whose employee is the primary suspect in the hijacking or robbery of the shipment), no direct contractual relationship existed between Sony/Mitsui and BMT. If at all, Sony/Mitsui's cause of action against BMT could only arise from quasi-delict, as a third party suffering damage from the action of another due to the latter's fault or negligence, pursuant to Article 2176 of the Civil Code.[51]

We have repeatedly distinguished between an action for breach of contract (*culpa contractual)* and an action for quasi-delict (*culpa aquiliana).*

In *culpa contractual*, the plaintiff only needs to establish the existence of the contract and the obligor's failure to perform his obligation. It is not necessary for the plaintiff to prove or even allege that the obligor's non-compliance was due to fault or negligence because Article 1735 already presumes that the common carrier is negligent. The common carrier can only free itself from liability by proving that it observed *extraordinary diligence*. It cannot discharge this liability by shifting the blame on its agents or servants.[52]

On the other hand, the plaintiff in *culpa aquiliana* must clearly establish the defendant's fault or negligence because this is

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[51] *Loadmasters Custom Services, Inc. v. Glodel Brokerage Corp.*, 654 Phil. 67, 79 (2011).

[52] *Cangco v. Manila Railroad Co.*, 38 Phil. 768, 777 (1918).

the very basis of the action.[53] Moreover, if the injury to the plaintiff resulted from the act or omission of the defendant's employee or servant, the defendant may absolve himself by proving that he observed the diligence of a good father of a family to prevent the damage.[54]

In the present case, Mitsui's action is solely premised on TMBI's breach of contract. Mitsui did not even sue BMT, *much less prove any negligence on its part*. If BMT has entered the picture at all, it is because TMBI sued it for reimbursement for the liability that TMBI might incur from its contract of carriage with Sony/Mitsui. Accordingly, there is no basis to directly hold BMT liable to Mitsui for quasi-delict.

BMT is liable to TMBI for breach of their contract of carriage

We do not hereby say that TMBI must absorb the loss. By subcontracting the cargo delivery to BMT, TMBI entered into its own contract of carriage with a fellow common carrier.

The cargo was lost after its transfer to BMT's custody based on its contract of carriage with TMBI. Following Article 1735, BMT is presumed to be at fault. Since BMT failed to prove that it observed *extraordinary diligence* in the performance of its obligation to TMBI, it is liable to TMBI for breach of their contract of carriage.

In these lights, TMBI is liable to Sony (subrogated by Mitsui) for breaching the contract of carriage. In turn, TMBI is entitled to reimbursement from BMT due to the latter's own breach of its contract of carriage with TMBI. The proverbial buck stops with BMT who may either: (a) absorb the loss, or (b) proceed after its missing driver, the suspected culprit, pursuant to Article 2181.[55]

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[53] *Id*. at 776, citing MANRESA, Vol. 8, p. 71 [1907 ed., p. 76].

[54] Art. 2180, CIVIL CODE.

[55] Art. 2181. Whoever pays for the damage caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim.

WHEREFORE, the Court hereby **ORDERS** petitioner Torres-Madrid Brokerage, Inc. to pay the respondent FEB Mitsui Marine Insurance Co., Inc. the following:

a. Actual damages in the amount of PHP 7,293,386.23 plus legal interest from the time the complaint was filed until it is fully paid;

b. Attorney's fees in the amount of PHP 200,000.00; and

c. Costs of suit.

Respondent Benjamin P. Manalastas is in turn **ORDERED** to **REIMBURSE** Torres-Madrid Brokerage, Inc. of the above-mentioned amounts.

SO ORDERED.

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

Mendoza, J., on official leave.

FIRST DIVISION

[G.R. No. 195147. July 11, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. TAXATION; TAX LAWS; PROSPECTIVE IN APPLICATION, UNLESS THEIR RETROACTIVE APPLICATION IS EXPRESSLY PROVIDED.— [T]he maturity of PNB's interbank call loans was irrelevant in determining its DST liability for taxable year 1997, relation to which the applicable law was

the *National Internal Revenue Code of 1977* (1977 NIRC), as amended by Presidential Decree No. 1959 and Republic Act No. 7660. The five-day maturity of interbank call loans came to be introduced only by Section 22(y) of the *National Internal Revenue Code of 1997* (1997 NIRC) x x x. The provisions of the 1997 NIRC cannot be given retrospective effect to the prejudice of PNB. This is because tax laws are prospective in application, unless their retroactive application is expressly provided.

2. MERCANTILE LAW; BANKING LAWS; INTERBANK CALL LOAN, DEFINED; AN INTERBANK CALL LOAN DOES NOT FALL UNDER THE DEFINITION OF A LOAN AGREEMENT, AND EVEN IF IT DOES, THE DOCUMENTARY STAMP TAX LIABILITY WILL ONLY ATTACH IF THE LOAN AGREEMENT WAS SIGNED ABROAD BUT THE OBJECT OF THE CONTRACT IS LOCATED OR USED IN THE PHILIPPINES.— An interbank call loan refers to the cost of borrowings from other resident banks and non-bank financial institutions with quasi-banking authority that is payable on call or demand. It is transacted primarily to correct a bank's reserve requirements. Under the Manual of Regulation for Banks (MORB) issued by the Bangko Sentral ng Pilipinas (BSP), interbank borrowings, which include interbank call loans, shall be evidenced by deposit substitute instruments containing the minimum features prescribed under Section X235.3 of the MORB, except those that are settled through the banks' respective demand deposit accounts with the BSP via Philpass. Simply put, an interbank call loan is considered as a deposit substitute transaction by a bank performing quasi-banking functions to cover reserve deficiencies. It does not fall under the definition of a loan agreement. Even if it does, the DST liability under Section 180 x x x will only attach if the loan agreement was signed abroad but the object of the contract is located or used in the Philippines, which was not the case in regard to PNB's interbank call loans.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1977, AS AMENDED; DOCUMENTARY STAMP TAX; CANNOT BE IMPOSED ON INTERBANK CALL LOANS FOR THEY ARE NOT EXPRESSLY INCLUDED AMONG THE TAXABLE INSTRUMENTS LISTED IN SECTION

> **180 OF THE CODE.—** [F]or taxation purposes interbank call loans are not considered as deposit substitutes by express provision of Section 20(y) of the 1977 NIRC, as amended by P.D. No. 1959 x x x. [I]t can readily be discerned from Section 180 x x x [of the 1977 NIRC, as amended by R.A. No. 7660] that the DST of ₱0.30 on each ₱200.00, or fractional part thereof, shall only be imposed on the face value of: (1) loan agreements; (2) bills of exchange; (3) drafts; (4) instruments and securities issued by the Government or any of its instrumentalities; (5) certificates of deposits drawing interest; (6) orders for the payment of any sum of money otherwise than at sight or on demand; and (7) promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note. Interbank call loans, although not considered as deposit substitutes, are not expressly included among the taxable instruments listed in Section 180; hence, they may not be held as taxable.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Zambrano & Gruba Law Offices for respondent.

D E C I S I O N

BERSAMIN, *J.*:

At issue is whether or not the respondent bank's interbank call loans transacted in 1997 were subject to documentary stamp taxes.

The petitioner appeals the September 21, 2010 decision rendered in C.T.A. EB Case No. 512,[1] whereby the Court of Tax Appeals (CTA) *En Banc* affirmed the cancellation of

[1] *Rollo*, pp. 36-49; penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Ernesto D. Acosta, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova and Associate Justice Olga Palanca-Enriquez concurring. Associate Justice Esperanza R. Fabon-Victorino was on leave.

Assessment No. 97-000064 for deficiency documentary stamp taxes imposed on the interbank call loans of respondent Philippine National Bank (PNB); and the resolution issued on January 10, 2011[2] denying the petitioner's motion for reconsideration.

Antecedents

On March 23, 2000, the petitioner issued Letter of Authority No. 00058992, which PNB received on March 28, 2000. The letter of authority authorized the examination of PNB's books of accounts and other accounting records in relation to its internal revenue taxes for taxable year 1997.[3] On May 12, 2003, PNB received the preliminary assessment notice with details of discrepancies dated March 31, 2003, which indicated that PNB had deficiency payments of documentary stamp taxes (DST), withholding taxes on compensation, and expanded withholding taxes for taxable year 1997.[4] On May 26, 2003, the petitioner issued a formal assessment notice, together with a formal letter of demand and details of discrepancies, requiring PNB to pay the following deficiency taxes:[5]

Assessment No. 97-000064 for deficiency DST arising from PNB's interbank call loans and special savings account	₱39,550,963.50
Assessment No. 97-000067 for deficiency expanded withholding tax	2,173,972.25
TOTAL	₱41,724,935.75

PNB immediately paid Assessment No. 97-000067 on May 30, 2003, but filed a protest against Assessment No. 97-000064. The petitioner denied PNB's protest through the final decision on disputed assessment dated December 10, 2003.[6]

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[2] *Id.* at 61-67.

[3] *Id.* at 38.

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

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

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

On January 16, 2004, PNB filed its petition for review in the CTA (C.T.A. Case No. 6850).[7]

On March 3, 2009, after trial, the CTA (First Division) rendered judgment, disposing:

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessment for deficiency documentary stamp taxes on petitioner's Interbank Call Loans for taxable year 1997 is hereby **CANCELLED**. However, the assessment for deficiency documentary stamp tax on petitioner's Special Savings Account for taxable year 1997 is hereby **AFFIRMED**.

Petitioner is hereby **ORDERED** to **PAY** respondent the amount of **FOURTEEN MILLION SIX HUNDRED EIGHTY EIGHT THOUSAND FOUR HUNDRED SIXTY THREE PESOS AND FIFTEEN CENTAVOS (₱14,688,463.15)**, representing deficiency documentary stamp tax for taxable year 1997, computed as follows:

Special Savings Account	7,833,847,016.00
Documentary Stamp Tax (0.30/200)	11,750,770.52
Surcharge — 25%	2,937,692.63
Total Amount Due	14,688,463.15

In addition, petitioner is hereby **ORDERED** to **PAY** a penalty equivalent to twenty five percent (25%) and a delinquency interest equivalent to twenty percent (20%) per annum on the amount of ₱14,688,463.15 from February 15, 2004 until such amount is paid in full, pursuant to Sections 248 and 249 of the Tax Code.

SO ORDERED.[8]

Both parties moved for partial reconsideration.[9] On July 7, 2009, the CTA in Division denied the petitioner's motion for partial reconsideration but held in abeyance the resolution of PNB's motion for partial reconsideration pending its submission of its supplemental formal offer of evidence to admit tax abatement documents.[10]

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[7] *Id.* at 41.

[8] *Id.* at 37.

[9] *Id.* at 41.

[10] *Id.* at 37-38, 41-42.

Consequently, the petitioner appealed to the CTA *En Banc* on August 10, 2009.

On September 21, 2010, the CTA *En Banc* promulgated its assailed decision, *viz*.:

> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated March 3, 2009 and Resolution dated July 7, 2009 insofar as the cancellation of the assessment for Documentary Stamp Taxes on PNB's Interbank Call Loans for the taxable year 1997 is concerned, are **AFFIRMED**. No pronouncement as to costs.
>
> **SO ORDERED.**[11]

The petitioner sought reconsideration,[12] but the CTA *En Banc* denied the motion through the resolution dated January 10, 2011.[13]

Hence, this appeal by the petitioner.

Issue

The sole issue concerns whether or not PNB's interbank call loans for taxable year 1997 are subject to DST. The petitioner argues that:

I

THE PNB'S TRANSACTIONS UNDER INTERBANK CALL LOANS ARE CONSIDERED LOAN AGREEMENTS BETWEEN PNB AND THE OTHER BANKS, HENCE, THEY ARE SUBJECT TO DOCUMENTARY STAMP TAXES (DST) UNDER SECTION 180 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1977, AS AMENDED BY REPUBLIC ACT (R.A.) NO. 7660 OF 1994.

II

THE FURTHER AMENDMENTS OF SECTION 180 OF THE 1977 NIRC (AS AMENDED BY R.A. NO. 7660 OF 1994) BY R.A.

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[11] *Id.* at 48.

[12] *Id.* at 50-60.

[13] *Id.* at 67.

NO. 8424 OF 1998 AND R.A. NO. 9243 OF 2004 CONFIRM THE NATURE AND CHARACTER OF INTERBANK CALL LOANS AS LOAN AGREEMENTS AND/OR DEBT INSTRUMENTS, HENCE, THEY ARE SUBJECT TO DST.

III

THERE IS NO LAW OR PROVISION IN THE 1977 NIRC, AS AMENDED BY R.A. NO. 7660 OF 1994, THAT SPECIFICALLY AND EXPRESSLY EXEMPTS PNB'S INTERBANK CALL LOANS FOR THE TAXABLE YEAR 1997 FROM THE PAYMENT OF DST.[14]

Ruling

The appeal lacks merit.

The petitioner claims that while interbank call loans were not considered as deposit substitute debt instruments, PNB's interbank call loans, which had a maturity of more than five days, were included in the concept of loan agreements; hence, the interbank call loans were subject to DST.[15]

The petitioner's claim cannot be upheld.

Firstly, the maturity of PNB's interbank call loans was irrelevant in determining its DST liability for taxable year 1997, relation to which the applicable law was the *National Internal Revenue Code of 1977* (1977 NIRC), as amended by Presidential Decree No. 1959[16] and Republic Act No. 7660.[17] The five-day maturity of interbank call loans came to be introduced only by Section 22 (y)[18] of the *National Internal Revenue Code of 1997* (1997 NIRC), to wit:

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[14] *Id.* at 14.

[15] *Id.* at 21-22, 46-47.

[16] Effective on October 10, 1984.

[17] Effective on January 14, 1994.

[18] Effective on January 1, 1998.

(y) The term '***deposit substitutes***' shall mean an alternative from of obtaining funds from the ***public*** (the term 'public' means borrowing form twenty (20) or more individual or corporate lenders at any one time) other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrowers own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include, but need not be limited to bankers' acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank, certificates of assignment or participation and similar instruments with recourse: Provided, however, **That debt instruments issued for interbank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks, shall not be considered as deposit substitute debt instruments**. (Bold underscoring supplied for emphasis)

xxx xxx xxx

The provisions of the 1997 NIRC cannot be given retrospective effect to the prejudice of PNB. This is because tax laws are prospective in application, unless their retroactive application is expressly provided.[19]

Secondly, PNB's interbank call loans are not taxable under Section 180 of the 1977 NIRC, as amended by R.A. No. 7660, which states:

Sec. 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.* — On all **loan agreements** signed abroad wherein the object of the contract is located or used in the Philippines; **bills of exchange** (between points within the Philippines), **drafts, instruments and securities issued by the Government or any of its instrumentalities** or **certificates of deposits drawing interest,** or **orders for the payment**

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[19] *The Provincial Assessor of Marinduque v. Court of Appeals*, G.R. No. 170532, April 30, 2009, 587 SCRA 285, 303.

of any sum of money otherwise than at sight or on demand, or on all **promissory notes**, **whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note,** there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: Provided, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section." (Bold underscoring supplied for emphasis)

The petitioner insists that PNB's interbank call loans fell under the definition of a *loan agreement* found in Section 3(b) of Revenue Regulations No. 9-94, to wit:

xxx xxx xxx

(b) 'Loan agreement' refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.

The terms "Loan Agreement" under Section 180 and "Mortgage" under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195.[20]

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The insistence is bereft of merit.

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[20] *Rollo*, p. 16; see also *Commissioner of Internal Revenue v. Filinvest Development Corporation*, G.R. No. 163653, July 19, 2011, 654 SCRA 56, 80-81.

An interbank call loan refers to the cost of borrowings from other resident banks and non-bank financial institutions with quasi-banking authority that is payable on call or demand.[21] It is transacted primarily to correct a bank's reserve requirements.[22] Under the Manual of Regulation for Banks (MORB) issued by the Bangko Sentral ng Pilipinas (BSP), interbank borrowings,[23] which include interbank call loans, shall be evidenced by deposit substitute instruments containing the minimum features prescribed under Section X235.3 of the MORB, except those that are settled through the banks' respective demand deposit accounts with the BSP via Philpass.[24] Simply put, an interbank call loan is considered as a deposit substitute transaction by a bank performing quasi-banking functions to cover reserve deficiencies. It does not fall under the definition of a loan agreement. Even if it does, the DST liability under Section 180, *supra*, will only attach if the loan agreement was signed abroad but the object of the contract is located or used in the Philippines, which was not the case in regard to PNB's interbank call loans.

We note, however, that for taxation purposes interbank call loans are not considered as deposit substitutes by express provision of Section 20 (y) of the 1977 NIRC, as amended by P.D. No. 1959, *viz*.:

> Sec. 1. A new subsection (y) is inserted in Sec. 2 of the National Internal Revenue Code to read as follows:
>
> xxx xxx xxx
>
> (y) 'Deposit substitutes' shall mean an alternative form of obtaining funds from the public, other than deposit, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include

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[21] BSP Circular No. 512, February 3, 2006.

[22] *http://www.bsp.gov.ph/financial/open.asp*. Last visited on July 6, 2016.

[23] Section X343, Manual of Regulations for Banks Volume 1.

[24] Section X235.4, Manual of Regulations for Banks Volume 1.

but need not be limited to banker's acceptances, promissory notes, repurchase agreements, certificates of assignment or participation and similar instruments with recourse as may be authorized by the Central Bank of the Philippines, for banks and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies: **Provided, however, that only debt instruments issued for inter-bank call loans to cover deficiency in reserves against deposit liabilities including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instruments.** (Bold emphasis supplied.)

The foregoing notwithstanding, it can readily be discerned from Section 180, *supra*, that the DST of ₱0.30 on each ₱200.00, or fractional part thereof, shall only be imposed on the face value of: (1) loan agreements; (2) bills of exchange; (3) drafts; (4) instruments and securities issued by the Government or any of its instrumentalities; (5) certificates of deposits drawing interest; (6) orders for the payment of any sum of money otherwise than at sight or on demand; and (7) promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note. Interbank call loans, although not considered as deposit substitutes, are not expressly included among the taxable instruments listed in Section 180; hence, they may not be held as taxable. As the Court has pointedly pronounced in *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*:[25]

x x x The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly

[25] G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160, 185.

and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.

In fine, the cancellation of Assessment No. 97-000064 was in order.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; and **AFFIRMS** the decision promulgated on September 21, 2010 in C.T.A. EB Case No. 512. No pronouncement on costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 195641. July 11, 2016]

TARCISIO S. CALILUNG, *petitioner, vs.* **PARAMOUNT INSURANCE CORPORATION, RP TECHNICAL SERVICES, INC., RENATO L. PUNZALAN and JOSE MANALO, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF JUDGMENTS; A FINAL AND EXECUTORY JUDGMENT IS IMMUTABLE AND CAN NO LONGER BE MODIFIED OR OTHERWISE DISTURBED.— It is settled that upon the finality of the judgment, the prevailing party is entitled, as a matter of right, to a writ of execution to enforce the judgment, the issuance of which is a ministerial duty of the court. The judgment directed

the respondents to pay to the petitioner the principal amount of ₱718,750.00, plus interest of 14% *per annum* from October 7, 1987 until full payment; 5% of the amount due as attorney's fees; and the costs of suit. Being already final and executory, it is immutable, and can no longer be modified or otherwise disturbed. Its immutability is grounded on fundamental considerations of public policy and sound practice, which demand that the judgment of the courts, at the risk of occasional errors, must become final at some definite date set by law or rule. Indeed, the proper enforcement of the rule of law and the administration of justice require that litigation must come to an end at some time; and that once the judgment attains finality, the winning party should not be denied the fruits of his favorable result. x x x The only interest to be collected from the respondents is the 14% *per annum* on the principal obligation of ₱718,750.00 reckoned from October 7, 1987 until full payment. There was no basis for the petitioner to claim compounded interest pursuant to Article 2212 of the *Civil Code* considering that the judgment did not include such obligation. As such, neither the RTC nor any other court, including this Court, could apply Article 2212 of the *Civil Code* because doing so would infringe the immutability of the judgment. Verily, the execution must conform to, and not vary from, the decree in the final and immutable judgment.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SOLIDARY OBLIGATIONS; THE CREDITOR MAY COMPEL EITHER OR BOTH DEBTORS TO PAY THE ENTIRE OBLIGATION TO HIM.— [U]nder the express terms of the judgment, the respondents' obligation to pay the 14% interest *per annum* was *joint and several*. This meant that the respondents were in passive solidarity in relation to the petitioner as their creditor, enabling him to compel either or both of them to pay the entire obligation to him. Stated differently, each of the respondents was a debtor of the whole as to the petitioner, but each respondent, as to the other, was only a debtor of a part.

APPEARANCES OF COUNSEL

Angelito C. Lo for petitioner.

Aceron Punzalan Vehemente Avila & Del Prado Law Offices for respondent Renato Punzalan.

Soo Gutierrez Leogardo & Lee for respondent Paramount Insurance, Corp.

D E C I S I O N

BERSAMIN, *J.*:

The issue concerns the rate of interest on the debt decreed in a final and executory decision. This issue has emerged during the stage of the execution of the judgment, and the petitioner as the winning party sought compounded interest pursuant to Article 2212 of the *Civil Code*. The trial court ultimately ruled that compounded interest should not be recovered because the final and executory decision did not decree the compounding of interest. Thus, the petitioner has directly come to the Court for recourse.

Antecedents

On March 16, 2005, the Court promulgated its resolution in G.R. No. 136326 entitled *Paramount Insurance Corporation v. Tarcisio S. Calilung and RP Technical Services, Inc.* upholding the judgment promulgated on August 14, 1998, whereby the Court of Appeals (CA) affirmed the decision of the Regional Trial Court (RTC), Branch 154, in Pasig City holding the respondents jointly and severally liable to pay to the petitioner the principal obligation of ₱718,750.00, with interest at 14% *per annum* from October 7, 1987 until full payment, plus attorney's fees equivalent to 5% of the amount due, and the costs of suit.

The resolution of March 16, 2005 summarized the factual and procedural antecedents,[1] as follows:

[1] *Rollo*, pp. 62-66.

Sometime in 1987, Tarcisio S. Calilung, herein respondent, commissioned Renato Punzalan, President of the RP Technical Services, Inc. (RPTSI), a domestic corporation, also impleaded as respondent, of his desire to buy shares of stocks (sic) worth ₱1,000,000.00 from RPTSI.

During the consultation meeting among the officers and stockholders of RPTSI, they did not agree with Calilung's proposal because he will be in complete control of the corporation. Instead, he allowed to buy ₱2,820.00 worth of shares with the understanding that the remaining balance of ₱718,750.00 would be invested to finance Shell Station Project in Batangas then being undertaken by respondent RPTSI.

On October 9, 1987, respondent Punzalan, on behalf of RPTSI, executed a promissory note in favor of Calilung in the amount of ₱718,750 with 14% interest per annum, payable on or before April 9, 1988. The payment of this promissory note was guaranteed by petitioner Paramount Insurance Corporation (Paramount) under Surety Bond No. G (16) 7003 dated October 27, 1987. On the same date, Punzalan and Jose Manalo, Jr., another officer of RPTSI, executed an indemnity agreement to the effect that Paramount would be reimbursed of all expenses it will incur under the surety bond.

However, RPTSI failed to pay Calilung the amount stated in the promissory note when it fell due, prompting him to file with the Regional Trial Court (RTC), Branch 154, Pasig City, a complaint for sum of money against RPTSI and Paramount, docketed as Civil Case No. 56194. For its part, Paramount filed a third party complaint against RPTSI and its corporate officers, Punzalan and Manalo, Jr., seeking reimbursement for all expenses it may incur under the surety bond.

In its answer, RPTSI denied that it authorized Punzalan and Manalo, Jr. to execute the promissory note and claimed that it did not profit from the loan obtained from Calilung.

Paramount, in its answer, alleged that the terms and conditions of the surety bond have been novated when Calilung, without its consent, extended an extension to RPTSI to pay its obligation. Hence, Paramount has no obligation to pay the amount of the promissory note.

In their answer to the third party complaint, both Punzalan and Manalo, Jr. denied any liability in the indemnity agreement because

they contracted it as officers of the corporation, not in their personal capacities.

Paramount, RPTSI and its officers, Punzalan and Manalo, Jr., jointly challenged the validity of the promissory note on the ground that the contract is simulated. RPTSI did not intend to be bound by the promissory note. Paramount insisted that since no money was actually involved, the contract is entirely fictitious.

After trial, the RTC rendered its Decision, the dispositive portion which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff (now respondent) and against the defendants RP Technical Services, Incorporated (now respondent) and Paramount Insurance Corporation (now petitioner), jointly and severally, to pay plaintiff the following sums:
>
> 1) ₱718,750.00 with interest at 14% per annum from October 7, 1987, until fully paid;
>
> 2) 5% of the amount due above as attorney's fees; plus
>
> 3) costs.
>
> and in favor of defendant-third party plaintiff, Paramount Insurance Corporation against the defendant RP Technical Services, Incorporated and third party defendants, Messrs. Renato Punzalan and Jose M. Manalo, Jr. jointly and severally, to pay the former whatever sum it shall pay to the plaintiff as above ordered.
>
> SO ORDERED.

Paramount, Punzalan and Manalo, Jr., interposed an appeal to the Court of Appeals. In its Decision dated August 14, 1998, the Appellate Court affirmed *in toto* the judgment of the trial court. Their motion for reconsideration was likewise denied in a Resolution dated November 13, 1998.

Hence, this petition for review on *certiorari*.

Paramount, herein petitioner, contends that the Court of Appeals erred in holding that the promissory note is valid. Petitioner insists that the note was simulated and that respondents committed fraud in introducing it to execute a surety bond to secure payment of the said note.

Here, the issues of whether the promissory note is simulated or not is whether its execution was attended with fraud evidently involved questions of fact and evidentiary matters which are not proper in a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended. It is bas*ic* that factual issues are beyond the province of this Court, for it is not its function to weigh the evidence all [over] again. Factual findings of the trial court, when adopted and affirmed by the Court of Appeals, as in this case, are binding and conclusive upon this Court and generally will not be reviewed on appeal. There are exceptions to this general rule, but petitioner failed to show that this case is one of them.

WHEREFORE, the petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 43870 are **AFFIRMED**. Costs against petitioner.

SO ORDERED.

The March 16, 2005 resolution of the Court became final and executory on July 19, 2005, and was recorded in the Court's Book of Entries of Judgments on the same date.[2] Thereafter, the decision was remanded to the RTC for execution.

In the RTC, the petitioner moved for execution, and sought the recovery of compounded interest on the judgment debt. Acting on the petitioner's motion for execution, the RTC issued three orders.

The first order, dated July 28, 2009, reads:

After evaluating the respective submissions of the parties, the court hereby holds in favor of the defendant. Indeed, the decision sought to be implemented awarded plaintiff the amount of ₱718,750.00 with interest at 14% per annum from October 7, 1987 until fully paid. There is nothing in the dispositive portion of the decision that would justify the conclusion that the 14% interest imposed by the court should further earn interest of 12% per annum. As correctly pointed out by the defendant, where the decision is clear there is no room for further interpretation or adding to or subtracting therefrom.

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[2] *Id.* at 67.

In this particular case, since the judgment or decision to be executed did not provide for any compounding of interest, it is clear that the interest should be the simple interest of 14% per annum counted from October 7, 1987.

Anent the parties' reference to the case of Eastern Shipping, *supra*, the court is more inclined to subscribe to the position taken by the defendant. Indeed, the 12% per annum finds application only if the obligation breached is for the payment of a sum of money, i.e., loan or forbearance of money. The Supreme Court in the same case held that the interest due (in case the obligation breached is a loan or forbearance of money) shall itself earn interest from the time it is judicially demanded. In the instant case, it can hardly be contended that the obligation of the defendant to the plaintiff that was breached consisted in the payment of a sum of money or a loan or forbearance of money. It is very clear that the obligation of the defendant arose from its liability under a surety bond that it issued. Such obligation cannot by any stretch of imagination be considered a loan or forbearance of money.

Anent the second part of the Omnibus Motion for the consignment of the ₱2,993,152.65, let it be noted that a check in the same amount has been tendered by the defendant to plaintiff, Atty. Tarcisio S. Calilung, and the latter has duly received the same.

WHEREFORE, premises considered, order is hereby given fixing the amount of interest on the principal claim of ₱718,750.00 at fourteen percent (14%) per annum from October 7, 1987 until fully paid.

There will be no compounding of interest as this has no basis in law.

SO ORDERED.[3]

Through the second order, issued on September 1, 2010, the RTC reconsidered the first order upon motion of the petitioner by allowing the recovery of compounded interest, *viz.*:

After going over the submission of the plaintiff in his Motion for Reconsideration and the opposition thereto interposed by the defendant, the court is constrained to change its former position and hold in favor of the plaintiff. A review of the facts of the case will show that

[3] *Id.* at 37-38.

while the obligation of Paramount arose from its contract of surety with defendant RP Technical Services, Inc., it is undeniable however that the obligation being secured or guaranteed by defendant Paramount is a loan obligation of the defendant RP Technical Services, Inc. to the plaintiff Calilung. As such, when the defendant RP Technical Services, Inc. defaulted in its obligation, the guaranty ripened into a loan obligation. In other words, the obligation of defendant Paramount to the plaintiff was transferred (sic) from one of suretyship agreement to an obligation for the payment of a sum of money corresponding to the unpaid obligation of defendant RP Technical Services, Inc. to the plaintiff Calilung, which obligation was guaranteed by the defendant Paramount. Be it noted that as a surety obligation, the same became due and demandable upon the default of the principal debtor (RP Technical Services, Inc.) to pay its obligation to plaintiff Calilung.

xxx xxx xxx

In the instant case, since the principal debtor (RP Technical Services, Inc.) has defaulted in the payment of its obligation to the plaintiff and the latter has made a demand upon the defendant Paramount for the payment of the loan obligation of RP Technical Services, Inc., the surety (defendant Paramount Insurance Corp.) effectively stepped into the shoes of principal debtor RP Technical Services, Inc. and assumed the latter's obligation to the plaintiff which obligation is one for the payment of sum of money.

Following the ruling in Eastern Shipping, the interest due on RP Technical Services, Inc.'s obligation to plaintiff shall itself earn interest from the time demand was made for its payment. As ruled by the court, the interest shall commence to run on October 7, 1987.

WHEREFORE, premises considered, the **Motion for Reconsideration** is **GRANTED**. Compounding of interest is allowed pursuant to the Eastern Shipping Lines ruling *supra*.

SO ORDERED.[4]

In the third order, dated February 10, 2011, however, the RTC, acting on the motion for reconsideration of Paramount Insurance Corporation, reverted to its stance under the first

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

order to the effect that compounded interest on the judgment debt should not be recovered, to wit:

> After a careful study of the respective positions forwarded by the parties and of the applicable jurisprudence on the matter, the court is inclined to take the position of defendant Paramount Insurance Corporation. Indeed, the order of the court dated September 1, 2010 has to be reconsidered because it is not in accord with the rule on immutability of decision (sic). In a long line of cases, it has been held that:
>
> xxx xxx xxx
>
> In the present case, the decision of Honorable Ramon R. Buenaventura which has long become final and executory and is the subject of plaintiff's Motion for Execution did not mention anything about the compounding of interest that was awarded in favor of the plaintiff. The decision only said that it will earn interest at fourteen percent (14%) per annum.
>
> **WHEREFORE**, in view of the foregoing the "**Motion for Reconsideration**" of the Order of the court dated September 1, 2010 filed by Paramount Insurance Corporation is hereby **GRANTED** and the court's September 1, 2010 Order is **SET ASIDE**.
>
> **SO ORDERED**.[5]

Hence, this appeal by the petitioner.

Issue

The petitioner argues that Article 2212 of the *Civil Code* and the rules set in *Eastern Shipping Lines v. Court of Appeals* (234 SCRA 78) are applicable to the judgment award in his favor;[6] that the obligation of the respondents was a loan or forbearance of money;[7] that the correct computation of the judgment award as inclusive of compounded interest would not constitute a modification or alteration of the judgment proscribed by the doctrine of the immutability of judgments;

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

[6] *Id.* at 17.

[7] *Id.* at 21.

and that considering the lengthy dilatory appeals resorted to by Paramount Insurance Corporation, restoring the stipulated 25% of the award as attorney's fees and imposing expenses of litigation should be appropriate.

Paramount Insurance Corporation counters[8] that its obligation, having arisen only out of a surety bond, was neither a loan nor a forbearance of money;[9] that because its suretyship with RP Technical Services, Inc. was separate and distinct from the petitioner's loan contract with RP Technical Services, Inc., the *Eastern Shipping* ruling and Article 2212 of the *Civil Code* did not apply;[10] that the compounding of interest would violate the immutability of judgments;[11] that restoring the petitioner's claim for 25% of the award as attorney's fees would also violate the immutability of judgments; and that the stipulation on the amount of attorney's fees in the promissory note did not bind the respondent.[12]

Ruling of the Court

The appeal lacks merit.

It is settled that upon the finality of the judgment, the prevailing party is entitled, as a matter of right, to a writ of execution to enforce the judgment, the issuance of which is a ministerial duty of the court.[13]

The judgment directed the respondents to pay to the petitioner the principal amount of ₱718,750.00, plus interest of 14% *per annum* from October 7, 1987 until full payment; 5% of the amount due as attorney's fees; and the costs of suit. Being already

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[8] *Id.* at 101-109.

[9] *Id.* at 101.

[10] *Id.* at 103.

[11] *Id.* at 105.

[12] *Id.* at 108.

[13] *Adlawan v. Tomol*, G.R. No. 63225, April 3, 1990, 184 SCRA 31, 39; *Palma v. Court of Appeals*, G.R. No. 45158, June 2, 1994, 232 SCRA 714, 721.

final and executory, it is immutable, and can no longer be modified or otherwise disturbed.[14] Its immutability is grounded on fundamental considerations of public policy and sound practice, which demand that the judgment of the courts, at the risk of occasional errors, must become final at some definite date set by law or rule.[15] Indeed, the proper enforcement of the rule of law and the administration of justice require that litigation must come to an end at some time; and that once the judgment attains finality, the winning party should not be denied the fruits of his favorable result.

An elucidation on the concept of interest is appropriate at this juncture. The kinds of interest that may be imposed in a judgment are the monetary interest and the compensatory interest. In this regard, the Court has expounded in *Siga-an v. Villanueva*:[16]

> Interest is a compensation fixed by the parties for the use or forbearance of money. This is referred to as monetary interest. Interest may also be imposed by law or by courts as penalty or indemnity for damages. This is called compensatory interest. The right to interest arises only by virtue of a contract or by virtue of damages for delay or failure to pay the principal loan on which interest is demanded.
>
> Article 1956 of the Civil Code, which refers to monetary interest, specifically mandates that no interest shall be due unless it has been expressly stipulated in writing. As can be gleaned from the foregoing provision, payment of monetary interest is allowed only if: (1) there was an express stipulation for the payment of interest; and (2) the agreement for the payment of interest was reduced in writing. The concurrence of the two conditions is required for the payment of monetary interest. Thus, we have held that collection of interest without any stipulation therefor in writing is prohibited by law.

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[14] *Policarpio v. RTC of Quezon City, Branch 83*, G.R. No. 107167, August 15, 1994, 235 SCRA 314, 321; *Industrial Timber Corp. v. National Labor Relations Commission*, G.R. No. 111985, June 30, 1994, 233 SCRA 597, 601.

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

[16] G.R. No. 173227, January 20, 2009, 576 SCRA 696.

xxx xxx xxx

There are instances in which an interest may be imposed even in the absence of express stipulation, verbal or written, regarding payment of interest. Article 2209 of the Civil Code states that if the obligation consists in the payment of a sum of money, and the debtor incurs delay, a legal interest of 12% *per annum* may be imposed as indemnity for damages if no stipulation on the payment of interest was agreed upon. Likewise, Article 2212 of the Civil Code provides that interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent on this point.

All the same, the interest under these two instances may be imposed only as a penalty or damages for breach of contractual obligations. It cannot be charged as a compensation for the use or forbearance of money. In other words, the two instances apply only to compensatory interest and not to monetary interest.[17] x x x

The only interest to be collected from the respondents is the 14% *per annum* on the principal obligation of ₱718,750.00 reckoned from October 7, 1987 until full payment. There was no basis for the petitioner to claim compounded interest pursuant to Article 2212[18] of the *Civil Code* considering that the judgment did not include such obligation. As such, neither the RTC nor any other court, including this Court, could apply Article 2212 of the *Civil Code* because doing so would infringe the immutability of the judgment. Verily, the execution must conform to, and not vary from, the decree in the final and immutable judgment.[19]

It is cogent to observe that under the express terms of the judgment, the respondents' obligation to pay the 14% interest *per annum* was *joint and several*. This meant that the respondents were in passive solidarity in relation to the petitioner as their

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[17] *Id.* at 704-705, 707.

[18] Article 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. (1109a)

[19] *Nazareno v. Court of Appeals*, G.R. No. 131641, February 23, 2000, 326 SCRA 338, 339.

creditor, enabling him to compel either or both of them to pay the entire obligation to him. Stated differently, each of the respondents was a debtor of the whole as to the petitioner, but each respondent, as to the other, was only a debtor of a part.[20] Thus, Article 1216 of the *Civil Code* states:

> Article 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. (1144a)

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; *AFFIRMS* the orders issued on July 28, 2009 and February 10, 2011 by the Regional Trial Court, Branch 154, in Pasig City to the effect that the only interest to be collected from the respondents is 14% *per annum* reckoned from October 7, 1987 until full payment; **DIRECTS** the Regional Trial Court to forthwith issue the writ of execution to enforce the final and executory judgment in accordance with the decree thereof; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson), Perlas-Bernabe, Jardeleza,*[**] and *Caguioa, JJ.,* concur.

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[20] IV Caguioa, *Comments and Cases on Civil Law*, Premium Book Store, Manila, 1983 Revised Second Edition, p. 252.

[*] Acting Chairperson per Special Order No. 2355 dated June 2, 2016.

[**] Vice Chief Justice Maria Lourdes P.A. Sereno, who inhibited due to close personal relations with one of the parties, per the raffle of March 7, 2016.

SECOND DIVISION

[G.R. No. 201436. July 11, 2016]

SPOUSES MAMERTO and ADELIA[*] TIMADO, *petitioners, vs.* **RURAL BANK OF SAN JOSE, INC., TEDDY MONASTERIO, in his capacity as its President/ Manager, and ATTY. AVELINO SALES**, *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; CONCEPT; REQUIREMENTS FOR THE AWARD OF EXEMPLARY DAMAGES TO BE PROPER; WHEN THERE IS NO AWARD FOR MORAL DAMAGES, THE AWARD OF EXEMPLARY DAMAGES MUST BE DELETED.— Exemplary or corrective damages are imposed by way of example or correction for the public good, *in addition to* moral, temperate, liquidated, or compensatory damages. The award of exemplary damages is allowed by law as a warning to the public and as a deterrent against the repetition of socially deleterious actions. The requirements for an award of exemplary damages to be proper are as follows: *First*, they may be imposed by way of example or correction **only in addition**, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant. *Second*, the claimant must **first establish his right to moral, temperate, liquidated, or compensatory damages.** And *third*, the wrongful act must be accompanied by bad faith; and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. In the light of the appellate court's finding that the respondents are not entitled to moral damages, **the award of exemplary damages, too, must be deleted for lack of legal basis.**

2. ID.; ID.; ATTORNEY'S FEES; CONCEPT OF ATTORNEY'S FEES AS PART OF DAMAGES.— As regards the attorney's fees, the law is clear that in the absence of stipulation, attorney's fees may be awarded as actual or compensatory damages under

[*] Delia in some parts of the records.

any of the circumstances 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 persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousnesss of his cause.

3. ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES, PROPER IN CASE AT BAR.— The award of attorney's fees to the winning party lies *within the discretion of the court,* taking into account the circumstances of each case. This means that such an award should have factual, legal, and equitable basis, not founded on pure speculation and conjecture. In addition, the court *should state the reason for the award of attorney's fees in the body of the decision.* Its unheralded appearance in the dispositive portion, as a rule, is not allowed. x x x The RTC's findings of fact also support the award of attorney's fees: *first,* the petitioners knew that they had executed two mortgages in favor of Rural Bank to secure their loan; *second,* they failed to pay their loan amortizations; *third,* they instituted the complaint for reformation of instruments to stop the foreclosure proceedings of the two mortgages; *fourth,* they filed a complaint for indirect contempt against the respondents with full awareness that no writ of injunction or TRO was issued to stay the foreclosure proceedings; and *fifth,* they even tried to deceive the court by changing their signatures in their submissions in an attempt to support their claim. Clearly, the petitioners' filing of unfounded actions forced the respondents to litigate to protect their interests. For these reasons, we find the award of attorney's fees proper under Article 2208(4) of the Civil Code, but we modify the amount to ₱100,000.00 which would be just and reasonable under the circumstances.

APPEARANCES OF COUNSEL

Nicolas C. Alvaran for petitioners.
Alfredo A. Cabral for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] assailing the March 30, 2012 decision[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 89866 entitled *"Spouses Mamerto Timado and Delia Timado v. Rural Bank of San Jose, Inc., Teddy Monasterio, in his capacity as its Manager, and Gilbert Passion,"* that affirmed with modification the October 31, 2006 Regional Trial Court *(RTC)* joint decision in Civil Case No. IR-2974 and Special Civil Action No. IR-3187.

The CA decision affirmed the RTC's decision dismissing the complaint for reformation of instruments and the petition for indirect contempt filed by spouses Mamerto and Delia Timado *(petitioners)* against Rural Bank of San Jose, Inc. *(Rural Bank)* and Teddy Monasterio, in his capacity as Rural Bank's Manager *(*collectively as *respondents),* and awarded them exemplary damages, attorney's fees, and costs of litigation.

The Factual Antecedents

On August 15, 1994, the petitioners obtained a loan from Rural Bank amounting to ₱178,000.00[3] As security for the loan, they executed a real estate mortgage over a parcel of land *(subject property)* located in Nabua, Camarines Sur, and a chattel mortgage over one (1) unit of rice mill machinery with accessories and one (1) unit of diesel engine in favor of the bank.[4]

The petitioners eventually failed to pay their loan amortizations. As of August 27, 1997, their outstanding obligation

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[1] Petition for Review on *Certiorari, rollo,* pp. 8-29.

[2] Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Sesinando E. Villon, *rollo,* pp. 22-42.

[3] CA *rollo,* p. 77.

[4] *Id*. at 77-78.

to Rural Bank amounted to ₱125,700.00.[5] Consequently, the bank informed the petitioners of its intention to foreclose the real estate and chattel mortgages to cover the unpaid balance.[6]

On April 1, 1998, the petitioners filed a **complaint for reformation of instruments**[7] with prayer for injunction and temporary restraining order and damages *(reformation of instruments case)* against the respondents before the RTC, Branch 35, Iriga City. *No writ of injunction or temporary restraining order was ever issued by the RTC.*

On April 6, 1998, Rural Bank proceeded with the extrajudicial foreclosure of the real estate mortgage and sold the property at a public auction where it emerged as the highest bidder.[8] The provisional deed of sale was registered with the Office of the Provincial Register of Camarines Sur.[9] The petitioners failed to redeem the property within the one-year redemption period.[10] As a result, the title was consolidated in Rural Bank's name and a definite certificate of sale was issued in its favor.[11]

On November 9, 2000, the petitioners filed a **petition for indirect contempt with damages**[12] *(indirect contempt case)* against the respondents, alleging that the latter had pre-empted judicial authority by foreclosing the mortgages and selling the properties at a public auction during the pendency of the reformation of instruments case.

On February 7, 2002, while the reformation of instruments and indirect contempt cases were pending, Rural Bank filed an

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[5] *Id.* at 79.

[6] *Rollo,* p. 11.

[7] Docketed as Civil Case No. IR-2974, *rollo,* p. 23.

[8] CA *rollo,* p. 80.

[9] *Id*.

[10] *Id*.

[11] *Rollo,* p. 26.

[12] *Supra* note 7.

ex-parte **petition for issuance of writ of possession**[13] over the subject property. Because of this, the petitioners filed their third petition for indirect contempt.[14]

The trial court subsequently ordered[15] the consolidation of the reformation of instruments and the indirect contempt cases, and the dismissal[16] of the second and third petitions for indirect contempt.

In its joint decision[17] dated October 31, 2006, the RTC dismissed the complaint for reformation of instruments and petition for indirect contempt filed by the petitioners and ordered the Clerk of Court to issue a writ of possession in favor of the respondents. It also awarded damages as follows:[18]

WHEREFORE, premises considered, a joint decision is hereby rendered, as follows:

I. In Civil Case No. IR-2974 – against plaintiffs spouses Mamerto Timado and Delia Timado and in favor of defendants Rural Bank of San Jose, Inc., and Teddy Monasterio, in his capacity as its manager, to wit:

   1. Dismissing the amended complaint;

   2. On defendants' counterclaim, condemning plaintiff spouses:

      a. To pay defendant Teddy Monasterio the amount of **₱500,000.00 as moral damages,** and **₱300,000.00 as exemplary damages**;

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[13] SPL. Proc. No. IR-1789, *id*. at 27.

[14] Rural Bank filed two previous *ex-parte* petitions for issuance of writ of possession which were erroneously docketed as Nos. IR-1781 and IR-1782. Both were *dismissed* due to some defects. Despite the dismissals, the petitioners filed a **second petition for indirect contempt** against the respondents. IR-1781 and IR-1782 were re-filed, now docketed as IR-1789, which triggered the filing of the **third petition for indirect contempt.** *Id*. at 6.

[15] *Id*.

[16] *Id*.

[17] Penned by Judge Rosario B. Torrecampo.

[18] CA *rollo*, pp. 81-82.

b. To pay defendants Rural Bank of San Jose, Inc. and Teddy Monasterio the amount of **₱50,000.00 for legal counsel's acceptance fee** and **₱1,500.00 per appearance of counsel**; and,

c. To pay defendants Rural Bank of San Jose, Inc., and Teddy Monasterio other expenses of litigation and/or cost of suit.

II. In Spec. Civil Action No. IR-3187 – against petitioners spouses Mamerto Timado and Delia Timado and in favor of respondents Rural Bank of San Jose, Inc., Teddy Monasterio, and Atty. Avelino V. Sales, Jr., to wit:

1. Dismissing the petition;

2. Condemning petitioners spouses Mamerto Timado and Delia Timado:

1. To pay respondent Teddy Monasterio the amount of **₱200,000.00 as moral damages** and **₱50,000.00 as exemplary damages**; and,

2. To pay respondents Rural Bank of San Jose, Inc., and Teddy Monasterio the amount of **₱50,000.00 for the services of counsel**.[19]

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On appeal, the CA affirmed with modification the October 31, 2006 RTC decision. In its decision dated March 30, 2012, the appellate court found the dismissal of the case proper, as well as the RTC's issuance of a writ of possession in favor of the respondents. However, it *deleted the award of moral damages for lack of legal justification* and *reduced the amount of exemplary damages* awarded in Civil Case No. IR-2974 to ₱100,000.00.[20]

The petitioners raise the following issues for this Court's resolution: 1) whether the award of exemplary damages is proper, considering the CA's deletion of the award of moral damages;

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[19] Emphasis ours.

[20] *Rollo*, pp. 41-42.

and 2) whether the award of attorney's fees is supported by the factual and legal premises in the text of the RTC decision.

The Court's Ruling

We find the petition partly meritorious.

Exemplary or corrective damages are imposed by way of example or correction for the public good, *in addition to* moral, temperate, liquidated, or compensatory damages.[21] The award of exemplary damages is allowed by law as a warning to the public and as a deterrent against the repetition of socially deleterious actions.[22]

The requirements for an award of exemplary damages to be proper are as follows: [23]

First, they may be imposed by way of example or correction **only in addition**, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant.

Second, the claimant must **first establish his right to moral, temperate, liquidated, or compensatory damages**.

And *third*, the wrongful act must be accompanied by bad faith; and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

In the light of the appellate court's finding that the respondents are not entitled to moral damages, **the award of exemplary damages, too, must be deleted for lack of legal basis.**

As regards the attorney's fees, the law is clear that in the absence of stipulation, attorney's fees may be awarded as actual

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[21] CIVIL CODE, Article 2229.

[22] *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, January 12, 2011, 639 SCRA 471, 485.

[23] *Octot v. Ybañez*, G.R. No. L-48643, January 18, 1982, 111 SCRA 79-80.

or compensatory damages under any of the circumstances provided for in Article 2208 of the Civil Code.[24]

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 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.[25]

The award of attorney's fees to the winning party lies *within the discretion of the court*, taking into account the circumstances of each case. This means that such an award should have factual, legal, and equitable basis, not founded on pure speculation and conjecture. In addition, the court should *state the reason for the award of attorney's fees in the body of the decision.* Its unheralded appearance in the dispositive portion, as a rule, is not allowed.[26]

In the present case, the RTC expressly stated in the body of its decision its basis for awarding attorney's fees:

> On the other hand, the **vexatious and baseless action filed by plaintiffs-petitioners** gave rise to a cause of action for damages against them in favor of respondents for unnecessarily dragging the latter to Court and compelling them to defend themselves as well as for causing them to suffer anxiety and embarrassment.[27]

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[24] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 528, 529 (1999).

[25] *Id*. at 529.

[26] *Alcatel Philippines, Inc. v. I.M. Bongar & Co., Inc.*, G.R. No. 182946, October 5, 2011, 658 SCRA 741, 744.

[27] CA *rollo*, p. 80. Emphasis ours.

The RTC's findings of fact also support the award of attorney's fees: *first,* the petitioners knew that they had executed two mortgages in favor of Rural Bank to secure their loan; *second,* they failed to pay their loan amortizations; *third,* they instituted the complaint for reformation of instruments to stop the foreclosure proceedings of the two mortgages; *fourth,* they filed a complaint for indirect contempt against the respondents with full awareness that no writ of injunction or TRO was ever issued to stay the foreclosure proceedings; and *fifth,* they even tried to deceive the court by changing their signatures in their submissions in an attempt to support their claim. Clearly, the petitioners' filing of unfounded actions forced the respondents to litigate to protect their interests.

For these reasons, we find the award of attorney's fees proper under Article 2208(4)[28] of the Civil Code, but we modify the amount to ₱100,000.00 which would be just and reasonable under the circumstances.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The March 30, 2012 decision of the Court of Appeals in CA-G.R. CV No. 89866 is **AFFIRMED** with the **MODIFICATION** as follows: the award of exemplary damages is deleted and the amount of attorney's fees is fixed at ₱100,000.00. Costs against spouses Mamerto and Delia Timado.

SO ORDERED.

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

Mendoza, J., on official leave.

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[28] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

xxx xxx xxx

4. in case of a **clearly unfounded civil action** or proceeding against the plaintiff.

xxx xxx xxx

SECOND DIVISION

[G.R. No. 203657. July 11, 2016]

AILEEN ANGELA S. ALFORNON, *petitioner*, *vs.* **RODULFO DELOS SANTOS and EDSEL A. GALEOS**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; QUESTION OF LAW, DEFINED.—** The issues raised in this case are both questions of law, which we can properly take cognizance of in a Rule 45 review. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS IS SATISFIED WHEN A PERSON IS NOTIFIED OF THE CHARGE AGAINST HIM AND GIVEN THE OPPORTUNITY TO EXPLAIN OR DEFEND HIMSELF.—** [T]here is no requirement in the administrative determination of contested cases for strict adherence to technical rules in the manner observed in judicial proceedings. Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process, in justiciable cases presented before them. For as long as the right to due process is recognized and respected, administrative tribunals may relax the technical rules of procedure. The essence of due process is simply the opportunity to be heard. Due process – in administrative proceedings – is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. The filing of charges and a fair and reasonable opportunity to explain one's side suffice to meet the minimum requirements of due process.

3. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; WHEN CONSIDERED SERIOUS WHICH WARRANTS THE PENALTY OF DISMISSAL FROM THE SERVICE.— Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray and an intent to violate the truth. For dishonesty to be considered serious – warranting the penalty of dismissal from the service – the presence of any one of the following attendant circumstances must be present: "(1) The dishonest act caused serious damage and grave prejudice to the Government; (2) The respondent gravely abused his authority in order to commit the dishonest act; (3) Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (4) The dishonest act exhibits moral depravity on the part of the respondent; (5) The respondent employed fraud and/or ***falsification of official documents in the commission of the dishonest act related to his/her employment***; (6) The dishonest act was committed several times or in various occasions; (7) The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; (8) Other analogous circumstances."

4. ID.; ID.; ID.; ID.; THE PENALTY FOR DISHONESTY IS RELATIVE TO THE ATTENDANT CIRCUMSTANCES OF THE ERRING GOVERNMENT OFFICIAL TO BE PUNISHED.— In the present case, while the falsification in Alfornon's PDS can be considered as a dishonest act related to her employment, we find that suspension is the more proportionate penalty for her dishonesty. Our recent disposition in *Committee on Security and Safety v. Dianco* shows that we do not automatically dismiss dishonest government employees; rather, their penalty would depend on the gravity of their dishonesty x x x. As explained in *Fernandez v. Vasquez,* the penalty of dismissal for dishonesty is not exclusive; mitigating circumstances – *i.e.* lengths of government service, good faith and other analogous circumstances – may be appreciated in imposing the proper penalty. Jurisprudence is replete with cases where we lowered the penalty of dismissal to suspension taking

> into account the presence of mitigating circumstances. Thus, the penalty for dishonesty is relative to the attendant circumstances of the erring government official to be punished. x x x Considering Alfornon's continued service to the Municipality of Argao, Cebu since 2003, among others, she only deserves to be suspended for, at most, six (6) months; her outright dismissal from the service would be too harsh. Accordingly, Alfornon's reinstatement is in order as she has been out of government service since December 14, 2009, far beyond the period for her supposed suspension.

APPEARANCES OF COUNSEL

Clarus Law for petitioner.
Celso K. Inocente for respondents.

D E C I S I O N

BRION, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court[1] are the **February 29, 2012** decision[2] and the **September 5, 2012** resolution[3] of the Court of Appeals *(CA)* in **CA-G.R. SP No. 05722**.

The CA found petitioner Aileen Angela S. Alfornon (*Alfornon*) guilty of serious dishonesty and upheld her dismissal from the service, with forfeiture of retirement benefit except for accrued leave credits, and perpetual disqualification for reemployment in government service.

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[1] *Rollo*, pp. 3-15.

[2] *Id*. at 179-192; Penned by Executive Justice Pampio A. Abarintos, and concurred in by Associate Justice Eduardo B.Peralta, Jr. and Associate Justice Gabriel T. Ingles.

[3] *Id*. at 205-207.

The Facts

In November 2003, Alfornon worked as a casual employee for the Municipality of Argao, Cebu. She eventually became a permanent employee on February 16, 2007, as an Administrative Aide IV.

Alfornon filled-up, and submitted, a Personal Data Sheet *(PDS)* as one of the documents required to become a permanent government employee. When confronted with the question: "Have you ever been formally charged?, she answered "NO" despite remembering that she was previously charged with the crime of estafa before the Regional Trial Court *(RTC)* in Lapu-Lapu City, Cebu. According to her, she was advised by her co-employees that it did not matter if she denied having a case against her because the case was dismissed before she even entered government service.

On September 25, 2009, respondent Edsel A. ***Galeos***, the Municipal Mayor of Argao, issued Memorandum Order No. 2009-23 informing Alfornon that a copy of her warrant of arrest in the estafa case had been forwarded to his office pursuant to an investigation conducted by Mrs. Socorro Seares.[4] Alfornon was required to show cause within twenty-four (24) hours from receipt of the memorandum why she should not be dismissed from the service.[5]

In her letter to Galeos,[6] Alfornon explained that it was never her intention to make any material misrepresentation in her PDS. She alleged that the question was confusing as it connotes a legal question as to when a person is considered to have been formally charged. She sought the Municipal Mayor's pardon saying that she believed she was not formally charged because she was never convicted of the charge. In fact, she claimed

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[4] *Id*. at 122.

[5] *Id*.

[6] *Id*. at 123.

that she never received the warrant of arrest because the case was subsequently dismissed by the RTC on July 25, 2002.[7]

On October 8, 2009, respondent Rodolfo Delos Santos (*Delos Santos*), a security aide in the Office of the Municipal Mayor of Argao, executed an affidavit formally charging Alfornon of Serious Dishonesty. The following day, Galeos forwarded the affidavit to the LGU-Argao Fact-Finding Committee.

On October 20, 2009, Alfornon was required to submit to the LGU-Argao Fact-Finding Committee, within three (3) days from receipt of the subpoena, her counter-affidavit and all other documentary evidence supporting her case.[8] Alfornon duly complied.

After Delos Santos filed his reply-affidavit, Alfornon, in turn, filed her rejoinder-affidavit.

On November 25, 2009, after considering the affidavits and documents filed, the LGU-Argao Fact-Finding Committee issued a report recommending that Alfornon be dismissed from the service.[9]

The committee believed that Alfornon's answer was motivated by malice, bad faith, and the deliberate intent to mislead her employer who was then entertaining other applicants for the position.

On December 14, 2009, pursuant to the recommendation submitted before him, Galeos ordered Alfornon's dismissal from the service.[10]

Aggrieved, Alfornon appealed before the Civil Service Commission (*CSC*).[11]

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[7] *Id*. at 131.

[8] *Id*. at 134.

[9] *Id*. at 156.

[10] *Id*. at 164-165.

[11] *Id*. at 16-50.

Ruling of the CSC

In its **August 10, 2010** decision, the CSC granted the appeal of Alfornon, and set aside Memorandum Order No. 2009-26 dated December 14, 2003, dismissing her from the service.[12]

The CSC essentially held that Alfornon was denied due process for noncompliance with the Uniform Rules on Administrative Cases in the Civil Service (*URACCS*).[13] Based on its review of the records, the Commission found that a formal investigation was immediately conducted without Galeos – as the disciplining authority – issuing any formal charge. This procedural lapse, according to the Commission, was not in accordance with Sections 15 & 16, Rule II of the URACCS, and thus violated Alfornon's right to due process.

Accordingly, the CSC directed Galeos to immediately reinstate Alfornon to her former position, and to pay her backwages and other benefits from the time she was illegally dismissed.

On **January 11, 2011**, the CSC issued a resolution denying Galeos' motion, noting that the motion simply rehashed the same issues which the Commission had already resolved.[14]

The CSC further held that there was no legal basis to consider the endorsement of the complaint-affidavit filed against Alfornon as a formal charge because it lacked the necessary requirements. To be considered a formal charge, the CSC pointed out, it must have informed Alfornon that she had the right to file an answer, to request for a formal investigation, and to be assisted by counsel.

On February 21, 2011, Galeos, through counsel, filed a petition for review under Rule 43 of the Rules of Court before the CA.

Ruling of the CA

In the assailed February 29, 2012 decision, the CA reversed the August 10, 2010 decision and the January 11, 2011 resolution

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[12] *Id*. at 51-58.

[13] The URACCS was revised on November 8, 2011 and is now known as the Revised Rules on Administrative Cases in the Civil Service (*RRACCS*).

[14] *Supra* note 11, at 78-83.

of the CSC, and reinstated Memorandum Order No. 2009-26 dated December 14, 2003.

The CA ruled that Alfornon's right to due process was never impaired as the records reveal that:

(1) Memorandum No. 2009-23 was issued requiring Alfornon to show cause why she should not be dismissed on the ground of non-disclosure that she had been formally charged with estafa in 2002;

(2) Alfornon submitted her written explanation on October 2, 2009;

(3) She was given sufficient notice of the complaint-affidavit of Delos Santos against her and of the setting of the hearings of her administrative case;

(4) She was issued a subpoena directing her to submit to the committee within three (3) days from notice to file her counter-affidavit and supporting documents;

(5) Galeos issued Memorandum Order No. 2009-26 ordering her dismissal after the parties had submitted their arguments and evidence; and

(6) Alfornon sought recourse with the CSC by filing an appeal.

Additionally, the CA affirmed the finding that Alfornon was guilty of dishonesty which it found to be supported by substantial evidence. Finally, the CA found no merit in Alfornon's defense of good faith.

After the CA denied her motion for reconsideration in its September 5, 2012 resolution, Alfornon filed the present petition.

Our Ruling

The issues raised in this case are both questions of law, which we can properly take cognizance of in a Rule 45 review. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of

the probative value of the evidence presented, the truth or falsehood of facts being admitted.[15]

Alfornon essentially questions the application of the law and jurisprudence on the issues of (1) whether she was afforded due process before she was dismissed from the service, and (2) whether she committed a lesser degree of dishonesty, warranting a less harsh penalty than dismissal.

No further examination of the truth or falsity of the facts is required in this case because Alfornon admitted that she failed to disclose in her PDS that she had been previously charged with estafa. Our review of the case is limited to the determination of whether the CA and the administrative tribunals correctly applied the law and jurisprudence based on the facts on record.

We agree with the CA that Alfornon's right to due process was not impaired.

Alfornon argues that her right to due process was violated because Galeos, as the Municipal Mayor of Argao, disregarded Sections 15 & 16, Rule 3 of the URACCS, which provide:

Section 15. *Decision or Resolution After Preliminary Investigation.* – If a prima facie case is established during the investigation, a formal charge shall be issued by the disciplining authority. A formal investigation shall follow.

In the absence of a *prima facie* case, the complaint shall be dismissed.

Section 16. *Formal Charge.* – After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of. The formal charge shall contain a specification charge(s), a brief statement of material or relevant facts, accompanied by certified true

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[15] *Bukidnon Doctors' Hospital v. Metropolitan Bank & Trust Co.*, G.R. No. 161882, July 8, 2005, 463 SCRA 222, 223, citing *Republic v. Sandiganbayan*, G.R. No. 102508, January 30, 2002, 375 SCRA 145. See also *Almero v. Heirs of Pacquing*, G.R. No. 199008, November 19, 2014, http://sc.judiciary.gov.ph/; *Far Eastern Surety and Insurance Co., Inc. v. People*, G.R. No. 170618, November 20, 2013, http://sc.judiciary.gov.ph/; and *Century Iron Works, Inc. v. Bañas*, G.R. No. 184116, June 19, 2013, 699 SCRA 157.

copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less that seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s) and a notice that he is entitled to be assisted by a counsel of his choice.

If the respondent has submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

xxx xxx xxx

After carefully examining the records of this case, we find that there was substantial compliance in following the procedure laid down in the URACCS.

This case started when Galeos discovered that Alfornon had a previous warrant of arrest issued against her. When Galeos realized that Alfornon previously declared in her PDS that she had never been formally charged, he issued Memorandum No. 2009-23 requiring her to explain her PDS declaration.

In *Garcia v. Molina*,[16] we held that the respondents were denied due process because they were not given the opportunity to air out their side before the disciplining authority filed formal charges against them.[17] Here, however, Alfornon was able to explain her side and, in fact, admitted that she gave a false answer in her PDS.

What happened next was a deviation from the procedure laid down in the URACCS. Following Alfornon's letter-reply to Memorandum No. 2009-23, Delos Santos filed a complaint-affidavit against her with a letter addressed to the investigation committee for proper action. On the following day, Galeos endorsed the letter-complaint of Delos Santos to the investigation committee and requested a formal investigation. In our view, this endorsement can be equated to the formal charge required by the URACCS after the preliminary investigation.

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[16] G.R. No. 157383, August 10, 2010, 627 SCRA 520.

[17] *Id*. at 553.

What followed after the endorsement was a formal investigation conducted by the LGU-Argao Fact-Finding Committee. After determining that the complaint was sufficient in form and in substance, the committee issued a subpoena,[18] which Alfornon received on October 21, 2009, requiring her to submit her counter-affidavit and supporting documentary evidence. Alfornon, in turn, duly complied and filed her counter-affidavit. She was likewise able to file a rejoinder-affidavit after Delos Santos filed a reply-affidavit. It was only after all the pleadings and documents had been submitted that the committee gave its recommendation to Galeos to dismiss Alfornon from the service.

From the foregoing, we are convinced that there was substantial compliance with the procedure laid down in the URACCS (now RRACCS) before Alfornon's dismissal was resolved.

Besides, there is no requirement in the administrative determination of contested cases for strict adherence to technical rules in the manner observed in judicial proceedings.[19] Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process, in justiciable cases presented before them.[20] For as long as the right to due process is recognized and respected, administrative tribunals may relax the technical rules of procedure.

The essence of due process is simply the opportunity to be heard.[21] Due process – in administrative proceedings – is satisfied

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[18] *Rollo*, p. 134.

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

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

[21] See *Municipality of Butig, Lanao del Sur v. Court of Appeals*, G.R. No. 138348, December 9, 2005,477 SCRA 115; *Casimiro v. Tandog*, G.R. No. 146137, June 8, 2005, 459 SCRA 624; and *Montemayor v. Bundalian*, G.R. No. 149335, July 1, 2003, 405 SCRA 264.

when a person is notified of the charge against him and given an opportunity to explain or defend himself.[22] The filing of charges and a fair and reasonable opportunity to explain one's side suffice to meet the minimum requirements of due process.[23]

In the present case, Alfornon was given every opportunity to face the charges of dishonesty against her. She was able to give her answer during the initial investigation before Galeos and before the formal investigation conducted by the LGU-Argao Fact-Finding Committee.

Also, Alfornon sought reconsideration before the CSC. While the filing of a motion for reconsideration does not necessarily cure a violation of the right to due process,[24] the move, however, give due recognition to the right to due process.[25]

All told, we affirm the CA's finding that Alfornon's right to due process was not violated.

This conclusion notwithstanding, we find the petition partially meritorious because the penalty of dismissal from service is not proportionate to the dishonesty Alfornon committed. We find the penalty of outright dismissal from government service with forfeiture of benefits too severe under the circumstances of Alfornon's case.

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[22] *Ledesma v. Court of Appeals*, 565 Phil. 731, 740 (2007).

[23] *Cayago v. Lina*, G.R. No. 149539, January 19, 2005, 449 SCRA 29, 44-45. See also *Autencio v. Mañara*, G.R. No. 152752, January 19, 2005, 449 SCRA 46; and *Ziga v. Arejola*, A.M. No. MTJ-99-1203, January 10, 2003, 403 SCRA 361.

[24] See *PAGCOR v. Court of Appeals*, 678 Phil. 513, 531 (2011).

[25] See *Mayon Hotel & Restaurant v. Adana*, G.R. No. 157634, May 16, 2005, 458 SCRA 609; and *Philippine Merchant Marine School, Inc. v. Court of Appeals*, G.R. No. 112844, June 2, 1995, 244 SCRA 770. See also *Rivera v. Civil Service Commission*, G.R. No. 115147, January 4, 1995, 240 SCRA 43, where this Court said that in order that the review of the decision of a subordinate officer might not turn out to be a farce, the reviewing officer must be other than the officer whose decision is under review.

The records show that the respondents' legal basis for considering Alfornon's dishonesty as serious was CSC O.M. No. 40 s. 2010, implementing CSC Resolution No. 06-1009 dated June 5, 2006. We note that CSC Resolution No. 06-1009 merely corrected a provision in CSC Resolution No. 06-0538 dated April 4, 2006,[26] to *wit*:

> **Section 1.** Section 7 of CSC Resolution No. 06-0538 dated April 4, 2006, also known as the Rules on the Administrative Offense of Dishonesty, is hereby amended to read as follows:
>
> > **Section 7.** *Transitory Provision.* – These rules shall not apply to dishonesty cases already decided with finality prior to the effectivity hereof. All pending cases of dishonesty or those filed within three (3) years after the effectivity hereof, **shall be labeled as Serious Dishonesty** *without prejudice to the finding of the proper offense after the termination of the investigation*. [emphasis, italics, and underscoring ours]

The terms of this provision, to our mind, show that the CSC never intended to automatically consider a case of dishonesty as serious. The phrase "*without prejudice to the finding of the proper offense*" implies that the disciplining body can still find a government employee guilty of only less serious or simple dishonesty if warranted by the circumstances of a case.

In fact, CSC Resolution No. 06-0538 provides for different circumstances when dishonesty is considered serious, less serious, or simple.[27]

Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray and an intent to violate the truth.[28]

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[26] Otherwise known as the Rules on the Administrative Offense of Dishonesty.

[27] See CSC Resolution No. 06-0538 (2006), Sections 2, 3 &4.

[28] *Office of the Ombudsman v. Torres*, 567 Phil. 46, 57 (2008). See also *Office of the Court Administrator v. Ibay*, A.M. No. P-02-1649, November 29, 2002, 393 SCRA 212; and *OCAD v. Yan*, A.M. No. P-98-1281, April 27, 2005, 457 SCRA 389-390.

For dishonesty to be considered serious – warranting the penalty of dismissal from the service – the presence of any one of the following attendant circumstances must be present:

(1) The dishonest act caused serious damage and grave prejudice to the Government;

(2) The respondent gravely abused his authority in order to commit the dishonest act;

(3) Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption;

(4) The dishonest act exhibits moral depravity on the part of the respondent;

(5) The respondent employed fraud and/or ***falsification of official documents in the commission of the dishonest act related to his/her employment***;

(6) The dishonest act was committed several times or in various occasions;

(7) The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets;

(8) Other analogous circumstances.[29] [emphasis, italics, and underscoring ours]

In the present case, while the falsification in Alfornon's PDS can be considered as a dishonest act related to her employment, we find that suspension is the more proportionate penalty for her dishonesty.

Our recent disposition in *Committee on Security and Safety v. Dianco* shows that we do not automatically dismiss dishonest government employees; rather, their penalty would depend on the gravity of their dishonesty, to *wit*:[30]

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[29] CSC Resolution No. 06-0538 (2006), Section 2.

[30] A.M. No. CA-15-31-P, June 16, 2015, p. 9.

CSC Resolution No. 06-0538 thus reflects a departure from the Draconian treatment of dishonest conduct under the Old Uniform Rules […]. The Uniform Rules did not contain any standard for classifying dishonesty, for which reason, this Court had ruled that a finding of dishonesty carries the indivisible penalty of dismissal.[31] The advent of CSC Resolution No. 06-0438, however, *humanized the penalties for acts falling under the general category of dishonesty* and categorized the conduct, depending upon its effect, the offender's position, the intent and moral depravity of the offender, and other analogous circumstances.[32]

As explained in *Fernandez v. Vasquez*,[33] the penalty of dismissal for dishonesty is not exclusive; mitigating circumstances – *i.e.* lengths of government service, good faith and other analogous circumstances – may be appreciated in imposing the proper penalty. Jurisprudence is replete with cases where we lowered the penalty of dismissal to suspension taking into account the presence of mitigating circumstances.[34] Thus, the penalty for dishonesty is relative to the attendant circumstances of the erring government official to be punished.

In *Advincula v. Dicen*,[35] the petitioner submitted his PDS, declaring therein that there was no pending administrative and criminal cases against him and that he had not been convicted

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[31] Thus, in *Bacsarsar v. Civil Service Commission*, G.R. No. 180853, January 20, 2009, 576 SCRA 787, we stated that dishonesty alone, because it is a grave offense, carries the extreme penalty of dismissal from service. In the subsequent case of *Retired Employee, Municipal Trial Court, Sibonga, Cebu v. Merlyn Manubag*, A.M. No. P-10-2833, December 14, 2010, 638 SCRA 86, we held likewise that dishonesty being in the nature of a grave offense, carries the extreme penalty of dismissal from service.

[32] The same treatment is reflected in the Revised Rules on Administrative Cases in the Civil Service, enacted on November 18, 2011.

[33] A.M. No. RTJ-11-2261, July 26, 2011, 654 SCRA 349.

[34] *Office of the Court Administrator v. Flores*, A.M. No. P-07-2366, April 16, 2009, 585 SCRA 82, citing *OCA v. Ibay*, AM No. P-02-1649, 29 November 2002; *OCA v. Sirios*, AM No. P-02-1659, 28 August 2003, 410 SCRA 35. See also *Office of the Court Administrator v. Aguilar*, A.M. No. RTJ-07-2087, June 7, 2011, 651 SCRA 13.

[35] G.R. No. 162403, May 16, 2005, 458 SCRA 696.

of any administrative offense. The records reveal, however, that at that time there were criminal and administrative cases pending against the petitioner. Moreover, it was later on discovered that the petitioner had already been convicted for simple misconduct. When the case was brought before this Court, we *affirmed* the finding that the petitioner was guilty of dishonesty but *imposed the penalty of* ***suspension from office for six (6) months without pay***.[36]

Likewise, in *Yalung v. Pascua*,[37] the erring judge made the same misrepresentation that there had been no pending case against him when, in fact, an administrative and a criminal case had been filed against him. In imposing the penalty of suspension for six (6) months, we took into consideration of the length of time he served in government, and the fact that he had no prior administrative record as the cases against him were eventually dismissed.

Considering Alfornon's continued service to the Municipality of Argao, Cebu since 2003, among others, she only deserves to be suspended for, at most, six (6) months; her outright dismissal from the service would be too harsh. Accordingly, Alfornon's reinstatement is in order as she has been out of government service since December 14, 2009, far beyond the period for her supposed suspension.

Alfornon, however, is not entitled to backwages because she is not completely exonerated from the charge against her.[38] A finding of liability for a lesser offense is not equivalent to exoneration.[39] Likewise, the mere reduction of the penalty on

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[36] *Id.* at 700.

[37] A.M. No. MTJ-01-1342, June 21, 2001, 411 SCRA 765.

[38] See *Secretary of Education, Culture and Sports v. Court of Appeals*, G.R. Nos. 128559 & 130911, 342 SCRA 40, 49-50, citing *Alipat v. Court of Appeals*, G.R. No. 132841, June 21, 1999, 308 SCRA 781, 788-789; and *Bangalisan v. Court of Appeals*, G.R. No. 124678, July 31, 1997, 276 SCRA 619.

[39] *Jacinto v. Court of Appeals*, G.R. No. 124540, 14 November 1997, 281 SCRA 657, 682.

appeal does not entitle a government employee to back salaries as he was not exonerated of the charge against him.[40]

WHEREFORE, premises considered, we hereby partially **GRANT** the petition, **REVERSE** the February 29, 2012 decision and the September 5, 2012 resolution of the Court of Appeals in CA-G.R. SP No. 05722, and order the Municipality of Argao, Cebu to **REINSTATE** Aileen Angela S. Alfornon to the position she was holding prior to her dismissal on December 14, 2009, without loss of seniority rights.

SO ORDERED.

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

Mendoza, J., on official leave.

SECOND DIVISION

[G.R. No. 204620. July 11, 2016]

ROWENA A. SANTOS, *petitioner, vs.* **INTEGRATED PHARMACEUTICAL, INC. and KATHERYN TANTIANSU,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; GROSS AND HABITUAL NEGLECT OF DUTY; ESTABLISHED WHEN THE EMPLOYEE'S TARDINESS

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[40] *Civil Service Commission v. Cruz*, G.R. No. 187858, August 9, 2011, 655 SCRA 214. See also *City Mayor of Zamboanga v. Court of Appeals*, G.R. No. 80270, February 27, 1990, 182 SCRA 785.

IS SO EXCESSIVE THAT IT ALREADY AFFECTS THE GENERAL PRODUCTIVITY AND BUSINESS OF THE EMPLOYER.— Records reveal that petitioner was indeed habitually tardy. She was always late in district meetings and in the submission of her periodic reports. These are borne out by the evaluation conducted by petitioner's former supervisor x x x. The memorandum dated April 6, 2010 also bears out petitioner's lack of deep sense of duty and punctuality. x x x These pieces of documentary evidence already constitute substantial evidence (or that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion) proving petitioner's habitual tardiness. Her tardiness is so excessive that it already affects the general productivity and business of Integrated Pharma. It has amounted to gross and habitual neglect of her duty, which is a just cause for terminating employment under Article 282 of the Labor Code.

2. **ID.; ID.; ID.; ID.; WILLFUL DISOBEDIENCE OF EMPLOYER'S LAWFUL ORDERS; ELEMENTS.—** Petitioner also committed willful disobedience of reasonable and lawful orders of her employer. As a just cause for dismissal of an employee under Article 282 of the Labor Code, willful disobedience of the employer's lawful orders requires the concurrence of two elements: "(1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which she had been engaged to discharge."

3. **ID.; ID.; ID.; ID.; DISHONESTY AND SERIOUS MISCONDUCT; THE EMPLOYEE'S ACT OF DELIBERATELY MISDECLARING OR OVERSTATING HER ACTUAL TRAVELLING EXPENSE, A CASE OF.—** We are not also convinced with the labor tribunals' ratiocination that petitioner should be absolved for overcharging since there is no proof that she is not entitled to ₱10.00 travel expense or that she pocketed the difference of ₱8.00. There is a difference between allotted transportation allowance and actual transportation expense. Thus, to state an amount of actual transportation expense other than the amount actually incurred for transportation is dishonesty. Elsewise put, just because petitioner was allotted ₱10.00 transportation expense does not mean that she can keep the remainder should she not exhaust

the entire amount thereof. Petitioner's act of deliberately misdeclaring or overstating her actual travelling expense constitutes dishonesty and serious misconduct, which are lawful grounds for her dismissal under paragraphs (a) and (c) of Article 282 of the Labor Code.

4. ID.; ID.; ID.; THE EXISTENCE OF ANY OF THE JUST OR AUTHORIZED CAUSES DOES NOT AUTOMATICALLY RESULT IN THE DISMISSAL OF THE EMPLOYEE, FOR THE EMPLOYER HAS THE DISCRETION WHETHER IT WOULD EXERCISE ITS RIGHT TO TERMINATE THE EMPLOYMENT OR NOT.— [P]etitioner is guilty of dishonesty and serious misconduct. Based on Article 282 of the Labor Code, such offense *may* merit the termination of employment. However, while the law provides for a just cause to dismiss an employee, the employer still has the discretion whether it would exercise its right to terminate the employment or not. In other words, the existence of any of the just or authorized causes enumerated in Articles 282 and 283 of the Labor Code does not automatically result in the dismissal of the employee. The employer has to make a decision whether it would dismiss the employee, impose a lighter penalty, or perhaps even condone the offense committed by an erring employee. In making a decision, the employer may take into consideration the employee's past offenses. In this case, petitioner had been forewarned that her failure to correct her poor behavior would be visited with stiffer penalty. However, she remained recalcitrant to her superiors' directives and warnings. Thus, respondents "have come to a forced conclusion to terminate [her] employment."

5. ID.; ID.; ID.; TWO-NOTICE REQUIREMENT; THE FIRST WRITTEN NOTICE IS INTENDED TO APPRISE THE EMPLOYEE OF THE PARTICULAR ACTS OR OMISSIONS FOR WHICH THE EMPLOYER SEEKS HER DISMISSAL, WHILE THE SECOND IS INTENDED TO INFORM THE EMPLOYEE OF THE EMPLOYER'S DECISION TO TERMINATE HER.— But the existence of a just cause to terminate an employment is one thing; the manner and procedure by which such termination should be effected is another. If the dismissal is based on a just cause under Article 282 of the Labor Code, as in this case, the employer must give the employee two written notices and conduct a hearing. The

first written notice is intended to apprise the employee of the particular acts or omissions for which the employer seeks her dismissal; while the second is intended to inform the employee of the employer's decision to terminate him. x x x The employer bears the burden of proving compliance with the above two-notice requirement. In the present case, respondents presented two *first* written notices (memoranda dated April 6, 2010 and April 21, 2010) charging petitioner with various offenses. Both notices, however, fell short of the requirements of the law.

6. ID.; ID.; ID.; IF THE DISMISSAL WAS FOR CAUSE, THE LACK OF STATUTORY DUE PROCESS SHOULD NOT NULLIFY THE DISMISSAL, OR RENDER IT ILLEGAL OR INEFFECTUAL, BUT IT WOULD WARRANT THE PAYMENT OF INDEMNITY IN THE FORM OF NOMINAL DAMAGES.— In *Agabon v. National Labor Relations Commission*, the Court held that if the dismissal was for cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. However, respondents' violation of petitioner's right to statutory due process warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the Court, taking into account the relevant circumstances. Hence, the CA did not err in awarding the amount of ₱30,000.00 to petitioner as and by way of nominal damages.

APPEARANCES OF COUNSEL

Subido Pagente Certeza Mendoza & Binay for petitioner.

Ari N. Ancheta & Marie Therese Auriel L. Salvan for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Failure to comply strictly with the requirements of procedural due process for dismissing an employee will not render such dismissal ineffectual if it is based on a just or an authorized cause. The employer, however, must be held liable for nominal

damages for non-compliance with the requirements of procedural due process.[1]

This Petition for Review on *Certiorari*[2] assails the August 31, 2012 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 122180 that modified the July 14, 2011 Resolution[4] of the National Labor Relations Commission (NLRC). Said Resolution of the NLRC affirmed the April 1, 2011 Decision[5] of the Labor Arbiter that, in turn, granted petitioner Rowena A. Santos's (petitioner) Complaint[6] for illegal dismissal filed against respondents Integrated Pharmaceutical, Inc. (Integrated Pharma) and/or Katheryn Tantiansu (Tantiansu).

Factual Antecedents

Integrated Pharma is a pharmaceutical marketing and distributing company. On February 26, 2005, it engaged the services of petitioner as "Clinician," tasked with the duty of promoting and selling Integrated Pharma's products. Petitioner's work includes visiting doctors in different hospitals located in Makati, Taguig, Pateros and Pasay.

On April 6, 2010, petitioner received a memorandum[7] from Alicia E. Gamos (Gamos), her immediate supervisor and District Manager of Integrated Pharma, relative to her failure to remit her collections and to return the CareSens POP demonstration unit to the office, at a specified time.

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[1] *Agabon v. National Labor Relations Commission*, 485 Phil. 248, 281 (2004).

[2] *Rollo*, pp. 3-43.

[3] *Id.* at 45-52; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro.

[4] *Id.* at 191-197; penned by Commissioner Gregorio O. Bilog III and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr.

[5] *Id.* at 177-189; penned by Labor Arbiter Veneranda C. Guerrero.

[6] *Id.* at 150-152.

[7] *Id.* at 363.

On April 19, 2010, Maribel E. Suarez (Suarez), National Sales Manager for Pharmaceutical Division of Integrated Pharma, called the petitioner to a meeting. Suarez informed petitioner that the management discovered that instead of reporting ₱2.00 as the actual amount of her travelling expense in going to the Fort Bonifacio Hospital, petitioner charged Integrated Pharma ₱10.00 as and for her transportation expense.

Then in the morning of April 21, 2010, respondents attempted to serve upon petitioner a memorandum[8] denominated as Memo on Padding of Expense Report. It charged petitioner with (ii) attempting to coerce her immediate supervisor to pad her transportation expenses and (ii) insubordination for not following the instructions of her immediate supervisor to report the true amount of her transportation expenses. In the same memorandum, respondents required petitioner to submit a written explanation within 24 hours in "aid [of] investigation."

Petitioner, however, refused to accept said memorandum.

Subsequently, petitioner received through registered mail another memorandum[9] likewise dated April 21, 2010 but already denominated as Termination of Employment. It enumerated five infractions which, allegedly, constrained respondents to terminate petitioner's employment, *viz*.:

After weighing all the factors on the various infractions you have committed, to wit:

1. Overstating transportation expenses
2. Attempting to coerce your manager to overstate transportation expenses
3. Unpleasant attitude towards clients, co-workers and superiors
4. Failure to remit collection on time
5. Insubordination (e.g., failure to arrive at appointed meeting time, failure to submit reports at designated hour, and,

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[8] *Id.* at 380.

[9] *Id.* at 382.

> ultimately, refusal to accept the memo asking for a written explanation on the incidents in question after verbally admitting to committing the stated offenses)

and despite considering your length of stay in the company, we have come to a forced conclusion to terminate your employment. x x x[10]

Petitioner thus filed a complaint[11] for illegal dismissal, nonpayment of salary, separation pay, and 13th month pay, with claims for moral and exemplary damages and attorney's fees.

Ruling of the Labor Arbiter

In a Decision dated April 1, 2011,[12] the Labor Arbiter ruled that respondents failed to comply with the two-notice requirement as the offenses stated in the April 21, 2010 memorandum terminating petitioner's employment do not pertain to the same infractions enumerated in the April 6, 2010 memorandum. Hence, there is no proof that petitioner was properly informed of the charges against her. With regard to the charge of insubordination (specifically her failure to remit her collections and to return the CareSens POP demonstration unit on time), the Labor Arbiter opined that petitioner had already been reprimanded for such offense.

The Labor Arbiter likewise ruled the respondents failed to establish that there was a just cause to terminate petitioner's employment; that petitioner is habitually tardy; and, that petitioner was not entitled to ₱10.00 travelling allowance or that she pocketed the ₱8.00 difference. The Labor Arbiter thus held Integrated Pharma liable for illegal dismissal and to pay petitioner separation pay, backwages, unpaid salary, 13th month pay, and attorney's fees. The dispositive portion of the Labor Arbiter's April 1, 2011 Decision reads:

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[10] *Id.*

[11] *Id.* at 150-152.

[12] *Id.* at 177-189.

WHEREFORE, premises considered, judgment is hereby rendered finding respondent [sic] liable for illegal dismissal and nonpayment of salary and 13th month pay. Respondent Integrated Pharmaceutical, Inc., is ordered to pay complainant Rowena A. Santos the aggregate amount of Two Hundred Twenty Five Thousand Six Hundred Ninety Eight Pesos and 23/100 (₱225,698.23) representing separation pay, backwages, salary for April 11-21, 2010 and 13th month pay for three (3) years, plus ten percent (10%) thereof as and for attorney's fees in the amount of ₱22,569.82.

All other claims are dismissed for lack of merit.[13]

Not satisfied, respondents appealed to the NLRC. They insisted that petitioner was validly dismissed for cause and with due process of law.

Ruling of the National Labor Relations Commission

In its Resolution[14] dated July 14, 2011, the NLRC sustained the ruling of the Labor Arbiter that the additional infractions mentioned in the April 21, 2010 memorandum cannot be used against petitioner for lack of prior notice. The NLRC likewise affirmed the ruling of the Labor Arbiter anent the charge of padding of transportation expenses.

Respondents filed a Motion for Reconsideration. In a Resolution[15] dated August 23, 2011, however, the NLRC likewise denied said motion.

Still unfazed by the adverse rulings of the labor tribunals, respondents filed before the CA a Petition for *Certiorari*[16] ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in rendering its July 14, 2011 Resolution.

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[13] *Id.* at 188-189.

[14] *Id.* at 191-197.

[15] *Id.* at 209-210.

[16] *Id.* at 70-149.

Ruling of the Court of Appeals

On August 31, 2012, the CA rendered its Decision[17] modifying the NLRC's Resolution. It held that petitioner was not illegally dismissed and, therefore, not entitled to separation pay, backwages, attorney's fees, damages, and 13th month pay. It opined that there are just causes to terminate petitioner's employment because she was always late in district meetings and in the submission of periodical reports, had committed acts of insubordination and dishonesty, and her sales performance was far from satisfactory. The CA nonetheless agreed with the NLRC that respondents failed to comply with the two-notice requirement. The *fallo* of the assailed CA Decision reads:

> WHEREFORE, premises considered, the petition is PARTLY GRANTED. The assailed Decision dated 14 July 2011 of [the] National Labor Relations Commission is MODIFIED in that private respondent was not illegally dismissed and, therefore, the awards of separation pay, backwages, attorney's fees, other damages and 13th month pay are deleted. For failure to comply with the twin notice requirements of due process in effecting the just dismissal of private respondent, petitioner is ordered to pay private respondent the amount of ₱30,000.00 as nominal damages.
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> SO ORDERED.[18]

Petitioner filed a Motion for Partial Reconsideration.[19] In a Resolution[20] promulgated on November 5, 2012, however, the CA denied petitioner's motion.

Issues

Feeling aggrieved, petitioner filed the instant Petition imputing upon the CA the following errors:

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[17] *Id.* at 45-52.

[18] *Id.* at 52.

[19] *Id.* at 56-68.

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

I.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THERE IS SUFFICIENT PROOF TO SUPPORT THE VARIOUS INFRACTIONS COMMITTED BY PETITIONER SANTOS.

II.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE DISMISSAL OF PETITIONER SANTOS WAS WITH JUST CAUSE.[21]

Petitioner contends that the CA erred in deviating from the uniform rulings of the labor tribunals whose findings of facts are binding on the CA. She insists that the CA grievously erred in delving into the factual issues of the case instead of limiting itself with the issue of jurisdiction.

Petitioner denies being habitually tardy. She claims that respondents failed to provide specific instances where her alleged habitual tardiness could be deduced. Petitioner likewise faults the CA in finding her guilty of insubordination since she was already reprimanded for the acts she committed relative thereto. She maintains that she had dutifully abided with all the lawful orders of Integrated Pharma.

As to her alleged dismal performance, petitioner argues that respondent Integrated Pharma has no written policy as to the expected performance of its employees. Hence, it had no basis in concluding that her performance was unsatisfactory.

Lastly, petitioner admits reporting the amount of ₱10.00 as her fare in going to the Fort Bonifacio Hospital. Nevertheless, she denies overcharging respondents and maintains that she only reported the actual amount she incurred in going to the said hospital. According to petitioner, to maximize her time, she used to take tricycles and pay ₱10.00 for her fare, instead of multicabs for only ₱2.00.

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[21] *Id.* at 23.

After all, respondents neither forbade her from taking tricycles nor denied her claim for ₱10.00 tricycle fare. In fact, they allowed her to spend ₱10.00 for travel expenses for quite some time already.

Respondents, on the other hand, argue that petitioner essentially assails the CA's factual findings, which cannot be done in a petition for review on *certiorari*. They point out that the Supreme Court is not a trier of facts and only questions of law can be raised in a petition for review on *certiorari*. Hence, the Decision of the CA finding sufficient proof that petitioner committed various infractions deserves full faith and credence. Respondents contend that these infractions should be taken collectively; not singly or separately. Viewed as a whole, the series of infractions committed by the petitioner constitutes serious misconduct that justifies the termination of her employment. Specifically, respondents claim that petitioner was guilty of habitual absenteeism and tardiness, insubordination, and dishonesty. According to respondents, petitioner was habitually absent as shown by the evaluation reports and affidavits[22] of petitioner's immediate supervisors who stated that petitioner was always late in district meetings and in the submission of required reports. She committed insubordination when she refused to heed to the reasonable instructions of her supervisor to remit her collections and to bring the CareSens POP demonstration unit at the particular time specified by her supervisor. And, petitioner is guilty of dishonesty because she overstated her travel expenses.

Respondents further contend that they did not reprimand respondent in the April 6, 2010 memorandum. Said memorandum is actually the first written notice in effecting termination of employment.

Our Ruling

We dismiss the Petition.

At the outset, we note that the Petition essentially assails the factual findings of the CA. As a rule, this Court does not

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[22] *Id.* at 349-358.

analyze and weigh again the evidence presented before the tribunals below because it is not a trier of facts.[23] The only issues it can pass upon in a Petition for Review on *Certiorari* are questions of law. In view, however, of the conflicting findings of the labor tribunals and the CA, this Court finds it compelling to make its own independent findings of facts.[24]

Petitioner was guilty of gross and habitual neglect of duty for being excessively tardy.

Records reveal that petitioner was indeed habitually tardy. She was always late in district meetings and in the submission of her periodic reports. These are borne out by the evaluation[25] conducted by petitioner's former supervisor, Arnelo R. Peñaranda, on September 26, 2008 where it was observed that petitioner was "[a]lways late during District Meetings and [in] passing x x x required reports."[26] Correspondingly, in a scale of 1-5 (5 being the highest), petitioner was given a low mark of 1.5 as to punctuality. Despite such rock-bottom mark, however, the result on petitioner's evaluation[27] conducted barely two years later by her new supervisor did not show any sign of improvement. She still failed "to report on time both in the office and during regular field work visits."[28]

The memorandum[29] dated April 6, 2010 also bears out petitioner's lack of deep sense of duty and punctuality. In that memorandum, petitioner was chastised for arriving in the office late in the afternoon on March 22, 2010 when she was given

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[23] *Diokno v. Hon. Cacdac*, 553 Phil. 405, 428 (2007).

[24] *InterOrient Maritime Enterprises, Inc. v. Creer III*, G.R. No. 181921, September 17, 2014, 735 SCRA 267, 281.

[25] *Rollo*, pp. 349-351.

[26] *Id.* at 349.

[27] *Id.* at 353-355.

[28] *Id.* at 354.

[29] *Id.* at 363.

the specific instruction to be at the office in the morning of said date. Petitioner was also late for about 4 ½ hours for her appointment on April 5, 2010. Her payslips also reveal several deductions from her salary due to tardiness and absences.

These pieces of documentary evidence already constitute substantial evidence (or that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion) proving petitioner's habitual tardiness. Her tardiness is so excessive that it already affects the general productivity and business of Integrated Pharma. It has amounted to gross and habitual neglect of her duty, which is a just cause for terminating employment under Article 282 of the Labor Code.

Petitioner was guilty of insubordination.

Petitioner also committed willful disobedience of reasonable and lawful orders of her employer. As a just cause for dismissal of an employee under Article 282 of the Labor Code, willful disobedience of the employer's lawful orders requires the concurrence of two elements: "(1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which she had been engaged to discharge."[30]

Both requisites are present in the instant case. It is clear from the April 6, 2010 memorandum that petitioner was tasked to remit her collections to the office in the morning of March 22, 2010, a Monday. In fact, it was upon her behest that instead of on March 19, 2010, the date when she got her collections, petitioner would make the remittance on Monday morning. Come Monday, however, petitioner arrived in her office late in the afternoon, thereby making it impossible for the respondents to deposit her collections. While petitioner alleged that she attended first to her area of coverage, the fact remains that she wantonly disobeyed the reasonable and lawful orders of her employer to

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[30] *R.B. Michael Press v. Galit*, 568 Phil. 585, 597-598 (2008).

remit her collections *in the morning* of March 22, 2010, the specific time given by her employer. In one case, this Court held that "the employer had the discretion to regulate all aspects of employment, and that the workers had the corresponding obligation to obey company rules and regulations. x x x [D]eliberately disregarding or disobeying the rules could not be countenanced, and any justification that the disobedient employee might put forth would be deemed inconsequential. The lack of resulting damages was unimportant, because the 'heart of the charge is the crooked and anarchic attitude of the employee towards his employer. Damage aggravates the charge but its absence does not mitigate or negate the employee's liability.'"[31]

Another instance of petitioner's insubordination was when she did not bring the CareSens SOP demonstration unit to the office at a particular given time. Petitioner does not dispute that respondents instructed her to bring to the office said demonstration unit at 9:00 o'clock in the morning as a fellow Clinician from Batangas would pick it up that same morning. However, petitioner could not provide sensible justification why she failed to arrive at the appointed time. Her failure to come on time without weighty reasons evinces her willful disregard of the clear and simple instructions of her superiors.

Lastly, as early as January 2010 Gamos instructed petitioner to reflect in her expense report the amount of ₱2.00, which is the actual amount she incurred as transportation expense in going to the Fort Bonifacio Hospital. Petitioner, however, disobeyed her immediate supervisor and continued to reflect the amount of ₱10.00 in her expense reports.

Petitioner is guilty of dishonesty.

Petitioner would also have this Court believe that she actually incurred ₱10.00 travel expense in going to the Fort Bonifacio Hospital because she used to take tricycles. She avers that it is

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[31] *Glaxo Wellcome Phils., Inc. v. Nagkakaisang Empleyado ng Wellcome-DFA*, 493 Phil. 410, 424-425 (2005).

faster to take the tricycle because it takes quite a while before multicabs are filled with passengers.

We cannot, however, give credence to petitioner's excuses in light of the result of the investigation Gamos conducted on the matter and petitioner's own admission to Suarez that she overcharged respondents. In her memorandum dated April 13, 2010, Gamos reported to Suarez that the only means of public transportation to Fort Bonifacio Hospital at that time was by taking a multicab. Thus:

> [Petitioner] admitted that ever since she started covering FBH under her former DSM's, she was charging a tricycle fare of ₱10 on her way to the mentioned [hospital]. Further, she claimed that [in] her previous Expense Reports she was declaring that the means of transportation she regularly take is tricycle *when in fact the only means of regular transportation to FBH is actually a multicab.*
>
> But since I had no service car then, I went to the same route and discovered that there was no tricycle ride since last year on the way to FBH[;] instead available for free to employees and soldiers of Fort Bonifacio were multicabs with routes around the camp. The public or outsiders were requested to pay the ₱2 amount only as donation for the unit's maintenance and driver's salary and this was confirmed by the guards on the gate when I asked them about it that same day.[32] (Emphasis ours)

In her affidavit,[33] Suarez stated that on April 19, 2010 she, together with Tantiansu, discussed the matter of overcharging with petitioner. On said occasion, petitioner admitted that she overcharged the transportation expense every time she would go to Fort Bonifacio Hospital.

We are not also convinced with the labor tribunals' ratiocination that petitioner should be absolved for overcharging since there is no proof that she is not entitled to ₱10.00 travel expense or that she pocketed the difference of ₱8.00. There is a difference between allotted transportation allowance and actual

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[32] *Rollo*, p. 360.

[33] *Id.* at 364-365.

transportation expense. Thus, to state an amount of actual transportation expense other than the amount actually incurred for transportation is dishonesty. Elsewise put, just because petitioner was allotted ₱10.00 transportation expense does not mean that she can keep the remainder should she not exhaust the entire amount thereof. Petitioner's act of deliberately misdeclaring or overstating her actual travelling expense constitutes dishonesty and serious misconduct, which are lawful grounds for her dismissal under paragraphs (a) and (c) of Article 282 of the Labor Code.[34] It provides:

> ART. 282. *Termination by employer*. — An employer may terminate an employment for any of the following just causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.
>
> xxx xxx xxx
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

The fact that petitioner had been declaring ₱10.00 as her actual travelling expense for quite some time cannot be interpreted as condonation of the offense or waiver of Integrated Pharma to enforce its rules. "A waiver is a voluntary and intentional relinquishment or abandonment of a known legal right or privilege."[35] To be valid and effective, the waiver must be couched in clear and unequivocal terms leaving no doubt as to the intention of a party to give up a right or benefit which legally pertains to it.[36] Hence, the management prerogative to discipline employees and impose punishment cannot, as a general rule, be impliedly waived.[37]

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[34] *San Miguel Corporation v. National Labor Relations Commission*, 256 Phil. 271, 276 (1989).

[35] *R.B. Michael Press v. Galit, supra* note 30 at 596.

[36] *Id.*

[37] *Id.*

Past offense may be taken into consideration in imposing the appropriate penalty.

Petitioner further faults the CA in finding her guilty of insubordination since she was already reprimanded for the acts she committed in relation thereto.

We agree with petitioner that she had already been reprimanded for the infractions stated in the April 6, 2010 memorandum. It undoubtedly dealt with her failure to remit her collections and to return the Caresens POP demonstration unit, at the appointed time. Thus:

> This memo is being issued to reprimand you for an offense you have repeated despite several discussions in the hope that you will correct your bad habit and improve your performance. However, it seems that our pleas have been unheard or disregarded because you continue to commit the same infraction, to wit:[38]

The last paragraph of said Memorandum even contained a warning that a repetition of the same offense in the future may result in the imposition of stiffer penalty of suspension or even termination.

> Your failure to comply with appointed tasks and schedules shows disobedience and a lack of respect for authority and peers. This is clearly a form of insubordination. We have talked with you time and again to help you realize this offense, but we have hardly seen any improvement. We really hope that you will strive to correct this poor behavior. Otherwise, we will be constrained to impose a suspension that may lead to eventual termination should the same offense happen again.[39]

Hence, petitioner could no longer be punished for said offenses. Nevertheless, petitioner's failure to remit her collections and to return the Caresens POP demonstration unit on time may still be considered in imposing the appropriate penalty

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[38] *Rollo*, p. 363.

[39] *Id.*

for future offenses. In *Philippine Rabbit Bus Lines, Inc. v. National Labor Relations Commission*[40] we held that that:

> Nor can it be plausibly argued that because the offenses were already given the appropriate sanctions, they cannot be taken against him. They are relevant in assessing private respondent's liability for the present violation for the purpose of determining the appropriate penalty. To sustain private respondent's argument that the past violation should not be considered is to disregard the warnings previously issued to him.[41]

As discussed above, petitioner is guilty of dishonesty and serious misconduct. Based on Article 282 of the Labor Code, such offense *may* merit the termination of employment. However, while the law provides for a just cause to dismiss an employee, the employer still has the discretion whether it would exercise its right to terminate the employment or not. In other words, the existence of any of the just or authorized causes enumerated in Articles 282 and 283 of the Labor Code does not automatically result in the dismissal of the employee. The employer has to make a decision whether it would dismiss the employee, impose a lighter penalty, or perhaps even condone the offense committed by an erring employee. In making a decision, the employer may take into consideration the employee's past offenses. In this case, petitioner had been forewarned that her failure to correct her poor behavior would be visited with stiffer penalty. However, she remained recalcitrant to her superiors' directives and warnings. Thus, respondents "have come to a forced conclusion to terminate [her] employment."[42]

Petitioner was not accorded due process.

But the existence of a just cause to terminate an employment is one thing; the manner and procedure by which such termination

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[40] 344 Phil. 522 (1997).

[41] *Id.* at 530-531.

[42] *Rollo*, p. 382.

should be effected is another. If the dismissal is based on a just cause under Article 282 of the Labor Code, as in this case, the employer must give the employee two written notices and conduct a hearing. The first written notice is intended to apprise the employee of the particular acts or omissions for which the employer seeks her dismissal; while the second is intended to inform the employee of the employer's decision to terminate him.[43] In *King of Kings Transport, Inc. v. Mamac*,[44] this Court elaborated on what should be the contents of the first notice and the purpose thereof. Thus:

> (1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. 'Reasonable opportunity' under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.[45]

The employer bears the burden of proving compliance with the above two-notice requirement.[46]

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[43] *University of the Immaculate Conception v. Office of the Secretary of Labor and Employment,* G.R. Nos. 178085-178086, September 14, 2015.

[44] 553 Phil. 108 (2007).

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

[46] *University of the Immaculate Conception v. Office of the Secretary of Labor and Employment, supra* note 43.

In the present case, respondents presented two *first* written notices (memoranda dated April 6, 2010 and April 21, 2010) charging petitioner with various offenses. Both notices, however, fell short of the requirements of the law. The April 6, 2010 memorandum did not apprise petitioner of an impending termination from employment. It did not require her to submit within a specified period of time her written explanation controverting the charges against her. Said memorandum did not also specify the company rules allegedly violated by the petitioner or the cause of her possible dismissal as provided under Article 282 of the Labor Code. After elaborating on the two acts of insubordination, said memorandum merely reprimanded petitioner and warned her that a commission of the same or similar offense in the future would be visited with stiffer penalty. It reads:

This memo is being issued to reprimand you for an offense you have repeated despite several discussions in the hope that you will correct your bad habit and improve your performance. However, it seems that our pleas have been unheard or disregarded because you continue to commit the same infraction, to wit:

1. On March 19, 2010, late in the afternoon, you informed our VP for operations that you were able to collect some accounts and asked if you could postpone your remittance to the office to Monday the following week. You were asked to report early on Monday morning, so that your remittances may be deposited on the same day. Without notice, you appeared close to 5:00PM that day, thus the office was not able to deposit your remittances anymore. Your explanation that you prioritized regular coverage in the morning is not acceptable. If you had an important appointment that morning/day, you should have taken this up with our VP for operations during your conversation on Friday or even during the weekend prior to Monday morning to allow the office to think of a way to get the remittances from you and be able to deposit them that morning. It was clear to you that you were tasked to bring them to the office during opening hours on Monday, March 22, but you failed to do so.

2. Yesterday, you were asked to bring the CareSens POP demo unit to the office at 9:00AM, so that your fellow clinician from Batangas can pick it up for an urgent demo. Again, you agreed, and it was clear to you what time you were expected at the office. However, you arrived at 1:30PM, claiming that you sent text messages today and explaining that you had to go to PAL to cover doctors. While it is important to keep to your itinerary, the specific instruction for you to deviate your morning schedule to deliver the demo unit should have been your priority. If your visit to PAL office was very important, you should have brought this up as you were being instructed yesterday. Your failure to surrender the unit to the office resulted in a missed appointment for your fellow clinician, not to mention incurred travel expenses and wasted time and effort. This was not only irresponsible but selfish on your part.

You failure to comply with appointed tasks and schedules shows disobedience and a lack of respect for authority and peers. Thus is clearly a form of insubordination. We have talked with you time and again to help you realize this offense, but we have hardly seen any improvement. We really hope that you will strive to correct this poor behavior. Otherwise, we will be constrained to impose a suspension that may lead to eventual termination should the same offense happen again.[47]

With regard to the April 21, 2010 memorandum,[48] respondents claim that they attempted to furnish petitioner with a copy thereof, but that petitioner refused to receive the same. However, respondents' bare allegation that they attempted to furnish the petitioner with a copy of the April 21, 2010 memorandum is not sufficient. Proof of actual service is required.[49] Also, the April 21, 2010 memorandum did not afford petitioner ample opportunity to intelligently respond to the accusations hurled against her as she was not given a reasonable period of at least five days to prepare for her defense. Notably, respondents

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[47] *Rollo*, p. 363.

[48] *Id.* at 380.

[49] *Electro System Industries Corporation v. National Labor Relations Commission*, 509 Phil. 187, 192-193 (2005).

terminated her employment through another memorandum bearing the same date. Moreover, the April 21, 2010 memorandum did not also state the specific company rule petitioner violated or the just cause for terminating an employment. Nothing was likewise mentioned about the effect on petitioner's employment should the charges against her are found to be true.[50]

Lastly, it does not escape our attention that respondents never scheduled a hearing or conference where petitioner could have responded to the charge and presented her evidence.[51] Both the April 6, 2010 and the April 21, 2010 memoranda do not contain a notice setting a particular date for hearing or conference.

In *Agabon v. National Labor Relations Commission*,[52] the Court held that if the dismissal was for cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. However, respondents' violation of petitioner's right to statutory due process warrants the payment of indemnity in the form of nominal damages. The amount of such damages

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[50] *Dr. Maquiling v. Philippine Tuberculosis Society, Inc.*, 491 Phil. 43, 57-58 (2005).

[51] Pertinent portion of Section 2, Rule I, of the Implementing Rules of Book VI of the Labor Code provides:

> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
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> For termination of employment based on just cases as defined in Article 282 of the Labor Code:
>
> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
>
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

[52] *Supra* note 1.

is addressed to the sound discretion of the Court, taking into account the relevant circumstances. Hence, the CA did not err in awarding the amount of ₱30,000.00 to petitioner as and by way of nominal damages.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED** and the assailed August 31, 2012 Decision of the Court of Appeals in CA-G.R. SP No. 122180 is **AFFIRMED**.

SO ORDERED.

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

Mendoza, J., on official leave.

SECOND DIVISION

[G.R. No. 204750. July 11, 2016]

SUSAN D. CAPILI, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, DEFINED; IN LABOR CASES, GRAVE ABUSE OF DISCRETION MAY BE IMPUTED AGAINST THE NATIONAL LABOR RELATIONS COMMISSION WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.— In order that the extraordinary writ of *certiorari* be issued against a court or quasi-judicial body, it is necessary to prove that such court or tribunal gravely abused its discretion, which connotes "a capricious and whimsical exercise of judgment as is equivalent

to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." Specifically, in labor cases, grave abuse of discretion may be imputed against the NLRC when its findings and conclusions are not supported by substantial evidence or such amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; VALID DISMISSAL; ELEMENTS.— [T]o constitute a valid dismissal from employment, two requirements must concur: the dismissal must be for any of the causes under Article 297 (previously Article 282) of the Labor Code; and the employee must be given the opportunity to be heard and defend himself or herself.

3. ID.; ID.; ID.; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; TO VALIDLY DISMISS ON THIS GROUND, THE EMPLOYEE MUST HOLD A POSITION OF TRUST AND CONFIDENCE AND HE MUST HAVE COMMITTED AN ACT JUSTIFYING SUCH LOSS OF TRUST OF THE EMPLOYER.— One of the grounds under Article 297 of the Labor Code is the employer's loss of trust and confidence on the employee. To validly dismiss on this ground, the employee must hold a position of trust and confidence; and, he or she must have committed an act justifying such loss of trust of the employer. x x x Being an AVP—SMD, it is clear that Capili held a position of trust and confidence. x x x [W]e are unconvinced that PNB lost its confidence on Capili. As properly pointed out by the LA, PNB in fact gave Capili a "Very Good" rating in her work performance. Particularly, in her Performance Appraisal Report dated February 27, 2007, Capili was given a "Very Good" rating by PNB. During this time, PNB was well aware of the BP 22 cases against her, and the administrative case was also then pending investigation already. When PNB gave Capili a very satisfactory rating in her work performance, it did not consider the pendency of the administrative case as sufficient to prevent her from performing well in her work; in the process, she continually enjoyed the

trust and confidence of PNB. As also held in *General Bank & Trust Company*, "managerial employees should enjoy the confidence of top management x x x especially x x x in banks where [its officers] handle large sum of money and engage in confidential x x x transactions. However, loss of confidence [must] not be simulated. It [must] not be used as subterfuge x x x for improper, illegal, or unjustified [causes. It must] not be arbitrarily asserted in the face of overwhelming evidence to the contrary. [Lastly,] it must be genuine and not a mere afterthought to justify earlier action taken in bad faith."

4. ID.; ID.; ID.; REINSTATEMENT PENDING APPEAL; THE DECISION ORDERING THE REINSTATEMENT OF AN EMPLOYEE PENDING APPEAL IS IMMEDIATELY EXECUTORY, SUCH THAT THE EMPLOYEE WILL EITHER BE ACTUALLY REINSTATED OR AT THE OPTION OF THE EMPLOYER, BE REINSTATED IN THE PAYROLL.— As regards the issue on Capili's reinstatement pending appeal, Article 229 (previously Article 223) of the Labor Code provides that the LA Decision ordering the reinstatement of an employee pending appeal is immediately executory, such that the employee will either be actually reinstated or at the option of the employer, be reinstated in the payroll x x x. In *Aboc v. Metropolitan Bank and Trust Company*, respondent therein opted to reinstate in its payroll Antonio Aboc pursuant to the LA ruling that he was illegally dismissed. The Court held that payroll reinstatement restored Aboc to his previous position; even if the LA's order of reinstatement is reversed on appeal, "it is obligatory on the part of the employer to **reinstate** and **pay the wages** of the dismissed employee during the period of appeal until final reversal by the higher court." In *Wenphil Corporation v. Abing*, the Court reiterated the foregoing principles on reinstatement of employee pending appeal. It further held that in case of payroll reinstatement, the reinstated employee is not required to return the salary he received during the period the lower court or tribunal declared that he was illegally dismissed, even if the employer's appeal would eventually be ruled in its favor. Such non-requirement to reimburse salary presupposes that salary must in fact be paid to the concerned employee when he or she is ordered reinstated pending appeal. This is contrary to PNB's contention that mere

deposit of salary to the NLRC Cashier is sufficient compliance to Capili's payroll reinstatement pending appeal.

APPEARANCES OF COUNSEL

Rojas and Uy Law Offices for petitioner.
Jubert Jay C. Andrion for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the July 25, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 121824. The CA set aside the May 31, 2011 Decision[2] and July 22, 2011 Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 07-002293-08 (RA-11-10), which affirmed the September 11, 2010 Decision[4] of the Labor Arbiter (LA) in NLRC NCR Case No. 08-09149-07. Likewise challenged is the December 5, 2012 CA Resolution[5] denying Susan D. Capili's (Capili) Motion for Reconsideration.

Factual Antecedents

From December 29, 1994[6] until her dismissal on August 9, 2007, Capili was the Assistant Vice President — Systems and Methods Division (AVP-SMD) of the Philippine National Bank

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[1] CA *rollo*, pp. 917-929; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon.

[2] NLRC records, Volume III, pp. 180-189; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioner Perlita B. Velasco. Commissioner Romeo L. Go, dissented.

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

[4] *Id.* at 18-26; penned by Labor Arbiter Adolfo C. Babiano.

[5] CA *rollo*, pp. 977-978.

[6] NLRC records, Volume I, p. 44.

(PNB).[7] On October 8, 2005, PNB President, Omar Byron Mier (Pres. Mier) received information from Hyun Duk Cho (Hyun), a Korean national, that Capili was engaged in anomalous transactions.[8] Resultantly, PNB created a Fact Finding Committee to verify the matter. On March 31, 2006, the Committee reported[9] that Capili owned a private company named Sandino Builders (SB); Capili, representing SB, and Hyun, representing I-Gen. Multi-Trading Corporation, entered into a contract of sale of scrap metals; and the signing and payment thereof were made within PNB premises. It also reported that the NBI[10] record[11] showed that Capili's name was listed for tax liabilities, and violation of *Batas Pambansa Blg*. 22 (BP 22).

Later, PNB gave Capili a notice[12] to explain her alleged violations of its Code of Conduct for a) "Doing personal work during office hours or abuse of company time for personal or unauthorized business[; b)] Unauthorized use of Bank name or misrepresenting authority that may cause damage to the Bank[; and, c) C]ommission of a criminal offense involving moral turpitude or that which results in breach of trust or loss of confidence[.][13]

In her Sworn Answer,[14] Capili claimed that while there were times she met Hyun during work days, these meetings were made during her personal time at lunch; she never concealed that she owned SB as she even had a PNB bank account for it; she informed Hyun that it was Hydro Resources Contractors Corporation (HRCC), which owned the scrap metals; and had

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[7] *Id.* at 8.

[8] *Id.* at 155-157.

[9] *Id.* at 44-46.

[10] National Bureau of Investigation.

[11] NLRC records, Vol. I, pp. 172-173.

[12] *Id.* at 43.

[13] *Id.* at 45-46.

[14] *Id.* at 49-59.

she represented that it was PNB which owned them, then PNB would be a party to her contract with Hyun.

Also, Capili confirmed that in 1999, Francisco Motor Corporation (FMC) filed a BP 22 case against her relating to two checks she issued as part of the installment payment for a car she purchased from it (Makati case); when she was notified of the dishonor, she paid the value of the checks in cash but the sales agent did not turn over it to FMC; she clarified the matter with FMC, which, in turn, had desisted[15] in pursuing the case. She further asserted that she came to know that in 2000, a BP 22 case was also filed against her arising from her aborted purchase of a truck (Bulacan case). She insisted that the pendency of the Bulacan case should not be taken against her as she was not convicted of any offense or that which will result in breach of PNB's trust. She added that other than these BP 22 cases, there are no cases filed or are pending against her.

Later, PNB's Investigation, Evaluation and Charging Division (IECD), served upon Capili a Memorandum[16] charging her of committing: "(a) Acts which Tend to Show Questionable Moral Character, Integrity or Honesty, Constituting Loss of Confidence (Paragraph 2.4 [General Circular] No. 2-1345/2004 dated February 24, 2004 re: Policy on Loss of Confidence);" and "(b) Falsification of Personnel Records or Other Bank Records (Item X-C, Table 1, Bank's Code of Conduct)." The IECD opined that as a PNB officer, Capili was in the best position to understand that the issuance of worthless checks disrupts banking transactions, trading and commerce; also, Capili's failure to inform PNB that she owned SB violated its Manual on Personnel and Manpower Development, and its Employee Handbook; and her untruthful statement in her "Statement of Equity Holdings and/or Connections"[17] that as of December 31, 2003, she had nothing to report even if she owned SB is a concealment of fact amounting to falsification of personnel and bank records.

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[15] *Id.* at 68-70.

[16] *Id.* at 78-79.

[17] *Id.* at 220.

In her Answer[18] to IECD Memorandum, Capili asserted that the Makati case was already dismissed[19] with finality; the Bulacan case was still pending, but it had no reasonable connection to her function as PNB officer; she did not falsify any personnel or bank records because on November 30, 2005, she disclosed her ownership of SB;[20] and, she did not indicate in her 2003 Statement of Equity Holdings and/or Connections her interest in SB because it was a dormant business that had only engaged in 2 transactions since 1999.

In its Decision[21] dated January 16, 2007, PNB's Administrative Adjudication Panel (AAP) declared that Hyun's accusation, and the charge of falsification against Capili were without basis; and that the issue on her purported questionable integrity lost its basis relative to the Makati case that was already dismissed. However, it stated that with respect to the Bulacan case, the decision therein would be necessary in resolving the issue on her character. Thus, AAP provisionally dismissed the administrative complaint against her.

On February 20, 2007, Capili informed PNB that in its August 24, 2006 Order,[22] the Municipal Trial Court of Santa Maria, Bulacan already dismissed the Bulacan case; as such, she requested that she be excluded from the list of employees with pending administrative cases and that the benefits due her be released.[23] On February 22, 2007, Edgardo T. Nallas (Nallas), PNB's First Senior VP (FSVP), informed her that since the dismissal of the Bulacan case was merely provisional and PNB's decision is contingent upon its outcome, then its January 16, 2007 Decision remains.[24]

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[18] *Id.* at 81-87.

[19] *Id.* at 88.

[20] *Id.* at 96.

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

[22] *Id.* at 98.

[23] *Id.* at 104.

[24] *Id.* at 105.

On May 16, 2007, Capili attended the administrative hearing[25] conducted by the AAP.

On August 1, 2007, the AAP rendered its Decision[26] finding Capili guilty of violating PNB General Circular No. 2-1345[27] (Policy on Loss of Confidence in relation to Article 282 (e) of the Labor Code) and dismissing her effective August 9, 2007.[28] It explained that Capili's issuance of worthless checks put her character in question. It also explained that under the BSP[29] Circular No. 513, Series of 2006,[30] the directors, officers or employees are disqualified when they have derogatory records with the NBI, among others, affecting their integrity and/or ability to discharge their duties; since Capili's NBI record indicated that she was a respondent in several criminal cases, then this gives basis to disqualify her from her work.

On August 23, 2007, Capili filed a Complaint[31] against PNB, and its officers, Pres. Mier, Nallas, Anthony O. Chua, John D. Medina, Diego A. Allena, Jr, Carmela A. Pama, Ricardo C. Ramos and Ma. Luisia S. Toribio[32] for illegal dismissal; non-payment of salary, service incentive leave, 13th month pay, retirement benefits; actual, moral and exemplary damages, attorney's fees, among other claims.

In her Position Paper,[33] Reply,[34] and Rejoinder,[35] Capili argued that her termination was without cause because all the charges

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[25] *Id.* at 135, 207.

[26] *Id.* at 106-115.

[27] *Id.* at 117-121.

[28] *Id.* at 116.

[29] *Banko Sentral ng Pilipinas*.

[30] NLRC records, Vol. I, pp. 122-127.

[31] *Id.* at 1-3.

[32] *Id.* at 130.

[33] *Id.* at 8-35.

[34] *Id.* at 242-260.

[35] *Id.* at 262-280.

supporting PNB's loss of confidence had been dismissed by the proper courts. She stated that in PNB's Decision dated January 16, 2007 (First Decision), the AAP held that Hyun's complaint and the charge of falsification against her were without sufficient basis. She also insisted that the BP 22 cases against her were not work-related and were already dismissed with finality. She added that she submitted to PNB court clearances[36] showing that there were no pending cases against her.

Capili claimed that she was singled out by PNB since there were other PNB managerial employees, who had cases in court like her; but unlike her, they were not administratively charged. Lastly, she averred that notwithstanding the administrative case, she was given a rating[37] of "Very Good" in her latest performance appraisal report, which showed that she consistently and completely met the demands of her work.

On November 16, 2007, the MTC dismissed with finality the Bulacan case.[38]

For their part, PNB and its officers argued in their Position Paper,[39] Reply[40] and Rejoinder[41] that as AVP — SMD, Capili occupied a position requiring PNB's trust and confidence. According to them, Capili's questionable activities and/or conduct were revealed through the complaint of Hyun, the BP 22 cases, and her 2003 Statement of Equity and/or Connections. They also affirmed that its Second Decision dismissing Capili from her work is valid because it emanated from the administrative charges pending at the time of its rendition. They further declared that Capili was notified of the charges against her and was given the chance to answer them; she also was given a second notice informing her of the penalty of dismissal imposed against her.

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[36] *Id.* at 71-77.

[37] *Id.* at 39-42.

[38] *Id.* at 103.

[39] *Id.* at 129-152.

[40] *Id.* at 224-241.

[41] *Id.* at 281-291.

Ruling of the Labor Arbiter

On September 11, 2010, the LA rendered a Decision[42] finding PNB guilty of illegally dismissing Capili. The dispositive portion of the Decision reads:

> WHEREFORE, judgment is hereby rendered ordering respondent Philippine National Bank to:
>
> 1. Immediately reinstate complainant (*Capili*) to her former position without loss of seniority rights and benefits;
> 2. Pay complainant full backwages which as of this Decision is now ₱2,146,000.00 subject to further computation up to the time of her actual reinstatement;
> 3. Pay complainant ₱20,076.92 (₱2,230.76 x 9 days) representing her salaries for the period August 1-9, 2007;
> 4. Pay complainant ₱58,000.00 representing her 13th month pay for the year 2007; and
> 5. Pay complainant attorney's fees equivalent to 10% of the total award.
>
> All other claims are dismissed for lack of factual and legal basis.
>
> SO ORDERED.[43]

The LA decreed that despite PNB's compliance with the required procedural due process, its claim of loss of trust and confidence on Capili is unfounded as the latter committed no derogatory act against PNB, and even had impressive work performance appraisal. He also pointed out that the dismissal of the administrative case under PNB's First Decision was only provisional because of the Bulacan case, which PNB viewed as a prejudicial issue to the administrative case. He added that all the BP 22 cases against Capili were already dismissed by the courts; thus, she enjoys the presumption of innocence. Finally, he stressed that Capili issued the subject checks a long time ago, in her personal dealings that were unrelated to her work.

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[42] NLRC records, Volume III, pp. 18-26.

[43] *Id.* at 25-26.

PNB and its officers appealed the LA Decision.

Pending appeal in the main case, Capili moved for the execution of the LA Decision on her immediate reinstatement. On December 22, 2010, the LA approved Capili's payroll reinstatement ordering PNB to deposit her accrued salaries with the NLRC Cashier until the case is decided with finality.[44] On March 24, 2011, acting on Capili's motion, the LA ordered the release in her favor ₱328,666.67 that PNB deposited to the NLRC Cashier.[45]

PNB and its officers appealed[46] the March 24, 2011 LA Order arguing that the December 22, 2010 Order only granted the deposit of Capili's payroll salary, and not the release thereof to Capili while the main case is pending.

Ruling of the National Labor Relations Commission

On May 31, 2011, the NLRC affirmed[47] the September 11, 2010 LA Decision. It held that to be a ground for dismissal, loss of trust and confidence must refer to work-related acts, which make the concerned employee unfit to continue with his work. It ruled that Capili's issuance of checks was personal in nature and did not pertain to her duties as AVP. It also declared that the BP 22 cases against her were already dismissed with finality. Hence, PNB's loss of confidence is without basis.

The NLRC also clarified that BSP Circular No. 513 relied upon by PNB pertained to the disqualification of officers or employees from holding a director position; there being no proof that Capili was a PNB Director, then this circular is not applicable here. It added that the NBI record under "Capili, Susan" does not show that its entire information pertained to Capili herself. It likewise noted that Capili in fact submitted to PNB court clearances showing that she was not convicted of any offense nor was there any pending case against her. It also ruled that

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[44] NLRC records, Volume IV, pp. 26-29.

[45] *Id.* at 131-134.

[46] *Id.* at 135-149.

[47] NLRC records, Volume III, pp. 180-189.

in PNB's First Decision, Capili was absolved of the charge of falsification arising from her purported non-disclosure of business interest, and its Second Decision did not discuss such accusation at all.

Meanwhile, on July 15, 2011, the NLRC denied[48] the appeal on the March 24, 2011 LA Order. Later, it also denied[49] PNB and its officers' Motion for Reconsideration.

On July 22, 2011, the NLRC denied[50] the Motion for Reconsideration on its May 31, 2011 Decision.

Ruling of the Court of Appeals

Undeterred, PNB filed with the CA a Petition for *Certiorari* essentially reiterating that it validly dismissed Capili. It stated that Capili's issuance of worthless checks violated its policy on loss of confidence; there is reasonable relation between her work and her purported dishonest conduct since she was expected to uphold bank-related laws more than an ordinary employee. It also faulted Capili for transacting with Hyun within its premises because it gave the semblance of a work-related deal. PNB likewise insisted that its First Decision was subject to the revival of the charges, and its Second Decision was a mere continuation of the proceedings in the administrative case.

In its Supplemental Petition, PNB ascribed grave abuse of discretion to the NLRC for ordering the release of the deposited salaries to Capili because it contravenes the December 22, 2010 NLRC Order that merely required the deposit of such salaries to the NLRC Cashier.

For her part, Capili alleged that PNB's First Decision dismissed all charges against her with finality, except the charge arising from the then pending Bulacan case. She also explained that

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[48] NLRC records, Volume IV, pp. 186-194; penned by Presiding Commissioner Gerardo C. Nograles. Commissioner Perlita B. Velasco concurred; Commissioner Romeo L. Go took no part.

[49] *Id.* at 222-223.

[50] NLRC records, Volume III, pp. 230-231.

the BP 22 cases against her did not involve PNB, and PNB merely used these dormant cases to illegally dismiss her. She also affirmed that these BP 22 cases were all dismissed; hence, they cannot be the basis of her termination.

In response to PNB's Supplemental Petition, Capili stated that the reinstatement of the employee, whether actual or on payroll, is immediately executory.

On July 25, 2012, the CA rendered the assailed Decision[51] setting aside the May 31, 2011 Decision and July 22, 2011 Resolution of the NLRC. It found that by issuing worthless checks, Capili gave PNB reasonable ground to lose its trust on her. As regards Capili's payroll reinstatement, the CA declared that it is rendered moot because of its finding that PNB legally dismissed her.

On December 5, 2012, the CA denied[52] Capili's Motion for Reconsideration.

Hence, Capili filed the instant Petition raising the following grounds:

> [1.] x x x [T]he Court of Appeals erroneously denied payment of herein petitioner's salaries and benefits from the time of her payroll reinstatement pending appeal until the date of retirement of herein petitioner. x x x
>
> [2.] The Court of Appeals erroneously ruled that the filing of criminal cases against herein petitioner Capili for violation of Batas Pambansa Blg. 22 in the years 2000 and 2001 were sufficient grounds to terminate her employment six (6) years later in the year 2007 on the ground of loss of confidence notwithstanding the fact that said cases were dismissed by the trial courts and had nothing to do with [C]apili's employment in PNB.
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> [3.] The Court of Appeals erred in ruling that respondent PNB's First Decision dated 16 January 2007 which dismissed the charges against herein petitioner did not bar PNB from rendering a Second

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[51] CA *rollo*, pp. 917-929.

[52] *Id.* at 977-978.

Decision terminating petitioner's employment on the ground of loss of confidence.

[4.] The Court of Appeals erred in refusing to recognize that respondent PNB is already bound by the terms of settlement it entered into with herein petitioner during the pre-execution conferences before the Labor Arbiter.

[5.] The Court of Appeals erred in refusing to appreciate that respondent PNB discriminated against herein petitioner Capili.[53]

Capili reiterates that the BP 22 cases against her cannot justify her dismissal on the ground of loss of confidence because these cases were filed six years before PNB dismissed her from her work; they were already dismissed by the court; and, they were not work-related. She also maintains that PNB's First Decision cleared her from all the charges except the Bulacan case then pending. She asserts that PNB is estopped from reversing the dismissal of these charges because PNB itself ruled that Hyun's complaint, the falsification charge and the Makati case were insufficient bases to dismiss her. Thus, when she submitted to PNB the subsequent dismissal order relating to the Bulacan case, then she is fully cleared of all the charges from which the administrative case arose.

Capili also contends that since the LA immediately reinstated her, she is entitled to the payment of her accrued salaries and benefits during the period of appeal until reversal of the high court, or until her supposed mandatory retirement in July 2011.

For its part, PNB counters that when it received Hyun's complaint against Capili, it resultantly discovered the other charges against Capili; thus, it lost its trust and confidence on her. It points out that its First Decision is not a bar for it to re-evaluate the charges against Capili and render a subsequent decision against her. PNB also echoes the CA's finding that the issue on payment of salaries and benefits of Capili pending appeal had been mooted by the CA Decision reversing that of the NLRC.

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[53] *Rollo*, p. 23.

Issue

Is Capili's dismissal on the ground of loss of trust and confidence valid?

Our Ruling

The Court grants the Petition.

In order that the extraordinary writ of *certiorari* be issued against a court or quasi-judicial body, it is necessary to prove that such court or tribunal gravely abused its discretion, which connotes "a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[54]

Specifically, in labor cases, grave abuse of discretion may be imputed against the NLRC when its findings and conclusions are not supported by substantial evidence or such amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion.[55]

In turn, to constitute a valid dismissal from employment, two requirements must concur: the dismissal must be for any of the causes under Article 297[56] (previously Article 282) of the Labor Code; and the employee must be given the opportunity to be heard and defend himself or herself.[57] One of the grounds under Article 297 of the Labor Code is the employer's loss of trust and confidence on the employee. To validly dismiss on

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[54] *Manila Memorial Park Cemetery, Inc. v. Panado*, 524 Phil. 282, 295 (2006).

[55] *Cebu People's Multi-Purpose Cooperative v. Carbonilla, Jr.*, G.R. No. 212070, January 27, 2016.

[56] The Labor Code of the Philippines as amended and renumbered, July 21, 2015.

[57] *Janssen Pharmaceutica v. Silayro*, 570 Phil. 215, 226 (2008).

this ground, the employee must hold a position of trust and confidence; and, he or she must have committed an act justifying such loss of trust of the employer.[58]

As such, to determine if Capili was validly dismissed, PNB must comply with the foregoing requirements; after all, the burden is on the employer to prove that it has justifiable reasons for terminating an employee.[59] Thus, PNB must prove by substantial evidence the facts upon which it based its loss of trust and confidence on Capili.

Records reveal that PNB, through its IECD, charged Capili of committing: "(a) Acts which Tend to Show Questionable Moral Character, Integrity or Honesty, Constituting Loss of Confidence (Paragraph 2.4 [General Circular] No. 2-1345/2004 dated February 24, 2004 re: Policy on Loss of Confidence);" and "(b) Falsification of Personnel Records or Other Bank Records (Item X-C, Table 1, Bank's Code of Conduct)."[60] Under Paragraph 2.4 of PNB General Circular No. 2-1345, acts constituting loss of confidence include: "Any other act which tends to show questionable moral character, integrity or honesty."[61]

Being an AVP — SMD, it is clear that Capili held a position of trust and confidence. The remaining question is, did she commit any act justifying PNB's loss of trust and confidence?

In its First Decision dated January 16, 2007, PNB, through its AAP, declared that 1) Hyun's complaint is without basis; 2) because the Makati case was already dismissed, it lost its basis in connection with the administrative case; 3) the charge of falsification is unfounded; and, 4) the only remaining matter is the Bulacan case and the decision of which will assist PNB in resolving the issue on Capili's character, to wit:

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[58] *Martinez v. Central Pangasinan Electric Cooperative*, 714 Phil. 70, 74-75 (2013).

[59] *Janssen Pharmaceutica v. Silayro*, *supra* at 227.

[60] NLRC records, Vol. I, pp. 78-79.

[61] *Id.* at 118.

x x x We find that **the accusations of [Hyun] against [Capili] have in fact no sufficient basis**. The contract is the best evidence in this regard. There is no statement or provision therein to show that the scrap metal is an acquired asset of PNB. Neither does the contract state that SB or Capili is representing PNB in the transaction.

xxx xxx xxx

As to the issue of [Capili's] questionable character, integrity or honesty brought about by her issuance of bum checks, the administrative charge in this regard lost its basis after the Metropolitan Trial Court of Makati City, Branch AJ63, dismissed the criminal cases x x x against her on May 23, 2006.

With respect to the [Bulacan case], it is believed that the decision of the trial court in this regard can help Us in settling the issue of [Capili's] character, integrity or honesty. At this time our ruling is premature.

Anent [Capili's] failure to disclose her business interest x x x, it is **believed that the opening of bank account by [Capili] in the name of Sandino Builders and disclosing her participation therein is sufficient disclosure of her business interest and does not amount to falsification of personal records**.[62] (Emphasis Supplied)

Too, the decretal portion of PNB's First Decision distinctly stated that the administrative case was dismissed but only provisionally because of the then pending Bulacan case, *viz*.:

WHEREFORE, in view of the pending criminal case against respondent SUSAN D. CAPILI in court the resolution of which shall determine whether or not this administrative case can proceed, this administrative case is PROVISIONALLY DISMISSED.[63]

To further bolster the position that the only remaining charge against Capili is that which relates to the Bulacan case is the statement made by PNB's FSVP Nallas (when Capili requested that benefits due her be released by PNB) that "[c]onsidering

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[62] *Id.* at 101.

[63] *Id.*

[64] *Id.* at 105.

that the AAP Decision dated 16 January 2007 is contingent to the outcome of [the Bulacan] case, which has not yet attained finality, the said AAP Decision remains."[64]

It is clear from the foregoing that in its First Decision, PNB absolved Capili of all the charges against her, except that arising from the Bulacan case. In fine, the Bulacan case was the sole reason for the provisional dismissal of the administrative case. However, PNB changed its position in its Second Decision. There, it revived the Makati case against Capili and her alleged derogatory NBI record, and dismissed her from work. This Second Decision is, nonetheless, incongruent with the following guidelines set forth under Paragraph 3.6 of PNB General Circular No. 2-1345:

> Matters to be considered. — In resolving any case under this circular, the AAP/HRC shall consider the following factors:
>
> a. Loss of confidence must **not be simulated**;
>
> b. It must **not be used as subterfuge** for causes which are improper, illegal or unjustified.
>
> c. It must **not be arbitrarily** asserted in the face of overwhelming evidence to the contrary; and
>
> d. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith.[65] (Emphases supplied)

First, PNB's assertion — that because of the BP 22 cases, it lost its trust on Capili — is a mere afterthought considering that in its First Decision, PNB resolved that the issue on her questionable character lost its basis as regards the Makati BP 22 case; and the only matter remaining was the Bulacan case. Worthy to note is that after PNB issued its Second Decision, the Bulacan case was also dismissed with finality by the court. Thus, PNB's loss of confidence is also simulated because all the while it represented that the administrative case against Capili will be contingent on the resolution of the Bulacan case;

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[65] *Id.* at 119.

[66] See *Felix v. National Labor Relations Commission*, 485 Phil. 140 (2004).

nevertheless, PNB unjustifiably changed its position to the detriment and eventual illegal dismissal of Capili.

Second, the relevance of all the charges against Capili, except that relative to the Bulacan case, had been fully threshed out in PNB's First Decision. PNB may no longer use these same matters to justify her dismissal.[66]

Third, Capili presented valid defenses for the misconduct imputed against her. For one, the complaint of Hyun was indeed a personal transaction that does not involve PNB. For another, her interest in SB was in fact disclosed considering her having a PNB bank account for it. As regards the BP 22 cases, she already settled them with the parties involved and these cases were already dismissed with finality by the courts. Certainly, she did not breach PNB's trust and confidence on her.

Fourth, the guidelines set forth by PNB relative to its policy on loss of confidence are the same guidelines specified in *General Bank & Trust Co. v. Court of Appeals*[67] concerning the Court's policy on loss of trust and confidence. In said case, the Court was unconvinced that the employer indeed lost its trust on its Bank Manager because said employer even commended the latter for his efficient work performance, among other circumstances, disproving its loss of trust.

In the same vein, we are unconvinced that PNB lost its confidence on Capili. As properly pointed out by the LA, PNB in fact gave Capili a "Very Good" rating in her work performance. Particularly, in her Performance Appraisal Report[68] dated February 27, 2007, Capili was given a "Very Good" rating by PNB. During this time, PNB was well aware of the BP 22 cases against her, and the administrative case was also then pending investigation already. When PNB gave Capili a very satisfactory rating in her work performance, it did not consider the pendency

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[67] 220 Phil. 243, 249, 252 (1985).

[68] NLRC records, Volume I, pp. 39-42.

[69] *Supra* note 66 at 252.

of the administrative case as sufficient to prevent her from performing well in her work; in the process, she continually enjoyed the trust and confidence of PNB.

As also held in *General Bank & Trust Company*, "managerial employees should enjoy the confidence of top management x x x especially x x x in banks where [its officers] handle large sum of money and engage in confidential x x x transactions. However, loss of confidence [must] not be simulated. It [must] not be used as subterfuge x x x for improper, illegal, or unjustified [causes. It must] not be arbitrarily asserted in the face of overwhelming evidence to the contrary. [Lastly,] it must be genuine and not a mere afterthought to justify earlier action taken in bad faith."[69]

At the same time, PNB arbitrarily relied on BSP Circular No. 513 as another basis in dismissing Capili. Nonetheless, as properly pointed out by the NLRC, this BSP circular pertained to the disqualification of a bank officer or employee from holding a director position upon conviction by final judgment tending to show questionable character. This circular stated that the enumeration therein pertains to "persons disqualified to become directors."[70] Capili was neither a director nor was she convicted by final judgment of any offense; certainly, this circular could not be used as ground in dismissing her from work.

As regards the issue on Capili's reinstatement pending appeal, Article 229[71] (previously Article 223) of the Labor Code provides that the LA Decision ordering the reinstatement of an employee pending appeal is immediately executory, such that the employee will either be actually reinstated or at the option of the employer, be reinstated in the payroll *viz*.:

> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal.

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[70] NLRC records, Vol. I, p. 122.

[71] The Labor Code of the Philippines as amended and renumbered, July 21, 2015.

The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

In *Aboc v. Metropolitan Bank and Trust Company*,[72] respondent therein opted to reinstate in its payroll Antonio Aboc pursuant to the LA ruling that he was illegally dismissed. The Court held that payroll reinstatement restored Aboc to his previous position; even if the LA's order of reinstatement is reversed on appeal, "it is obligatory on the part of the employer to **reinstate** and **pay the wages** of the dismissed employee during the period of appeal until final reversal by the higher court."[73]

In *Wenphil Corporation v. Abing*,[74] the Court reiterated the foregoing principles on reinstatement of employee pending appeal. It further held that in case of payroll reinstatement, the reinstated employee is not required to return the salary he received during the period the lower court or tribunal declared that he was illegally dismissed, even if the employer's appeal would eventually be ruled in its favor. Such non-requirement to reimburse salary presupposes that salary must in fact be paid to the concerned employee when he or she is ordered reinstated pending appeal. This is contrary to PNB's contention that mere deposit of salary to the NLRC Cashier is sufficient compliance to Capili's payroll reinstatement pending appeal.

Given all these, the Court finds that the CA erred in finding that the NLRC committed grave abuse of discretion in ruling that Capili was illegally dismissed, as her employer, PNB, failed to prove by substantial evidence that there is just cause supporting such dismissal.

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[72] 652 Phil. 311 (2010).

[73] *Id.* at 330; emphasis in the original.

[74] 721 SCRA 126, 136-138 (2014).

WHEREFORE, the Petition is **GRANTED**. The Decision dated July 25, 2012 and Resolution dated December 5, 2012 of the Court of Appeals in CA-G.R. SP No. 121824 are **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated May 31, 2011 and Resolution dated July 22, 2011 of the National Labor Relations Commission in NLRC LAC No. 07-002293-08 (RA-11-10) are **REINSTATED**.

SO ORDERED.

Carpio (*Chaiperson*), *Brion*, and *Leonen, JJ.*, concur.

Mendoza, J., on official leave.

SECOND DIVISION

[G.R. No. 206690. July 11, 2016]

BARRIO FIESTA RESTAURANT, LIBERTY ILAGAN, SUNSHINE ONGPAUCO-IKEDA and MARICO CRISTOBAL, *petitioners, vs.* **HELEN C. BERONIA**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; A MOTION FOR RECONSIDERATION OF A JUDGMENT OR FINAL RESOLUTION SHOULD BE FILED WITHIN A NON-EXTENDIBLE PERIOD OF FIFTEEN DAYS FROM NOTICE.— There is no question that the petitioners filed their motion for reconsideration of the CA's June 21, 2012 decision 138 days beyond the fifteen-day reglementary period for filing the motion. x x x Under Section 1, Rule 52 of the Rules of Court, a motion for reconsideration of a judgment or final resolution should be

filed within fifteen (15) days from notice. If no appeal or motion for reconsideration is filed within this period, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgment as provided under Section 10 of Rule 51. The fifteen-day reglementary period for filing a motion for reconsideration is non-extendible. x x x Without a motion for reconsideration of the CA's June 21, 2012 decision duly filed on time, the petitioners lost their right to assail the CA decision before this Court. "For purposes of determining its timeliness, a motion for reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal." In other words, the petitioners' failure to timely file the motion for reconsideration foreclosed any right which they may have had under the rules not only to seek reconsideration of the CA's June 21, 2012 decision; more importantly, the failure foreclosed their right to assail the CA decision before this Court.

2. ID.; ID.; ID.; A MOTION FOR RECONSIDERATION ON THE GROUND OF EXCUSABLE NEGLIGENCE IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT WHICH CANNOT BE GRANTED EXCEPT UPON A CLEAR SHOWING OF JUSTIFIABLE CIRCUMSTANCES NEGATING THE EFFECTS OF ANY NEGLIGENCE THAT MIGHT HAVE BEEN PRESENT.— We are not unaware that in certain cases, this Court allowed the liberal application of procedural rules. We stress, however, that these cases are the exceptions and were sufficiently justified by attendant meritorious and exceptional circumstances. A motion for reconsideration on the ground of excusable negligence is addressed to the sound discretion of the court which cannot be granted except upon a clear showing of justifiable circumstances negating the effects of any negligence that might have been present. We emphasize and reiterate that rules of procedure must be faithfully complied with and cannot be based solely on the claim of substantial merit. Rules prescribing the time to do specific acts or to undertake certain proceedings are considered absolutely indispensable to prevent needless delays and to the orderly and prompt discharge of judicial business.

By their very nature, these rules are mandatory. In the present case, the only permissible consideration we can take is to determine whether circumstances exist to excuse the petitioners' delay in the filing of their motion for reconsideration. If there are none, as indeed we find because the petitioners utterly failed to show us one, then the delay is fatal.

3. ID.; ID.; JUDGMENTS; FINALITY OF JUDGMENT; BECOMES A FACT UPON THE LAPSE OF THE REGLEMENTARY PERIOD OF APPEAL IF NO APPEAL IS PERFECTED OR NO MOTION FOR RECONSIDERATION OR NEW TRIAL IS FILED, AND THE SUBSEQUENT FILING OF A MOTION FOR RECONSIDERATION CANNOT DISTURB THE FINALITY OF THE JUDGMENT OR ORDER.— As the petitioners failed to timely seek reconsideration or appeal within the fifteen-day reglementary period, the CA's June 21, 2012 decision automatically became final and executory after the lapse of this fifteen-day period. "It is well-settled that judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or [no] motion for reconsideration or new trial is filed." "The court need not even pronounce the finality of the order as the same becomes final by operation of law. In fact, it could not even validly entertain a motion for reconsideration after the lapse of the period for taking an appeal x x x. **The subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment or order."** Once a decision becomes final and executory, it is *"immutable and unalterable, and can no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land."* The CA in this case lost jurisdiction when the petitioners failed to file the motion for reconsideration within the fifteen-day reglementary period. The petitioners' subsequent filing of the motion for reconsideration 138 days after the deadline did not and could no longer disturb the finality of the June 21, 2012 decision nor restore jurisdiction which had already been lost.

APPEARANCES OF COUNSEL

Real Brotarlo and Real for petitioners.
U.P. Office of Legal Aid for respondent.

D E C I S I O N

BRION, *J.*:

In this petition for review on *certiorari*,[1] we resolve the challenge to the **June 21, 2012** decision[2] and the **April 5, 2013** resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 119458.

The CA reversed and set aside the December 7, 2010 decision[4] of the National Labor Relations Commission *(NLRC)* and reinstated the May 31, 2010 ruling[5] of the labor arbiter *(LA)* declaring respondent Helen C. Beronia (*Beronia*) illegally dismissed.

The Antecedents

On August 17, 2009, Beronia filed a complaint[6] for illegal dismissal, praying for backwages, damages, and attorney's fees against Barrio Fiesta Restaurant (*Barrio Fiesta*), its owner Liberty Ilagan (*Ilagan*), General Manager Sunshine Ongpauco-Ikeda (*Ikeda*), and Personnel Officer Marico Cristobal (*Cristobal*) (collectively referred to as *petitioners*).

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[1] *Rollo*, pp. 10-32.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Franchito N. Diamante and Edwin D. Sorongon, id. at 39-54.

[3] *Id*. at 55.

[4] Penned by Presiding Commissioner Herminio V. Suelo and concurred in by Commissioners Angelo Ang Palana and Numeriano D. Villena, *id*. at 238-246.

[5] Issued by Labor Arbiter Virginia T. Luyas-Azarraga, *id*. at 167-177.

[6] *Id*. at 95-96. See also *rollo*, p. 130; Beronia's Position Paper, p. 3, par. 8.

Beronia claimed that on February 12, 1988, the spouses Rodolfo Ongpauco and Liberty Ilagan[7] hired her as receptionist[8] at one of their restaurants, the *Mikimito*. In 1989, they made her a cashier and assigned her at the *Bakahan* at *Manukan* restaurants; in 1990, they also assigned her at two branches of the *Barrio Fiesta*. She worked in these four restaurants until 1999 when she went on absence without leave to take care of her sick daughter.

Beronia added that after seven months, she was called back to work and was again assigned at the *Barrio Fiesta*. On September 5, 2008, Irene Molina (*Molina*), the cashier assigned to the shift preceding Beronia's, failed to enter in the cash register (Omron machine) a sales transaction worth 582.00. When Beronia began her shift (night shift), she failed to see Molina's handwritten note and her previous unrecorded sales transaction resulting in an excess of 582.00 in the cash register as compared to the amount recorded in the cash book.

Beronia argued that, in the following month, she used the 582.00 "overage" to offset the "shortages" she incurred on three separate instances when she could not find the corresponding receipts and vouchers despite diligent search. She believed in good faith that "offsetting" was authorized as it was the "usual practice among the cashiers, as sanctioned by the secretaries authorized to check the cashiers' cash book regularly x x x."[9]

She explained that this practice is based on the fact that, unlike in fast food chains and department stores where money moves only in one direction (*i.e.*, coming only from customer payments), the money handled by *Barrio Fiesta* cashiers also includes money used by the restaurant for its regular business expenses.[10]

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[7] The spouses Rodolfo Ongpauco and Liberty Ilagan owned the following restaurants: *Mikimoto, Bakahan* at *Manukan, Ihaw-Ihaw Kalde-Kaldero,* and *Barrio Fiesta* restaurants.

[8] *Id*. at 77-78; Beronia's application for employment dated February 11, 1988.

[9] *Id*. at 130; Beronia's Position Paper, p. 3, par. 8.

[10] *Id*. at 111; Position Paper, p. 4, par. 15.

On October 5, 2008, Ilagan's secretary, Nora Olarte (*Olarte*), reported the offsetting to Cristobal. Cristobal subsequently directed Beronia to submit a written explanation on the incident within 24 hours.[11] Beronia submitted her explanation, written on a half sheet of pad paper dated October 10, 2008, admitting that she had applied the overage to her shortages.[12]

Cristobal then gave her a termination of employment memorandum[13] dated October 17, 2008, which she refused to accept because it was not signed by Ikeda. She received the signed termination notice three weeks later; she stopped reporting for work starting November 15, 2008.

On February 3, 2009, Ilagan asked her to report back to work. She accepted the request as she was in dire need of money to support her daughter. She signed a contract to work as waitress[14] from February 4 to July 30, 2009 during which she was made to train new cashiers. On July 30, 2009, she was completely discharged.

The petitioners, through Atty. Richard Neil S. Chua (*Chua*) of *Ligon Solis Mejia Florendo* (*Ligon, et al.*) law firm, denied the claimed liability. They confirmed Beronia's employment as cashier at Barrio Fiesta, noting that for a while, her performance was satisfactory. In 2007, however, her work ethic changed; she was often late for work until she was suspended for seven days due to her repeated tardiness.[15] They added that Beronia was also suspended for two days for berating co-employees who confronted her for pocketing tips without giving them their share.[16]

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[11] *Id.* at 88.

[12] *Id.* at 89.

[13] Id. at 90.

[14] Id. at 92-93.

[15] *Id.* at 82.

[16] *Id.* at 85.

[17] *Id.* at 86, 318.

The worst among Beronia's transgressions, the petitioners pointed out, involved acts that resulted in the loss of their trust and confidence in her.

The first of these acts occurred on October 2, 2006, when Barrio Fiesta's accounting department discovered that Beronia withheld/took cash ("cash out") from the sales of the restaurant and released the amount to one Maribeth "Letlet" Echaluche without authority from the management.[17] They maintained that the act constituted qualified theft but they nonetheless gave Beronia a chance and allowed her to continue her employment.

Beronia committed another act of qualified theft – the offsetting incident – which Beronia had in fact admitted.[18] The management discovered this act when Olarte reported on September 5, 2008 that Beronia applied (offset) the 594.00 (which she claimed was only 582.00 overage in the sale transactions of the cashier previous to her shift) to the shortages in her (Beronia's) transactions during the night shift.[19] The petitioners maintained that "offsetting" is a prohibited act as it is an implied admission of taking the cash surplus for one day and applying it to cash shortages for the previous days. They stressed that the cash involved was restaurant property, not the cashier's.

On November 17, 2008, Beronia reported for work for the last time; at the close of business hours, the management dismissed Beronia for just cause.[20] She left the work premises peacefully.

After three months (or sometime in February 2009), Beronia approached Ilagan and begged that she be given any job at Barrio Fiesta. For humanitarian considerations, they granted Beronia's request, but told her that "due to her prior acts of theft, she would not be allowed to handle cash."[21] They advised her to apply for employment, which she did,[22] and Barrio Fiesta

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[18] *Supra* note 7. *Rollo,* p. 89.

[19] *Supra* note 5. *Rollo,* p. 87.

[20] *Supra* note 8. *Rollo,* p. 90.

[21] *Rollo*, p. 101; petitioners' Position Paper, p. 5, par. 7.

[22] *Id*. at 301.

employed her as acting supervisor on a contractual basis for the period February 4, 2009 to July 30, 2009.[23]

Before the end of July 2009, the petitioners notified Beronia of the expiration of her contract on July 30, 2009.[24] She left the work premises peacefully on July 30, 2009, only to return sometime in August asking that she be hired again. They decided, however, not to employ her anymore. Beronia then filed the complaint for illegal dismissal, which they believed she did to spite them for the termination of her employment in November 2008.

In the decision[25] dated May 31, 2010, the LA declared that Beronia had been illegally dismissed, and ordered the petitioners to pay Beronia separation pay in lieu of reinstatement and backwages from the date of dismissal up to the signing of the decision.

The LA ruled that the dismissal penalty the petitioners imposed on Beronia was grossly disproportionate to the wrong she had committed as the petitioners failed to prove that Beronia was motivated by bad faith. The ₱582.00 shortage was a negligible amount, thus, her alleged violation of the unwritten policy on "offsetting of shortages" could be considered to have been done in good faith.

The LA added that Beronia deserves compassion given her more or less twenty-year service in the company as well as the fact that the "off-setting" incident was her first offense.

Finally, the LA ruled, the petitioners' subsequent act of rehiring and assigning Beronia to a higher position – as Acting Supervisor to train incoming cashiers – belie their charge of serious misconduct and breach of trust and confidence.

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[23] *Id*. at 92-93.

[24] *Id*. at 94.

[25] *Supra* note 5.

The NLRC decision

On petitioners' appeal,[26] the NLRC reversed the LA's ruling in its December 7, 2010 decision.[27]

The NLRC pointed out that Beronia was hired as cashier of Barrio Fiesta restaurant – a position of utmost trust and confidence. Prior to the offsetting incident, she had already been warned for releasing cash to a person without prior authority from the management. While she claimed that offsetting short amounts was a practice among cashiers with the implicit authorization of the secretaries, she failed to show that she sought the authorization of the secretary on duty before undertaking the offsetting. In fact, the secretary was the one who brought to Cristobal's attention her unauthorized offsetting.

Thus, the NLRC concluded that the wrong Beronia committed rendered her unworthy of the utmost trust and confidence reposed on her by the petitioners justifying her dismissal from the service. That the amount involved was "only" ₱594.00 did not mean that Beronia did not breach the petitioners' trust and confidence.

Beronia sought reconsideration[28] of the NLRC's December 7, 2010 decision. On **January 13, 2011**, the petitioners filed their opposition to Beronia's motion for reconsideration;[29] **the opposition was personally signed and filed by Ilagan and Ikeda.**

The NLRC subsequently denied Beronia's motion for reconsideration on February 24, 2010,[30] prompting the latter to seek recourse before the CA *via* a petition for *certiorari*.[31]

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[26] *Rollo*, pp. 178-201.

[27] *Supra* note 4.

[28] *Rollo*, pp. 247-267.

[29] *Id*. at 268-279.

[30] *Id*. at 325-327.

[31] *Id*. at 328-377.

The Proceedings before the CA

On **August 1, 2011**, the CA issued a resolution[32] directing the petitioners to file their comment.

On **September 16, 2011**, the CA issued another resolution[33] stating, among others, that "no manifestation and comment has been filed by the [petitioners]."

In a resolution[34] dated **March 2, 2012**, the CA gave the petitioners a last opportunity to file their comment to Beronia's petition within ten days from notice.

Subsequently, in its **June 8, 2012** resolution,[35] the CA submitted the case for decision *sans* the petitioners' comment.

In the ***June 21, 2012*** decision,[36] the CA reinstated the LA's May 31, 2010 decision, declaring that Beronia had been dismissed without just cause and without the observance of due process.

The CA ruled that the petitioners' basis for dismissing Beronia was unclear as they failed to show or prove that the company prohibited the act of offsetting. The CA also pointed out that while the petitioners submitted a copy of a memorandum dated June 22, 2004, requiring all cashiers to explain in writing their shortages or overages, the memorandum was submitted for the first time – together with their opposition to Beronia's motion for reconsideration – and was neither an original nor a certified copy.

The CA agreed that the value of the amount involved was immaterial, but pointed out that the petitioners nonetheless failed to show that Beronia's breach of confidence was willful.

The CA added that the petitioners in fact also failed to prove the theft Beronia allegedly committed when she released, without

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[32] *Id*. at 380.

[33] *Id*. at 381.

[34] *Id*. at 382.

[35] *Id*. at 383.

[36] *Supra* note 2.

prior consent and authority of the management, amounts of money to a certain Marileth Echaluche. The violation report shows that they simply warned Beronia for her failure to report the release of cash and not for committing theft. Thus, absent proof of bad faith and ill motive in this release of money, the loss of trust and confidence simply has no basis.

Finally, the CA noted that the petitioners' subsequent rehiring of Beronia as acting supervisor negates the charge of loss of trust and confidence. An employer would not likely require a previously dismissed employee charged with theft to train its incoming cashiers.

On November 29, 2012, the petitioners, through *Real Bartolo & Real* law offices, filed with the CA an Entry of Appearance with Manifestation and Motion for Reconsideration.[37]

In its ***April 5, 2013*** resolution,[38] the CA, among others: (1) merely noted the petitioners' manifestation and motion for time within which to comply, pointing out that it has already received the postal registry return receipt for the petitioners' counsel on record – *Ligon, et al.* – showing that the petitioners' counsel has received a copy of the CA's June 21, 2012 decision on June 29, 2012; (2) noted the petitioners' termination of their counsel of record's services on February 19, 2013; and (3) **denied** the petitioners' motion for reconsideration for **being 138 days late**.

The records show that the petitioners, through their counsel of record, *Ligon et al.*, received copies of the CA's August 1, 2011; September 16, 2011; March 2, 2012; and June 8, 2012 resolutions and of the June 21, 2012 decision.

The Petition

The petitioners seek the reversal of the CA rulings, arguing that the CA reversibly erred in declaring that: (1) their motion

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[37] Signed by Emmanuel S. Bartolo for Real Bartolo & Real law offices, *rollo,* pp. 56-73.

[38] *Supra* note 3.

for reconsideration was filed out of time; (2) Beronia was illegally dismissed; and (3) she was denied due process.[39]

On the first assignment of error, the petitioners ask for a liberal application of the procedural rules, reasoning that they believed all the while that they were being represented by their former counsel, *Ligon, et al.*, through Atty. Chua. Atty. Chua, however, alleged that he had ceased to be their lawyer since 2010 when his services "were disengaged" by mutual agreement with the petitioners[40] after the appeal to the NLRC was filed. The petitioners argue that the procedural lapse before the CA was clearly due to a miscommunication with the law firm for which they should not be made to suffer, in the interest of substantial justice.

On the illegal dismissal issue, the petitioners insist that Beronia was dismissed for just cause. They argue that Beronia committed acts resulting in a breach of their trust that, together with her previous infractions, justify the termination of her employment.

They reiterate in this regard that the most serious of Beronia's infractions refers to the offsetting of shortages in her sales transactions with the overage in sales handled by another cashier. Beronia admitted the offsetting, stating in her explanation "*yong over ko ay inoffset ko sa short ko.*"[41] They stress that she was aware that the management never consented to the offsetting as there is an existing policy on the matter.[42] Thus, they contend that her admission serves as substantial evidence of fraud and serious misconduct resulting in their loss of trust and confidence in her as a cashier of the restaurant.

They add that, being equally protected under the law, they have the prerogative to discipline the employees and to impose

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[39] See Petition, *supra* note 1.

[40] *Id.* at 386; letter dated February 25, 2013 of Atty. Richard Neil S. Chua to Liberty Ilagan.

[41] *Supra* note 15, *rollo,* p. 89.

[42] *Rollo,* p. 81.

appropriate penalties on erring workers pursuant to company rules and regulations. They likewise have the prerogative to hire dismissed employees out of compassion for a specific period; as they did in Beronia's case when they hired her for the fixed period of February 4, 2009 to July 30, 2009.

On the due process issue, the petitioners argue that the essence of due process is simply an opportunity to be heard or to explain one's side as applied in administrative proceedings. In the present case, they point out that Barrio Fiesta served the first notice (October 9, 2008 memorandum) on Beronia informing her of the charges against her and asking her for a written explanation within 24 hours.

Initially, Beronia offered a verbal explanation on the offsetting incident, but when told that it should be in writing, she wrote down her explanation on a half sheet of pad paper stating that she had applied the overage to her shortages.[43] They thus submit that they duly accorded Beronia the required due process.

The Case for Beronia

Beronia prays that the petition "be denied for utter lack of merit."[44] She asserts that the CA committed no error in denying the petitioners' motion for reconsideration for late filing, a procedural lapse admitted by the petitioners themselves, although they put the blame on their former counsel – *Ligon, et al.* – for not informing them of its receipt of the June 21, 2012 decision of the CA.

She argues that the petitioners' alleged miscommunication with their former counsel should not be made an excuse for their failure to file their motion for reconsideration with the CA on time. The documents the petitioners had in fact presented show that they and not their former counsel have been negligent in handling their case.

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[43] *Supra* note 8.

[44] Comment dated October 16, 2013, *rollo*, pp. 407-424.

Since the petitioners filed their motion for reconsideration only on November 29, 2012, or 138 days after the lapse of the reglementary period, the June 21, 2012 decision of the CA had already become final and executory.

On the main issue, Beronia argues that the CA correctly ruled that she was illegally dismissed as the act of offsetting does not amount to fraud or willful breach that would justify termination of employment for loss of trust and confidence. She insists that the petitioners failed to present evidence to show that she willfully and deliberately misrepresented Barrio Fiesta's sales record; on the contrary, she sufficiently explained that it was Molina who failed to enter the sales transaction in question. She adds that her subsequent rehiring by the petitioners negated loss of trust as a basis for her dismissal.

Beronia bewails the petitioners' reliance on her alleged past infractions as additional ground for her dismissal, contending that there is likewise no evidence that she committed these infractions. In any case, she argues that the alleged tip-pocketing, berating of co-employees, and failing to release cash to a co-employee were offenses which had already been meted their corresponding penalties; they also have no relation to the offense of "offsetting" for which she was charged in the October 9, 2008 show-cause memorandum[45] and for which she was eventually dismissed.

Finally, Beronia assails the petitioners' failure to afford her due process in her petition for dismissal. She argues that she was not given adequate opportunity to prepare for her defense as she was given only 24 hours to submit her explanation and was not sufficiently informed of the specific facts upon which the charge was based. Although a formal hearing is not required, she adds, the employee should nevertheless be given ample time to be heard, which was absent in her case, and the defect was not cured with the third notice (dated October 17, 2008) laying down additional charges for her dismissal.

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[45] *Rollo,* p. 88.

The Issue

The core issues for the Court's resolution are: (1) whether the CA reversibly erred in denying the petitioners' motion for reconsideration for belated filing; and (2) whether the CA erred in reinstating the labor arbiter's ruling finding Beronia dismissed without just cause and without due process.

The Court's Ruling

We resolve to DENY the petition.

The CA did not err in denying the petitioners' motion for reconsideration for belated filing.

A. The petitioners' motion for reconsideration was filed well beyond the fifteen-day reglementary period.

There is no question that the petitioners filed their motion for reconsideration of the CA's June 21, 2012 decision 138 days beyond the fifteen-day reglementary period for filing the motion. The petitioners, through their former counsel, received the copy of this CA decision on June 29, 2012, and had only until July 14, 2012 (or until July 16, 2012 since July 14, 2012 was a Saturday) to file their motion for reconsideration. They filed this motion, through a new counsel, only on November 29, 2012.

Under Section 1, Rule 52 of the Rules of Court, a motion for reconsideration of a judgment or final resolution should be filed within fifteen (15) days from notice. If no appeal or motion for reconsideration is filed within this period, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgment as provided under Section 10 of Rule 51.[46]

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[46] Section 10, Rule 51 of the Rules of Court provides in full:

SEC. 10. *Entry of judgments and final resolutions.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment

The fifteen-day reglementary period for filing a motion for reconsideration is non-extendible.

In *Ponciano Jr. v. Laguna Lake Development Authority, et al.*,[47] the Court refused to admit a motion for reconsideration filed only one day late, pointing out that the Court has, in the past, similarly refused to admit belatedly filed motions for reconsideration.

Without a motion for reconsideration of the CA's June 21, 2012 decision duly filed on time, the petitioners lost their right to assail the CA decision before this Court. "For purposes of determining its timeliness, a motion for reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal."[48]

In other words, the petitioners' failure to timely file the motion for reconsideration foreclosed any right which they may have had under the rules not only to seek reconsideration of the CA's June 21, 2012 decision; more importantly, the failure foreclosed their right to assail the CA decision before this Court.

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or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory.

See also Section 1, Rule VII of the 2009 Internal Rules of the Court of Appeals, which states:

Section 1. *Entry of Judgment. – Unless a motion for reconsideration or new trial is filed or an appeal is taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties.*

x x x x x x x x x

[47] 591 Phil. 194, 211 (2008), citing *Philippine Coconut Authority v. Garrido*, 424 Phil. 904, 909 (2002), and *Vda. De Victoria v. Court of Appeals*, G.R. No. 147550, January 26, 2005, 449 SCRA 319, 330-331.

[48] *Ponciano Jr. v. Laguna Lake Development Authority, et al., id.*, citing *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, G.R. Nos. 74191, December 21, 1987, 156 SCRA 740, 746.

B. The supposed negligence of the petitioners' former counsel was the result of their actions and inactions, hence, is binding on the petitioners.

The petitioners claim that their former counsel – *Ligon, et al.* through Atty. Chua – did not inform them of the CA's August 1, 2011; September 16, 2011; March 2, 2012; and June 8, 2012 resolutions, and of the June 21, 2012 decision, this omission "effectively depriv[ing] [them] of procedural and substantive due process of law."[49] They argue that their procedural lapse before the CA was clearly due to a miscommunication with their former law firm and that the CA should not have denied their motion for reconsideration in the interest of substantial justice.

We do not see any merit in this argument.

We are not unaware that in certain cases, this Court allowed the liberal application of procedural rules. We stress, however, that these cases are the exceptions and were sufficiently justified by attendant meritorious and exceptional circumstances.

A motion for reconsideration on the ground of excusable negligence is addressed to the sound discretion of the court which cannot be granted except upon a clear showing of justifiable circumstances negating the effects of any negligence that might have been present.

We emphasize and reiterate that rules of procedure must be faithfully complied with and cannot be based solely on the claim of substantial merit. Rules prescribing the time to do specific acts or to undertake certain proceedings are considered absolutely indispensable to prevent needless delays and to the orderly and prompt discharge of judicial business. By their very nature, these rules are mandatory.[50]

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[49] *Rollo,* p. 21.

[50] *Laguna Metts Corp. v. CA,* 611 Phil. 530, 534-535 (2009). See also *Prudential Guarantee and Assurance, Inc. v. CA,* 480 Phil. 134, 140 (2004); and *Mejillano v. Lucillo, et al.,* 607 Phil. 660, 668-669 (2009).

In the present case, the only permissible consideration we can take is to determine whether circumstances exist to excuse the petitioners' delay in the filing of their motion for reconsideration. If there are none, as indeed we find because the petitioners utterly failed to show us one, then the delay is fatal.

We note that on January 13, 2011, the petitioners filed an **Opposition**,[51] dated **January 5, 2011**, to the motion filed by Beronia seeking reconsideration of the NLRC's December 7, 2010 decision.

Significantly, this January 5, 2011 opposition was signed personally by petitioners Ilagan and Ikeda, on behalf of themselves and of petitioner Barrio Fiesta, instead of by Atty. Chua for *Ligon, et al.* as the petitioners' counsel.

As a rule, when a party to a proceeding is represented by counsel, it is the counsel who signs any pleading filed in the course of the proceeding. The party represented does not have to sign the pleadings, save only in the specific instances required by the rules; they appear before the court and participate in the proceedings only when specifically required by the court or tribunal.

In the petitioners' case, they were themselves aware that Beronia sought reconsideration of the NLRC decision as they had, in fact, personally opposed this motion instead of through their counsel on record, *Ligon, et al.* Had they still been represented by their counsel, through Atty. Chua as they claim, the latter would have signed and filed the opposition in their behalf.

Viewed in this light, the petitioners must have known that *Ligon, et al.* no longer represented them in this case; this was true even at the NLRC level and before the case reached the CA.

This conclusion becomes unavoidable when we consider the February 25, 2013 letter of Atty. Chua replying to Ilagan's

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[51] *Rollo,* pp. 268-279.

February 13, 2013 letter[52] purportedly terminating the services of *Ligon, et al.* in the case.

In the February 25, 2013 letter, Atty. Chua categorically pointed out that he had not been the petitioners' counsel since 2010 due to their mutual agreement. To quote this letter:

"February 25, 2013

x x x x x x x x x

Dear Mrs. Liberty D. Ilagan,

I received your letter that you are terminating my services effectively immediately.

However, **this is no longer possible since I have not been your counsel since 2010 due to our mutual agreement to disengage all professional relationships after the appeal to the NLRC was made in relation to your case**.

You will recall, hopefully, that **you even asked me for copies of a notice to withdraw as your legal counsel to make way for your new lawyer**, which I readily provided you through your assistant Ms. Gerly who was then working in your Barrio Fiesta, Makati Branch. You and Gerly were specifically instructed to sign the Conforme and file the same [with] the NLRC simultaneously with the new counsel you alleged to have engaged already by that time.

I also gave Ms. Gerly all of the folders and documents relevant to this case.

As to whether or not you actually submitted my Notice to Withdraw as Counsel to the said quasi-judicial body (NLRC) is already unknown to me, but the same was your responsibility to do since it was upon your adamant request.

x x x x x x x x x

I hope this clarifies the situation, and I wish you all the best.

Very truly yours,

RICHARD NEIL S. CHUA" [emphases and underscorings supplied]

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[52] *Id.* at 385.

Considered together, the January 5, 2011 opposition and the February 25, 2013 letter of Atty. Chua more than sufficiently show that there could not have been any miscommunication between the petitioners and their former counsel that could have reasonably prevented the petitioners from immediately acting on Beronia's *certiorari* petition before the CA. Their failure to act on Beronia's *certiorari* petition, therefore, was due solely to their own fault or negligence, not to their former counsel's as they claim.

C. The CA decision became final and executory which the CA and even this Court could no longer review.

As the petitioners failed to timely seek reconsideration or appeal within the fifteen-day reglementary period, the CA's June 21, 2012 decision automatically became final and executory after the lapse of this fifteen-day period.

"It is well-settled that judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or [no] motion for reconsideration or new trial is filed."[53] "The court need not even pronounce the finality of the order as the same becomes final by operation of law. In fact, it could not even validly entertain a motion for reconsideration after the lapse of the period for taking an appeal x x x **The subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment or order."**[54]

Once a decision becomes final and executory, it is *"immutable and unalterable, and can no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless*

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[53] *Franco-Cruz v. Court of Appeals, et al.,* 587 Phil. 307, 317 (2008), citing *Testate Estate of Manuel v. Biascan,* 401 Phil. 49, 59 (2000). See also *Cadena v. Civil Service Commission,* 679 Phil. 165, 176-177 (2012).

[54] *Franco-Cruz v. Court of Appeals, supra* note 53.

of whether the modification is attempted to be made by the court rendering it or by the highest court of the land."[55]

The CA in this case lost jurisdiction when the petitioners failed to file the motion for reconsideration within the fifteen-day reglementary period. The petitioners' subsequent filing of the motion for reconsideration 138 days after the deadline did not and could no longer disturb the finality of the June 21, 2012 decision nor restore jurisdiction which had already been lost.[56]

Accordingly, the CA did not err in refusing to admit and act on the petitioners' motion for reconsideration. At the time the petitioners filed their motion for reconsideration, the decision subject of this motion had already become final.

Consequently, we can no longer review nor modify in any way the CA's June 21, 2012 decision. With this conclusion, we see no reason for us to resolve the petitioners' other issues.

WHEREFORE, we hereby DENY the petition as the decision dated June 21, 2012 and the resolution dated April 5, 2013 of the Court of Appeals in CA-G.R. SP No. 119458, have lapsed to finality and are beyond our power to review.

SO ORDERED.

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

Mendoza, J., on official leave.

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[55] *Guzman v. Guzman and Montealto*, 706 Phil. 319, 327 (2013) (citation omitted).

[56] See *Ponciano Jr. v. Laguna Lake Development Authority, et al.*, 591 Phil. 194, 211 (2008); *Fabella v. Tancinco, et al.*, 86 Phil. 543, 548 (1950); and *Bolaño and Rabat v. Intermediate Appellate Court*, G.R. No. 68458, Phil. 409, 413 (1985).

SECOND DIVISION

[G.R. No. 208009. July 11, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDILBERTO PUSING *y* TAMOR,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; THE PHRASE "TWELVE YEARS OF AGE"; MAY REFER TO EITHER THE CHRONOLOGICAL AGE OF THE CHILD IF HE OR SHE IS NOT SUFFERING FROM INTELLECTUAL DISABILITY, OR THE MENTAL AGE IF INTELLECTUAL DISABILITY IS ESTABLISHED.—** In *People v. Quintos*, we have defined "'twelve (12) years of age' under Article 266-A(1)(d) … [as] either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established." x x x [T]he Sexual Crime Protocol and Dr. Joseph Palermo's testimony show AAA's mental age to be nine (9) years old. This makes the victim less than 12 years old, in light of our ruling in *Quintos*. The act is, therefore, classified as statutory rape under Article 266-A(1)(d) of the Revised Penal Code.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF THE TRIAL COURT AND ITS EVALUATION OF THE CREDIBILITY OF WITNESSES ARE GENERALLY NOT DISTURBED ON APPEAL.—** It is settled that "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."

3. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; DULY ESTABLISHED BY THE TESTIMONIES OF THE PROSECUTION WITNESSES WHO HAD NO ILL MOTIVES TO TESTIFY AGAINST THE ACCUSED IN CASE AT BAR.—**The prosecution satisfactorily established

the elements to prove that accused-appellant raped and sexually abused AAA, a 12-year-old minor with the cognitive ability of a nine-year-old. x x x The Regional Trial Court and the Court of Appeals correctly found that the victim's testimony is credible. Given her cognitive "immaturity and lowly intelligence," she "could not have concocted a tale of pure fantasy out of a mere imagination." AAA likewise spontaneously cried during direct examination, a tell-tale sign of her credibility. x x x The Regional Trial Court properly found, as affirmed by the Court of Appeals, that the testimonies of AAA, BBB, and the medico-legal officer of the Philippine National Police, among others, were consistent with each other and with the physical evidence. There was no showing that the witnesses for the prosecution had ill motive to testify against accused-appellant. Their testimonies are, therefore, accorded full faith and credence.

4. ID.; ID.; ID.; LACERATIONS, WHETHER FRESH OR HEALED, ARE THE BEST PHYSICAL EVIDENCE OF RAPE.— The lacerations sustained by AAA in her vagina, which, as Dr. Joseph Palermo testified, could have been caused by a penetration, show that carnal knowledge happened. Lacerations, whether fresh or healed, are the best physical evidence of rape.

5. ID.; ID.; ID.; QUALIFIED WHEN COMMITTED WITH THE ATTENDANCE OF THE AGGRAVATING/QUALIFYING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY AND THE OFFENDER'S KNOWLEDGE OF THE VICTIM'S INTELLECTUAL DISABILITY.— As to the circumstances qualifying rape, the prosecution established that the victim is under 18 years old and that the offender is her guardian. Dr. Elma Tolentino's testimony and AAA's dental record prove AAA's minority. AAA's cousin, BBB, also confirmed this on the basis of the birth certificate that BBB obtained from their grandmother, which the defense never refuted. AAA is accused-appellant's foster daughter. She, her mother (accused-appellant's former live-in partner), and accused-appellant resided in his house. After AAA's mother passed away, accused-appellant took AAA in his custody. Soon, accused-appellant took AAA's aunt, CCC, as his common-law spouse. They all lived together. The prosecution also established that accused-appellant knew that AAA was intellectually challenged

at the time of the offense. BBB testified that accused-appellant knew that AAA was intellectually challenged "even before the incident." Accused-appellant himself admitted that he considered AAA his "adopted daughter." Thus, he would have known of her condition.

6. ID.; ID.; ID.; RAPE THROUGH SEXUAL ASSAULT; PENALTY.— Article 266-B(10) of the Revised Penal Code states that the penalty of *reclusion temporal* shall be imposed if the rape through sexual assault is committed with *any of the 10 aggravating/qualifying circumstances* listed in paragraph 6. In this case, the aggravating/qualifying circumstances of relationship and minority (Article 266-B(6)(1)) and the offender's knowledge of the victim's intellectual disability (Article 266-B(6)(10)) are present. The rape was committed by a guardian or the common-law spouse of AAA's mother against the offended party's foster child, whom he knew had the cognitive ability of a nine-year-old. In view of the aggravating circumstances present, the penalty prescribed by the Revised Penal Code (i.e. *reclusion temporal*) under Article 266-B(10) shall be in its maximum period. Therefore, we impose the indeterminate sentence of 12 years of *prision mayor* as minimum and 20 years of *reclusion temporal* as maximum.

7. ID.; PENALTIES; BETWEEN RAPE OF A MINOR UNDER THE REVISED PENAL CODE AND UNDER REPUBLIC ACT NO. 7610, THE HIGHER PENALTY MUST BE APPLIED.— Between rape of a minor under the Revised Penal Code and that under Republic Act No. 7610, the higher penalty must be applied for the minor victim's benefit. This Court has held that imposing a lower penalty for the offender "is undeniably unfair to the child victim." Thus, in *People v. Chingh* and *People v. Ricalde*, this Court meted the higher penalty stated in Republic Act No. 7610 (i.e. *reclusion temporal* in its medium period) instead of the lower penalty stated in the Revised Penal Code (i.e. *prision mayor*). In this case, there is no need to apply the penalty under Republic Act No. 7610. The penalty for the crime of rape, being qualified pursuant to Article 266-B(6)(1) and (10) of the Revised Penal Code, is already for the minor victim's benefit. Unlike in *Chingh* and *Ricalde*, this case has aggravating circumstances. Applying these aggravating circumstances qualifies the rape and allows for a higher penalty

of *reclusion temporal* in its maximum period, instead of simply *reclusion temporal* in the medium period under Republic Act No. 7610.

8. ID.; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT); ACTS OF LASCIVIOUSNESS AGAINST A MINOR; PENALTY.— Article III, Section 5(b) of Republic Act No. 7610 provides that "the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period." The penalty of *reclusion temporal* in its medium period is 14 years, eight (8) months, and one (1) day to 17 years and four (4) months. Thus, we impose the indeterminate penalty of 14 years, eight (8) months, and one (1) day of *reclusion temporal* as minimum, to 17 years and four (4) months of *reclusion temporal* as maximum.

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

LEONEN, *J.*:

When a female minor alleges rape, "she says in effect all that is necessary to mean that she has been raped."[1]

This resolves an appeal of a conviction for two (2) counts of qualified rape and one (1) count of child abuse of a minor.[2] AAA, a minor, is accused-appellant Edilberto Tamor Pusing's (Pusing) foster daughter.[3] She, her mother (Pusing's former live-in partner), and Pusing resided in his house.[4] After AAA's

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[1] *People v. Fernandez*, 403 Phil. 803, 816 (2001) [Per *C.J.* Davide, *En Banc*].

[2] *Rollo*, p. 7, Court of Appeals Decision.

[3] *Id*. at 6.

[4] *Id*.

mother's death, Pusing took AAA in his custody.[5] Soon, Pusing had AAA's aunt, CCC, as his common-law spouse.[6] CCC is the sister of AAA's mother.[7] They all lived together.[8]

On or about April 5, 2004, while they were at home,[9] Pusing allegedly went on top of AAA, put his penis in her mouth, mashed her breasts, kissed her on the lips, licked her vagina, and inserted his penis into her genital.[10]

The next day, AAA's cousin, BBB (CCC's son from a previous marriage), came to attend the wake of his brother (CCC's other son).[11] There, BBB was prodded by Pusing's neighbor[12] to take AAA in his custody because Pusing allegedly did something to her.[13] Alarmed, BBB took AAA to his house in Manila, where she revealed the rape to BBB and his wife.[14]

BBB assisted AAA in filing a complaint before the police.[15] He was referred to the Philippine National Police Crime Laboratory for AAA's medical examination.[16] AAA was examined on April 7, 2004.[17]

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[5] *Id*.

[6] *Id*.

[7] CA *rollo*, p. 104, Regional Trial Court Decision.

[8] *Rollo*, p. 6.

[9] CA *rollo*, p. 103.

[10] *Rollo*, p. 6.

[11] *Id*.

[12] CA *rollo*, p. 130, Brief for the Appellee. Prosecution identifies the neighbor as a certain Marie.

[13] *Rollo*, p. 6.

[14] *Id*.

[15] CA *rollo*, p. 37.

[16] *Id*. at 131.

[17] *Id*.

In four (4) separate Informations, Pusing was charged with the rape and abuse of AAA, a 12-year-old[18] minor with the cognitive ability of a nine-year-old.[19] The charging portions in the Informations are as follows:

(a) Criminal Case No. 127823-H charges rape through carnal knowledge of an offended party under 12 years of age or is demented, under Article 266-A(1)(d),[20] in relation to the special qualifying circumstance that the offender knew of the offended party's intellectual disability at the time of the commission of the crime, pursuant to Article 266-B(10)[21]of the Revised Penal Code:

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[18] CCC alleges that the victim was 14 years old at the time he discovered the abuse (CA *rollo*, p. 98). The same age (14 years old) shows up as the victim's estimate age based on her dental examination (CA *rollo*, p. 107). However, based on the Sexual Crime Protocol by Dr. Joseph Palermo, the victim's estimated age is 12 years old, with a cognitive capacity of a child in Grade 2 (CA *rollo*, p. 146) or nine years old (CA *rollo*, pp. 95-96). Thus, the Informations state her biological age as 12, and her mental age as 9.

[19] *Id*. at 95–96.

[20] REV. PEN. CODE, art. 266-A provides:

> 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:
>
> . . . . . .
>
> 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.

[21] REV. PEN. CODE, Art. 266-B provides:

> Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> . . . . . .
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> . . . . . .
>
> 10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

That, on or about the 5th day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, *taking advantage of his moral authority and influence being the common law husband of the offended party's aunt* who acts as the offended party's guardian, and by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously *have sexual intercourse* with one (AAA), a 12 year old minor, against the latter's will and consent, the said crime having been attended by the qualifying circumstance that the *offender knew of the mental disability*, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime, the offended party being a *special child with a mental capacity of a 9 year old person*, aggravated by the circumstances of abuse of superior strength, dwelling and the act having been committed with insult or in disregard of the respect due the offended party on account of her minority, to the damage and prejudice of said victim (AAA).[22] (Emphasis supplied)

(b) Criminal Case No. 127824-H charges rape through sexual assault by inserting the offender's penis into the offended party's mouth, under Article 266-A(2),[23] and the offended party being under 12 years old or demented, under Article 266-A(1)(d), in relation to the special qualifying circumstance that the offender knew of the offended party's intellectual disability at the time of the commission of the crime, pursuant to Article 266-B(10) and (12)[24] of the Revised Penal Code:

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[22] *Rollo*, pp. 3–4.

[23] Article 266-A. *Rape: When And How Committed*. - Rape is committed:

. . . . . .

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.

[24] Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

. . . . . .

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

That, on or about the 5th day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral authority and influence being the common law husband of the offended party's aunt who acts as the offended party's guardian, and by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously *commit an act of sexual assault by means of inserting his penis into the mouth* of one (AAA), a 12 year old minor, against the latter's will and consent, the said crime having been attended by the qualifying circumstance that the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime, the offended party being a special child with a mental capacity of a 9 year old person, aggravated by the circumstances of abuse of superior strength, dwelling and the act having been committed with insult or in disregard of the respect due the offended party on account of her minority, to the damage and prejudice of said victim (AAA).[25] (Emphasis supplied)

(c) Criminal Case No. 127825-H charges committing lascivious conduct on a victim under 12 years old, pursuant to Section 5(b)[26]of Republic Act No. 7610:

. . . . . .

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

. . . . . .

Reclusion temporal shall be imposed if the rape is committed by any of the ten aggravating/ qualifying circumstances mentioned in this article.

[25] *Rollo*, p. 4.

[26] Rep. Act No. 7610 (1992), Special Protection of Children Against Abuse, Exploitation and Discrimination Act, Sec. 5 provides:

Section 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:

That, on or about the 5th day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, did, then and there willfully, unlawfully and knowing[ly] commit lascivious act [sic] upon the person of one (AAA), a 12 year old minor with the mental age of a 9 year old child, by causing (AAA) *to masturbate the penis of the accused*, against the will and consent of (AAA), thus constituting child abuse which is an act that is prejudicial to the normal development of said (AAA).[27] (Emphasis supplied)

(d) Criminal Case No. 127826-H charges committing lascivious conduct on a victim under 12 years old, pursuant to Section 5(b) of Republic Act No. 7610:

That, on or about the 5th day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, did, then and there willfully, unlawfully and knowing[ly] commit lascivious act [sic] upon the person of one (AAA), a 12 year old minor with the mental age of a 9 year old child, by *mashing the breast*[s] *and licking the vagina* of the latter against her will and consent, thus constituting child abuse which is an act that is prejudicial to the normal development of said (AAA).[28] (Emphasis supplied)

Five (5) witnesses were presented for the prosecution: AAA,[29] her cousin BBB,[30] PCI Joseph Palermo, M.D.,[31] Dr. Elma Tolentino,[32] and Police Officer III Dennis B. Salopaguio.[33]

. . . . . .

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victims 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, 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[.]

[27] *Rollo*, p. 4.

[28] CA *rollo*, p. 97.

[29] *Id*. at 98.

[30] *Id*.

[31] *Id*.

AAA testified that on the day of the incident, she and Pusing were home when he consummated the act.[34] AAA detailed what happened:[35] Pusing went on top of AAA, inserted his penis into her mouth, mashed her breasts, kissed her on the lips, licked her vagina, and penetrated her.[36]

BBB testified that he and his wife found out about what Pusing did after BBB rescued the victim.[37] BBB confirmed that AAA has been intellectually challenged even before the incident.[38] He added that Pusing was aware of this.[39] According to BBB, AAA was only 14 years old at the time he discovered the abuse.[40]

Dr. Elma Tolentino testified that based on AAA's October 18, 2006 dental examination, AAA was about 14 years old at the time of rape.[41]

On April 16, 2004, Dr. Joseph Palermo issued a Medico-Legal Report finding that AAA had a deep healed laceration, with "clear evidence of blunt force trauma or penetrating trauma."[42] The Sexual Crime Protocol also concluded that AAA, being 12 years old but still in Grade 2, is mentally deficient.[43]

Two (2) witnesses testified for the defense: Pusing and CCC.[44]

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[32] *Id*. at 107.

[33] *Id*. at 98.

[34] *Id*. at 103.

[35] *Id*. at 101-105.

[36] *Id*. at 99.

[37] *Id*. at 130.

[38] *Id*. at 146.

[39] *Rollo*, p. 14.

[40] CA *rollo*, p. 98.

[41] *Id*. at 107.

[42] *Rollo*, p. 12.

[43] CA *rollo*, p. 146.

[44] *Rollo*, pp. 6-7.

Pusing testified that when AAA lived with him, he treated her as his adopted daughter; he could not have committed rape against her.[45] He did not know that she was suffering from any intellectual disability.[46] He claimed that the filing of the case was instigated by BBB, who had ill feelings towards his mother, CCC, and was interested in Pusing's house and lot.[47] Finally, Pusing alleged that BBB hoped to take over the property, which, by his own admission, was not titled under his name.[48]

CCC testified that at the time of the alleged incidents, she and Pusing were busy attending to the wake of her deceased son, BBB's sibling.[49] She claimed that BBB and Pusing were not in good terms, and BBB caused Pusing's arrest because of interest over Pusing's house.[50] On cross-examination, she admitted that she was not aware how BBB would benefit in filing the case.[51]

In the Decision[52] dated March 16, 2009, the Regional Trial Court found Pusing guilty beyond reasonable doubt of two (2) counts of rape and one (1) count of child abuse. The dispositive portion reads:

> WHEREFORE, finding accused EDILBERTO PUSING y TAMOR @ EDWIN guilty beyond reasonable doubt, the Court hereby sentences him as follows:
>
> IN CRIM. CASE NO. 127823 for QUALIFIED RAPE – the penalty of Reclusion Perpetua without eligibility for parole;

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[45] CA *rollo*, p. 99.

[46] *Id*. at 69, Brief for the Accused-Appellant.

[47] *Id*. at 99.

[48] *Id*.

[49] *Id*.

[50] *Id*.

[51] *Id*.

[52] *Id.* at 95-110. The case is docketed as Criminal Case Nos. 127823-26-H. The Decision was penned by Judge Lorifel L. Pahimna of Branch 69 of the Regional Trial Court, Pasig City, Stationed in Taguig City.

and to pay AAA the amount of Php50,000.00 as civil indemnity; Php50,000.00 for moral damages and Php25,000.00 for exemplary damages;

IN CRIM. CASE NO. 127824 for QUALIFIED RAPE (of the second kind) – the indeterminate penalty of Six (6) years and 1 day of Prision Mayor as minimum, to Seventeen (17) years and Ten (10) months of Reclusion Temporal, as maximum and to pay the amount of Php50,000.00 as civil indemnity; Php50,000.00 for moral damages and Php25,000.00 for exemplary damages;

IN CRIM. CASE NO. 127826 for CHILD ABUSE – the indeterminate penalty of Fourteen (14) years and Eight (8) Months of Reclusion Temporal as minimum to Twenty (20) years of Reclusion Temporal, as maximum and to pay the amount of Php50,000.00 as civil indemnity; Php50,000.00 for moral damages and Php25,000.00 for exemplary damages.

Meanwhile, accused is ACQUITTED of the crime charged in Crim. Case No. 127825-H for insufficiency of evidence.

SO ORDERED.[53] (Emphasis in the original)

In the Decision[54] dated August 24, 2012, the Court of Appeals affirmed in toto the Regional Trial Court Decision:

WHEREFORE, premises considered, the appeal is hereby **DENIED** and the challenged Decision dated 16 March 2009, *supra*, is hereby **AFFIRMED *in toto***.

SO ORDERED.[55] (Emphasis in the original)

Pusing filed his Notice of Appeal.[56] The Office of the Solicitor General[57] and Pusing[58] filed their respective Manifestations before

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[53] *Id*. at 110.

[54] *Rollo*, pp. 2-20. The Decision was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Ramon M. Bato, Jr. and Eduardo B. Peralta, Jr. of the Special Twelfth Division, Court of Appeals, Manila.

[55] *Id*. at 19.

[56] *Id*. at 21.

[57] *Id*. at 35-37.

[58] *Id*. at 31-34.

this Court, noting that they would no longer file supplemental briefs and, instead, adopt their respective Appellant's and Appellee's Briefs.

For resolution is whether accused-appellant Edilberto Tamor Pusing is guilty beyond reasonable doubt of two (2) counts of qualified rape and one (1) count of child abuse.

Both the Regional Trial Court and the Court of Appeals correctly found accused-appellant guilty beyond reasonable doubt of:

(a) qualified rape through carnal knowledge under Article 266-A(1)(d) in relation to Article 266-B(6)(10) of the Revised Penal Code;

(b) qualified rape through sexual assault under Article 266-A(2), in relation to Article 266-A(1)(d) and Article 266-B(6)(10) and (12) of the Revised Penal Code; and

(c) sexual violence against a minor through the lascivious conduct of mashing her breasts and licking her vagina under the second and third phrases of Section 5(b) of Republic Act No. 7610, in relation to Article 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610.

Both the Regional Trial Court and the Court of Appeals likewise correctly dismissed the charge of sexual violence against a minor by causing the child to masturbate accused-appellant's penis, as this was never proven in trial.[59]

For the first charge (rape through carnal knowledge), under the Revised Penal Code, as amended, the first type of rape is committed as follows:

Article 266-A. Rape: *When And How Committed*. – Rape is committed:

1) By a man who shall have *carnal knowledge* of a woman under any of the following circumstances:

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[59] CA *rollo*, p. 110.

. . . .

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. (Emphasis supplied)

In *People v. Quintos*,[60] we have defined "'twelve (12) years of age' under Article 266-A(1)(d) . . . [as] either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established."[61]

Rape is qualified for the first charge as accused-appellant committed it with any of the following aggravating/qualifying circumstances under Article 266-B(6)(1) and (10):[62]

1) When the victim is under eighteen (18) years of age and the offender is a . . . guardian . . . or the common law spouse of the parent of the victim;

. . . . . .

10) When the offender knew of the mental disability . . . of the offended party at the time of the commission of the crime.

For the second charge (rape through sexual assault), under Article 266-A(2), the second type of rape is committed as follows:

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. (Emphasis supplied)

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[60] G.R. No. 199402, November 12, 2014, 740 SCRA 179 [Per *J.* Leonen, Second Division].

[61] *Id*. at 202.

[62] See REV. PEN. CODE, Art. 266-B(6), which provides: "The death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances[.]"

As accused-appellant committed the act with the qualifying circumstances under Article 266-B(6)(1) and (10), rape is qualified for the second charge.

For the third charge (sexual violence against a minor through acts of lasciviousness), Republic Act No. 7610 provides the following elements:

Section 5. *Child Prostitution and Other Sexual Abuse.*

. . . . . .

(b) Those who commit the act of . . . *lascivious conduct* with a child . . . or subject 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, 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[.][63] (Emphasis supplied)

Article 2(h) of the Implementing Rules and Regulations of Republic Act 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[.][64]

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[63] Article 335(3), was repealed by Rep. Act No. 8353 (1997), Anti-Rape Law of 1997. It is now Article 266-A(1)(d). See REV. PEN. CODE, Art. 336, which provides:

Art. 336. Acts of lasciviousness.- Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

[64] See *Garingarao v. People*, 669 Phil. 512, 523 (2011) [Per J. Carpio, Second Division]; See also *People v. Chingh*, 661 Phil. 208, 222 (2011) [Per J. Peralta, Second Division].

A careful examination of the records shows that there is nothing that would warrant a reversal of the Decisions of the Regional Trial Court and the Court of Appeals. When a woman, especially a minor,[65] alleges rape, "she says in effect all that is necessary to mean that she has been raped."[66]

It is settled that "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."[67]

The prosecution satisfactorily established the elements to prove that accused-appellant raped and sexually abused AAA, a 12-year-old minor with the cognitive ability of a nine-year-old. In *People v. Dalipe*:[68]

> [A] young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[69]

As pointed out by the Court of Appeals, several circumstances, which have been duly established from the evidence, point to the conclusion that accused-appellant is responsible for the crimes charged against him.

On the two (2) charges of rape and one (1) charge of child abuse, AAA clearly and consistently communicated how accused-appellant forced or intimidated her into having sexual congress

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[65] *People v. Fernandez*, 403 Phil. 803, 816–817 (2001) [Per *C.J.* Davide, *En Banc*].

[66] *Id.* at 816.

[67] *People v. De Jesus*, 695 Phil. 114, 122 (2012) [Per *J.* Brion, Second Division].

[68] 633 Phil. 428 (2010) [Per *J.* Mendoza, Third Division].

[69] *Id.* at 448.

with him.[70] He put his penis in her mouth (rape through sexual assault) and inserted his penis into her vagina (rape through carnal knowledge).[71] He mashed her breasts and kissed her on the lips and on her vagina (child abuse through acts of lasciviousness).[72]

The lacerations sustained by AAA in her vagina, which, as Dr. Joseph Palermo testified, could have been caused by a penetration, show that carnal knowledge happened.[73] Lacerations, whether fresh or healed, are the best physical evidence of rape.[74]

As to the circumstances qualifying rape, the prosecution established that the victim is under 18 years old and that the offender is her guardian.[75] Dr. Elma Tolentino's testimony and AAA's dental record prove AAA's minority.[76] AAA's cousin, BBB, also confirmed this on the basis of the birth certificate that BBB obtained from their grandmother,[77] which the defense never refuted.[78] AAA is accused-appellant's foster daughter. She, her mother (accused-appellant's former live-in partner), and accused-appellant resided in his house. After AAA's mother passed away, accused-appellant took AAA in his custody. Soon, accused-appellant took AAA's aunt, CCC, as his common-law spouse. They all lived together.

The prosecution also established that accused-appellant knew that AAA was intellectually challenged at the time of the offense. BBB testified that accused-appellant knew that AAA was

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[70] *Rollo*, p. 9.

[71] *Id*.

[72] *Id*.

[73] *Id*. at 12.

[74] *People v. Brondial*, 397 Phil. 663, 688 (2000) [*Per Curiam, En Banc*].

[75] *Rollo*, pp. 10-12.

[76] *Id*. at 15.

[77] CA *rollo*, p. 145.

[78] *Rollo*, p. 16.

intellectually challenged "even before the incident."[79] Accused-appellant himself admitted that he considered AAA his "adopted daughter."[80] Thus, he would have known of her condition.

In addition, the Sexual Crime Protocol and Dr. Joseph Palermo's testimony show AAA's mental age to be nine (9) years old. This makes the victim less than 12 years old, in light of our ruling in *Quintos*. The act is, therefore, classified as statutory rape under Article 266-A(1)(d) of the Revised Penal Code.

The Regional Trial Court and the Court of Appeals correctly found that the victim's testimony is credible. Given her cognitive "immaturity and lowly intelligence," she "could not have concocted a tale of pure fantasy out of a mere imagination."[81] AAA likewise spontaneously cried during direct examination, a tell-tale sign of her credibility.[82]

As against these details and testimonies, all that accused-appellant offered in defense were denials and alibis, defenses which jurisprudence has long considered weak and unreliable.[83]

The Regional Trial Court properly found, as affirmed by the Court of Appeals,[84] that the testimonies of AAA, BBB, and the medico-legal officer of the Philippine National Police, among others, were consistent with each other and with the physical evidence.[85] There was no showing that the witnesses for the prosecution had ill motives to testify against accused-

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[79] *Id.* at 14.

[80] *Id.* at 6.

[81] *People v. Itdang*, 397 Phil. 692-706, 701 (2000) [Per *J.* Melo, Third Division].

[82] *People v. Mitra*, 385 Phil. 515, 533 (2000) [Per *J.* Puno, First Division].

[83] *People v. Liwanag, et al.*, 415 Phil. 271, 295 (2001) [Per *J.* Ynares-Santiago, First Division].

[84] *Rollo*, pp. 7-19.

[85] CA *rollo*, pp. 107-109.

appellant. Their testimonies are, therefore, accorded full faith and credence.[86]

In sum, the Regional Trial Court and the Court of Appeals did not err in finding accused-appellant guilty beyond reasonable doubt of two (2) counts of qualified rape and one (1) count of child abuse.

The Regional Trial Court,[87] as affirmed by the Court of Appeals,[88] imposed an indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum to 17 years and 10 months of *reclusion temporal*.[89] We modify this penalty for the second charge (rape through sexual assault) under Article 266-A(2) of the Revised Penal Code.

Article 266-B(10) of the Revised Penal Code states that the penalty of *reclusion temporal* shall be imposed if the rape through sexual assault is committed with *any of the 10 aggravating/ qualifying circumstances* listed in paragraph 6.

In this case, the aggravating/qualifying circumstances of relationship and minority (Article 266-B(6)(1)) and the offender's knowledge of the victim's intellectual disability (Article 266-B(6)(10)) are present. The rape was committed by a guardian or the common-law spouse of AAA's mother against the offended party's foster child, whom he knew had the cognitive ability of a nine-year-old.

In view of the aggravating circumstances present, the penalty prescribed by the Revised Penal Code (i.e. *reclusion temporal*) under Article 266-B(10) shall be in its maximum period.[90]

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[86] *People v. Guzman*, 107 Phil. 1122, 1125-1126 (1960) [Per J. Gutierrez David, *En Banc*].

[87] *Rollo,* p. 49.

[88] *Id.,* at 19.

[89] *Id*.

[90] REV. PEN. CODE, Art. 64(6) provides:

Article 64. *Rules for the application of penalties which contain three periods.* –

Therefore, we impose the indeterminate sentence of 12 years of *prision mayor* as minimum and 20 years of *reclusion temporal* as maximum.

Between rape of a minor under the Revised Penal Code and that under Republic Act No. 7610, the higher penalty must be applied for the minor victim's benefit. This Court has held that imposing a lower penalty for the offender "is undeniably unfair to the child victim."[91] Thus, in *People v. Chingh*[92] and *People v. Ricalde*,[93] this Court meted the higher penalty stated in Republic Act No. 7610[94] (i.e. *reclusion temporal* in its medium period) instead of the lower penalty stated in the Revised Penal Code (i.e. *prision mayor*).

In this case, there is no need to apply the penalty under Republic Act No. 7610. The penalty for the crime of rape, being qualified pursuant to Article 266-B(6)(1) and (10) of the Revised Penal Code, is already for the minor victim's benefit.

Unlike in *Chingh* and *Ricalde*, this case has aggravating circumstances. Applying these aggravating circumstances qualifies the rape and allows for a higher penalty of *reclusion temporal* in its maximum period, instead of simply *reclusion temporal* in the medium period under Republic Act No. 7610.

In *People v. Bonaagua*:[95]

. . . . . .

6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.

[91] *People v. Chingh*, 661 Phil. 208, 222 (2011) [Per *J.* Peralta, Second Division].

[92] 661 Phil. 208 (2011) [Per *J.* Peralta, Second Division].

[93] G.R. No. 211002, January 21, 2015, 747 SCRA 542 [Per *J.* Leonen, Second Division].

[94] Rep. Act No. 7610, Art. 3, Sec. 5(b).

[95] 665 Phil. 750 (2011) [Per *J.* Peralta, Second Division].

It must be clarified . . . that the reasoning expounded by the Court in the recent case of *People v. Armando Chingh y Parcia,* for imposing upon the accused the higher penalty provided in Section 5(b), Article III of R.A. No. 7610, has no application in the case at bar.

. . . . . .

In the present case, the factual milieu was different since the offender, Ireno [Bonaagua], is the father of the minor victim. Hence, the offenses were committed with the aggravating/qualifying circumstances of *minority and relationship*, attendant circumstances which were not present in the *Chingh* case, which in turn, warrants the imposition of the higher penalty of *reclusion temporal* prescribed by Article 266-B of the R[evised] P[enal] C[ode]. Considering that the R[evised] P[enal] C[ode] already prescribes such penalty, the rationale of unfairness to the child victim that *Chingh* wanted to correct is absent. Hence, there is no more need to apply the penalty prescribed by R.A. No. 7610.[96] (Emphasis supplied, citations omitted)

We also modify the penalty for the third charge (sexual violence against a minor through acts of lasciviousness) under Republic Act 7610. The Court of Appeals imposed the indeterminate penalty of 14 years and eight (8) months of *reclusion temporal* as minimum to 20 years of *reclusion temporal.*

Article III, Section 5(b) of Republic Act No. 7610 provides that "the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period." The penalty of *reclusion temporal* in its medium period is 14 years, eight (8) months, and one (1) day to 17 years and four (4) months.

Thus, we impose the indeterminate penalty of 14 years, eight (8) months, and one (1) day of *reclusion temporal* as minimum, to 17 years and four (4) months of *reclusion temporal* as maximum.

Further, in view of the depravity of the acts committed by accused-appellant against his nine-year-old foster daughter, we increase the amounts awarded to AAA, in accordance with jurisprudence:

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[96] *Id.* at 770-772.

For qualified rape through carnal knowledge, we modify the award of civil indemnity from ₱50,000.00 to ₱100,000.00; moral damages from ₱50,000.00 to ₱100,000.00; and exemplary damages from ₱25,000.00 to ₱100,000.00.[97]

For qualified rape through sexual assault, we modify the award of civil indemnity from ₱50,000.00 to ₱100,000.00; moral damages from ₱50,000.00 to ₱100,000.00; and exemplary damages from ₱25,000.00 to ₱100,000.00.[98]

For acts of lasciviousness against AAA, we retain the award of civil indemnity and moral damages of ₱50,000.00, but increase the exemplary damages from ₱25,000.00 to ₱30,000.00.[99]

In addition, interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.[100]

WHEREFORE, this Court **ADOPTS** the findings of fact and conclusions of law of the Court of Appeals Decision dated August 24, 2012 in CA-G.R. CR.-H.C. No. 04052, with **MODIFICATION** as follows:

WHEREFORE, finding accused EDILBERTO PUSING *y* TAMOR @ EDWIN guilty beyond reasonable doubt, the Court hereby sentences him as follows:

IN CRIM. CASE NO. 127823 for QUALIFIED RAPE *(through carnal knowledge)* – the penalty of Reclusion Perpetua without eligibility for parole; and to pay AAA the amount of ***₱100,000.00*** as civil

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[97] *People v. Jugueta*, G.R. No. 202124, April 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> 29–30 [Per *J.* Peralta, *En Banc*].

[98] *People v. Quintos*, G.R. No. 199402, November 12, 2014, 740 SCRA 179, 207 [Per *J.* Leonen, Second Division].

[99] *People v. Padigos*, 700 Phil. 368, 381 (2012) [Per *J.* Leonardo-De Castro, First Division].

[100] *People v. Buclao*, G.R. No. 208173, June 11, 2014, 726 SCRA 365, 382 [Per *J.* Leonen, Third Division].

indemnity; ***₱100,000.00*** for moral damages, and ***₱100,000.00*** for exemplary damages;

IN CRIM. CASE NO. 127824 for QUALIFIED RAPE *(through sexual assault)* – the indeterminate penalty of ***twelve (12) years*** of Prision Mayor as minimum, to ***twenty (20) years*** of Reclusion Temporal, as maximum, and to pay the amount of ***₱100,000.00*** as civil indemnity; ***₱100,000.00*** for moral damages and ***₱100,000.00*** for exemplary damages;

IN CRIM. CASE NO. 127826 for CHILD ABUSE – the indeterminate penalty of Fourteen (14) years, Eight (8) months and ***one (1) day*** of Reclusion Temporal as minimum, to ***Seventeen (17)* years *and Four (4) months*** of Reclusion Temporal as maximum, and to pay the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 for moral damages, and ***₱30,000.00*** for exemplary damages.

All awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.[101]

Meanwhile, accused is ACQUITTED of the crime charged in Crim. Case No. 127825-H for insufficiency of evidence.

SO ORDERED.

SO ORDERED.

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

Mendoza, J., on official leave.

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[101] See *Ricalde v. People*, G.R. No. 211002, January 21, 2015, 747 SCRA 542, 551 [Per *J.* Leonen, Second Division].

SECOND DIVISION

[G.R. No. 213279. July 11, 2016]

C.F. SHARP CREW MANAGEMENT, INC., BLUE OCEAN SHIP MANAGEMENT, LTD., and/or WILLIAM S. MALALUAN, *petitioners, vs.* **WILLIAM C. ALIVIO**, *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; THE FACT THAT THE SEAFARER WAS REPATRIATED FOR FINISHED CONTRACT AND NOT FOR MEDICAL REASONS WEAKENED, IF NOT BELIED, HIS CLAIM FOR ILLNESS ON BOARD THE VESSEL.— Alivio was repatriated for "*finished contract,*" not for medical reasons. He chose to complete his employment contract with the petitioners instead of being medically repatriated, even as he claimed he experienced fatigue, weakness and nape pains shortly before his disembarkation on October 3, 2009. Yet, he did not report his "discomforts," as the CA put it, to the ship authorities for onboard examination and treatment, if necessary, or to the agency for post-employment medical examination, as required by the POEA-SEC. Alivio's omission to report his health problem at the time could only mean that it was not serious or grave enough to require medical attention. In fact, his physician of choice, Dr. Sugay, whom he consulted two days after he disembarked on October 3, 2009, diagnosed him to have hypertension and required him only to rest for one to two days. In *Villanueva, Sr. v. Baliwag Navigacion, Inc*., the Court noted with approval the CA conclusion that the fact that the seafarer was repatriated for finished contract and not for medical reasons weakened, if not belied, his claim of illness on board the vessel.

2. ID.; ID.; ID.; ID.; A HEART AILMENT IS CONSIDERED AN OCCUPATIONAL DISEASE PROVIDED IT SATISFIES

THE CONDITIONS UNDER THE POEA-SEC TO BE CONSIDERED OCCUPATIONAL.— Alivio's claimed cardio-vascular disease was not work-related and therefore not compensable. Although considered as an occupational disease, his heart ailment did not satisfy the conditions under the POEA-SEC to be considered occupational x x x. These conditions provide for two possibilities (1) the heart disease is present during employment and there is proof that an acute exacerbation was precipitated by the unusual strain of the seafarer's work and was followed within 24 hours by the clinical signs of a cardiac arrest or, (2) the seafarer, who is asymptomatic before being subjected to the strain of work, shows signs and symptoms of cardiac injury during the performance of his work, and such symptoms persist. Nowhere in the case record does it appear that any of the above conditions were present during the whole term of Alivio's previous engagements up to the last employment with the petitioners. The evidence showed that his cardiomegaly was discovered three months after he finished his last contract with *Phyllis N*.

3. **ID.; ID.; ID.; ID.; THE SEAFARER'S FAILURE TO SUBMIT HIMSELF TO A POST-EMPLOYMENT MEDICAL EXAMINATION BY A COMPANY-DESIGNATED PHYSICIAN WITHIN THREE WORKING DAYS UPON HIS RETURN MILITATES AGAINST HIS CLAIM FOR DISABILITY BENEFITS AND IT RESULTS IN THE FORFEITURE OF HIS RIGHT TO THE BENEFITS.—** Even if we were to consider that Alivio was repatriated for health reasons, his failure to submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return militates against his claim for disability benefits. It results in the forfeiture of his right to the benefits. x x x Alivio was repatriated for completion of his contract without raising any medical problem with the ship management which could have been the basis of a disability compensation claim. x x x [T]he reason why Alivio did not bring his discomforts to the petitioners' attention was the fact that they were not grave enough to require medical treatment. This was confirmed by his chosen physician, Dr. Sugay, whom he consulted two days after his disembarkation on October 3, 2009 and who merely required him to rest for one to two days, following the doctor's diagnosis that he had hypertension.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Dela Cruz Entero & Associates for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] seeking the reversal of the January 30, 2014 decision[2] and June 26, 2014 resolution[3] of the Court of Appeals in CA-G.R. SP No. 124006.

The Antecedents

On August 18, 2010, the respondent William **Alivio** filed a complaint for disability benefits, reimbursement of medical expenses, damages, and attorney's fees,[4] against the **petitioners** C.F. Sharp Crew Management, Inc. (*agency*), its Sr. Crew Manager William **Malaluan** and its principal **Blue Ocean** Ship Management, Ltd. The petitioners re-hired Alivio as *bosun* for nine months starting January 7, 2009 for the vessel *Phyllis N*.[5] He had been under successive contracts with Blue Ocean since November 1991, starting as General Purpose (*GP*) *I*, then Able Seaman (*AB*), until he was made bosun in 1999.

Alivio alleged that prior to boarding Blue Ocean's vessels (including the *Phyllis N*), in the course of his employment with the petitioners, he passed all his pre-employment medical examinations (*PEMEs*), although sometime in October 2006, he was diagnosed to have high blood pressure. He claimed he

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[1] *Rollo*, pp. 3-31; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 36-52; penned by Associate Justice Romeo F. Barza with Associate Justices Hakim S. Abdulwahid and Roman A. Cruz concurring.

[3] *Id.* at 51-52.

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

[5] *Id.* at 69.

was prescribed medications for it. He further claimed that he had been continuously hired as bosun because of his fitness to work.

Alivio signed off from the *Phyllis N* on October 3, 2009 for "*finished contract*," but before he disembarked, he allegedly experienced undue fatigue and weakness, with nape pains. On October 5, 2009, he consulted a Dr. Raymund Jay **Sugay** who diagnosed him with hypertension. Dr. Sugay advised him to "rest at home for one or two days to prevent further morbidity."[6]

On January 8, 2010, the agency asked Alivio to undergo a PEME, prior to a possible re-deployment. The PEME revealed that he was suffering from *cardiomegaly* or enlarged heart and his electrocardiography (*ECG*) showed that he had *left ventricular hypertrophy with strain*. He was diagnosed with *hypertensive cardiovascular disease* and was declared "unfit for sea duty."[7] The petitioners did not engage Alivio due to his delicate health condition.

Alivio sought a second opinion from Hi-Precision Diagnostics which arrived at essentially the same diagnosis. He also consulted with occupational health specialist Dr. Li-Ann **Orencia** who certified that his illness is work-related, permanent in nature, and compensable.[8] He then demanded permanent total disability compensation from the petitioners, but they refused, leaving him no option but to file his present complaint.

The petitioners denied liability, contending that Alivio is not entitled to his claim because (1) his disability resulted from an illness which is not work-related and therefore not compensable under the Philippine Overseas Employment Administration Standard Contract (*POEA-SEC*), as he acquired the illness after the expiration of his contract with them; (2) his failure to submit himself to a post-employment medical

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[6] *Id.* at 71.

[7] *Id.* at 72.

[8] *Id.* at 85; Alivio's Reply to petitioners' Position Paper, p. 3, pars. 11 & 12.

examination by the company doctor disqualified him from claiming disability benefits; and (3) he is not entitled to damages and attorney's fees since their denial of his claim was in good faith.

The Compulsory Arbitration Rulings

In her decision[9] of February 25, 2011, Labor Arbiter (*LA*) Fe Cellan found merit in the complaint, holding that Alivio's *hypertensive cardiovascular disease* developed during his employment with the petitioners and was aggravated by his last engagement for the *Phyllis N*. LA Cellan further held that Alivio's failure to report for post-employment medical examination to the company-designated physician did not negate his entitlement to disability compensation. She awarded him US$60,000.00 in permanent total disability benefits, plus 10% attorney's fees.

On appeal by the petitioners, the National Labor Relations Commission (*NLRC*) set aside LA Cellan's award.[10] It found that Alivio was repatriated not for an illness he suffered during the term of his contract, but due to the expiration of the contract. The NLRC was not convinced by his argument that he already felt symptoms of his illness onboard the vessel, but since his contract was already due to end, he opted to just let his engagement expire, instead of being medically repatriated. Further, the NLRC held that Alivio's failure to report for post-employment medical examination upon his repatriation, as mandated by the POEA-SEC, resulted in the forfeiture of his right to claim disability compensation.

The foregoing notwithstanding, the NLRC recognized that the work of a seaman "is difficult to say the least and it is not unlikely that his work contributed, if it did not give rise to, his illness."[11] It therefore deemed it proper to award Alivio financial

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[9] *Id.* at 138-154.

[10] *Id*. at 209-216; June 15, 2011 Decision penned by Presiding Commissioner Benedicto R. Palacol and concurred in by Commissioners Isabel G. Panganiban Ortiguerra and Nieves Vivar-De Castro.

[11] *Id.* at 215; NLRC Decision, p. 7, par. 1.

assistance of ₱250,000.00.

Alivio moved for reconsideration, but the NLRC denied the motion in its resolution of January 12, 2012.[12] He then sought relief from the CA through a Rule 65 petition for *certiorari*.

The CA Decision

In its decision of January 30, 2014,[13] the CA set aside the NLRC ruling and reinstated LA Cellan's award. Like LA Cellan, the CA held that even if Alivio was not medically repatriated, he was not precluded from claiming disability benefits from his employer. It stressed that he should not be blamed for his failure to report for his post-employment medical examination because he thought that the "discomforts" he suffered onboard the vessel were caused by his hypertension.[14] Nonetheless, the CA added, Alivio was able to prove that his cardio-vascular disease was a consequence of his work as a bosun onboard the petitioners' vessel and therefore work-related.

The Petition

With their motion for reconsideration denied by the CA, the petitioners now seek the CA rulings' review by this Court, contending that the appellate court seriously erred when it (1) ruled that Alivio is entitled to permanent total disability compensation; (2) ordered the payment of attorney's fees to Alivio; and (3) held that Malaluan is solidarily liable for the award.

The petitioners submit that the NLRC committed no grave abuse of discretion in ruling that Alivio's hypertension was not duly proved and its causation was not established. Section 32-A(11) of the POEA-SEC, they argue, considers a cardio-vascular disease as occupational only if it was contracted under the following conditions:

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[12] *Id.* at 242-243.

[13] *Supra* note 2.

[14] *Id.* at 13, par. 1.

(a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reason of the nature of his work.

(b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship.

(c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

They add that for Alivio's hypertension to be considered an occupational disease, it must satisfy the following requisites under Section 32-A (20) of the POEA-SEC:

20. Essential Hypertension

Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; Provided, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy report, and (e) C-T scan.

The petitioners assert that Alivio failed to prove the work-causation of his illness as the evidence showed that he did not suffer any injury or illness while onboard the *Phyllis N.* The CA erred, they argue, when it declared that he suffered from a compensable illness based on his pre-employment medical examination, conducted three months after his repatriation. Relying on *NYK-FIL Ship Management, Inc., v. NLRC,*[15] they submit that the PEME could not have divulged his illness since the examination is merely exploratory.

Moreover, the CA's reliance on "work-aggravation" in awarding disability benefits, they argue, is misplaced considering that the POEA-SEC makes the employer liable only for a "work-

[15] 503 SCRA 595 (2006).

related" injury or sickness. They stress that Alivio's hypertension and cardio-vascular disease are not work-related as they were obviously acquired prior to his contract of employment and were caused by pre-existing conditions. They cite his medical history where it was revealed that he is a known hypertensive with blood pressure elevations even before his deployment to the *Phyllis N.*

The petitioners additionally stress that Alivio disembarked from the vessel for finished contract and not for medical reasons, which explains his failure to report to the agency within 72 hours from disembarkation for post-employment medical examination, a mandatory requirement under the POEA-SEC.

The petitioners also dispute the award of attorney's fees to Alivio, insisting that they acted in good faith in considering his claim, in accordance with their contractual obligations to him. Lastly, they maintain that Malaluan cannot be held personally liable in the case because there was no showing that he knowingly participated or exceeded his authority in denying Alivio's "unwarranted claims."[16]

The Case for Alivio

In his October 3, 2014 Comment,[17] Alivio prays for dismissal of the petition for lack of merit.

He argues that "as long as the illness is contracted during the employee's employment, the employer's obligation subsists."[18] He insists that he is entitled to full disability benefits, despite the fact that he failed to report to the agency for post-employment medical examination upon his disembarkation. He considers the requirement "not absolute as it accepts of exceptions, when reason dictates, like in the case at bar, where the seafarer does not know that he is already disabled and seriously ill."[19]

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[16] *Supra* note 1, at 25, par. 61.

[17] *Rollo*, pp. 268-281.

[18] *Id.* at 269; Comment, p. 2, par. 6, citing *Itogon Suyoc Mines v. Dulay*, 118 Phil. 1032, 1037 (1963).

[19] *Id.* par. 8, citing *Wallem v. NLRC and Inductivo*, 376 Phil. 738, 748 (1999).

He takes exception to the petitioners' contention that his medical condition is not work-related, asserting that he contracted his illness during his employment with them. He cited the stress, limited dietary option, imposition of staying on board the vessel after working hours, and exposure to the hazardous life at sea as among the conditions which gave rise to his illness. In any case, he argues, the work-connection of his medical condition was not an issue before the labor tribunals and it cannot now be raised by the petitioners.

Alivio bewails the petitioners' refusal to grant him attorney's fees considering that he was compelled to litigate to protect his rights. Lastly, he submits that Malaluan is solidarily liable for his claim since the agency is engaged in the business of providing maritime manpower, and as such, the agency and its principal officer are clearly liable under the law.

The Court's Ruling

We find merit in the petition.

First. Alivio was repatriated for "*finished contract*," not for medical reasons. He chose to complete his employment contract with the petitioners instead of being medically repatriated, even as he claimed he experienced fatigue, weakness and nape pains shortly before his disembarkation on October 3, 2009. Yet, he did not report his "discomforts," as the CA put it, to the ship authorities for onboard examination and treatment, if necessary, or to the agency for post-employment medical examination, as required by the POEA-SEC.

Alivio's omission to report his health problem at the time could only mean that it was not serious or grave enough to require medical attention. In fact, his physician of choice, Dr. Sugay, whom he consulted two days after he disembarked on October 3, 2009, diagnosed him to have hypertension and required him only to rest for one to two days.[20] In *Villanueva, Sr. v. Baliwag Navigacion, Inc.*,[21] the Court noted with approval

[20] *Supra* note 6.

[21] G.R. No. 206505, July 24, 2013, 702 SCRA 311.

the CA conclusion that the fact that the seafarer was repatriated for finished contract and not for medical reasons weakened, if not belied, his claim of illness on board the vessel.[22]

Second. Alivio's claimed cardio-vascular disease was not work-related[23] and therefore not compensable. Although considered as an occupational disease, his heart ailment did not satisfy the conditions under the POEA-SEC to be considered occupational, as quoted above.[24] These conditions provide for two possibilities (1) the heart disease is present during employment and there is proof that an acute exacerbation was precipitated by the unusual strain of the seafarer's work and was followed within 24 hours by the clinical signs of a cardiac arrest or, (2) the seafarer, who is asymptomatic before being subjected to the strain of work, shows signs and symptoms of cardiac injury during the performance of his work, and such symptoms persist.

Nowhere in the case record does it appear that any of the above conditions were present during the whole term of Alivio's previous engagements up to the last employment with the petitioners. The evidence showed that his cardiomegaly was discovered three months after he finished his last contract with *Phyllis N.*

In fact, Alivio could only point to two episodes that could be considered of medical significance during his entire employment with the petitioners.

The first one occurred sometime in 2006 when he was diagnosed with high blood pressure and was advised to take prescribed medication; despite his condition, he was found fit to work and had been continuously hired by the petitioners as bosun.[25]

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[22] *Id*. at 314.

[23] 2002 POEA-SEC, Section 20 (B) Introductory Paragraph: ***The liabilities of the employer when the seafarer suffers work-related injury during the terms of his contract are as follows****: x x x.*

[24] Section 32-A (11).

[25] *Supra* note, 2, at 2, par. 3.

The second one happened before he disembarked from the *Phyllis N* on October 3, 2009, when he claimed he experienced undue fatigue, weakness with nape pains.[26] But instead of reporting to the agency for medical examination, he consulted Dr. Sugay.

These two episodes, however, did not trigger Alivio's heart disease as on both occasions, he suffered no cardiac injury or cardiac arrest. In the same *Villanueva, Sr.* case, the Court said: "*We find no reversible error in the CA ruling affirming the denial of Villanueva's claim for disability benefits. We find it undisputed that he was repatriated for finished contract, not for medical reasons. More importantly, while the 2000 POEA-Standard Employment Contract* (*Section 32-A [11]*) *considers a heart disease as occupational, Villanueva failed to satisfy by substantial evidence the condition laid down in the Contract if the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain brought by the nature of his work.*"[27]

The circumstances leading to Alivio's disembarkation and shortly thereafter, lend credence to the petitioners' submission that his medical condition was pre-existing and could not have developed during his employment with them. This is supported by his own admission that even after being diagnosed with hypertension in October 2009, he had been continuously engaged as bosun because of his continuing fitness to work.

In this light, especially the failure to satisfy the conditions laid down under the POEA-SEC, we find that Alivio's *cardiomegaly*, discovered three months after his repatriation for "finished contract," is not work-related and is therefore not compensable. Alivio's argument that the work-connection of his heart ailment is a non-issue because it was not raised before the labor tribunals is of no moment as the POEA-SEC

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[26] *Id.*, par. 4.

[27] *Supra* note 21, at 315; underscoring supplied.

which governs his employment expressly provides that the employer is liable only for a **work-related injury or illness suffered by the seafarer**.[28]

Third. Even if we were to consider that Alivio was repatriated for health reasons, his failure to submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return militates against his claim for disability benefits. It results in the forfeiture of his right to the benefits.[29]

The CA justified Alivio's failure to report to the agency upon his disembarkation with the observation that "he signed off from the vessel due to finished contract," and that "while he may have suffered discomforts before his contract with Phyllis N ended, petitioner thought that it was just his hypertension x x x."[30] We are not convinced by the appellate court's justification. On the one hand, it stressed that Alivio was repatriated for completion of his contract without raising any medical problem with the ship management which could have been the basis of a disability compensation claim. On the other

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[28] *Supra* note 23.

[29] POEA-SEC, Section 20(B) 3 which provides: ***"Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.***

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

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

[30] *Supra* note 2, at 13, par. 1.

hand, it acknowledged the discomforts that Alivio experienced shortly before his disembarkation, clearly a medical issue which should have been reported to the petitioners.

As we noted earlier, the reason why Alivio did not bring his discomforts to the petitioners' attention was the fact that they were not grave enough to require medical treatment. This was confirmed by his chosen physician, Dr. Sugay, whom he consulted two days after his disembarkation on October 3, 2009 and who merely required him to rest for one to two days, following the doctor's diagnosis that he had hypertension.

In sum, we find that the CA based its rulings on the wrong legal and factual considerations and therefore effectively abused its discretion in reviewing the June 15, 2011 NLRC decision. The NLRC ruling should thus stand.

WHEREFORE, premises considered, we hereby **SET ASIDE** the January 30, 2014 decision and June 26, 2014 resolution of the Court of Appeals, and **REINSTATE** the June 15, 2011 decision of the National Labor Relations Commission.

The complaint is **DISMISSED** for lack of merit.

SO ORDERED.

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

Mendoza, J., on official leave.

THIRD DIVISION

[G.R. No. 221636. July 11, 2016]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **THE COURT OF APPEALS and HEIRS of MANUEL BOLAÑOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 42 OF THE RULES OF COURT; THE PROPER MODE OF APPEAL FROM DECISIONS OF REGIONAL TRIAL COURTS SITTING AS SPECIAL AGRARIAN COURTS.— We have already settled in *Land Bank of the Philippines v. De Leon* that the proper mode of appeal from decisions of RTCs sitting as SACs is by petition for review under Rule 42 of the Rules of Court and not through an ordinary appeal under Rule 41. Section 60 of Republic Act (RA) No. 6657 clearly and categorically states that said mode of appeal should be adopted. So far, we have not prescribed any rule expressly disallowing this procedure. In *Land Bank of the Philippines v. Court of Appeals*, we explained that the adoption of a petition for review as the mode of appeal is justified in order to "hasten" the resolution of cases involving issues on just compensation of expropriated lands under RA No. 6657. x x x Considering, therefore, that private respondents resorted to a wrong mode of appeal, their notice of appeal did not toll the running of the reglementary period under Section 60 of RA No. 6657. Consequently, the decision of the SAC became final and executory.

2. ID.; ID.; ID.; THE PERFECTION OF AN APPEAL IN THE MANNER AND WITHIN THE PERIOD PRESCRIBED BY LAW IS NOT ONLY MANDATORY BUT ALSO JURISDICTIONAL.— Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a

party to conform to the rules regarding appeal will render the judgment final and executory.

3. ID.; RULES OF PROCEDURE; LIBERAL APPLICATION OF THE RULES OF PROCEDURE CAN BE INVOKED ONLY IN PROPER CASES AND UNDER JUSTIFIABLE CAUSES AND CIRCUMSTANCES.— While it is true that we have applied a liberal application of the rules of procedure in a number of cases, we have stressed that this can be invoked only in proper cases and under justifiable causes and circumstances. We agree with petitioner's contention that the CA and private respondents did not proffer a reasonable cause to justify non-compliance with the rules besides the exhortation of circumspect leniency in order to give private respondents a day in court. Private respondents failed to specifically cite any justification as to how and why a normal application of procedural rules would frustrate their quest for justice. Indeed, private respondents have not been forthright in explaining why they chose the wrong mode of appeal. The bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel us to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Grace Dela Torre for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for *Certiorari and Prohibition* with Prayer for a Temporary Restraining Order or Writ of Preliminary Injunction assailing the Resolutions of the Court of Appeals in

CA-G.R. CV No. 100894 dated May 21, 2015[1] and October 13, 2015.[2] These Resolutions denied petitioner's motion to dismiss, which sought the dismissal of the appeal filed by private respondents for being a wrong remedy.

The Facts

The Department of Agrarian Reform (DAR) subjected the 71.4715 hectare land of private respondents to the coverage of the Comprehensive Agrarian Reform Program. Petitioner Land Bank of the Philippines (LBP) valued the property in the amount of ₱1,620,750.72 based on DAR Administrative Order (AO) No. 11, s. 1994.[3] Private respondents rejected the valuation but petitioner still deposited the amount in their favor. On March 11, 1996, farmer-beneficiaries were awarded with certificates of land ownership.[4]

On October 29, 1998, private respondents filed before Branch 23 of the Regional Trial Court (RTC) of Naga City, sitting as a Special Agrarian Court (SAC), a case for determination of just compensation.[5] The SAC ordered petitioner to re-value the property, which it did, coming up with a new valuation of ₱1,803,904.76 based on DAR AO No. 5, s. 1998.[6] The SAC upheld the new valuation in its May 14, 2013 Decision.[7]

Private respondents filed a notice of appeal under Rule 41 before the SAC, which gave the notice due course.[8] On September 9, 2013, the Court of Appeals (CA) required them to file their

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[1] *Rollo*, pp. 54-56. Ponencia by Associate Justice Sesinando E. Villon, with Associate Justices Rodil V. Zalameda and Pedro B. Corales, concurring.

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

[3] *Id.* at 7, 120.

[4] *Id.* at 7.

[5] *Id.* at 4, 7.

[6] Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compusorily Acquired Pursuant to Republic Act No. 6657.

[7] *Rollo*, pp. 7-8.

[8] *Id.* at 8, 82.

brief.[9] Petitioner filed a motion to dismiss on the ground that private respondents availed a wrong mode of appeal. The CA did not immediately resolve the motion, prompting petitioner to file its brief dated February 14, 2014 where it also reiterated the grounds raised in its motion to dismiss.[10] On May 21, 2015, the CA denied petitioner's motion to dismiss on grounds of liberality in the construction of the Rules of Court, to wit:

> Rules of procedure are tools designed not to thwart but to facilitate the attainment of justice; thus, their strict and rigid application may, for good and deserving reasons, have to give way to, and be subordinated by, the need to aptly dispense substantial justice in the normal course. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice. Circumspect leniency will give the plaintiff-appellant "the fullest opportunity to establish the merits of his complaint rather than to lose property on technicalities."[11]

Petitioner filed a motion for reconsideration, but the CA also denied the same in a Resolution dated October 13, 2015.[12]

The Petition

Hence, this Petition for *Certiorari* and Prohibition with Prayer for a Temporary Restraining Order and/or Preliminary Injunction,[13] where petitioner imputes grave abuse of discretion on the CA when it arbitrarily disregarded the long-standing jurisprudence that appeals from the decision of the SAC must be via a petition for review under Rule 42[14] and not by ordinary

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[9] *Id.* at 8.

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

[11] *Id.* at 55-56, citations omitted.

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

[13] *Id.* at 3-30.

[14] Sec. 60 of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law provides:

appeal. Petitioner points out that the CA gave no justifiable reason in relaxing the rule and private respondents never explained why they did not file a petition for review. Thus, petitioner argues that the SAC decision attained finality when private respondents failed to file a petition for review.

In their Comment to the Petition,[15] private respondents argue that the exercise of liberality by the CA in allowing their ordinary appeal is in keeping with our recognition of the need of the landowner to be paid pursuant to the value for value exchange.[16] Private respondents cite the emerging trend in our rulings of affording every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.

The Court's Ruling

We grant the petition.

We have already settled in *Land Bank of the Philippines v. De Leon*[17] that the proper mode of appeal from decisions of RTCs sitting as SACs is by petition for review under Rule 42 of the Rules of Court and not through an ordinary appeal under Rule 41. Section 60 of Republic Act (RA) No. 6657 clearly and categorically states that said mode of appeal should be

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Sec. 60. *Appeals.* — An appeal may be taken from the decision of the Special Agrarian Courts by filing a petition for review with the Court of Appeals within fifteen (15) days receipt of notice of the decision; otherwise, the decision shall become final. An appeal from the decision of the Court of Appeals, or from any order, ruling or decision of the DAR, as the case may be, shall be by a petition for review with the Supreme Court within a non-extendible period of fifteen (15) days from receipt of a copy of said decision.

[15] *Rollo*, pp. 119-122.

[16] *Id.* at 120-121, citing *Apo Fruits Corporation v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, 632 SCRA 727.

[17] G.R. No. 143275, September 10, 2002, 388 SCRA 537.

adopted.[18] So far, we have not prescribed any rule expressly disallowing this procedure.[19]

In *Land Bank of the Philippines v. Court of Appeals*,[20] we explained that the adoption of a petition for review as the mode of appeal is justified in order to "hasten" the resolution of cases involving issues on just compensation of expropriated lands under RA No. 6657.[21] Citing *Land Bank of the Philippines v. De Leon*, we elaborated:

> The reason why it is permissible to adopt a petition for review when appealing cases decided by the Special Agrarian Courts in eminent domain case is the need for absolute dispatch in the determination of just compensation. Just compensation means not only paying the correct amount but also paying for the land within a reasonable time from its acquisition. Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. Such objective is more in keeping with the nature of a petition for review.
>
> Unlike an ordinary appeal, a petition for review dispenses with the filing of a notice of appeal or completion of records as requisites before any pleading is submitted. A petition for review hastens the award of fair recompense to deprived landowners for the government-acquired property, an end not foreseeable in an ordinary appeal. x x x[22]

Considering, therefore, that private respondents resorted to a wrong mode of appeal, their notice of appeal did not toll the running of the reglementary period under Section 60 of RA

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[18] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 190660, April 11, 2011, 647 SCRA 561, 564-565.

[19] *Id.* at 565.

[20] G.R. No. 190660, April 11, 2011, 647 SCRA 561.

[21] *Id.* at 566.

[22] *Id.* Underscoring supplied.

No. 6657. Consequently, the decision of the SAC became final and executory.[23]

Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory.[24]

While it is true that we have applied a liberal application of the rules of procedure in a number of cases, we have stressed that this can be invoked only in proper cases and under justifiable causes and circumstances.[25] We agree with petitioner's contention that the CA and private respondents did not proffer a reasonable cause to justify non-compliance with the rules besides the exhortation of circumspect leniency in order to give private respondents a day in court. Private respondents failed to specifically cite any justification as to how and why a normal application of procedural rules would frustrate their quest for justice. Indeed, private respondents have not been forthright in explaining why they chose the wrong mode of appeal.[26] The bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel us to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard

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[23] See *Land Bank of the Philippines vs. Court of Appeals, supra*.

[24] *Id.* at 567, citing *Zamboanga Forest Managers Corp. v. New Pacific Timber and Supply Co.*, G.R. No. 173342, October 13, 2010, 633 SCRA 82, 93.

[25] See *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012, 687 SCRA 643.

[26] See *Tan v. Antazo*, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 346.

of the rules cannot be justly rationalized by harping on the policy of liberal construction.[27]

WHEREFORE, the petition is **GRANTED**. The Resolutions of the Court of Appeals dated May 21, 2015 and October 13, 2015 are **SET ASIDE**.

The Decision dated May 14, 2013 of Branch 23 of the Regional Trial Court of Naga City sitting as a Special Agrarian Court in Civil Case No. 1998-4128 is deemed final and executory.

SO ORDERED.

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

Reyes, J., on official leave.

EN BANC

[A.C. No. 5951. July 12, 2016]

JUTTA KRURSEL, *complainant, vs.* **ATTY. LORENZA A. ABION,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; GROSS MISCONDUCT; THE LAWYER'S ACTS OF DEFRAUDING HER CLIENT AND FABRICATING A COURT ORDER CONSTITUTE GROSS MISCONDUCT WARRANTING HER DISBARMENT FROM THE PRACTICE OF LAW; CASE AT BAR.— [R]espondent committed serious acts of deceit in: (1) withdrawing the complaint with prejudice, without the knowledge and consent of complainant; and (2) forging

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[27] *Id.*

> complainant's signature or causing her signature to be forged in the April 15, 2002 letter, thus making it appear that complainant conformed to the withdrawal of the complaint. x x x Respondent's deception constitutes a gross violation of professional ethics and a breach of her fiduciary duty to her client, subjecting her to disciplinary action. x x x Furthermore, we agree with the Committee on Bar Discipline's finding that complainant has sufficiently proven her allegations regarding the falsified order. x x x Respondent's acts amount to deceit, malpractice, or gross misconduct in office as an attorney. She violated her oath to "do no falsehood" and to "conduct [her]self as a lawyer . . . with all good fidelity as well to the courts as to [her] clients." She also violated the x x x provisions of the Code of Professional Responsibility x x x. Respondent's transgressions are grave and serious. She abused her legal knowledge and training. She took undue advantage of the trust reposed on her by her client. Her misconduct exhibits a brazen disregard of her duties as a lawyer. The advocate for justice became the perpetrator of injustice. Aside from defrauding her client, respondent recklessly put Atty. Soriano's career in jeopardy by fabricating an order, thus making a mockery of the judicial system. That a lawyer is not merely a professional but also an officer of the court cannot be overemphasized. She owes the courts of justice and its judicial officers utmost respect. Her conduct degrades the administration of justice and weakens the peoples faith in the judicial system. She inexorably besmirched the entire legal profession. x x x Respondent's unethical and unscrupulous conduct proves her unworthy of the public's trust and confidence. She shamelessly transgressed all the things she swore to uphold, which makes her unfit to continue as a member of the bar. Hence, we find no hesitation in removing respondent from the Roll of Attorneys.

R E S O L U T I O N

***PER CURIAM*:**

In a verified Complaint,[1] filed on January 23, 2003, complainant Jutta Krursel, a German national, charges respondent

[1] *Rollo,* pp. 1-9.

Atty. Lorenza A. Abion with forgery, swindling, and falsification of a public document. She asks that respondent be disbarred.[2]

Complainant alleges that she engaged the services of respondent to assist her in filing a case against Robinsons Savings Bank — Ermita Branch and its officers, in relation to the bank's illegal withholding/blocking of her account.[3]

In March 2002, respondent filed, on complainant's behalf, a complaint against Robinsons Savings Bank and its officers before the Monetary Board of the Bangko Sentral ng Pilipinas for "Conducting Business in an Unsafe and Unsound Manner in violation of Republic Act No. 8791[.]"[4]

Without complainant's knowledge, respondent withdrew the complaint with prejudice through a letter[5] dated April 15, 2002 addressed to the Monetary Board. Complainant claims that respondent forged her signature and that of a certain William Randell Coleman (Coleman) in the letter.[6] She adds that she never authorized nor acceded to respondent's withdrawal of the complaint.[7]

Complainant was further surprised to discover two (2) Special Powers of Attorney dated March 7, 2002[8] and March 24, 2002,[9] which appear to have her and Coleman's signature as principals. The documents constituted respondent as

> their attorney-in-fact to represent, to receive, sign in their behalf, all papers, checks, accounts receivables, wired remittances, in their legal and extra legal efforts to retrieve and unblock the peso and

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[2] *Id.* at 8.

[3] *Id.* at 2.

[4] *Id.*

[5] *Id.* at 12, Annex C.

[6] *Id.* at 3.

[7] *Id.*

[8] *Id.* at 10, Annex A.

[9] *Id.* at 11, Annex B.

dollar savings accounts opened up with the Robinsons Savings Bank at its branch office at Ermita, Manila, in order for her to withdraw and to encash all their accounts, receivables, checks, savings, remittances.[10]

Again, complainant claims that the signatures were forged.[11] She denies ever having executed a special power of attorney for respondent.[12]

Complainant further alleges that on March 24, 2002, respondent filed before this Court a Complaint for "Writ of Preliminary Prohibitive and Mandatory Injunction with Damages[.]"[13] For such services, respondent demanded and received the following amounts on May 7, 2002:

Php 225,000.00	–	For filing fee to the Supreme Court
Php 55,000.00	–	For Sheriff's Service Fee
Php 50,000.00	–	For Atty. Soriano, Clerk of Court, to expedite matters
Php 330,000.00	**–**	**Total**[14] (Emphasis in the original)

Respondent failed to account for these amounts despite complainant's demands for a receipt.[15] Complainant's demand letter[16] dated June 24, 2002 for accounting and receipts was attached to the Complaint as Annex E.

Instead of providing a receipt for the amounts received, respondent allegedly presented complainant a document

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[10] *Id.* at 2.

[11] *Id.*

[12] *Id.*

[13] *Id.* at 4. The case was docketed as G.R. No. 152946 and was entitled *Lingkod, Inc., et al. v. Robinsons Savings Bank.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 15, Annex E.

purporting to be an Order[17] dated May 10, 2002 from this Court's First Division, resolving the case in complainant's favor. The Order was purportedly signed by Atty. Virginia R. Soriano, "Division Clerk of the First Division of the Supreme Court."[18] Complainant sought the advice of Atty. Abelardo L. Aportadera, Jr., who, in turn, wrote to Atty. Virginia Ancheta-Soriano (Atty. Soriano) on July 30, 2002[19] inquiring about the supposed Order.[20] Atty. Soriano replied[21] denying the signature as hers. She stated that the Order did not even follow this Court's format, and that, on the contrary, the case had been dismissed.[22]

Finally, complainant alleges that in April 2002, while she was sick and in the hospital, respondent asked for complainant's German passport to secure its renewal from the German Embassy.[23] For this service, respondent asked for the total amount of ₱440,000.00 to cover the following expenses:

May 20, 2002 -	Php40,000.00 -	For Processing of Travel Papers
May 27, 2002 -	Php50,000.00 -	For Additional Fee for the Travel Papers
June 3, 2002 -	Php350,000.00-	For the release of Travel Papers as required by Atty. O. Dizon, BID

Php450,000.00 [sic][24] (Emphasis in the original)

These sums were allegedly not properly accounted for despite complainant's demand.[25] Respondent eventually presented a

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[17] *Id.* at 18-19, Annex F.

[18] *Id.* at 5.

[19] *Id.* at 20, Annex G.

[20] *Id.*

[21] *Id.* at 21, Annex H.

[22] *Id.* at 5 and 21.

[23] *Id.* at 6.

[24] *Id.*

[25] *Id.*

purportedly renewed German passport, which complainant rejected because it was obviously fake.[26] Complainant later found out that her original German passport was in the possession of Robinsons Savings Bank.[27]

Complainant avers that respondent's malicious acts warrant her removal from the roster of lawyers.[28] She adds that she and Coleman filed before the Office of the City Prosecutor of Quezon City a criminal Complaint[29] against respondent for the unlawful acts committed against them.[30]

In the Resolution[31] dated February 24, 2003, this Court required respondent to file her comment.

Copies of the February 24, 2003 Resolution were subsequently served on respondent's various addresses. However, these were returned unserved with the notations "Unclaimed," "Party Moved Out," "Moved Out," and "Party in Manila."[32] This Court requested the assistance of the National Bureau of Investigation, but respondent could still not be found.[33]

In the Resolution[34] dated October 10, 2011, this Court referred the case to the Integrated Bar of the Philippines for investigation, report, and recommendation.

On March 14, 2012, the Commission on Bar Discipline of the Integrated Bar of the Philippines directed both parties to appear for mandatory conference.[35] However, copies of the Notice

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[26] *Id.* at 7.

[27] *Id.*

[28] *Id.*

[29] *Id.* at 24-28, Annex J.

[30] *Id.* at 7.

[31] *Id.* at 29.

[32] *Id.* at 112, Resolution dated June 1, 2011.

[33] *Id.* at 114-115, Return of the National Bureau of Investigation.

[34] *Id.* at 122.

[35] *Id.* at 137.

of Mandatory Conference were returned unserved as both parties were stated to have "moved out."[36]

Hence, in the Order[37] dated April 24, 2012, the Commission on Bar Discipline deemed the case submitted for resolution on the basis of the Complaint (with attachments) filed before this Court.

In his Report and Recommendation[38] dated July 6, 2013, Investigating Commissioner Peter Irving C. Corvera recommended that respondent be disbarred for fabricating and forging Special Powers of Attorney and an order from this Court, coupled with her exaction of money from complainant without receipt or accounting despite demands.[39] These acts are in culpable violation of Canon 1, Rule 1.01; Canon 16, Rule 16.01; and Canon 17 of the Code of Professional Responsibility.[40]

In the Resolution[41] dated October 10, 2014, the Integrated Bar of the Philippines Board of Governors adopted and approved the findings and recommendations of the Investigating Commissioner. Respondent did not file a motion for reconsideration or any other subsequent pleading.

On October 13, 2015, the Board of Governors transmitted its Resolution to this Court for final action under Rule 139-B of the Rules of Court.[42]

The issue for resolution is whether respondent should be disbarred for committing forgery, falsification, and swindling.

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[36] *Id.* at 138, IBP Order dated April 24, 2012.

[37] *Id.*

[38] *Id.* at 144-151.

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

[40] *Id.* at 149.

[41] *Id.* at 143.

[42] *Id.* at 142.

I

At the outset, we cannot ignore this Court's several attempts to serve a copy of the February 24, 2003 Resolution (requiring respondent to file a comment on the Complaint for disbarment) on respondent at her address on record and at the different addresses provided by complainant and the Integrated Bar of the Philippines, only to be returned unserved. On June 1, 2011, this Court requested the assistance of the National Bureau of Investigation to locate respondent, but to no avail.[43] All these circumstances reveal that either respondent was disinterested in contesting the charges against her or she was deliberately eluding the service of this Court's Resolutions to evade the consequences of her actions.

Respondent's willful behavior has effectively hindered this Court's process service and unduly prolonged this case. This evasive attitude is unbecoming of a lawyer, an officer of the court who swore to "obey the laws as well as the legal orders of the duly constituted authorities."[44]

In *Stemmerick v. Mas*,[45] this Court held that proper notice of the disbarment proceedings was given to the respondent lawyer who abandoned his law office after committing the embezzlement against his client. Thus:

> Respondent should not be allowed to benefit from his disappearing act. He can neither defeat this Court's jurisdiction over him as a member of the bar nor evade administrative liability by the mere ruse of concealing his whereabouts. Thus, service of the complaint and other orders and processes on respondent's office was sufficient notice to him.
>
> Indeed, since he himself rendered the service of notice on him impossible, the notice requirement cannot apply to him and he is thus considered to have waived it. The law does not require that the impossible be done. *Nemo tenetur ad impossibile*. The law obliges

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[43] *Id.* at 112.

[44] RULES OF COURT, Appendix of Forms, Form 28, Attorney's Oath.

[45] 607 Phil. 89 (2009) [*Per Curiam, En Banc*].

no one to perform an impossibility. Laws and rules must be interpreted in a way that they are in accordance with logic, common sense, reason and practicality.

In this connection, lawyers must update their records with the IBP by informing the IBP National Office or their respective chapters of any change in office or residential address and other contact details. In case such change is not duly updated, service of notice on the office or residential address appearing in the records of the IBP National Office shall constitute sufficient notice to a lawyer for purposes of administrative proceedings against him.[46] (Citations omitted)

Here, respondent's apparent disregard of the judicial process cannot be tolerated. Under the circumstances, respondent is deemed to have waived her right to present her evidence for she cannot use her disappearance as a shield against any liability she may have incurred.

Respondent's evasive attitude is tantamount to "a willful disobedience of any lawful order of a superior court,"[47] which alone is a ground for disbarment or suspension.

We proceed to address the charges raised in the Complaint.

II

Complainant claims that respondent forged her and Coleman's signatures in two (2) documents: *first*, in the Special Powers of

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[46] *Id.* at 95-96.

[47] RULES OF COURT, Rule 138, Sec. 27 provides:

SEC. 27. *Attorneys removed or suspended by Supreme Court on what grounds*. — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a ***willful disobedience of any lawful order of a superior court***, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

Attorney dated March 7, 2002[48] and March 24, 2002;[49] and *second*, in respondent's April 15, 2002 letter[50] withdrawing her complaint against Robinsons Savings Bank before the Monetary Board of the Bangko Sentral ng Pilipinas.

A comparison of the signature of complainant Jutta Krursel in her Complaint and Verification and Certification, on one hand, and her contested signature in the Special Power of Attorney dated March 7, 2002, on the other, visibly shows significant differences in the stroke, form, and general appearance of the two (2) signatures. The inevitable conclusion is that the two (2) signatures were not penned by one person. Similarly, complainant's contested signature under the Conforme portion in the April 15, 2002 letter of respondent clearly appears to have been forged.

Nonetheless, with respect to complainant's forged signature in the Special Power of Attorney, we find no other evidence pointing to respondent as the author of the forgery. Jurisprudence[51] creates a presumption that a person who was in possession of, or made use of, or benefitted from the forged or falsified documents is the forger. However, in this case, the facts are insufficient for us to presume that respondent forged complainant's signature.

Although the Special Power of Attorney may have been executed in respondent's favor — as it authorized her to represent, receive, and sign papers, checks, remittances, accounts, and receivables on behalf of complainant — her appointment as attorney-in-fact was only in relation to complainant's "legal

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[48] *Rollo*, p. 10.

[49] *Id.* at 11.

[50] *Id.* at 12.

[51] See *PCGG v. Jacobi*, 689 Phil. 307, 344 (2012) [Per J. Brion, Second Division]; *Rural Bank of Silay, Inc. v. Pilla*, 403 Phil. 1, 8 (2001) [Per J. Kapunan, *En Banc*]; *Sarep v. Sandiganbayan*, 258 Phil. 229, 238 (1989) [Per J. Padilla, *En Banc*], as cited in *Maliwat v. Court of Appeals*, 326 Phil. 732, 749 (1996) [Per J. Padilla, First Division].

and extra[-]legal efforts to retrieve and unblock [complainant's] peso and dollar savings accounts with Robinsons Savings Bank, Ermita."[52]

The authority given was only in furtherance of complainant's employment of respondent's legal services. There was no allegation or proof that respondent benefitted from or used the falsified document.[53] Moreover, complainant had possession of the Special Power of Attorney, a copy of which was attached to her Complaint. In all likelihood, the Special Power of Attorney may not only have been known to complainant; she may have conformed to its preparation all along.

However, the same conclusion cannot be made with regard to complainant's forged signature in the April 15, 2002 letter. In the Verification[54] attached to the letter, respondent declared under oath that she caused the preparation of the letter of withdrawal of the complaint with prejudice. She declared under oath that *she also caused the conforme of her clients after informing them of the facts, both as counsel and attorney-in-fact*.

Thus, respondent committed serious acts of deceit in: (1) withdrawing the complaint with prejudice, without the knowledge and consent of complainant; and (2) forging complainant's signature or causing her signature to be forged in the April 15,

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[52] *Rollo*, p. 10. The Special Power of Attorney dated March 7, 2002 constitutes respondent as attorney-in-fact to perform the following acts: "To represent me, to receive for me, to sign for me, all papers, checks, accounts receivables, wired remittances, in my legal and extra legal efforts to retrieve and unblock the peso and dollar savings accounts opened up with the Robinsons Savings Bank at its branch office at Robinsons, Ermita, Manila, in order for me to withdraw and to encash all my said accounts, receivables, checks, savings, remittances, including the accounts where I am a co-depositor with William Randell Coleman and Toresten Henschke" (*Id.*).

[53] *Cf. Rural Bank of Silay, Inc. v. Pilla*, 403 Phil. 1, 8 (2001) [Per **J.** Kapunan, *En Banc*].

[54] *Rollo*, p. 13.

2002 letter, thus making it appear that complainant conformed to the withdrawal of the complaint.

In *Sebastian v. Calis*:[55]

> Deception and other fraudulent acts by a lawyer are disgraceful and dishonorable. They reveal moral flaws in a lawyer. They are unacceptable practices. A lawyer's relationship with others should be characterized by the highest degree of good faith, fairness and candor. This is the essence of the lawyer's oath. The lawyer's oath is not mere facile words, drift and hollow, but a sacred trust that must be upheld and keep inviolable. The nature of the office of an attorney requires that he should be a person of good moral character. This requisite is not only a condition precedent to admission to the practice of law, its continued possession is also essential for remaining in the practice of law. We have sternly warned that any gross misconduct of a lawyer, whether in his professional or private capacity, puts his moral character in serious doubt as a member of the Bar, and renders him unfit to continue in the practice of law.[56] (Citations omitted)

Respondent's deception constitutes a gross violation of professional ethics and a breach of her fiduciary duty to her client, subjecting her to disciplinary action.[57]

III

Furthermore, we agree with the Committee on Bar Discipline's finding that complainant has sufficiently proven her allegations regarding the falsified order.

The appearance of the purported May 10, 2002 Order[58] in G.R. No. 152946 is markedly different from the orders and resolutions of this Court. Indeed, it was later confirmed through

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[55] 372 Phil. 673 (1999) [*Per Curiam*, *En Banc*].

[56] *Id.* at 679.

[57] In *Luna v. Galarrita*, A.C. No. 10662, July 7, 2015 [Per J. Leonen, *En Banc*], the lawyer was suspended for settling the litigation without the client's consent and for refusing to turn over the settlement proceeds.

[58] *Rollo*, p. 18.

the letter[59] issued by Atty. Soriano, Clerk of Court of the First Division, that there was no such order issued, that the signature there was not hers, and that the format did not follow this Court's format.

Complainant avers that she paid substantial amounts of money to respondent in relation to the filing of the complaint for injunction in G.R. No. 152946, though respondent did not issue any receipt or accounting despite her demands. Instead, respondent allegedly furnished complainant with the fabricated May 10, 2002 Order purportedly ruling in her favor. Complainant later found out that no such order existed. The case was already dismissed.

Respondent's acts amount to deceit, malpractice, or gross misconduct in office as an attorney.[60] She violated her oath to "do no falsehood"[61] and to "conduct [her]self as a lawyer . . . with all good fidelity as well to the courts as to [her] clients."[62] She also violated the following provisions of the Code of Professional Responsibility:

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

. . . . . .

CANON 7. A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

. . . . . .

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

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[59] *Id.* at 21.

[60] See *Tan v. Diamante*, A.C. No. 7766, August 5, 2014, 732 SCRA 1, 9 [*Per Curiam, En Banc*].

[61] RULES OF COURT, Appendix of Forms, Form 28, Attorney's Oath.

[62] RULES OF COURT, Appendix of Forms, Form 28, Attorney's Oath.

. . . . . .

CANON 15. A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT.

. . . . . .

CANON 17. A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18. A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

. . . . . .

Rule 18.04 — A lawyer shall keep his client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Respondent's transgressions are grave and serious. She abused her legal knowledge and training. She took undue advantage of the trust reposed on her by her client. Her misconduct exhibits a brazen disregard of her duties as a lawyer. The advocate for justice became the perpetrator of injustice.

Aside from defrauding her client, respondent recklessly put Atty. Soriano's career in jeopardy by fabricating an order, thus making a mockery of the judicial system. That a lawyer is not merely a professional but also an officer of the court cannot be overemphasized. She owes the courts of justice and its judicial officers utmost respect.[63] Her conduct degrades the administration of justice and weakens the people faith in the judicial system. She inexorably besmirched the entire legal profession.

In *Embido v. Pe, Jr.*,[64] Assistant Provincial Prosecutor Salvador Pe, Jr. was found guilty of violating Canon 7, Rule 7.03 and was meted the penalty of disbarment for falsifying a court decision "in a non-existent court proceeding."[65] Thus:

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[63] Code of Professional Responsibility, Canon 11.

[64] 720 Phil. 1 (2013) [Per *J.* Bersamin, *En Banc*].

[65] *Id.* at 9.

Gross immorality, conviction of a crime involving moral turpitude, or fraudulent transactions can justify a lawyer's disbarment or suspension from the practice of law. Specifically, the deliberate falsification of the court decision by the respondent was an act that reflected a high degree of moral turpitude on his part. Worse, the act made a mockery of the administration of justice in this country, given the purpose of the falsification, which was to mislead a foreign tribunal on the personal status of a person. He thereby became unworthy of continuing as a member of the Bar.[66] (Citations omitted)

Respondent's unethical and unscrupulous conduct proves her unworthy of the public's trust and confidence. She shamelessly transgressed all the things she swore to uphold, which makes her unfit to continue as a member of the bar. Hence, we find no hesitation in removing respondent from the Roll of Attorneys.

However, we find a dearth of evidence to support complainant's claim as to the amounts demanded and received by respondent, that is: (1) a total of ₱330,000.00 in relation to G.R. No. 152946; and (2) a total of ₱440,000.00 for the renewal of complainant's passport. The demand letter dated June 24, 2002, attached to the Complaint as Annex E, is not competent proof of the actual amounts paid to and received by respondent. The demand letter does not contain the date when the addressee received the letter; this produces doubt as to whether the demand letter was actually sent/delivered to respondent.

In administrative cases, it is the complainant who has the burden to prove, by substantial evidence,[67] the allegations in the complaint.[68]

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

[67] *Foster v. Agtang*, A.C. No. 10579, December 10, 2014, 744 SCRA 242, 263 [*Per Curiam, En Banc*].

[68] See *Vitug v. Rongcal*, 532 Phil. 615, 631 (2006) [Per *J.* Tinga, Third Division] and *Spouses Boyboy v. Yabut, Jr.*, 449 Phil. 664, 666 (2003) [Per *J.* Bellosillo, Second Division].

WHEREFORE, this Court finds respondent Atty. Lorenza A. Abion **GUILTY** of gross misconduct in violation of the Lawyer's Oath and the Code of Professional Responsibility. She is hereby **DISBARRED** from the practice of law. The Office of the Bar Confidant is **DIRECTED** to remove the name of Lorenza A. Abion from the Roll of Attorneys.

This Resolution is without prejudice to any pending or contemplated proceedings to be initiated against respondent.

The Legal Office of the Office of the Court Administrator is **DIRECTED** to file the appropriate criminal charges against respondent for falsifying an order of this Court.

Let copies of this Resolution be furnished to the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for dissemination to all courts in the country.

This Resolution takes effect immediately.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Mendoza and *Reyes, JJ.,* on official leave.

EN BANC

[A.C. No. 10541. July 12, 2016]
(Formerly CBD Case No. 11-3046)

AURORA AGUILAR-DYQUIANGCO, *complainant, vs.* **ATTY. DIANA LYNN M. ARELLANO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATED WHEN A LAWYER FAILS TO FILE A COMPLAINT WITH THE COURT IN BEHALF OF HIS CLIENT, DESPITE RECEIVING THE NECESSARY FEES FROM THE LATTER.— Respondent violated Canon 18 when she failed to file the collection case in court. x x x In *Reyes v. Vitan*, this Court held that the failure of a lawyer to file a complaint with the court in behalf of his client, despite receiving the necessary fees from the latter, is a violation of the said canon and rule x x x. Further, as this Court ruled in *Pariñas v. Paguinto*, it is of no moment that there is only partial payment of the acceptance fee x x x. In the case before us, it is undisputed that after Complainant paid the filing fees and also part of the acceptance fees, Respondent did not bother to file any complaint before the court. Worse, Respondent knew for a long time that she required additional documents from Complainant before filing the complaint, yet Respondent did not appear to exert any effort to contact Complainant in order to obtain the said documents and finally file the said case. x x x Respondent displayed a lack of zeal in handling the case of Complainant in neglecting to remind the latter of the needed documents in order to file the complaint in court.

2. ID.; ID.; ID.; IT IS UNETHICAL FOR A LAWYER TO OBTAIN LOANS FROM HER CLIENT DURING THE EXISTENCE OF THE LAWYER-CLIENT RELATIONSHIP BETWEEN THEM.— Respondent violated Canon 16 when she obtained loans from a client. x x x In the instant case, there is no dispute that Respondent obtained several loans from Complainant beginning in 2008 or two (2) years after they established a lawyer-client relationship in 2006, and before they terminated the same in 2009, in violation of Rule 16.04 of the

CPR. We have previously emphasized that it is unethical for a lawyer to obtain loans from Complainant during the existence of a lawyer-client relationship between them as we held in *Paulina T. Yu v. Atty. Berlin R. Dela Cruz* x x x. Respondent even exacerbated her infractions when she issued worthless checks to pay for her debts, the existence of which was admitted by Respondent.

3. ID.; ID.; GROSS MISCONDUCT; FAILURE TO RETURN OR REPAY MONEY DUE TO ANOTHER UPON DEMAND, EVEN IN THE ABSENCE OF AN ATTORNEY-CLIENT RELATIONSHIP, A CASE OF.— Regarding the issue of commingling of funds, the Court ruled in the case of *Velez v. De Vera,* citing *Espiritu v. Ulep,* that using a client's funds for the lawyer's personal use and depositing the same in his personal account is prohibited x x x. Further, in *Barcenas v. Alvero,* the Court held that the failure of a lawyer to render an account of any money received from a client and deliver the same to such client when due or upon demand, is a breach of the said rule; and, that a lawyer is liable for gross misconduct for his failure to return or repay money due to another person upon demand, even in the absence of an attorney-client relationship between them. In this case, Respondent admitted that she commingled her money and those of the Complainant for the bracelet business by opening an East West Bank joint account for the said purpose.

4. ID.; ID.; LAWYER'S OATH; BREACHED WHEN A LAWYER FILES OR THREATENS TO FILE A BASELESS COMPLAINT.— [T]he Investigating Commissioner failed to consider Respondent's act of filing two (2) baseless complaints for libel against Complainant in two (2) different venues (Manila and San Fernando City, La Union) for the same alleged act. The fact that the handling prosecutors in both cases are in agreement that there was nothing in the demand letter subject of the said cases that could be considered libelous, and that the City Prosecutor of Manila made mention of the aforementioned criminal complaint filed with, and previously dismissed by, the Provincial Prosecutor of La Union, make the aforementioned filing of criminal complaints by Respondent a clear violation of the Lawyer's Oath — which states that a lawyer shall "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid or consent to the same." This is

enunciated by this Court in *Vaflor-Fabroa v. Paguinto* x x x. The filing of baseless criminal complaints, even merely threatening to do so, also violates Canon 19 and Rule 19.01 of the CPR, as explained in *Pena v. Aparicio* x x x.

5. ID.; ID.; SHOULD PROPERLY SEPARATE AND ACCOUNT FOR ANY MONEY GIVEN TO THEM BY THEIR CLIENTS, AND TO RESIST THE TEMPTATION TO BORROW MONEY FROM THEIR CLIENTS, IN ORDER TO PRESERVE THE TRUST AND CONFIDENCE REPOSED UPON LAWYERS.— [W]e remind lawyers that it is not only important to serve their clients with utmost zeal and competence. It is also an equally important responsibility for them to properly separate and account for any money given to them by their clients, and to resist the temptation to borrow money from their clients, in order to preserve the trust and confidence reposed upon lawyers by every person requiring their legal advice and services.

APPEARANCES OF COUNSEL

A.M. Guzman, Jr., and Associates Law Office for complaint.

D E C I S I O N

CAGUIOA, *J.:*

A lawyer, once he takes up the cause of his client, has the duty to serve such client with competence, and to attend to his client's cause with diligence, care and devotion, whether he accepts the engagement for free or for a fee.[1] Moreover, lawyers should refrain from obtaining loans from their clients, in order to avoid the perils of abusing the trust and confidence reposed upon him by such client.[2]

The facts established in the proceedings before the Integrated Bar of the Philippines (***"IBP"***), which we adopt in turn, are as follows:

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[1] *Lad Vda. de Dominguez v. Agleron, Sr.*, A.C. No. 5359, March 10, 2014, 718 SCRA 219, 222.

[2] See *Yu v. Atty. Dela Cruz*, A.C. No. 10912, January 19, 2016.

Complainant Aurora Aguilar-Dyquiangco (***"Complainant"***) and Respondent Atty. Diana Lynn M. Arellano (***"Respondent"***) first met in 2004 at the Don Mariano Marcos Memorial State University, College of Law when the latter became Complainant's professor.[3]

Sometime in 2006, Complainant engaged Respondent's services for the purpose of filing a case for collection of sum of money against a certain Delia Antigua (***"Antigua"***), advancing ₱10,000.00 for filing fees and ₱2,000.00 as part of the attorney's fees out of the agreed amount of ₱20,000.00.[4] Three years later, Complainant, upon inquiry with the Regional Trial Court (***"RTC"***) of San Fernando, La Union, discovered that Respondent failed to file her case against Antigua.[5] Consequently, Complainant sent a letter to Respondent terminating Respondent's services and demanding the return of the said money and documents she entrusted to Respondent,[6] who, in turn, refused to return Complainant's documents alleging that she was enforcing her retainer's lien.[7]

During the existence of a lawyer-client relationship between them, Respondent frequently borrowed money from Complainant and her husband, Antonio Dyquiangco (***"Antonio"***),[8] for which Respondent issued postdated checks in July 2008 (***"checks issued in July 2008"***) as security.[9] Complainant and Antonio later stopped lending money to Respondent when they discovered that she was engaged in "kiting", that is, using the newer loans to pay off the previous loans she had obtained.[10]

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[3] *Rollo,* p. 2.

[4] *Id*.

[5] *Id.* at 3, 16.

[6] *Id.* at 3.

[7] *Id*.

[8] *Id.* at 4-5.

[9] *Id.* at 5.

[10] *Id*.

These accumulated loans totaled ₱360,818.20 as of September 2008, covered by ten (10) checks.[11] Upon presentment by Complainant, all of the said checks were dishonored due to insufficiency of funds and closure of accounts. Hence, Complainant filed complaints for violation of Batas Pambansa Blg. 22 (***"BP Blg. 22"***) against Respondent.[12] These cases are currently pending with the Municipal Trial Court in Cities of San Fernando, La Union, Branch 2.[13]

Sometime in June 2008, in a separate transaction from the previous loans, Respondent purchased magnetic bracelets in the amount of ₱282,110.00 from Complainant's Good Faith Network Marketing business in order to resell the same.[14] In addition, since Complainant's business uses "networking" as a marketing scheme, Respondent also bought an "up-line"[15] slot in the amount of ₱126,160.00 to maximize her earnings.[16]

Respondent then borrowed ₱360,000.00 from Complainant.[17] A part of the loan proceeds were used by Respondent to pay for the magnetic bracelets by issuing postdated checks for the purpose. Respondent purchased seventy five (75) bracelets, which were kept at Complainant's business center, and withdrawn by Respondent whenever she had buyers.[18] However, Respondent's total withdrawals exceeded the number of bracelets

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[11] *Id*. at 5, 24-33.

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

[13] *Id*. at 36-40.

[14] *Id*. at 6.

[15] "Up-line" is a term used in network marketing for independent distributors above the representative's genealogy. (What is UPLINE? Definition of UPLINE [Black's Law Dictionary]. Retrieved at <http://thelawdictionary.org/upline/>).

[16] *Rollo*, p. 7.

[17] *Id*.

[18] *Id*.

actually purchased from Complainant.[19] Moreover, Respondent failed to pay the price for the magnetic bracelets.[20]

Respondent similarly acquired from Complainant other products (i.e., soaps, slimming products, coffee, etc.) for reselling in the amount of ₱15,770.00 which Respondent failed to pay up to this day.[21]

On June 24, 2008, Complainant and Respondent opened a joint checking account with East West Bank in connection with their Good Faith Magnetic Bracelets business transactions, with an initial balance of ₱130,000.00.[22] Respondent issued a check from this joint account in the amount of ₱126,160.00 to pay for the "up-line" slot she purchased from Complainant.[23] Subsequent deposits by Complainant were used by Respondent when the latter issued checks in the amounts of ₱136,000.00 and ₱75,000.00.[24]

On June 17, 2009, Respondent obtained another loan from Complainant in the amount of ₱30,000.00, which the Respondent used to pay off her obligation to Complainant's husband.[25]

Complainant and her husband sent a demand letter dated August 26, 2009[26] to Respondent for the payment of the dishonored checks issued in July 2008. The Respondent's failure to pay despite demand resulted in letter exchanges between the parties dated September 28, 2009[27] and October 7, 2009.[28]

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[19] *Id*.

[20] *Id*. at 8.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*. at 9.

[25] *Id*. at 10.

[26] *Id*. at 70.

[27] *Id*. at 71.

[28] *Id*. at 60-63.

The October 7, 2009 demand letter by Complainant was also sent to Respondent's mother, Florescita M. Arellano.[29] This exchange of letters, which the Respondent believed to be libelous, led to the filing of two (2) complaints for Libel against Complainant with the Office of the City Prosecutor of Manila and the Office of the Provincial Prosecutor of La Union, both of which were eventually dismissed for lack of probable cause.[30]

On May 27, 2011, based on the foregoing transactions and incidents between the parties, the Complainant filed against the Respondent the instant administrative case for suspension and disbarment with the Integrated Bar of the Philippines ("IBP"),[31] listing seven causes of action based on the Respondent's acts of:

1. Failing to file a collection case on behalf of the Complainant, for which the Respondent received ₱10,000.00 for filing fees (***"First Cause of Action"***);
2. Obtaining several loans from the Complainant, which remain unpaid (***"Second Cause of Action"***);
3. Taking out merchandise (i.e. magnetic bracelets) in excess of what she purchased from the Complainant (***"Third Cause of Action"***);
4. Acquiring other merchandise from the Complainant without paying for the same (***"Fourth Cause of Action"***);
5. Inducing the Complainant to open joint bank accounts, out of which the Respondent made several withdrawals (***"Fifth Cause of Action"***);
6. Obtaining a ₱30,000.00 loan that remains unpaid (***"Sixth Cause of Action"***);
7. Filing libel cases against the Complainant based on incidents related the transactions that gave rise to the second, third,

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[29] *Id*.

[30] *Id*. at 12, 86-91.

[31] *Id*. at 2-13. Denominated as "Petition" by Complainant; should be Complaint.

fourth, fifth and sixth causes of action (***"Seventh Cause of Action"***).

Proceedings with the IBP

The instant case was initially set for mandatory conference on March 23, 2012,[32] but the same was reset to June 29, 2012 upon motion of Respondent.[33] After due proceedings, the mandatory conference was terminated and both parties were required by the investigating commissioner, Commissioner Oliver A. Cachapero, to file their respective position papers.[34] Both parties filed their respective position papers on July 26, 2012[35] and September 7, 2012.[36]

The Findings of the IBP

On September 28, 2012, Commissioner Cachapero rendered a Report and Recommendation[37] finding Respondent guilty of violation of Rules 16.04, 16.02, and 18.03 of the Code of Professional Responsibility (***"CPR"***). The dispositive portion reads:

Foregoing premises considered, the undersigned believes and so hold that the instant complaint is with merit. Accordingly, he recommends that the Respondent be meted with the penalty of SUSPENSION for a period of one (1) year.[38]

In a Resolution dated March 21, 2013, the IBP Board of Governors resolved to adopt and approve with modification the Report and Recommendation of the Investigating Commissioner dated September 28, 2012 which states:

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[32] *Id*. at 102.

[33] *Id*. at 116.

[34] *Id*. at 213.

[35] *Id*. at 214.

[36] *Id*. at 255.

[37] *Id*. at 383 to 389-A.

[38] *Id*. at 389 to 389-A.

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification,** the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that Respondent violated Canon 16, Rule 16.02 and Canon 18, Rule 18.03 of the Code of Professional Responsibility, Atty. Diana Lynn M. Arellano is hereby **SUSPENDED from the practice of law for five (5) years.**[39]

Respondent filed a Motion for Reconsideration dated July 16, 2013,[40] which was subsequently denied through a Resolution dated March 21, 2014.[41] In view of the penalty recommended by the IBP Board of Governors, the case was referred to this Court *En Banc*.

The Court's Ruling

After a judicious examination of the records and submission of the parties, we find no cogent reason not to adopt the factual findings of the Investigating Commissioner as approved by the IBP Board of Governors. However, we reduce the penalty for the reasons to be discussed below.

First Cause of Action

Respondent violated Canon 18 when she failed to file the collection case in court. In this regard, Canon 18 of the CPR mandates, thus:

A lawyer shall serve his client with competence and diligence.

Rule 18.03 thereof emphasizes that:

A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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[39] *Id*. at 382; emphasis in the original.

[40] *Id*. at 390-393.

[41] *Id*. at 404.

In *Reyes v. Vitan*,[42] this Court held that the failure of a lawyer to file a complaint with the court in behalf of his client, despite receiving the necessary fees from the latter, is a violation of the said canon and rule:

> The act of receiving money as acceptance fee for legal services in handling complainant's case and subsequently failing to render such services is a clear violation of Canon 18 of the *Code of Professional Responsibility* which provides that a lawyer shall serve his client with competence and diligence. More specifically, Rule 18.03 states:
>
> > "Rule 18.03. A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."
>
> A member of the legal profession owes his client entire devotion to his genuine interest, warm zeal in the maintenance and defense of his rights. An attorney is expected to exert his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client likewise serves the ends of justice. Verily, the entrusted privilege to practice law carries with it the corresponding duties, not only to the client, but also to the court, to the bar and to the public.[43]

Further, as this Court ruled in *Pariñas v. Paguinto*,[44] it is of no moment that there is only partial payment of the acceptance fee, to wit:

> Rule 16.01 of the Code of Professional Responsibility ("the Code") provides that a lawyer shall account for all money or property collected for or from the client. Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. **Money entrusted to a lawyer for a specific purpose, such as for filing fee, but not used for failure to file the case must immediately be**

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[42] 496 Phil. 1 (2005).

[43] *Id*. at 4-5; citations omitted.

[44] 478 Phil. 239 (2004).

returned to the client on demand. Paguinto returned the money only after Pariñas filed this administrative case for disbarment.[45]

In the case before us, it is undisputed that after Complainant paid the filing fees and also part of the acceptance fees, Respondent did not bother to file any complaint before the court. Worse, Respondent knew for a long time that she required additional documents from Complainant before filing the complaint, yet Respondent did not appear to exert any effort to contact Complainant in order to obtain the said documents and finally file the said case.[46] In fact, in the occasions Respondent met with Complainant in order to obtain a loan or discuss the magnetic bracelet business, Respondent never brought up the needed documents for the case to Complainant. As correctly held by Commissioner Cachapero, Respondent displayed a lack of zeal in handling the case of Complainant in neglecting to remind the latter of the needed documents in order to file the complaint in court.[47]

Second, Third, Fourth, Fifth and Sixth Causes of Action

Respondent violated Canon 16 when she obtained loans from a client. Pertinently, Canon 16 of the CPR states:

A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Moreover, Rule 16.02 provides that:

A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Finally, Rule 16.04 thereof commands that:

A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when

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[45] *Id*. at 245; citations omitted; emphasis supplied.

[46] *Rollo*, p. 389.

[47] *Id*.

in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.

In the instant case, there is no dispute that Respondent obtained several loans from Complainant beginning in 2008 or two (2) years after they established a lawyer-client relationship in 2006, and before they terminated the same in 2009, in violation of Rule 16.04 of the CPR.[48]

We have previously emphasized that it is unethical for a lawyer to obtain loans from Complainant during the existence of a lawyer-client relationship between them as we held in *Paulina T. Yu v. Atty. Berlin R. Dela Cruz*[49]:

> This act alone shows respondent lawyer's blatant disregard of Rule 16.04. Complainant's acquiescence to the "pawning" of her jewelry becomes immaterial considering that the CPR is clear in that lawyers are proscribed from borrowing money or property from clients, unless the latter's interests are fully protected by the nature of the case or by independent advice. Here, respondent lawyer's act of borrowing does not constitute an exception. Respondent lawyer used his client's jewelry in order to obtain, and then appropriate for himself, the proceeds from the pledge. In so doing, he had abused the trust and confidence reposed upon him by his client. That he might have intended to subsequently pay his client the value of the jewelry is inconsequential. What deserves detestation was the very act of his exercising influence and persuasion over his client in order to gain undue benefits from the latter's property. The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse. **The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client.** The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation. **Suffice it to say, the borrowing of money or property from a client outside the limits laid down in the CPR is an unethical act that warrants sanction**.

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[48] *Id*. at 388.

[49] *Supra* note 2.

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Given the circumstances, the Court does not harbor any doubt in favor of respondent lawyer. Obviously, his unfulfilled promise to facilitate the redemption of the jewelry and his act of issuing a worthless check constitute grave violations of the CPR and the lawyer's oath. These shortcomings on his part have seriously breached the highly fiduciary relationship between lawyers and clients. Specifically, his act of issuing worthless checks patently violated Rule 1.01 of Canon 1 of the CPR which requires that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." **This indicates a lawyer's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action, and thus seriously and irreparably tarnishes the image of the profession**. Such conduct, while already off-putting when attributed to an ordinary person, is much more abhorrent when exhibited by a member of the Bar. In this case, respondent lawyer turned his back from the promise that he once made upon admission to the Bar. As "vanguards of the law and the legal system, lawyers must at all times conduct themselves, especially in their dealings with their clients and the public at large, with honesty and integrity in a manner beyond reproach."[50]

Respondent even exacerbated her infractions when she issued worthless checks to pay for her debts,[51] the existence of which was admitted by Respondent. Both the *Yu* case quoted above and the case of *Wong v. Moya II*[52] citing *Lao v. Medel*[53] are in point:

Canon 1 of the Code of Professional Responsibility mandates all members of the Bar to obey the laws of the land and promote respect for law. Rule 1.01 of the Code specifically provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." In *Co v. Bernardino*, [A.C. No. 3919, January 28, 1998, 285 SCRA

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[50] *Id*. at 5-6; emphasis supplied.

[51] *Rollo*, p. 389.

[52] 590 Phil. 279 (2008).

[53] 453 Phil. 115, 121 (2003).

102] the Court considered the issuance of worthless checks as violation of this Rule and an act constituting gross misconduct.

Moreover, in *Cuizon v. Macalino*, we also ruled that **the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action.** Similarly, *Sanchez v. Somoso* held that the **persistent refusal to settle due obligations despite demand manifests a lawyer's low regard to his commitment to the oath he has taken when he joined his peers, seriously and irreparably tarnishing the image of the profession he should, instead, hold in high esteem.** This conduct deserves nothing less than a severe disciplinary action.

Clearly, therefore, the act of a lawyer in issuing a check without sufficient funds to cover the same constitutes such willful dishonesty and immoral conduct as to undermine the public confidence in the legal profession. He cannot justify his act of issuing worthless checks by his dire financial condition. Respondent should not have contracted debts which are beyond his financial capacity to pay. If he suffered a reversal of fortune, he should have explained with particularity the circumstances which caused his failure to meet his obligations. His generalized and unsubstantiated allegations as to why he reneged in the payment of his debts promptly despite repeated demands and sufficient time afforded him cannot withstand scrutiny.[54]

Regarding the issue of commingling of funds, the Court ruled in the case of *Velez v. De Vera*,[55] citing *Espiritu v. Ulep*,[56] that using a client's funds for the lawyer's personal use and depositing the same in his personal account is prohibited, to wit:

[A] lawyer's failure to return upon demand the funds or property held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use to the prejudice of, and in violation of the trust reposed in him

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[54] *Supra* note 53, at 288-289; emphases supplied.

[55] 528 Phil. 763 (2006).

[56] 497 Phil. 339, 345-346 (2005).

by, his client. It is a gross violation of general morality as well as of professional ethics; it impairs the public confidence in the legal profession and deserves punishment.

Lawyers who misappropriate the funds entrusted to them are in gross violation of professional ethics and are guilty of betrayal of public confidence in the legal profession. Those who are guilty of such infraction may be disbarred or suspended indefinitely from the practice of law. (Emphases supplied.)

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In the instant case, the act of Atty. de Vera in holding on to his client's money without the latter's acquiescence is conduct indicative of lack of integrity and propriety. It is clear that Atty. de Vera, **by depositing the check in his own account and using the same for his own benefit is guilty of deceit, malpractice, gross misconduct and unethical behavior.** He caused dishonor, not only to himself but to the noble profession to which he belongs. For, it cannot be denied that the respect of litigants to the profession is inexorably diminished whenever a member of the profession betrays their trust and confidence. Respondent violated his oath to conduct himself with all good fidelity to his client.[57]

Further, in *Barcenas v. Alvero*,[58] the Court held that the failure of a lawyer to render an account of any money received from a client and deliver the same to such client when due or upon demand, is a breach of the said rule; and, that a lawyer is liable for gross misconduct for his failure to return or repay money due to another person upon demand, even in the absence of an attorney-client relationship between them.

In this case, Respondent admitted that she commingled her money and those of the Complainant for the bracelet business by opening an East West Bank joint account for the said purpose.[59] To be sure, Commissioner Cachapero noted that Respondent has not shown that she had made any effort to separate her

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[57] *Supra* note 56, at 796-797; citations omitted; emphases supplied.

[58] 633 Phil. 25, 33-34 (2010).

[59] *Rollo,* p. 133.

funds from Complainant's money and properly account for the same, including any withdrawals Respondent made therefrom.[60]

Seventh Cause of Action

The Court notes, in addition, that the Investigating Commissioner failed to consider Respondent's act of filing two (2) baseless complaints for libel against Complainant in two (2) different venues (Manila[61] and San Fernando City, La Union[62]) for the same alleged act. The fact that the handling prosecutors in both cases are in agreement that there was nothing in the demand letter subject of the said cases that could be considered libelous,[63] and that the City Prosecutor of Manila made mention of the aforementioned criminal complaint filed with, and previously dismissed by, the Provincial Prosecutor of La Union,[64] make the aforementioned filing of criminal complaints by Respondent a clear violation of the Lawyer's Oath – which states that a lawyer shall "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid or consent to the same."[65] This is enunciated by this Court in *Vaflor-Fabroa v. Paguinto:*[66]

> When respondent caused the filing of baseless criminal complaints against complainant, he violated the Lawyer's Oath that a lawyer shall "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid or consent to the same."

The filing of baseless criminal complaints, even merely threatening to do so, also violates Canon 19 and Rule 19.01 of the CPR, as explained in *Pena v. Aparicio*,[67] thus:

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[60] *Id.* at 388-389.

[61] *Id.* at 76-78.

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

[63] *Id.* at 86-91.

[64] *Id.* at 88.

[65] See *Vaflor-Fabroa v. Paguinto*, 629 Phil. 230, 236 (2010); *Madrid v. Dealca*, A.C. No. 7474, September 9, 2014, 734 SCRA 468, 478.

[66] *Id.* at 236.

[67] 552 Phil. 512 (2007).

Canon 19 of the Code of Professional Responsibility states that "a lawyer shall represent his client with zeal within the bounds of the law," reminding legal practitioners that a lawyer's duty is not to his client but to the administration of justice; to that end, his client's success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of law and ethics. In particular, Rule 19.01 commands that a "lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding." Under this Rule, a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure a leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client.[68]

As to the imposable penalty, and after due consideration of the totality of the circumstances attendant to this case, the nature of the offenses committed, we find the recommended penalty of the IBP to be too harsh, especially in light of the fact that this is Respondent's first administrative case.[69]

In *Pariñas v. Paguinto,*[70]cited above, this Court suspended Atty. Paguinto from the practice of law for six (6) months for failing to file the complaint on behalf of his client despite having been paid a part of his acceptance fee.

In *Orbe v. Adaza*,[71] this Court suspended Atty. Adaza for one (1) year for issuing two (2) worthless checks, in spite of the pendency of the BP Blg. 22 cases filed against him.

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[68] *Id*. at 523; citations omitted.

[69] See *Olayta-Camba v. Bongon*, A.C. No. 8826, March 25, 2015, 754 SCRA 205; *Samala v. Valencia*, 541 Phil. 1 (2007); *Maligaya v. Doronilla, Jr.*, 533 Phil. 303 (2006) .

[70] *Supra* note 44.

[71] A.C. No. 5252, May 20, 2004, 428 SCRA 567.

In *Velez v. De Vera*,[72] a two (2)-year suspension was given to Atty. de Vera for using his client's funds for his personal use and depositing the same in his personal account.

Finally, in *Olivares v. Villalon, Jr.*,[73] the Court would have imposed a penalty of six (6) months suspension against the late Atty. Villalon had he not died prior to the resolution of the said case for violating the rule on forum-shopping by filing a second complaint for the same cause of action, despite the finality of the decision in the first case.

In view of the foregoing jurisprudence, and taking into consideration that this is Respondent's first administrative case, and that she fully participated in the proceedings before the IBP, we deem it more appropriate to reduce the period of suspension from five (5) years, as recommended, to only three (3) years.

One final note: It also bears mentioning that there is nothing in the records to show that the ₱10,000.00 filing fee advanced by the Complainant has been returned to her by Respondent after failing to file the said complaint against Antigua. This Court has, in numerous administrative cases, ordered lawyers to return any acceptance, filing, or other legal fees advanced to them by their clients.[74] Hence, the return of the said amount to Complainant is proper. Furthermore, the ₱2,000.00 Respondent received as attorney's fees should likewise be returned.

As we conclude, we remind lawyers that it is not only important to serve their clients with utmost zeal and competence. It is also an equally important responsibility for them to properly separate and account for any money given to them by their clients, and to resist the temptation to borrow money from their

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[72] *Supra* note 56.

[73] 549 Phil. 528 (2007).

[74] See *Nenita D. Sanchez v. Atty. Romeo G. Aguilos*, A.C. No. 10543, March 16, 2016; *Ferrer v. Tebelin*, 500 Phil. 1 (2005); *Ramos v. Jacoba*, 418 Phil. 346 (2001).

clients, in order to preserve the trust and confidence reposed upon lawyers by every person requiring their legal advice and services.

WHEREFORE, we find Respondent Atty. Diana Lynn M. Arellano **GUILTY** of Violation of Rules 16.02, 16.04, and 18.03 of the Code of Professional Responsibility, and the Lawyer's Oath. We **SUSPEND** Respondent from the practice of law for a period of **THREE (3) YEARS.** We also **ORDER** Respondent to return to Aurora Aguilar-Dyquiangco the full amount of **TWELVE THOUSAND PESOS (₱12,000.00)** within 30 days from notice hereof and **DIRECT** her to submit to this Court proof of such payment. We **STERNLY WARN** Respondent that a repetition of the same or similar act will be dealt with more severely.

We also **DIRECT** Respondent to inform this Court of the date of her receipt of this Decision to determine the reckoning point of the effectivity of her suspension.

Let a copy of this Decision be made part of Respondent's records in the Office of the Bar Confidant, and copies be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

Mendoza and Reyes, JJ., on official leave.

EN BANC

[A.C. No. 10944. July 12, 2016]

NORMA M. GUTIERREZ, *complainant, vs.* **ATTY. ELEANOR A. MARAVILLA-ONA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; MONEY ENTRUSTED TO A LAWYER FOR A SPECIFIC PURPOSE, BUT NOT USED FOR THE GIVEN PURPOSE, MUST IMMEDIATELY BE RETURNED TO THE CLIENT ON DEMAND.—** In line with the highly fiduciary nature of an attorney-client relationship, Canon 16 of the Code requires a lawyer to hold in trust all moneys and properties of his client that may come into his possession. Rule 16.03 of the Code obligates a lawyer to deliver the client's funds and property when due or upon demand. Where a client gives money to his lawyer for a specific purpose, such as: to file an action, to appeal an adverse judgment, to consummate a settlement, or to pay a purchase price for a parcel of land, the lawyer, upon failure to spend the money entrusted to him or her for the purpose, must immediately return the said money entrusted by the client. x x x Simply put, money entrusted to a lawyer for a specific purpose, but not used for the given purpose, must immediately be returned to the client on demand. In the present case, Atty. Maravilla-Ona received money from her client for the filing of a case in court. Not only did she fail to file the case but she also failed to return her client's money. These acts constitute violations of Atty. Maravilla-Ona's professional obligations under Canon 16.

2. **ID.; ID.; SHOULD MAINTAIN AT ALL TIMES A HIGH STANDARD OF LEGAL PROFICIENCY, MORALITY, HONESTY, INTEGRITY, AND FAIR DEALING, FOR THE PRACTICE OF LAW IS A PRIVILEGE BESTOWED ONLY TO THOSE WHO POSSESS AND CONTINUE TO POSSESS THE LEGAL QUALIFICATIONS FOR THE PROFESSION.—** The practice of law is a privilege bestowed only to those who possess and continue to possess the legal

qualifications for the profession. As such, lawyers are duty-bound to maintain at all times a high standard of legal proficiency, morality, honesty, integrity, and fair dealing. If the lawyer falls short of this standard, the Court will not hesitate to discipline the lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion.

3. ID.; ID.; MISCONDUCT; THE APPROPRIATE PENALTY ON AN ERRANT LAWYER REQUIRES SOUND JUDICIAL DISCRETION BASED ON THE SURROUNDING FACTS.— In several cases, the penalty imposed on lawyers for violating Canon 16 of the Code has ranged from suspension for six months, one year, two years, even up to disbarment, depending on the circumstances of each case. x x x We agree with the board's recommendation to impose a more severe penalty on Atty. Maravilla-Ona since her misconduct in the present case is not her first violation of her professional obligations under the Code. We point out that the Court had already suspended Atty. Maravilla-Ona from the practice of law for one year in 2014 due to serious misconduct and for violating Canon 1, Rule 1.01 of the Code. x x x Atty. Maravilla-Ona received money from her client for the filing of a case in court, but failed to do so. She also did not return a substantial portion of the attorney's fees paid to her by her client. Under these circumstances, her unjustified withholding of her client's funds warrants disciplinary action and the imposition of sanctions. x x x Atty. Maravilla-Ona's misconduct is aggravated by her failure to file an answer to the complaint and to appear at the mandatory conference. These omissions displayed her lack of respect for the IBP and its proceedings. x x x The appropriate penalty on an errant lawyer requires sound judicial discretion based on the surrounding facts. Considering the totality of the circumstances in the present case, we find a three-year suspension from the practice of law appropriate as penalty for Atty. Maravilla-Ona's misconduct. We emphasize, to the point of repetition, that her failure to discharge her duty properly constitutes an infringement of ethical standards and of her oath. Such failure makes her answerable not just to her client, but also to this Court, to the legal profession, and to the general public.

4. ID.; ID.; AS AN OFFICER OF THE COURT, A LAWYER IS PRESUMED TO HAVE PERFORMED HIS DUTIES PURSUANT TO THE LAWYER'S OATH.— The Court has consistently held that a lawyer enjoys the legal presumption that he or she is innocent of the administrative charges filed against him or her until the contrary is proved. As an officer of the court, a lawyer is presumed to have performed his or her duties pursuant to the lawyer's oath. Accordingly, the fact that other cases have also been filed against Atty. Maravilla-Ona and are pending resolution before the IBP or this Court should not be taken against her. Until these cases are resolved, such should not influence this Court's determination of the proper penalty to impose upon her in this instance.

R E S O L U T I O N

***PER CURIAM*:**

We review resolution No. XXI-2014-798 of the Board of Governors of the Integrated Bar of the Philippines (*IBP*) in CBD Case No. 12-3444, which imposed on Atty. Eleonor A. Maravilla-Ona (*Atty. Maravilla-Ona*) the penalty of five-year suspension from the practice of law and ordered her to return the remaining Sixty-Five Thousand Pesos (₱65,000.00) to complainant Norma M. Gutierrez (*Norma*).

On December 12, 2011, Norma secured Atty. Maravilla-Ona's services to send a demand letter to a third person for which she paid her Eight Hundred Pesos (₱800.00). When Norma decided to pursue the case in court, she paid Atty. Maravilla-Ona an additional Eighty Thousand Pesos (₱80,000.00) to file the case. The latter, however, failed to file the case, prompting Norma to withdraw from the engagement and to demand the refund of the amounts she had paid. Atty. Maravilla-Ona failed to refund the entire amount despite several demands.

On March 15, 2012, Atty. Maravilla-Ona returned Fifteen Thousand Pesos (₱15,000.00) to Norma and executed a promissory note to pay the remaining Sixty-Five Thousand Pesos

(₱65,000.00) on March 22, 2012. Atty. Maravilla-Ona reneged on her promise.

Norma filed a **complaint** for disbarment against Atty. Maravilla-Ona for grave misconduct, gross negligence, and incompetence. She also prayed for the refund of the remainder of the money she had paid.

Atty. Maravilla-Ona failed to file any pleading nor appear in the mandatory conference called on Norma's complaint; thus, she could not refute the allegations against her.

IBP's Recommendation

The investigating commissioner concluded that Atty. Maravilla-Ona's refusal to return her client's money is a clear violation of Canon 16, Rule 16.03 of the Code of Professional Responsibility (*Code*).

Canon 16 of the Code provides that a lawyer shall hold in trust all of the client's money or property; Rule 16.03 obligates a lawyer to deliver the client's funds and property when due or upon demand.

In the present case, Atty. Maravilla-Ona violated the Code when she failed to return Norma's money upon demand. Her act constitutes gross misconduct punishable by suspension from the practice of law. Pursuant to prevailing jurisprudence, the investigating commissioner recommended her suspension from the practice of law for two (2) years.

The Board of Governors adopted and approved the investigating commissioner's report but modified the recommended penalty of suspension from two (2) years to five (5) years.[1] The board noted that Atty. Maravilla-Ona's violation of Canon 16, Rule 16.03 of the Code is aggravated by her pending cases and the previous sanctions imposed upon her.

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[1] *Rollo*, p. 17. Resolution No. XXI-2014-798, October 11, 2014.

THE COURT'S RULING

The Court concurs with the IBP Board of Governor's finding of administrative liability, but modifies the penalty of suspension from the practice of law from five years to three (3) years.

In line with the highly fiduciary nature of an attorney-client relationship,[2] Canon 16 of the Code requires a lawyer to hold in trust all moneys and properties of his client that may come into his possession. Rule 16.03 of the Code obligates a lawyer to deliver the client's funds and property when due or upon demand.

Where a client gives money to his lawyer for a specific purpose, such as: to file an action, to appeal an adverse judgment, to consummate a settlement, or to pay a purchase price for a parcel of land, the lawyer, upon failure to spend the money entrusted to him or her for the purpose, must immediately return the said money entrusted by the client.[3] The Court's statement in *Del Mundo v. Atty. Capistrano* on this point, is instructive:

> Moreover, a lawyer is obliged to hold in trust money of his client that may come to his possession. As trustee of such funds, he is bound to keep them separate and apart from his own. Money entrusted to a lawyer for a specific purpose such as for the filing and processing of a case if not utilized, must be returned immediately upon demand. Failure to return gives rise to a presumption that he has misappropriated it in violation of the trust reposed on him. And the conversion of funds entrusted to him constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession.[4]

Simply put, money entrusted to a lawyer for a specific purpose, but not used for the given purpose, must immediately be returned to the client on demand.

In the present case, Atty. Maravilla-Ona received money from her client for the filing of a case in court. Not only did she fail

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[2] *Dalisay v. Mauricio*, A.C. No. 5655, January 23, 2006, 479 SCRA 307.

[3] *Arroyo-Posidio v. Vitan*, A.C. No. 6051, April 2, 2007, 520 SCRA 1.

[4] A.C. No. 6903, April 16, 2012, 669 SCRA 462.

to file the case but she also failed to return her client's money. These acts constitute violations of Atty. Maravilla-Ona's professional obligations under Canon 16.

The practice of law is a privilege bestowed only to those who possess and continue to possess the legal qualifications for the profession.[5] As such, lawyers are duty-bound to maintain at all times a high standard of legal proficiency, morality, honesty, integrity, and fair dealing.[6] If the lawyer falls short of this standard, the Court will not hesitate to discipline the lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion.[7]

In several cases, the penalty imposed on lawyers for violating Canon 16 of the Code has ranged from suspension for six months, one year, two years, even up to disbarment, depending on the circumstances of each case.[8]

In *Jinon v. Jiz*,[9] the lawyer failed to facilitate the transfer of land to his client's name and failed to return the money he received from the client despite demand. We suspended the lawyer from the practice of law for two years.

In *Agot v. Rivera*,[10] the lawyer neglected his obligation to secure his client's visa and failed to return his client's money despite demand. We also suspended him from the practice of law for two years.

In *Luna v. Galarrita*,[11] the lawyer failed to promptly inform his client of his receipt of the proceeds of a settlement for the

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[5] *Jinon v. Jiz*, A.C. No. 9615, March 5, 2013, 692 SCRA 348.

[6] *Id.*

[7] *Supra* note 4.

[8] *Luna v. Galarrita*, A.C. No. 10662, July 7, 2015, http://sc.judiciary.gov.ph.

[9] *Supra* note 5.

[10] A.C. No. 8000, August 5, 2014, 732 SCRA 12.

[11] *Supra* note 8.

client, and further refused to turn over the amount received. As in the above cases, we suspended him from the practice of law for two years.

We agree with the board's recommendation to impose a more severe penalty on Atty. Maravilla-Ona since her misconduct in the present case is not her first violation of her professional obligations under the Code. We point out that the Court had already suspended Atty. Maravilla-Ona from the practice of law for one year in 2014 due to serious misconduct and for violating Canon 1, Rule 1.01 of the Code.[12] The Court's minute resolution, however, did not indicate the specific act she had committed.

As earlier stated, Atty. Maravilla-Ona received money from her client for the filing of a case in court, but failed to do so. She also did not return a substantial portion of the attorney's fees paid to her by her client. Under these circumstances, her unjustified withholding of her client's funds warrants disciplinary action and the imposition of sanctions.[13]

We note, too, that Atty. Maravilla-Ona's misconduct is aggravated by her failure to file an answer to the complaint and to appear at the mandatory conference. These omissions displayed her lack of respect for the IBP and its proceedings.[14] While the board was correct that the penalty for the respondent's acts merit a higher penalty than the two-year suspension imposed by the investigating commissioner, we do not fully agree with the board's justification for the imposition of a graver penalty, *i.e.*, "her pending cases and previous sanctions."

The Court has consistently held that a lawyer enjoys the legal presumption that he or she is innocent of the administrative

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[12] *Yatco v. Maravilla-Ona*, A.C. No. 10107, November 15, 2014, http://sc.judiciary.gov.ph.

[13] See *Macarilay v. Seriña*, A.C. No. 6591, May 4, 2005, 458 SCRA 12.

[14] *Small v. Banares*, A.C. No. 7021, February 21, 2007, 516 SCRA 323.

charges filed against him or her until the contrary is proved.[15] As an officer of the court, a lawyer is presumed to have performed his or her duties pursuant to the lawyer's oath.[16] Accordingly, the fact that other cases have also been filed against Atty. Maravilla-Ona and are pending resolution before the IBP or this Court should not be taken against her. Until these cases are resolved, such should not influence this Court's determination of the proper penalty to impose upon her in this instance. Notably, only the Court's September 15, 2014 resolution in Administrative Case No. 10107 (where we suspended Atty. Maravilla-Ona from the practice of law for one year) has attained finality at the time the board issued Resolution No. XXI-2014-798.

The appropriate penalty on an errant lawyer requires sound judicial discretion based on the surrounding facts. Considering the totality of the circumstances in the present case, we find a three-year suspension from the practice of law appropriate as penalty for Atty. Maravilla-Ona's misconduct. We emphasize, to the point of repetition, that her failure to discharge her duty properly constitutes an infringement of ethical standards and of her oath. Such failure makes her answerable not just to her client, but also to this Court, to the legal profession, and to the general public.

Since disciplinary proceedings involve the determination of administrative liability, including those intrinsically linked to the lawyer's professional engagement, such as the payment of the money she received and failed to earn by delivering her promised professional services,[17] we aptly direct her to return the ₱65,000.00 to Norma.

WHEREFORE, premises considered, respondent **ATTY. ELEONOR A. MARAVILLA-ONA** is **SUSPENDED** from

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[15] *Aba v. De Guzman, Jr.*, A.C. No. 7649, December 14, 2011, 662 SCRA 361.

[16] *Id.*

[17] *Pitcher v. Gagate*, A.C. No. 9532, October 8, 2013, 707 SCRA 13; *Sison v. Camacho*, A.C. No. 10910, January 12, 2016.

the practice of law for three (3) years. She is **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Atty. Maravilla-Ona is also **ORDERED** to return to complainant Norma Gutierrez the full amount of ₱65,000.00 within ninety (90) days from the finality of this Resolution. Failure to comply with this directive will merit the imposition of the more severe penalty of disbarment from the practice of law, which this Court shall impose based on the complainant's motion with notice duly furnished to Atty. Maravilla-Ona. This penalty shall be in lieu of the penalty of suspension hereinabove imposed.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered into the respondent's personal record. Copies shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Mendoza and *Reyes, JJ.,* on official leave.

EN BANC

[A.C. No. 11316. July 12, 2016]

PATRICK A. CARONAN, *complainant, vs.* **RICHARD A. CARONAN *a.k.a.* "ATTY. PATRICK A. CARONAN,"** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF COURT; ATTORNEYS AND ADMISSION TO THE BAR; NO APPLICANT FOR ADMISSION TO THE BAR EXAMINATION SHALL BE ADMITTED UNLESS HE HAD PURSUED AND SATISFACTORILY COMPLETED A PRE-LAW COURSE.—** [C]omplainant has established by clear and overwhelming evidence that he is the real "Patrick A. Caronan" and that respondent, whose real name is Richard A. Caronan, merely assumed the latter's name, identity, and academic records to enroll at the St. Mary's University's College of Law, obtain a law degree, and take the Bar Examinations. x x x Since complainant — the real "Patrick A. Caronan" — never took the Bar Examinations, the IBP correctly recommended that the name "Patrick A. Caronan" be stricken off the Roll of Attorneys. The IBP was also correct in ordering that respondent, whose real name is "Richard A. Caronan," be barred from admission to the Bar. Under Section 6, Rule 138 of the Rules of Court, no applicant for admission to the Bar Examination shall be admitted unless he had pursued and satisfactorily completed a pre-law course x x x. In the case at hand, respondent never completed his college degree. While he enrolled at the PLM in 1991, he left a year later and entered the PMA where he was discharged in 1993 without graduating. Clearly, respondent has not completed the requisite pre-law degree.

2. **LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; NOT A NATURAL, ABSOLUTE OR CONSTITUTIONAL RIGHT TO BE GRANTED TO EVERYONE WHO DEMANDS IT, BUT A PRIVILEGE LIMITED TO CITIZENS OF GOOD MORAL CHARACTER.—** The Court does not discount the possibility that respondent may later on

> complete his college education and earn a law degree under his real name. However, his false assumption of his brother's name, identity, and educational records renders him unfit for admission to the Bar. The practice of law, after all, is not a natural, absolute or constitutional right to be granted to everyone who demands it. Rather, it is a privilege limited to citizens of **good moral character**. x x x Here, respondent exhibited his dishonesty and utter lack of moral fitness to be a member of the Bar when he assumed the name, identity, and school records of his own brother and dragged the latter into controversies which eventually caused him to fear for his safety and to resign from PSC where he had been working for years. Good moral character is essential in those who would be lawyers. This is imperative in the nature of the office of a lawyer, the trust relation which exists between him and his client, as well as between him and the court. Finally, respondent made a mockery of the legal profession by pretending to have the necessary qualifications to be a lawyer. He also tarnished the image of lawyers with his alleged unscrupulous activities, which resulted in the filing of several criminal cases against him. Certainly, respondent and his acts do not have a place in the legal profession where one of the primary duties of its members is to uphold its integrity and dignity.

D E C I S I O N

***PER CURIAM*:**

For the Court's resolution is the Complaint-Affidavit[1] filed by complainant Patrick A. Caronan (complainant), before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), against respondent "Atty. Patrick A. Caronan," whose real name is allegedly Richard A. Caronan (respondent), for purportedly assuming complainant's identity and falsely representing that the former has the required educational qualifications to take the Bar Examinations and be admitted to the practice of law.

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[1] Dated October 10, 2013. *Rollo*, pp. 9-18.

The Facts

Complainant and respondent are siblings born to Porferio[2] R. Caronan, Jr. and Norma A. Caronan. Respondent is the older of the two, having been born on February 7, 1975, while complainant was born on August 5, 1976.[3] Both of them completed their secondary education at the Makati High School where complainant graduated in 1993[4] and respondent in 1991.[5] Upon his graduation, complainant enrolled at the University of Makati where he obtained a degree in Business Administration in 1997.[6] He started working thereafter as a Sales Associate for Philippine Seven Corporation (PSC), the operator of 7-11 Convenience Stores.[7] In 2001, he married Myrna G. Tagpis with whom he has two (2) daughters.[8] Through the years, complainant rose from the ranks until, in 2009, he was promoted as a Store Manager of the 7-11 Store in Muntinlupa.[9]

Meanwhile, upon graduating from high school, respondent enrolled at the *Pamantasan ng Lungsod ng Maynila* (PLM), where he stayed for one (1) year before transferring to the Philippine Military Academy (PMA) in 1992.[10] In 1993, he was discharged from the PMA and focused on helping their father in the family's car rental business. In 1997, he moved to Nueva Vizcaya with his wife, Rosana, and their three (3) children.[11] Since then, respondent never went back to school to earn a college degree.[12]

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[2] "Porfirio" in some parts of the record.

[3] *Rollo*, pp. 9-10.

[4] *Id.* at 10.

[5] *Id.* at 11.

[6] *Id.* 10.

[7] *Id.*

[8] *Id.* at 11.

[9] See *id.* at 10-12.

[10] *Id.* at 11.

[11] *Id.* at 10-11.

[12] *Id.* at 11.

In 1999, during a visit to his family in Metro Manila, respondent told complainant that the former had enrolled in a law school in Nueva Vizcaya.[13] Subsequently, in 2004, their mother informed complainant that respondent passed the Bar Examinations and that he used complainant's name and college records from the University of Makati to enroll at St. Mary's University's College of Law in Bayombong, Nueva Vizcaya and take the Bar Examinations.[14] Complainant brushed these aside as he did not anticipate any adverse consequences to him.[15]

In 2006, complainant was able to confirm respondent's use of his name and identity when he saw the name "Patrick A. Caronan" on the Certificate of Admission to the Bar displayed at the latter's office in Taguig City.[16] Nevertheless, complainant did not confront respondent about it since he was pre-occupied with his job and had a family to support.[17]

Sometime in May 2009, however, after his promotion as Store Manager, complainant was ordered to report to the head office of PSC in Mandaluyong City where, upon arrival, he was informed that the National Bureau of Investigation (NBI) was requesting his presence at its office in Taft Avenue, Manila, in relation to an investigation involving respondent who, at that point, was using the name "Atty. Patrick A. Caronan."[18] Accordingly, on May 18, 2009, complainant appeared before the Anti-Fraud and Computer Crimes Division of the NBI where he was interviewed and asked to identify documents including: (1) his and respondent's high school records; (2) his transcript of records from the University of Makati; (3) Land Transportation Office's records showing his and respondent's driver's licenses; (4) records from St. Mary's University showing that complainant's transcript of records from the University of Makati and his Birth

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[13] *Id.*

[14] *Id.* at 12.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

Certificate were submitted to St. Mary's University's College of Law; and (5) Alumni Book of St. Mary's University showing respondent's photograph under the name "Patrick A. Caronan."[19] Complainant later learned that the reason why he was invited by the NBI was because of respondent's involvement in a case for qualified theft and *estafa* filed by Mr. Joseph G. Agtarap (Agtarap), who was one of the principal sponsors at respondent's wedding.[20]

Realizing that respondent had been using his name to perpetrate crimes and commit unlawful activities, complainant took it upon himself to inform other people that he is the real "Patrick A. Caronan" and that respondent's real name is Richard A. Caronan.[21] However, problems relating to respondent's use of the name "Atty. Patrick A. Caronan" continued to hound him. In July 2013, PSC received a letter from Quasha Ancheta Peña & Nolasco Law Offices requesting that they be furnished with complainant's contact details or, in the alternative, schedule a meeting with him to discuss certain matters concerning respondent.[22] On the other hand, a fellow church-member had also told him that respondent who, using the name "Atty. Patrick A. Caronan," almost victimized his (church-member's) relatives.[23] Complainant also received a phone call from a certain Mrs. Loyda L. Reyes (Reyes), who narrated how respondent tricked her into believing that he was authorized to sell a parcel of land in Taguig City when in fact, he was not.[24] Further, he learned that respondent was arrested for gun-running activities, illegal possession of explosives, and violation of *Batas Pambansa Bilang* (BP) 22.[25]

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

[20] *Id.* at 13.

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

[22] *Id.* 14.

[23] *Id.* at 13.

[24] *Id.* at 14.

[25] *Id.* Entitled "Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes," approved on April 3, 1979.

Due to the controversies involving respondent's use of the name "Patrick A. Caronan," complainant developed a fear for his own safety and security.[26] He also became the subject of conversations among his colleagues, which eventually forced him to resign from his job at PSC.[27] Hence, complainant filed the present Complaint-Affidavit to stop respondent's alleged use of the former's name and identity, and illegal practice of law.[28]

In his Answer,[29] respondent denied all the allegations against him and invoked *res judicata* as a defense. He maintained that his identity can no longer be raised as an issue as it had already been resolved in CBD Case No. 09-2362 where the IBP Board of Governors dismissed[30] the administrative case[31] filed by Agtarap against him, and which case had already been declared closed and terminated by this Court in A.C. No. 10074.[32] Moreover, according to him, complainant is being used by Reyes and her spouse, Brigadier General Joselito M. Reyes, to humiliate, disgrace, malign, discredit, and harass him because he filed several administrative and criminal complaints against them before the Ombudsman.[33]

On March 9, 2015, the IBP-CBD conducted the scheduled mandatory conference where both parties failed to appear.[34]

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[26] *Id.* at 16.

[27] *Id.*

[28] *Id.* at 17.

[29] Dated May 5, 2015. *Id.* at 77-80.

[30] See Notice of Resolution in Resolution No. XX-2012-649 dated December 29, 2012 issued by National Secretary Nasser A. Marohomsalic; *id.* at 110.

[31] See complaint for disbarment dated December 18, 2008, entitled "*Joseph Garcia Agtarap v. Atty. Patrick Atillo Caronan*"; *id.* at 81-90.

[32] See Minute Resolution dated October 23, 2013; *id.* at 111-112.

[33] See *id.* at 77-79.

[34] See Minutes of the Hearing; *id.* at 71.

Instead, respondent moved to reset the same on April 20, 2015.[35] On such date, however, both parties again failed to appear, thereby prompting the IBP-CBD to issue an Order[36] directing them to file their respective position papers. However, neither of the parties submitted any.[37]

The IBP's Report and Recommendation

On June 15, 2015, IBP Investigating Commissioner Jose Villanueva Cabrera (Investigating Commissioner) issued his Report and Recommendation,[38] finding respondent guilty of illegally and falsely assuming complainant's name, identity, and academic records.[39] He observed that respondent failed to controvert all the allegations against him and did not present any proof to prove his identity.[40] On the other hand, complainant presented clear and overwhelming evidence that he is the real "Patrick A. Caronan."[41]

Further, he noted that respondent admitted that he and complainant are siblings when he disclosed upon his arrest on August 31, 2012 that: (*a*) his parents are Porferio Ramos Caronan and Norma Atillo; and (*b*) he is married to Rosana Halili-Caronan.[42] However, based on the Marriage Certificate issued by the National Statistics Office (NSO), "Patrick A. Caronan" is married to a certain "Myrna G. Tagpis," not to Rosana Halili-Caronan.[43]

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[35] See Motion to Cancel/Reset Mandatory Conference/Hearing dated March 9, 2015; *id.* at 72-73.

[36] Dated April 20, 2015 issued by Commissioner Jose V. Cabrera. *Id.* at 76.

[37] *Id.* at 127.

[38] *Id.* at 117-134.

[39] *Id.* at 131.

[40] *Id.* at 130.

[41] *Id.* at 129.

[42] *Id.* at 130.

[43] *Id.* See also *id.* at 30.

The Investigating Commissioner also drew attention to the fact that the photograph taken of respondent when he was arrested as "Richard A. Caronan" on August 16, 2012 shows the same person as the one in the photograph in the IBP records of "Atty. Patrick A. Caronan."[44] These, according to the Investigating Commissioner, show that respondent indeed assumed complainant's identity to study law and take the Bar Examinations.[45] Since respondent falsely assumed the name, identity, and academic records of complainant and the real "Patrick A. Caronan" neither obtained the bachelor of laws degree nor took the Bar Exams, the Investigating Commissioner recommended that the name "Patrick A. Caronan" with Roll of Attorneys No. 49069 be dropped and stricken off the Roll of Attorneys.[46] He also recommended that respondent and the name "Richard A. Caronan" be barred from being admitted as a member of the Bar; and finally, for making a mockery of the judicial institution, the IBP was directed to institute appropriate actions against respondent.[47]

On June 30, 2015, the IBP Board of Governors issued Resolution No. XXI-2015-607,[48] adopting the Investigating Commissioner's recommendation.

The Issues Before the Court

The issues in this case are whether or not the IBP erred in ordering that: (*a*) the name "Patrick A. Caronan" be stricken off the Roll of Attorneys; and (*b*) the name "Richard A. Caronan" be barred from being admitted to the Bar.

The Court's Ruling

After a thorough evaluation of the records, the Court finds no cogent reason to disturb the findings and recommendations of the IBP.

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[44] *Id.* at 129. See also *id.*, at 50-51 and 59.

[45] *Id.* at 131.

[46] *Id.* at 133.

[47] *Id.*

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

As correctly observed by the IBP, complainant has established by clear and overwhelming evidence that he is the real "Patrick A. Caronan" and that respondent, whose real name is Richard A. Caronan, merely assumed the latter's name, identity, and academic records to enroll at the St. Mary's University's College of Law, obtain a law degree, and take the Bar Examinations.

As pointed out by the IBP, respondent admitted that he and complainant are siblings when he disclosed upon his arrest on August 31, 2012 that his parents are Porferio Ramos Caronan and Norma Atillo.[49] Respondent himself also stated that he is married to Rosana Halili-Caronan.[50] This diverges from the official NSO records showing that "Patrick A. Caronan" is married to Myrna G. Tagpis, not to Rosana Halili-Caronan.[51] Moreover, the photograph taken of respondent when he was arrested as "Richard A. Caronan" on August 16, 2012 shows the same person as the one in the photograph in the IBP records of "Atty. Patrick A. Caronan."[52] Meanwhile, complainant submitted numerous documents showing that he is the real "Patrick A. Caronan," among which are: (*a*) his transcript of records from the University of Makati bearing his photograph;[53] (*b*) a copy of his high school yearbook with his photograph and the name "Patrick A. Caronan" under it;[54] and (*c*) NBI clearances obtained in 2010 and 2013.[55]

To the Court's mind, the foregoing indubitably confirm that respondent falsely used complainant's name, identity, and school records to gain admission to the Bar. Since complainant — the real "Patrick A. Caronan" — never took the Bar Examinations,

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[49] *Id.* at 130. See also *id.* at 49.

[50] *Id.* at 130.

[51] *Id.* See *id.* at 38.

[52] *Id.* at 129. See also *id.* at 51 and 59.

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

[54] *Id.* at 29.

[55] *Id.* at 45-46.

the IBP correctly recommended that the name "Patrick A. Caronan" be stricken off the Roll of Attorneys.

The IBP was also correct in ordering that respondent, whose real name is "Richard A. Caronan," be barred from admission to the Bar. Under Section 6, Rule 138 of the Rules of Court, no applicant for admission to the Bar Examination shall be admitted unless he had pursued and satisfactorily completed a pre-law course, *viz.*:

> Section 6. *Pre-Law*. — No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, **before he began the study of law**, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, **the course of study prescribed therein for a bachelor's degree in arts or sciences** with any of the following subject as major or field of concentration: political science, logic, english, spanish, history, and economics. (Emphases supplied)

In the case at hand, respondent never completed his college degree. While he enrolled at the PLM in 1991, he left a year later and entered the PMA where he was discharged in 1993 without graduating.[56] Clearly, respondent has not completed the requisite pre-law degree.

The Court does not discount the possibility that respondent may later on complete his college education and earn a law degree under his real name. However, his false assumption of his brother's name, identity, and educational records renders him unfit for admission to the Bar. The practice of law, after all, is not a natural, absolute or constitutional right to be granted to everyone who demands it.[57] Rather, it is a privilege limited to citizens of **good moral character**.[58] In *In the Matter of the*

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[56] See *id.* at 11. See also Application for the PMA; *id.* at 36-37.

[57] *In the Matter of the Admission to the Bar of Argosino*, 316 Phil. 43, 46 (1995).

[58] *Id.*

Disqualification of Bar Examinee Haron S. Meling in the 2002 Bar Examinations and for Disciplinary Action as Member of the Philippine Shari'a Bar, Atty. Froilan R. Melendrez,[59] the Court explained the essence of good moral character:

> Good moral character is what a person really is, as distinguished from good reputation or from the opinion generally entertained of him, the estimate in which he is held by the public in the place where he is known. Moral character is not a subjective term but one which corresponds to objective reality. The standard of personal and professional integrity is not satisfied by such conduct as it merely enables a person to escape the penalty of criminal law. **Good moral character includes at least common honesty**.[60] (Emphasis supplied)

Here, respondent exhibited his dishonesty and utter lack of moral fitness to be a member of the Bar when he assumed the name, identity, and school records of his own brother and dragged the latter into controversies which eventually caused him to fear for his safety and to resign from PSC where he had been working for years. Good moral character is essential in those who would be lawyers.[61] This is imperative in the nature of the office of a lawyer, the trust relation which exists between him and his client, as well as between him and the court.[62]

Finally, respondent made a mockery of the legal profession by pretending to have the necessary qualifications to be a lawyer. He also tarnished the image of lawyers with his alleged unscrupulous activities, which resulted in the filing of several criminal cases against him. Certainly, respondent and his acts do not have a place in the legal profession where one of the primary duties of its members is to uphold its integrity and dignity.[63]

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[59] See B.M. No. 1154, June 8, 2004.

[60] *Id.*

[61] *Supra* note 56, at 46-50.

[62] See *Lizaso v. Amante*, 275 Phil. 1, 11 (1991).

[63] Rule 7.03 of the Code of Professional Responsibility.

WHEREFORE, respondent Richard A. Caronan a.k.a. "Atty. Patrick A. Caronan" (respondent) is found **GUILTY** of falsely assuming the name, identity, and academic records of complainant Patrick A. Caronan (complainant) to obtain a law degree and take the Bar Examinations. Accordingly, without prejudice to the filing of appropriate civil and/or criminal cases, the Court hereby resolves that:

(1) the name "Patrick A. Caronan" with Roll of Attorneys No. 49069 is ordered **DROPPED** and **STRICKEN OFF** the Roll of Attorneys;

(2) respondent is **PROHIBITED** from engaging in the practice of law or making any representations as a lawyer;

(3) respondent is **BARRED** from being admitted as a member of the Philippine Bar in the future;

(4) the Identification Cards issued by the Integrated Bar of the Philippines to respondent under the name "Atty. Patrick A. Caronan" and the Mandatory Continuing Legal Education Certificates issued in such name are **CANCELLED** and/or **REVOKED**; and

(5) the Office of the Court Administrator is ordered to **CIRCULATE** notices and **POST** in the bulletin boards of all courts of the country a photograph of respondent with his real name, "Richard A. Caronan," with a warning that he is not a member of the Philippine Bar and a statement of his false assumption of the name and identity of "Patrick A. Caronan."

Let a copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator.

SO ORDERED.

Sereno, C.J, Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Mendoza and *Reyes, JJ.,* on official leave.

EN BANC

[A.M. No. P-14-3213. July 12, 2016]
(Formerly A.M. No. 12-5-91-RTC)

ACCREDITED LOCAL PUBLISHERS: THE WEEKLY ILOCANDIA INQUIRER, THE NORLUZONIAN COURIER, THE AMIANAN TRIBUNE, THE WEEKLY CITY BULLETIN, THE NORTHERN STAR, THE WEEKLY BANAT, THE NORTH LUZON HEADLINE, THE REGIONAL DIARYO, and HIGH PLAINS JOURNAL ILOCANDIA, *complainants, vs.* **SAMUEL L. DEL ROSARIO, Clerk III, Regional Trial Court, Branch 33, Bauang, La Union,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GRAVE OR SERIOUS MISCONDUCT; VIOLATING THE RULE ON THE RAFFLE OF JUDICIAL NOTICES FOR PUBLICATION, A CASE OF.— Respondent himself admittedly failed to refer the notices for publication to the Office of the Clerk of Court for the conduct of raffle. His failure to do so was in clear violation of A.M. No. 01-1-07-SC in relation to P.D. 1079. x x x Respondent Del Rosario clearly violated the rule on the raffle of judicial notices for publication. The importance of the raffle of individual notices, cannot be overemphasized. It is intended to protect the integrity of the process. Under P.D. 1079, the rationale for the conduct of a raffle is to better implement the philosophy behind the publication of notices and announcements and, more important, to prevent cross commercialism and unfair competition among community newspapers, which conditions prove to be inimical to the development of a truly free and responsible press. In turn, the Court issued A.M. No. 01-1-07-SC to ensure uniform compliance with P.D. 1079 to protect the interests of the public in general, and of litigants in particular. It bears to stress that a disregard of Court directives constitutes grave or serious misconduct.

2. ID.; ID.; ID.; ID.; MUST CONDUCT THEMSELVES IN A MANNER EXEMPLIFYING INTEGRITY, HONESTY AND UPRIGHTNESS.— [T]he behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect and trust in the judiciary. Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness.

3. ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GRAVE OFFENSES; THE ACT OF CONTRACTING A LOAN FROM A PERSON HAVING BUSINESS RELATIONS WITH ONE'S OFFICE IS CLASSIFIED AS GRAVE OFFENSE AND IS PUNISHABLE BY DISMISSAL FROM THE SERVICE.— Del Rosario admits to having contracted loans from Reyes "whenever he needed money for his medicines." x x x Del Rosario admits his misconduct, apologizes to the Court, and promises not to repeat the offense in the future. Notwithstanding respondent's remorseful appeal, the act of contracting a loan from a person having business relations with one's office is classified as a grave offense and is punishable by dismissal from service under Section 46 A(9), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS). *Song v. Llegue* demonstrates the impropriety of receiving money or any other kind of property as a loan from a litigant or any other person who has business relations with court personnel x x x.

4. ID.; ID.; ID.; GROSS/GRAVE MISCONDUCT; CLASSIFIED AS A GRAVE OFFENSE PUNISHABLE WITH DISMISSAL FROM SERVICE; CASE AT BAR.— We find respondent Del Rosario remiss in his duty as Clerk III or clerk-in-charge of RTC Branch 33 of Bauang, La Union, for not abiding by the procedures for the raffle as laid down by law. This offense, coupled with his act of receiving loans from a person (Reyes) who had direct dealings or business with the court, constitutes gross misconduct on the part of a court employee. We find no basis x x x for the recommendation x x x for the imposition of a mere suspension for one year. Records do not bear out any ground for the reduction of penalty. On the contrary, respondent

admitted that he had been charged in the "Borromeo case," which was eventually dismissed by this Court. x x x [T]he alleged dismissal of the case cannot be used to support the diminution of the penalty to be imposed. The Court notes that the nature of the case and the reason for its dismissal were not disclosed, and that the penalty for grave misconduct is dismissal even for the first offense. Under Section 22 (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Section 46 A(2) of RRACCS, gross/grave misconduct is classified as a grave offense punishable with dismissal from service. We reiterate anew that this Court shall not hesitate to impose the ultimate penalty on those who have fallen short of their accountabilities. No less than the Constitution has enshrined the principle that a public office is a public trust. The Court will not tolerate or condone any conduct, act, or omission that falls short of the exacting norms of public office, especially on the part of those expected to preserve the image of the judiciary. Lastly, since his acts may amount to a violation of P.D. 1079, our ruling is without prejudice to OCA's filing of the appropriate criminal charges against Del Rosario.

D E C I S I O N

***PER CURIAM*:**

This case stemmed from a Joint Affidavit-Complaint[1] filed before Regional Trial Court Branch 67 (RTC Branch 67) of Bauang, La Union. Charges of grave misconduct and gross violation of Presidential Decree (P.D.) No. 1079[2] were filed by complainants, *The Weekly Ilocandia Inquirer*, *The Norluzonian Courier*, *The Amianan Tribune*, *The Weekly City Bulletin*, *The Northern Star*, *The Weekly Banat*, *The North Luzon Headline*, *The Regional Diaryo*, and *High Plains Journal Ilocandia* (collectively referred to as the Accredited Publishers), against respondents Samuel L. del Rosario (Del Rosario), Clerk III of Branch 33, Regional Trial

[1] Dated 19 October 2011; *rollo*, pp. 2-4.

[2] Revising and Consolidating All Laws and Decrees Regulating Publication of Judicial Notices, Advertisements for Public Biddings, Notices of Auction Sales and Other Similar Notices.

Court of Bauang, La Union; Harry Peralta (Peralta), publisher of the Ilocos Herald; and Brenda Ramos (Ramos), publisher of *Watching Eye* represented by Malou Reyes (Reyes).

ANTECEDENT FACTS

Complainants alleged that they, along with Ramos and Peralta, were the accredited publishers of judicial/legal notices. As such, they were authorized to participate in the raffle draws scheduled before RTC Branch 67 of Bauang, La Union.[3] They accused respondent Del Rosario and respondent publishers of conspiring so that the latter would be the publishers of judicial and legal notices in cases that had not undergone the process of raffle, to the prejudice of complainants and in violation of P.D. 1079.[4]

In his Answer,[5] respondent Del Rosario admitted referring some cases for publication to certain newspaper publishers or their representatives without the required raffle.[6] He claimed that he had referred litigants to those publishers because they charged lower rates, and not because he was motivated by any monetary gain.[7]

In her Affidavit,[8] Abarra alleged that in exchange for a certain amount of money intended for the medicines of respondent Del Rosario, the latter submitted a judicial notice to the *Ilocos Herald* for publication. Abarra claimed that publisher Peralta did not know that the notice had not been raffled. When Del Rosario gave her a second notice for publication, Abarra said that Peralta already knew it had not been raffled. As a result, Peralta did not publish the second judicial notice.[9]

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[3] *Supra* note 1, at 2.

[4] *Id.*

[5] *Id.* at 5-8.

[6] *Id.* at 7.

[7] *Id.*

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

[9] *Id.* at 15.

On the other hand, Reyes responded that Del Rosario had approached her and asked her to publish all special proceedings (notices) that had not been raffled.[10] The latter supposedly informed her that Presiding Judge Rose Mary M. Alim (Judge Alim) knew of the notices for publication.[11]

In his Resolution,[12] Judge Fe found that respondents Del Rosario, Abarra and Reyes had violated A.M. No. 01-1-07-SC[13] and possibly the provision of the Revised Penal Code on falsifications. The publisher's league or the parties affected were advised that they may file appropriate criminal charges against respondents Del Rosario, Abarra and Reyes. Judge Fe further referred the case to the Office of the Court Administrator (OCA) for the evaluation of the administrative liability of respondent Del Rosario.[14]

REFERRAL TO THE OCA

Upon evaluation, OCA recommended that the administrative complaint be re-docketed as a regular administrative matter. However, it found the preliminary findings of RTC Branch 67 insufficient. OCA said that the allegations against respondent were grave and warranted his dismissal from the service if he were to be found liable.[15] Hence, it opined that the case called for a full-blown investigation, in which the parties could adduce evidence and the investigator could come up with a detailed report.[16] The complaint was referred to Judge Alim as Presiding

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[10] *Id.* at 11.

[11] *Id.*

[12] Dated 12 April 2012, *id.* at 19-23; Penned by Executive Judge Ferdinand A. Fe.

[13] Guidelines in the Accreditation of Newspapers and Periodicals and in the Distribution of Legal Notices and Advertisements for Publication.

[14] *Supra* note 1, at 23.

[15] *Id.* at 58.

[16] *Id.*

Judge of RTC Branch 33 of Bauang, La Union, for investigation, report and recommendation within 60 days from receipt thereof.[17]

FINDINGS OF THE INVESTIGATING COURT

Following OCA's instructions, Judge Alim came up with her Report/Recommendation[18] concerning the charges against Del Rosario. She found that based on the evidence on record, as well as on the admissions made by respondent Del Rosario himself, the latter had referred some cases to several favored publishers but without the benefit of raffle. That conduct, according to Judge Alim, constituted grave misconduct on his part.[19] Another act amounting to grave misconduct was the alleged misrepresentation by Del Rosario to the newspaper representatives that his direct assignment to them was with the knowledge of the presiding judge.[20]

Judge Alim also found that Del Rosario's act of borrowing money from the newspaper representatives was tantamount to receiving consideration for the unraffled cases. Even if Del Rosario denied receiving any monetary consideration, why would he be receiving money from the newspaper representatives if they would not be getting any personal favor in return? This fact was confirmed when Del Rosario admitted that he had secured loans from Reyes for medicines, since the former could not borrow money from the Supreme Court because of his pending administrative case.[21]

Lastly, Judge Alim said that Del Rosario's acts constituting grave misconduct eroded faith and confidence in the administration of justice, since the whole court was brought to disrepute. She said that people dealing with the court were forced to become wary and act with caution.[22] Her recommendation reads:

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[17] *Id.*

[18] *Id.* at 108-112.

[19] *Id.* at 112.

[20] *Id.* at 111.

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

[22] *Id.* at 112.

This Investigating Judge finds respondent Samuel del Rosario, Clerk III of the RTC, Branch 33, Bauang, La Union, to have violated the law on raffle of judicial notices, as admitted by him, which is conduct prejudicial to the best interest of the service, and punishable with DISMISSAL.

Considering, however, that this is respondent's second offense, the first one was dismissed by the Supreme Court in the case of People *vs.* Borromeo, et al., and his plea for apology and his promise not to do the same act again, this Investigating Judge recommends that he be suspended for one (1) year, tempering his liability with compassion in light of his admission of the said act with apology, with a stern warning that a repetition of the same act shall be dealt with, more severely.[23]

RULING OF THE COURT

We find respondent Del Rosario guilty of gross/grave misconduct.

Respondent himself admittedly failed to refer the notices for publication to the Office of the Clerk of Court for the conduct of raffle. His failure to do so was in clear violation of A.M. No. 01-1-07-SC in relation to P.D. 1079. He claims that he directly gave notices for publication sans the required raffle, because "other newspapers charge very high amounts and he [took] pity [on] poor litigants."[24] Yet he miserably failed to adduce evidence to support his allegation that there were indigent litigants who had sought his help for referrals to publishers that would charge lower rates than the others. Even then, compassion cannot be a justification for ignoring the law on the publication of judicial notices and the rules on raffle, as there are remedies provided for indigent litigants.

Moreover, his lame excuse of lack of knowledge of the process not only demonstrates his professional incompetence, but also casts serious doubt on his motives. This Court cannot countenance acts that tend to erode the faith of the people in the courts.

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[23] *Id.*

[24] *Id.* at 110.

We have stressed that the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect and trust in the judiciary. Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness.[25]

Respondent Del Rosario clearly violated the rule on the raffle of judicial notices for publication. The importance of the raffle of individual notices, cannot be overemphasized. It is intended to protect the integrity of the process.[26] Under P.D. 1079, the rationale for the conduct of a raffle is to better implement the philosophy behind the publication of notices and announcements and, more important, to prevent cross commercialism and unfair competition among community newspapers, which conditions prove to be inimical to the development of a truly free and responsible press.[27] In turn, the Court issued A.M. No. 01-1-07-SC to ensure uniform compliance with P.D. 1079 to protect the interests of the public in general, and of litigants in particular.

It bears to stress that a disregard of Court directives constitutes grave or serious misconduct.[28]

Furthermore, Del Rosario admits to having contracted loans from Reyes "whenever he needed money for his medicines."[29] In support of this allegation, the latter testified that "whenever she collects the amount of ₱7,000, she would lend him (Del Rosario) ₱1,500 or ₱1,000 because she pitied him as he needed

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[25] *Aldecoa-Delorino v. Abellanosa*, A.M. No. P-08-2472, RTJ-08-2106, P-08-2420, 648 Phil. 32, 52 (2010).

[26] *In re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Branch 1, Cebu City*, A.M. No. MTJ-05-1572, 567 Phil. 103, 123 (2008).

[27] See WHEREAS Clause.

[28] *Tugot v. Coliflores*, A.M. No. MTJ-00-1332, 467 Phil. 391, 402 (2004).

[29] *Supra* note 1 at 110.

money for his medicines."[30] Del Rosario admits his misconduct, apologizes to the Court, and promises not to repeat the offense in the future.[31]

Notwithstanding respondent's remorseful appeal, the act of contracting a loan from a person having business relations with one's office is classified as a grave offense and is punishable by dismissal from service under Section 46 A (9), Rule 10 on the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

Song v. Llegue[32] demonstrates the impropriety of receiving money or any other kind of property as a loan from a litigant or any other person who has business relations with court personnel:

> Respondent admitted having received ₱3,000.00 from complainant, although he claims that it was a loan. This fact is also evidenced by a photocopy of the Allied Bank check dated April 3, 2002 issued by complainant to respondent, which he encashed on the same day. Respondent also acknowledged receiving such amount from complainant in his letter to complainant, through her counsel, remitting his payment for his debt. Respondent's act of receiving money from a litigant who has a pending case before the court where he is working is highly improper and warrants sanction from this Court. As stated by the Investigating Officer, the mere fact that he received money from a litigant unavoidably creates an impression not only in the litigant but also in other people that he could facilitate the favorable resolution of the cases pending before the court. Such behavior puts not only the court personnel involved, but the judiciary as well, in a bad light. We have often stressed that the conduct required of court personnel, from the presiding judge to the lowliest of clerk must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. **All court personnel are expected to exhibit the highest sense of honesty and integrity not only in the performance of their official duties but also in their personal and private dealings**

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[30] *Id.*

[31] *Id.* at 111.

[32] 464 Phil. 324 (2004).

with other people to preserve the Court's good name and standing. This is because the image of a court of justice is mirrored in the conduct, official or otherwise, of the men and women who work there. Any impression of impropriety, misdeed or negligence must be avoided.[33] (Emphasis supplied and citation omitted)

In sum, We find respondent Del Rosario remiss in his duty as Clerk III or clerk-in-charge of RTC Branch 33 of Bauang, La Union, for not abiding by the procedures for the raffle as laid down by law. This offense, coupled with his act of receiving loans from a person (Reyes) who had direct dealings or business with the court, constitutes gross misconduct on the part of a court employee.

We find no basis, however, for the recommendation of Judge Alim for the imposition of a mere suspension for one year. Records do not bear out any ground for the reduction of penalty. On the contrary, respondent admitted that he had been charged in the "Borromeo case," which was eventually dismissed by this Court.[34] Respondent resorted to obtaining loans from Reyes, because he could not avail himself of a loan from the Supreme Court during the pendency of the Borromeo case. Be that as it may, the alleged dismissal of the case cannot be used to support the diminution of the penalty to be imposed. The Court notes that the nature of the case and the reason for its dismissal were not disclosed, and that the penalty for grave misconduct is dismissal even for the first offense.

Under Section 22 (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Section 46A (2) of RRACCS, gross/grave misconduct is classified as a grave offense punishable with dismissal from service.

We reiterate anew that this Court shall not hesitated to impose the ultimate penalty on those who have fallen short of their accountabilities. No less than the Constitution has enshrined

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[33] *Id.* at 330-331.

[34] TSN dated 20 January 2015; *rollo*, p. 105.

the principle that a public office is a public trust.[35] The Court will not tolerate or condone any conduct, act, or omission that falls short of the exacting norms of public office, especially on the part of those expected to preserve the image of the judiciary.[36] Lastly, since his acts may amount to a violation of P.D. 1079, our ruling is without prejudice to OCA's filing of the appropriate criminal charges against Del Rosario.

WHEREFORE, for his gross misconduct in his duties as Clerk III of the Regional Trial Court, Branch 33, Bauang, La Union, respondent Samuel L. del Rosario is hereby **DISMISSED** from service, with forfeiture of all benefits, excluding leave credits, with prejudice to re-employment in any branch or agency of the government including government-owned or controlled corporations.

The Office of the Court Administrator is **DIRECTED** to file the appropriate criminal complaint against respondent Samuel L. del Rosario in connection with the criminal aspect of this case in accordance with P.D. 1079.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Mendoza, J., on sabbatical leave.

Reyes, J., on wellness leave.

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[35] Constitution, Art. XI, Sec. 1.

[36] *Supra* note 25.

EN BANC

[G.R. No. 193584. July 12, 2016]

HAMBRE J. MOHAMMAD, *petitioner, vs.* **GRACE BELGADO-SAQUETON, in her capacity as Director IV, Civil Service Commission, Regional Office No. XVI,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; PARTIES MUST AVAIL THEMSELVES OF ALL THE MEANS OF ADMINISTRATIVE PROCESSES AFFORDED TO THEM BEFORE THEY ARE ALLOWED TO SEEK THE INTERVENTION OF THE COURT.— Before parties are allowed to seek the intervention of the court, it is a precondition that they must have availed themselves of all the means of administrative processes afforded to them. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts — for reasons of law, comity, and convenience — will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.

2. ID.; ID.; ID.; EXCEPTION TO THE DOCTRINE WHEN THE ISSUE RAISED IS A PURELY LEGAL QUESTION; QUESTIONS OF FACT AND QUESTIONS OF LAW, HOW DISTINGUISHED.— Petitioner admits that while administrative remedies were available to him, he had invoked an exception to the doctrine of exhaustion of administrative remedies. On the contrary, We find that the dismissal of the petition for *mandamus* was warranted by the doctrine because the issue raised by petitioner is not a purely legal question. The Court has laid down tests to distinguish questions of fact from questions of law: when doubt arises as to the truth or falsity of the alleged facts, or when it becomes clear that the issue invites a review of the evidence presented, the question is one of fact. It was

grave error for the trial court to have ignored the red flags raised by both parties. Respondent has repeatedly asserted that the PARO II position is a third-level position requiring CES or CSEE. Petitioner himself raised an issue of fact when he posited that there was no position in the ARMM that had been declared to be a CES position. To disprove this allegation, respondent presented the Qualification Standards prescribed for the position which shows that it is a third-level position requiring CES or CSEE. Since doubt has risen as to the truth or falsity of the alleged fact, it cannot be said that the case presents a purely legal question.

3. ID.; ID.; ID.; IMPELS THE COURT TO ALLOW ADMINISTRATIVE AGENCIES TO CARRY OUT THEIR FUNCTIONS AND DISCHARGE THEIR RESPONSIBILITIES WITHIN THE SPECIALIZED AREAS OF THEIR RESPECTIVE COMPETENCIES.— We have recognized the CSC as the sole arbiter of controversies relating to the civil service. The doctrine of exhaustion of administrative remedies, which is "a cornerstone of our judicial system," impels Us to allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competencies. We refrain from the overarching use of judicial power in matters of policy infused with administrative character. Hence, the doctrine has been set aside only for exceptional circumstances.

4. ID.; STATUTES; REPUBLIC ACT NO. 9054 (ORGANIC ACT FOR THE AUTONOMOUS REGION IN MUSLIM MINDANAO); APPOINTMENTS; THE CIVIL SERVICE ELIGIBILITIES REQUIRED BY THE CENTRAL GOVERNMENT OR NATIONAL GOVERNMENT FOR APPOINTMENTS TO PUBLIC POSITIONS SHALL LIKEWISE BE REQUIRED FOR APPOINTMENTS TO GOVERNMENT POSITIONS IN THE REGIONAL GOVERNMENT UNTIL THE REGIONAL ASSEMBLY SHALL HAVE ENACTED A CIVIL SERVICE LAW.— Petitioner pleads for a liberal construction of the rules owing to the nature of the case as one of first impression involving a position in the ARMM vis-à-vis the application of CSC rules. His plea has been mooted, however, by the promulgation of *Buena*, in which We highlighted Section 4, Art. XVI of the

Organic Act for the ARMM which states that "until the Regional Assembly shall have enacted a civil service law, the civil service eligibilities required by the central government or national government for appointments to public positions shall likewise be required for appointments to government positions in the Regional Government."

APPEARANCES OF COUNSEL

Leo G. Lizada for petitioner.
The Solicitor General for public respondent.

D E C I S I O N

SERENO, *C.J.*:

We resolve the Petition for Review filed by Hambre J. Mohammad (petitioner) assailing the Court of Appeals (CA) Decision[1] dated 27 January 2010 and Resolution[2] dated 16 August 2010 in CA-G.R. SP No. 02392-MIN. The CA reversed the Orders[3] dated 26 July 2006 and 7 August 2006 issued by the Regional Trial Court Branch 14 in Cotabato City (RTC) in Special Civil Action No. 2006-096.

The issue before this Court is whether the filing of a petition for *mandamus* with the RTC was proper despite the availability of an administrative remedy against the unfavorable Decision of Civil Service Commission Regional Office No. XVI (CSCRO No. XVI).

We affirm the CA Decision. The failure of petitioner to exhaust available administrative remedies was fatal to his cause.

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[1] Penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Romulo V. Borja and Edgardo T. Lloren; *rollo*, pp. 33-48.

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

[3] RTC Records pp. 57-60, 71.

THE FACTS OF THE CASE

On 8 September 2004, petitioner was appointed as Provincial Agrarian Reform Officer II (PARO II) of the Department of Agrarian Reform in the Autonomous Region in Muslim Mindanao (DAR-ARMM) with Salary Grade 26.[4] His appointment was temporary as he had no Career Service Executive Eligibility (CSEE) or eligibility in the Career Executive Service (CES).[5] On 8 September 2005, his temporary appointment was renewed.[6]

On 24 October 2005, petitioner requested the regional secretary of DAR-ARMM to change his appointment status from temporary to permanent. His request was pursuant to an RTC decision in Special Civil Action No. 2005-085[7] concerning the change in status of division superintendents [8] He opined that his position was the same as that of petitioners therein, whose petition for *mandamus* had been granted by the trial court.[9] His request was endorsed[10] to the regional governor, who then submitted the matter for favorable consideration of CSCRO No. XVI.[11]

Respondent Grace Belgado-Saqueton (respondent), Director IV of CSCRO No. XVI, denied the request on the ground of the inapplicability of the RTC Decision, which was binding only on the parties to that case.[12] Moreover, she informed

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[4] *See* Appointment; RTC Records, p. 7.

[5] *Id.*

[6] *See* Appointment; RTC Records, p. 8.

[7] A special civil action for *mandamus* filed by Division Superintendent Mona A. Macatanong and Assistant Division Superintendent Pharida L. Sansarona against CSCRO No. XVI Director IV Atty. Anacleto B. Buena, Jr.

[8] See Letter; RTC Records, p. 9.

[9] *Id.*

[10] *See* 1st Indorsement dated 15 November 2005; RTC Records, p. 10.

[11] *See* letter to Atty. Macybel Alfaro-Sahi; RTC Records, pp. 11-12.

[12] *See* letter dated 24 March 2006; RTC Records, p. 13.

petitioner that the trial court's decision had been submitted by the CSC to the courts for review.[13]

Petitioner did not elevate the case to the Civil Service Commission proper. Instead, he filed a special civil action for *mandamus* before the RTC. He invoked an exception to the doctrine of exhaustion of administrative remedies: when the question is purely legal. He argued that because the PARO II position did not require CES eligibility and was not declared to be a CES position, respondent can be compelled through *mandamus* to change his status from temporary to permanent.[14] Respondent filed a Motion to Dismiss on the ground of failure to exhaust administrative remedies.

On 22 June 2006, during the pendency of the case, the Office of the Regional Governor appointed petitioner to the same position with a permanent status.[15]

THE RTC RULING

On 26 July 2006, the RTC ordered respondent to approve and attest to the appointment status of petitioner as permanent.[16] It ruled that he was able to establish that respondent had unlawfully neglected or refused to approve his appointment even if the law, the facts, and the evidence mandated her to approve the request.[17]

As regards the Motion to Dismiss, the RTC maintained that it had jurisdiction over the case which presented a pure question of law. The court further held that had petitioner taken the route of appealing to the CSC proper, it would have been an exercise in futility, since issues of law cannot be decided with finality by the commission.[18]

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[13] *Id.*

[14] RTC Records, p. 2.

[15] *See Porma Blg*. 33; RTC Records, p. 43.

[16] RTC Records, p. 60.

[17] *Id.*

[18] *Id.* at 59.

Respondent moved for reconsideration, calling the attention of the court to CSC Resolution No. 02-1011,[19] which states:

> 2. Permanent appointment issued after the effectivity of [this Resolution] to appointees who do not possess the required CSEE or CES eligibility shall be disapproved. This is without prejudice to their appointments under temporary status provided there are no qualified eligibles who are willing to assume the position.[20]

Respondent also argued that the approval or disapproval of an appointment is not a ministerial but a discretionary duty; hence, *mandamus* does not lie.[21]

On 7 August 2006, the RTC denied the Motion for Reconsideration for being a mere rehash of arguments already raised.[22] After respondent filed a Notice of Appeal on 15 August 2006, the trial court, on 30 August 2006, granted petitioner's motion for execution pending appeal.[23]

THE CA RULING

On intermediate appellate review, the CA reversed the RTC Orders dated 26 July 2006 and 7 August 2006. It agreed with respondent that petitioner had prematurely brought the case to the RTC without exhausting all the remedies available to him.[24]

The CA traced the jurisdiction of the CSC proper over decisions of CSCROs to Sections 4[25] and 5[26] of the Revised

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[19] Policy Guidelines on Appointments to Third Level Positions in the ARMM issued on 1 August 2002.

[20] RTC Records, pp. 62-63.

[21] *Id.* at 64.

[22] *Id.* at 71.

[23] *Id.* at 72, 80.

[24] *Rollo*, p. 38.

[25] SECTION 4. *Jurisdiction of the Civil Service Commission*. — The Civil Service Commission shall hear and decide administrative cases instituted by, or brought before it, directly or on appeal, including contested appointments, and shall review decisions and actions of its offices and of the agencies attached to it.

Uniform Rules on Administrative Cases in the Civil Service. These rules were promulgated pursuant to the Constitution[27] and the CSC Law.[28] Also cited were other administrative issuances categorically providing remedies for disapproved appointments,

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Except as otherwise provided by the Constitution or by law, the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees.

[26] SECTION 5. *Jurisdiction of the Civil Service Commission Proper*.— The Civil Service Commission Proper shall have jurisdiction over the following cases:

xxx xxx xxx

B. *Non-Disciplinary*

1. Decisions of Civil Service Commission Regional Offices brought before it; xxxx

[27] Art. IX-B, Sections 2 (1) and 3 state:

SECTION 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

SECTION 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

[28] Section 9 (h), PD 807 states:

SECTION 9. *Powers and Functions of the Commission*. — The Commission shall administer the Civil Service and shall have the following powers and functions:

xxx xxx xxx

(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. x x x x

such as CSC Memorandum Circular No. 40, series of 1998;[29] and CSC Memorandum Circular No. 15, series of 2002.[30]

The CA denied the Motion for Reconsideration of petitioner for being a mere rehash of arguments already passed upon. He then elevated the case to this Court for review.

OUR RULING

We deny the Petition.

Before parties are allowed to seek the intervention of the court, it is a precondition that they must have availed themselves of all the means of administrative processes afforded to them.[31] Where the enabling statute indicates a procedure for administrative

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[29] Or the "Revised Omnibus Rules on Appointments and Other Personnel Actions," Sections 2 and 3, Rule VI of which state:

SECTION 2. Request for reconsideration of, or appeal from, the disapproval of an appointment may be made by the appointing authority and submitted to the Commission within fifteen (15) calendar days from receipt of the disapproved appointment.

SECTION 3. When an appointment is disapproved, the services of the appointee shall be immediately terminated, unless a motion for reconsideration or appeal is seasonably filed.

Services rendered by a person for the duration of his disapproved appointment shall not be credited as government service for whatever purpose.

If the appointment was disapproved on grounds which do not constitute a violation of civil service law, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position, the same is considered effective until disapproved by the Commission or any of its regional or field offices. The appointee is meanwhile entitled to payment of salaries from the government.

If a motion for reconsideration or an appeal from the disapproval is seasonably filed with the proper office, the appointment is still considered to be effective. The disapproval becomes final only after the same is affirmed by the Commission.

[30] Or the "Policies on Facilitative Actions on Appointments and Motions for Reconsideration/Appeals," Item 1 of which states:

1. Appointments invalidated or disapproved by the CSCFO may be appealed to the CSCRO while those invalidated or disapproved by the CSCRO may be appealed to the Commission Proper within the fifteen (15) day reglementary period.

[31] *Paat v. Court of Appeals*, 334 Phil. 146 (1997).

review and provides a system of administrative appeal or reconsideration, the courts — for reasons of law, comity, and convenience — will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[32]

Petitioner admits that while administrative remedies were available to him, he had invoked an exception to the doctrine of exhaustion of administrative remedies.[33] On the contrary, We find that the dismissal of the petition for *mandamus* was warranted by the doctrine because the issue raised by petitioner is not a purely legal question.

The Court has laid down tests to distinguish questions of fact from questions of law: when doubt arises as to the truth or falsity of the alleged facts, or when it becomes clear that the issue invites a review of the evidence presented, the question is one of fact.[34]

It was grave error for the trial court to have ignored the red flags raised by both parties. Respondent has repeatedly asserted that the PARO II position is a third-level position requiring CES or CSEE.[35] Petitioner himself raised an issue of fact when he posited that there was no position in the ARMM that had been declared to be a CES position.[36] To disprove this allegation, respondent presented the Qualification Standards prescribed for the position which shows that it is a third-level position requiring CES or CSEE.[37] Since doubt has risen as to the truth or falsity of the alleged fact, it cannot be said that the case presents a purely legal question.

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[32] *University of the Phils. v. Catungal, Jr.*, 338 Phil. 728 (1997).

[33] *Rollo*, p. 26.

[34] *Piedras Negras Construction & Development Corp. v. Fil-Estate Properties, Inc.*, G.R. No. 211568 (Notice), 28 January 2015.

[35] Motion to Dismiss dated 5 May 2006, RTC Records p. 20; Comment dated 24 July 2006, RTC Records p. 53; Motion for Reconsideration dated 2 August 2006, RTC Records, pp. 61-62.

[36] RTC Records, pp. 2, 33.

[37] *See* RTC Records, p. 23.

We are aware of our pronouncement in *Buena, Jr. v. Benito*[38] that the issue of whether the position for which the respondent therein was appointed required career service eligibility was a purely legal question. In that case, We held that the direct recourse to the courts from the Decision of the CSCRO fell under an exception to the doctrine. Nevertheless, We set aside the RTC order, because we found that the Assistant Schools Division Superintendent is a position in the CES.

There are at least three material differences between this case and *Buena*.

First, in *Buena,* the question was whether the position is in the CES. In this case, the question is whether petitioner was eligible for a permanent appointment to the PARO II position, which had *already* been classified as a third-level position requiring CSEE or CES.[39] The issue is therefore not one of law, but of the merit and fitness of the appointee, which is a question of fact.

Second, in *Buena,* no evidence was presented to the trial court that could have created doubt as to the truth or falsity of the allegation. In this case, the qualification standards for the position were presented, but were unacknowledged as a matter of fact by the trial court.

Third, in *Buena,* the petition for *mandamus* was filed *after* the appointment had been issued by the regional governor. The element of a clear legal right was met in *Buena* because Section 19, Art. VII of Republic Act No. 9054 (Organic Act for the ARMM) designated the regional governor as the appointing authority in the ARMM. In this case, petitioner had no clear legal right to compel respondent to attest to his appointment, because at the time of filing, he had no appointment to a permanent position. Hence, the Petition should have been dismissed outright.

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[38] G.R. No. 181760, 14 October 2014, 738 SCRA 278.

[39] *See* RTC Records, p. 23.

We have recognized the CSC as the sole arbiter of controversies relating to the civil service.[40] The doctrine of exhaustion of administrative remedies, which is "a cornerstone of our judicial system,"[41] impels Us to allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competencies.[42] We refrain from the overarching use of judicial power in matters of policy infused with administrative character.[43] Hence, the doctrine has been set aside only for exceptional circumstances.

Petitioner pleads for a liberal construction of the rules owing to the nature of the case as one of first impression involving a position in the ARMM vis-à-vis the application of CSC rules.[44] His plea has been mooted, however, by the promulgation of *Buena*, in which We highlighted Section 4, Art. XVI of the Organic Act for the ARMM which states that "until the Regional Assembly shall have enacted a civil service law, the civil service eligibilities required by the central government or national government for appointments to public positions shall likewise be required for appointments to government positions in the Regional Government."

WHEREFORE, the Petition for Review is **DENIED**. The Court of Appeals Decision dated 27 January 2010 in CA-G.R. SP No. 02392-MIN is hereby **AFFIRMED.**

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Mendoza, J., on sabbatical leave.

Reyes, J., on wellness leave.

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[40] *Corsiga v. Defensor,* 439 Phil. 875 (2002).

[41] *Universal Robina Corp. v. Laguna Lake Development Authority*, 664 Phil. 754 (2011).

[42] *Presidential Commission on Good Government v. Peña,* 243 Phil. 93 (1988).

[43] *Ejera v. Merto*, 725 Phil. 180, 204 (2014).

[44] *Rollo*, p. 28.

EN BANC

[G.R. No. 210991. July 12, 2016]

DUTY FREE PHILIPPINES CORPORATION (formerly Duty Free Philippines) duly represented by its Chief Operating Officer, LORENZO C. FORMOSO, *petitioner, vs.* **COMMISSION ON AUDIT, HON. MA. GRACIA M. PULIDO TAN, Chairperson and HON. HEIDI L. MENDOZA, Commissioner,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT ENTITIES; DUTY FREE PHILIPPINES CORPORATION; CONSIDERED A GOVERNMENT ENTITY AND ITS PERSONNEL'S COMPENSATION STRUCTURE MUST COMPLY WITH THE SALARY STANDARDIZATION LAW.— The Duty Free was established under Executive Order (EO) No. 46 to improve the service facilities for tourists and to generate revenues for the government. In order for the government to exercise direct and effective control and regulation over the tax and duty free shops, their establishment and operation were vested in the DOT through its implementing arm, the PTA. All the net profits from the merchandising operations of the shops accrued to the DOT. Thus, the Duty Free is without a doubt a *government entity*. Executive Order No. 180, on the other hand, defines *government employees* as all employees of all branches, subdivisions, instrumentalities, and agencies, of the Government, including government-owned or controlled corporations with original charters. Plainly, as *government employees* working in a *government entity*, the Duty Free personnel's compensation structure must comply with and not contradict the SSL. The SSL took effect on July 1, 1989.

2. ID.; ID.; SALARY STANDARDIZATION LAW; CONSOLIDATION OF ALLOWANCES AND COMPENSATION; ONLY INCUMBENTS AS OF JULY 1, 1989 ARE ENTITLED TO CONTINUE RECEIVING ADDITIONAL COMPENSATION, WHETHER IN CASH OR IN KIND, NOT INTEGRATED WITH THE STANDARDIZED SALARY RATES.— [W]e

identify when the SSL became applicable to the Duty Free employees originally supplied by DFPSI. The record does not disclose the exact date but based on the COA's findings, the Duty Free terminated its manpower services contract with DFPSI after this Court denied its petition questioning the Med-Arbiter's decision in 1998, but before it paid the 14th Month Bonus in 2002. At the time the Duty Free paid the disallowed amount, the employees were already under its direct supervision and control. They were by then government employees, whose compensation and benefits must, from that point onward, be consistent with the SSL. We emphasize that Section 12 of the SSL mandates that only incumbents as of July 1, 1989 are entitled to continue receiving *additional compensation*, whether in cash or in kind, not integrated with the standardized salary rates. The 14th Month Bonus was an *additional benefit* granted under the employees' contracts with DFPSI. The COA thus correctly ruled that the 14th Month Bonus had no legal basis as far as the employees hired after July 1, 1989 are concerned. Viewed from another perspective, there is no diminution of benefits because the SSL is deemed to have superseded the contracts of the employees with DFPSI. The link between DFPSI and the employees was severed when the Duty Free terminated its manpower services contract with DFPSI and assumed the obligations of the latter. The Duty Free, however, could not legally assume an obligation (granting the 14th Month Bonus) that contradicts an express provision of law (Section 12 of the SSL). We thus uphold the COA's ruling that only those incumbents as of July 1, 1989 are entitled to continue receiving the 14th Month Bonus. We are aware, however, that the Duty Free employees and management had been exempted from the coverage of the SSL upon the effectivity of Republic Act No. 9593 or the *Tourism Act of 2009*. Our ruling here is thus relevant only to the period before the employees' exemption from the SSL.

3. ID.; ID.; ID.; ID.; THE OFFICIALS WHO APPROVED AND THE EMPLOYEES WHO RECEIVED THE DISALLOWED BENEFIT OR ALLOWANCE MAY NOT BE PERSONALLY LIABLE FOR REFUND BASED ON THE GOOD FAITH DOCTRINE; GOOD FAITH, DEFINED.— Although the 14th Month Bonus may have been paid without legal basis, we find that the Duty Free officials who approved and the employees who received the disallowed amount can take refuge under the

good faith doctrine. Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is "that state of mind denoting 'honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious.'" x x x [W]e find no credible basis to hold the concerned Duty Free officials and employees personally liable for the disallowed amount. On the contrary, we find that there are compelling grounds to believe that they acted in good faith. x x x [T]here was no controlling jurisprudence applicable at the time Duty Free granted the disallowed amount. There was no definitive guide that would have informed Duty Free that it could legally stop paying a contractually-granted employee benefit. We recognize that the present case is complex. It involves private sector employees who later became part of the government involuntarily. That their employment contracts with DFPSI granted the 14th Month Bonus added another layer of nuance to the case. To our mind, these factors, coupled with the lack of relevant ruling from this Court, created sufficient doubt on the legality of discontinuing the grant of the 14th Month Bonus. x x x [W]e accept the Duty Free management's explanation that they continued paying the 14th Month Bonus in recognition of what they thought to be the employees' vested right to their benefits. That they were mistaken should not be taken against them absent a clear showing of malice or bad faith on their part. We believe that the approving Duty Free officials merely erred on the side of caution when they continued paying the 14th Month Bonus. We share their concern that had they unilaterally stopped paying the benefits granted under the employees' contracts with DFPSI, the Duty Free would have been exposed to complaints and litigations. This distinct possibility could have disrupted the operation of the shops. Consequently, the employees who received the 14th Month Bonus are also deemed to have acted in good faith. They merely accepted what they thought was contractually due them. Besides, we cannot fairly expect them to verify the legality of every item of their compensation package; especially so in this case because the 14th Month Bonus was granted under their contracts with DFPSI.

APPEARANCES OF COUNSEL

Charlie DC Pascual for petitioner.
The Government Corporate Counsel for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BRION, *J.*:

Before this Court is a petition for *certiorari*[1] filed by the Duty Free Philippines Corporation (*Duty Free*)[2] to challenge the August 17, 2011 decision[3] and December 6, 2013 resolution[4] of the Commission on Audit (COA) in Decision No. 2011-059. The COA disallowed the payment of 14th Month Bonus to Duty Free officers and employees in the total amount of ₱14,864,500.13.

Antecedents

Executive Order (EO) No. 46[5] authorized the Ministry (now Department) of Tourism (DOT), through the Philippine Tourism Authority (PTA), to operate stores and shops that would sell tax and duty free merchandise, goods and articles, in international airports and sea ports throughout the country.[6] The Duty Free was established pursuant to this authority.

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[1] *Rollo*, pp. 3-14. The petition is filed under Rule 65 of the Rules of Court.

[2] Formerly Duty Free Philippines, *id.* at 3.

[3] *Id.* at 15-20.

[4] *Id.* at 23-24.

[5] Granting the Ministry of Tourism, Through the Philippine Tourism Authority (PTA), Authority to Establish and Operate A Duty and Tax Free Merchandising System in the Philippines dated September 4, 1986.

[6] *Rollo*, p. 15. *See* Section 1 of EO No. 46. Under Presidential Decree (PD) No. 564 dated October 2, 1974, the PTA is a government-owned or controlled corporation attached to the DOT.

The Duty Free Philippines Services, Inc. (DFPSI), a private contracting agency, initially provided the manpower needs of the Duty Free. The DFPSI employees organized the Duty Free Philippines Employees Association (DFPEA) and filed a petition for certification election with the Department of Labor and Employment.[7]

On April 22, 1997, the Med-Arbiter granted the application for certification election.[8] The Med-Arbiter found that the Duty Free was the direct employer of the contractual employees and that DFPSI was a labor-only contractor.[9] The Duty Free subsequently terminated its manpower services contract with DFPSI and assumed the obligations of the latter as the employer of the contractual personnel.

In 2002, the Duty Free granted the 14th Month Bonus to its officials and employees in the grand sum of Php14,864,500.13.[10]

On July 13, 2006, the COA Director 11 disallowed the payment of the 14th Month Bonus. The *Notice of Disallowance* reads in part:

> x x x Please be informed that the 14th month bonus paid to the officers and employees of [Duty Free] in 2002 amounting to ₱14,864,500.13 has been disallowed in audit as the same constitutes irregular expenditures and unnecessary use of public funds . . . the said grant being without the approval from the [PTA] Board of Directors and Office of the President as required under

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[7] *Id.* at 6 and 26.

[8] *Id.* at 25-35. Case No. NCR-OD-M-9606-015; order/decision issued by Med-Arbiter Tomas F. Falconitin. Department of Labor and Employment Secretary Leonardo A. Quisumbing affirmed the Med-Arbiter's decision in his resolution dated January 19, 1998; *id.* at 51-54.

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

[10] *Id.* at 16.

[11] Janet D. Nacion (Director IV).

Section 5 of P.D. No. 1597[12] and Memorandum Order No. 20[13] dated June 25, 2001.[14]

The COA Director ordered the following officials and employees to settle the disallowed amount:

1. Mr. Michael Christian U. Kho (*General Manager*) — for approving the 14th Month Bonus;
2. Ms. Ma. Teresa C. Panopio (*Acting HRMD Manager*) — for certifying that the expenses are necessary, lawful and incurred under her direct supervision;
3. Ms. Ma. Theresa R. Cruz (Accounting Manager) and Ms. Eleanor A. Macaraig (*Treasury Department Manager*) — for certifying that funds are available, the expenditures are proper and with adequate documentation; and
4. All officers and employees who received the 14th Month Bonus.[15]

The Duty Free moved for reconsideration before the COA Legal and Adjudication Sector (LAS).[16] The COA LAS denied

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[12] Section 5. *Allowances, Honoraria, and Other Fringe Benefits*.

Allowances, honoraria and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget. For this purpose, the Budget Commission shall review on a continuing basis and shall prepare, for the consideration and approval of the President, policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation.

[13] Section 3 of Memorandum Order No. 20 provides that any increase in salary or compensation of GOCCs/GFIs that are not in accordance with the SSL shall be subject to the approval of the President.

[14] *Rollo*, pp. 38-39. Notice of Disallowance No. PTA-2006-00.

[15] *Id.* at 39.

[16] *Id.* at 41-44. Motion for Reconsideration dated December 22, 2006, signed by Duty Free General Manager Michael Christian U. Kho.

the motion for reconsideration[17] and ruled that: (1) pursuant to this Court's ruling in *Duty Free Philippines v. Mojica*,[18] the Duty Free is a government entity under the exclusive authority of the PTA, a corporate body attached to the DOT;[19] and thus, (2) the Duty Free is not bound to pay the employee benefits previously granted by DFPSI, a private entity.

The COA LAS explained that the finding of the Med-Arbiter that DFPSI is a labor-only contractor converted the status of the employees from private to government. Thus, the non-payment of the 14th Month Bonus is not a diminution of the workers' benefits since their salaries and benefits are governed by law, rules and regulations applicable to government employees.

The Duty Free appealed to the COA Proper and claimed that: (1) this Court in *Duty Free Philippines v. Duty Free Philippines Employees Association (DFPEA)*[20] mandated the grant of the 14th Month Bonus; (2) the COA erred in applying the Mojica case; and (3) the grant of the 14th Month Bonus had legal basis.[21]

The COA Decision

The COA partly granted the Duty Free's petition for review and ruled as follows:

First, the *DFPEA* case did not rule that the Duty Free is bound to pay the 14th Month Bonus.[22] In that case, the Court denied through a minute resolution, the Duty Free's petition questioning the Med-Arbiter decision allowing the certification

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[17] *Id.* at 45-50. Legal and Adjudication Sector Decision No. 2009-006 dated January 28, 2009.

[18] 508 Phil. 726 (2005).

[19] *Rollo*, p. 48. The PTA is created by Presidential Decree No. 564.

[20] *Id.* at 36-37. G.R. No. 134151, December 7, 1998. Resolution signed by First Division Clerk of Court Virginia Ancheta-Soriano.

[21] *Id.* at 16.

[22] *Id.* at 17.

election. The Duty Free's petition was insufficient in form (lacks material dates) and substance (the Med-Arbiter did not gravely abuse his discretion).[23] This Court did not resolve the propriety of the 14th Month Bonus.

Second, the Duty Free employees are government employees. Their compensation structure is subject to Republic Act No. 6758 or the Salary Standardization Law (SSL for brevity).[24]

Applying our decision in *Philippine Ports Authority v. COA*,[25] the COA ruled that the additional (*i.e.*, not integrated with the base salary) allowances and benefits granted to incumbent government employees before the effectivity of the SSL (July 1, 1989)[26] shall not be diminished. The Duty Free employees who have been receiving the 14th Month Bonus as of July 1, 1989 shall continue to receive it. The Duty Free employees hired after July 1, 1989 shall not be entitled to the 14th Month Bonus although their employment contracts with DFPSI gave such entitlement.[27]

Citing the Civil Code, the COA stressed that contracting parties may establish stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.[28] Since salaries and compensation benefits of government employees are governed by the SSL, they cannot be the subject of negotiation, and any benefit not allowed under the SSL although stipulated in the employment contracts is disallowed.[29]

The dispositive portion of the COA decision reads:

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[23] *Ibid.*

[24] *Id.* at 18.

[25] G.R. No. 100773, October 16, 1992, 214 SCRA 653.

[26] Section 23 of the SSL.

[27] *Rollo*, p. 18.

[28] Citing Article 1306, Civil Code.

[29] *Rollo*, pp. 18-19.

WHEREFORE, premises considered, the herein petition for review is **PARTIALLY GRANTED**. Those [Duty Free] employees who have been receiving the 14th Month Bonus as of July 1, 1989, the effectivity date of the SSL, shall continue to receive the same while those hired after July 1, 1989 shall not be entitled thereto. LSS Decision No. 2009-006 dated January 28, 2009 and ND No. PTA-2006-001 dated July 13, 2006 disallowing the payment of 14th Month Bonus to [Duty Free] officials and employees in CY 2002 are **MODIFIED** accordingly.[30]

The COA denied the Duty Free's motion for reconsideration.[31] Aggrieved, the Duty Free came to this Court for relief through the present petition for *certiorari*.

The Petition

The Duty Free maintains that it was authorized and had the duty to grant the 14th Month Bonus on the main ground that it would have diminished the employees' benefits if it had discontinued the payment.[32]

The Duty Free argues that there is no substantial distinction between the employees hired before the effectivity of the SSL and the employees hired after.[33] All Duty Free employees whether hired before or after July 1, 1989 had the vested right to the 14th Month Bonus granted under their employment contracts.

The Duty Free submits that the distinction between employees hired before and after the effectivity of the SSL in *Philippine Ports Authority* case is inapplicable here. Unlike the Philippine Ports Authority employees who are clearly government employees, the Duty Free employees were initially hired by DFPSI, a private contracting agency.[34]

The Duty Free posits that the Med-Arbiter's ruling did not allow the diminution of employee benefits. In any case, it was

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[30] *Id.* at 19.

[31] *Supra* note 4.

[32] *Rollo*, p. 9.

[33] *Ibid.*

[34] *Ibid.*

only in 1998 in the *DFPEA* case that this Court upheld that the Duty Free is the employer of the DFPSI personnel. Even then, it was only in the 2005 *Mojica* case that this Court held that the Duty Free officials and employees are subject to Civil Services rules. The Duty Free underscores that before *Mojica*, disputes in Duty Free involving terms of employment were resolved under the Labor Code.[35]

The Duty Free also insists that the COA erred when it invoked the 2005 *Mojica* case in disallowing the payment of the 14th Month Bonus made in 2002. Assuming the SSL is applicable to the Duty Free employees, it should only be applied to cases after *Mojica*.

Finally, the Duty Free submits that the payment of the 14th Month Bonus was made in good faith, supported by then existing jurisprudence, and based on the recognition of the Duty Free employees' vested rights to the benefits granted under their employment contracts.

On March 24, 2014, the Office of the Government Corporate Counsel (OGCC) filed its entry of appearance as counsel for Duty Free.[36] The next day, the OGCC moved for the issuance of a temporary restraining order (TRO) and preliminary injunction[37] to bar the execution of the COA decision.

On April 22, 2014, the Court issued the TRO.[38]

On June 17, 2014, the COA, through the Office of the Solicitor General (OSG), filed its comment.[39]

The COA's Comment

The COA refutes the Duty Free's claims on the following grounds:

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[35] *Id.* at 10.

[36] *Id.* at 57-59.

[37] *Id.* at 62-71.

[38] *Id.* at 89-91.

[39] *Id.* at 104-115.

First, the Med-Arbiter did not rule that the Duty Free must continue paying all the benefits enjoyed by the contractual personnel supplied by DFPSI. The Med-Arbiter's determination of the employer-employee relationship between the Duty Free and the members of the DFPEA was necessary in deciding whether to allow the certification election. That determination did not require the Duty Free to pay the 14th Month Bonus.[40]

The COA posits that when we dismissed the Duty Free's petition questioning the Med-Arbiter decision, what we upheld was the propriety of the certification election and not the payment of the 14th Month Bonus.[41]

Second, the July 1, 1989 cut-off date to determine the entitlement of the Duty Free employees to the 14th Month Bonus is consistent with the Court's past ruling[42] construing Section 12[43] of the SSL on the consolidation of allowances and compensation. The Court has held that incumbent government employees as of July 1, 1989, who were receiving allowances or fringe benefits, whether or not included in the standardized salaries under the SSL, should continue to enjoy such benefits.[44]

Third, the Duty Free employees are government employees subject to the SSL.[45] The employees did not retain their benefits

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[40] *Id.* at 107.

[41] *Rollo*, pp. 107-108.

[42] *Agra et al. v. COA*, 677 Phil. 608 (2011).

[43] Section 12 of the SSL provides that:

Section 12. Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad, and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

[44] *Rollo*, p. 109.

[45] *Ibid.*

under the employment contracts with DFPSI when, in view of the Med-Arbiter's decision, Duty Free terminated its manpower services contract with DFPSI.

The Issue

The basic issue is whether the COA gravely abused its discretion when it disallowed the payment of the 14th Month Bonus. We also resolve whether the concerned Duty Free officers and employees may be held personally liable for the disallowed amount.

Our Ruling

We partly grant the petition.

The COA did not gravely abuse its discretion when it disallowed the payment of the 14th Month Bonus. However, the Duty Free officers who approved and the employees who received the 14th Month Bonus are not required to refund the disallowed payment.

The Duty Free employees are government employees subject to the SSL.

There is no dispute that PTA, a government-owned and controlled corporation attached to the DOT, operates and manages the Duty Free.[46] There is also no question that the employees supplied by DFPSI became government employees when the Duty Free terminated its manpower services contract with DFPSI.

The only question now is whether the Duty Free had the duty to continue paying the 14th Month Bonus. The Duty Free argues in the affirmative and invokes the principle of non-diminution of benefits. The COA insists the opposite and cites the SSL, the primary law on the compensation structure of government employees.

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[46] *Supra* note 6.

We agree with the COA's contention.

The Duty Free was established under Executive Order (EO) No. 46[47] to improve the service facilities for tourists and to generate revenues for the government. In order for the government to exercise direct and effective control and regulation over the tax and duty free shops, their establishment and operation were vested in the DOT through its implementing arm, the PTA. All the net profits from the merchandising operations of the shops accrued to the DOT.[48] Thus, the Duty Free is without a *doubt a government entity*.

Executive Order No. 180, on the other hand, defines *government employees* as all employees of all branches, subdivisions, instrumentalities, and agencies, of the Government, including government-owned or controlled corporations with original charters.[49]

Plainly, *as government employees* working in *a government entity*, the Duty Free personnel's compensation structure must comply with and not contradict the SSL.

The SSL took effect on July 1, 1989. Relevant provisions of the law include:

Section 4. Coverage. — The Compensation and Position Classification System herein provided shall apply to **all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government**, including government-owned or controlled corporations and government financial institutions. [Emphasis supplied]

Section 12. Consolidation of Allowances and Compensation. — **All allowances**, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance

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[47] Dated September 4, 1986.

[48] *Supra* note 18, at 730.

[49] Section 1 of Executive Order No. 180, entitled, Providing Guidelines for the Exercise of the Right to Organize of Government Employees, Creating a Public Section Labor-Management Council, and for Other Purposes (June 1, 1987).

of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, **shall be deemed** *included* **in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.** [Emphasis supplied]

For better focus, we identify when the SSL became applicable to the Duty Free employees originally supplied by DFPSI.

The record does not disclose the exact date but based on the COA's findings, the Duty Free terminated its manpower services contract with DFPSI after this Court denied its petition questioning the Med-Arbiter's decision in 1998, but before it paid the 14th Month Bonus in 2002.[50]

At the time the Duty Free paid the disallowed amount, the employees were already under its direct supervision and control. They were by then government employees, whose compensation and benefits must, from that point onward, be consistent with the SSL.[51]

We emphasize that Section 12 of the SSL mandates that only incumbents as of July 1, 1989 are entitled to continue receiving *additional compensation*, whether in cash or in kind, not integrated with the standardized salary rates.[52] The 14th Month Bonus was an *additional benefit* granted under the employees' contracts with DFPSI. The COA thus correctly ruled that the 14th Month Bonus had no legal basis as far as the employees hired after July 1, 1989 are concerned.

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[50] *Rollo*, p. 7.

[51] Duty Free employees and management were exempted from the coverage of the SSL upon the effectivity of Republic Act (R.A.) No. 9593 or the *Tourism Act of 2009*. *See* Section 105 of R.A. No. 9593, which was approved on May 12, 2009.

[52] *Supra* note 25.

Viewed from another perspective, there is no diminution of benefits because the SSL is deemed to have superseded the contracts of the employees with DFPSI. The link between DFPSI and the employees was severed when the Duty Free terminated its manpower services contract with DFPSI and assumed the obligations of the latter. The Duty Free, however, could not legally assume an obligation (granting the 14th Month Bonus) that contradicts an express provision of law (Section 12 of the SSL).

We thus uphold the COA's ruling that only those incumbents as of July 1, 1989 are entitled to continue receiving the 14th Month Bonus. We are aware, however, that the Duty Free employees and management had been exempted from the coverage of the SSL upon the effectivity of Republic Act No. 9593 or the *Tourism Act of 2009*.[53] Our ruling here is thus relevant only to the period before the employees' exemption from the SSL.

Finally, we reject the Duty Free's claim that we upheld the payment of the 14th Month Bonus in the DFPEA case.

In that case, we denied, *through a minute resolution*, the Duty Free's petition for *certiorari*, which sought to void the Med-Arbiter's order to conduct a certification election. We did not discuss the propriety of the 14th. Month Bonus because the sole issue was whether the Med-Arbiter gravely abused his discretion. The *DFPEA* case had nothing to do with the legality of the 14th Month Bonus.

The Duty Free officers who approved and the employees who received the 14th Month Bonus are not required to return the disallowed amount.

Although the 14th Month Bonus may have been paid without legal basis, we find that the Duty Free officials who approved and the employees who received the disallowed amount can take refuge under the good faith doctrine.

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[53] *Supra* note 51.

Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is "that state of mind denoting 'honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious.'"[54]

Citing earlier jurisprudence, this Court in *Mendoza v. COA*[55] and in the more recent case of *Zamboanga Water District v. COA*[56] recognized that the officers who approved and the employees who received the disallowed amount may not be held personally liable for refund absent a showing of bad faith or malice. This recognition stems from the rule that every public official is entitled to the presumption of good faith in the discharge of official duties.

In particular, we held in *Zamboanga Water District* that lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith.

Applying these rulings to the present case, we find no credible basis to hold the concerned Duty Free officials and employees personally liable for the disallowed amount. On the contrary, we find that there are compelling grounds to believe that they acted in good faith.

First, similar to the above-cited cases, there was no controlling jurisprudence applicable at the time Duty Free granted the disallowed amount. There was no definitive guide that would have informed Duty Free that it could legally stop paying a contractually-granted employee benefit.

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[54] *PEZA v. COA*, 690 Phil. 104, 115 (2012), cited in *Zamboanga Water District v. COA*, G.R. No. 213472, January 26, 2016.

[55] G.R. No. 195395, September 10, 2013, 705 SCRA 306.

[56] *Supra* note 54.

We recognize that the present case is complex. It involves private sector employees who later became part of the government involuntarily. That their employment contracts with DFPSI granted the 14th Month Bonus added another layer of nuance to the case. To our mind, these factors, coupled with the lack of relevant ruling from this Court, created sufficient doubt on the legality of discontinuing the grant of the 14th Month Bonus.

True, the *Philippine Ports Authority* case determined the entitlement of the employees to additional benefits on whether they were hired before or after the effectivity of the SSL. That case is not squarely applicable here. The Philippine Ports Authority employees were, without question, government employees. At no point did the terms and conditions of their employment govern by private contracts as in the case of the Duty Free (formerly DFPSI) employees.

Second, we accept the Duty Free management's explanation that they continued paying the 14th Month Bonus in recognition of what they thought to be the employees' vested right to their benefits. That they were mistaken should not be taken against them absent a clear showing of malice or bad faith on their part.

We believe that the approving Duty Free officials merely erred on the side of caution when they continued paying the 14th Month Bonus. We share their concern that had they unilaterally stopped paying the benefits granted under the employees' contracts with DFPSI, the Duty Free would have been exposed to complaints and litigations. This distinct possibility could have disrupted the operation of the shops.

Consequently, the employees who received the 14th Month Bonus are also deemed to have acted in good faith. They merely accepted what they thought was contractually due them. Besides, we cannot fairly expect them to verify the legality of every item of their compensation package; especially so in this case because the 14th Month Bonus was granted under their contracts with DFPSI.

WHEREFORE, in view of the foregoing findings and legal premises, we **PARTLY GRANT** the petition and **MODIFY** the August 17, 2011 decision and December 6, 2013 resolution of the Commission on Audit in Decision No. 2011-059, such that the **officers who approved** and the **employees who received** the 14th Month Bonus are **NOT** personally liable to refund the disallowed amount.

The Temporary Restraining Order issued on April 22, 2014 is **LIFTED**.

SO ORDERED.

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

Mendoza, J., on official leave.

Reyes, J., on leave.

Jardeleza, J., no part.

EN BANC

[G.R. No. 213847. July 12, 2016]

JUAN PONCE ENRILE, *petitioner, vs.* **SANDIGANBAYAN (THIRD DIVISION), AND PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; THE PRINCIPAL FACTOR IN BAIL FIXING IS THE PROBABILITY OF APPEARANCE OF THE ACCUSED

BEFORE THE PROPER COURT, OR OF HIS FLIGHT TO AVOID PUNISHMENT.— Section 2, Rule 114 of the *Rules of Court* expressly states that one of the conditions of bail is for the accused to "appear before the proper court whenever required by the court or these Rules." The practice of bail fixing supports this purpose. Thus, in *Villaseñor v. Abaño,* the Court has pronounced that "the principal factor considered (in bail fixing), to the determination of which most factors are directed, is the probability of the appearance of the accused, or of his flight to avoid punishment." The Court has given due regard to the primary but limited purpose of granting bail, which was to ensure that the petitioner would appear during his trial and would continue to submit to the jurisdiction of the *Sandiganbayan* to answer the charges levelled against him.

2. ID.; ID.; ID.; ACTS AS A RECONCILING MECHANISM TO ACCOMMODATE BOTH THE ACCUSED'S INTEREST IN PRE-TRIAL LIBERTY AND SOCIETY'S INTEREST IN ASSURING HIS PRESENCE AT TRIAL.— Bail exists to ensure society's interest in having the accused answer to a criminal prosecution without unduly restricting his or her liberty and without ignoring the accused's right to be presumed innocent. It does not perform the function of preventing or licensing the commission of a crime. The notion that bail is required to punish a person accused of crime is, therefore, fundamentally misplaced. Indeed, the practice of admission to bail is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. The spirit of the procedure is rather to enable them to stay out of jail until a trial with all the safeguards has found and adjudged them guilty. Unless permitted this conditional privilege, the individuals wrongly accused could be punished by the period of imprisonment they undergo while awaiting trial, and even handicap them in consulting counsel, searching for evidence and witnesses, and preparing a defense. Hence, bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring his presence at trial.

3. ID.; ID.; ID.; THE EXCEPTION TO THE FUNDAMENTAL RIGHT TO BAIL SHOULD BE APPLIED IN DIRECT RATIO TO THE EXTENT OF THE PROBABILITY OF

EVASION OF PROSECUTION.— Admission to bail always involves the risk that the accused will take flight. This is the reason precisely why the probability or the improbability of flight is an important factor to be taken into consideration in granting or denying bail, even in capital cases. The exception to the fundamental right to bail should be applied in direct ratio to the extent of the probability of evasion of prosecution. Apparently, an accused's official and social standing and his other personal circumstances are considered and appreciated as tending to render his flight improbable. The petitioner has proven with more than sufficient evidence that he would not be a flight risk. For one, his advanced age and fragile state of health have minimized the likelihood that he would make himself scarce and escape from the jurisdiction of our courts.

BRION, *J., separate concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO BAIL; BAIL IS ACCORDED TO A PERSON UNDER THE CUSTODY OF THE LAW, WHO BEFORE CONVICTION AND WHILE HE ENJOYS THE PRESUMPTION OF INNOCENCE, MAY BE ALLOWED PROVISIONAL LIBERTY UPON THE FILING OF A BOND TO SECURE HIS APPEARANCE BEFORE ANY COURT, AS REQUIRED UNDER SPECIFIED CONDITIONS.— Our Constitution zealously guards every person's right to life and liberty against unwarranted state intrusion; indeed, no state action is permitted to invade this sacred zone except upon observance of due process of law. Like the privilege of the writ of *habeas corpus*, the right to bail provides complete substance to the ***guarantee of liberty*** under the Constitution; without it, the right to liberty would not be meaningful, while due process would almost be an empty slogan. A related right is the ***right to be presumed innocent*** from where, the right to bail also draws its strength. Bail is accorded to a person under the custody of the law who, before conviction and *while he enjoys the presumption of innocence*, may be allowed provisional liberty upon the filing of a bond to secure his appearance before any court, as required under specified conditions. State interest is recognized through the submitted bond and by the guarantee that the accused would appear before any court as required under the terms of the bail.

2. ID.; ID.; ID.; ID.; BAIL IS A DEMANDABLE CONSTITUTIONAL RIGHT EXCEPT WHEN THE EVIDENCE OF GUILT OF THE PERSON CHARGED WITH A CRIME THAT CARRIES THE PENALTY OF *RECLUSION PERPETUA*, LIFE IMPRISONMENT, OR DEATH IS FOUND TO BE STRONG.— The constitutional mandate is that "[a]ll persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. x x x " Under this provision, bail is clearly a *demandable constitutional right*; it only ceases to be so recognized when evidence of guilt of the person — charged with a crime that carries the penalty of *reclusion perpetua*, life imprisonment, or death — is found to be strong. From the *perspective of innocence*, this degree of evidence apparently renders less certain the presumption of innocence that the accused enjoys before conviction. But while bail is separately treated for those charged with a crime that carries the penalty of *reclusion perpetua or higher*, ***the Constitution does not expressly and absolutely prohibit the grant of bail even for the accused who are so charged.*** If the evidence of guilt is *not strong,* as the courts may determine *in their discretion*, then the accused may be demanded still as of right. If the evidence of guilt, on the other hand, is strong, this preliminary evaluation, made prior to conviction, may *render the presumption of innocence lighter in its effects, but does not totally negate it*; constitutionally, the presumption of innocence that the accused enjoys still exists as only final conviction erases it.

3. ID.; JUDICIAL DEPARTMENT; JUDICIAL POWER; THE SPECIFIC POWERS MENTIONED IN THE CONSTITUTION DO NOT CONSTITUTE THE TOTALITY OF THE JUDICIAL POWER THAT THE CONSTITUTION GRANTS THE COURTS, SUCH THAT THE COURTS MAY ALSO ACT WITHIN THE PENUMBRAL AREA NOT DEFINITIVELY DEFINED BY LAW BUT NOT EXCLUDED FROM THEIR AUTHORITY BY THE CONSTITUTION AND THE LAW.— I have considered the judicial power that the courts have been granted under the Constitution. This power ***includes*** the duty to settle actual controversies involving rights which are legally demandable and enforceable. It likewise encompasses the

protection and enforcement of constitutional rights, through promulgated rules that also cover pleading, practice and procedure. I hold the view that judicial power, *by its express terms*, is ***inclusive*** rather than exclusive: the specific powers mentioned in the Constitution do not constitute the totality of the judicial power that the Constitution grants the courts. Time and again, the Supreme Court has given this constitutional reality due recognition by acting, not only within the clearly defined parameters of the law, but also within that *penumbral area not definitively defined by the law but not excluded from the Court's authority by the Constitution and the law*. The Court has particularly recognized its authority to so act if sufficiently compelling reasons exist that would serve the ends of the Constitution — the higher interests of justice, in this case, the protection and recognition of the right to liberty based on the special circumstances of the accused.

4. ID.; ID.; COURTS; EQUITY JURISDICTION, DEFINED; WHERE THE LAW PRESCRIBES A PARTICULAR REMEDY WITH FIXED AND LIMITED BOUNDARIES, THE COURT CANNOT, BY EXERCISING EQUITY JURISDICTION, EXTEND THE BOUNDARIES FURTHER THAN THE LAW ALLOWS.— [O]n the dictates of equity and the need to serve the higher interest of justice, I believe that it is within the authority of the Court to inquire if the special circumstances the accused submitted are sufficiently compelling reasons for the grant of bail to Enrile. Equity jurisdiction is used to describe the power of the court to resolve issues presented in a case in accordance with *natural rules of fairness and justice in the absence of a clear, positive law governing the resolution of the issues posed.* Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate. x x x I am not unaware that courts exercising equity jurisdiction must still apply the law and have no discretion to disregard the law. Equitable principles must always remain subordinate to positive law, and cannot be allowed to subvert it, nor do these principles give to the Courts authority to make it possible to do so. Thus, where the law prescribes a particular remedy with fixed and limited boundaries, the court cannot,

by exercising equity jurisdiction, extend the boundaries further than the law allows.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; THE REVISED RULES OF COURT CANNOT FORECLOSE THE EXERCISE OF A DISCRETIONARY GRANT OF BAIL, FOR THE CONSTITUTIONAL PROVISION ON BAIL SPEAKS ONLY OF BAIL AS A MATTER OF RIGHT AND DOES NOT PROHIBIT A DISCRETIONARY GRANT BY THE COURTS.— Where the *libertarian intent* of the Constitution, however, is beyond dispute; where this same Constitution itself does not *substantively* prohibit the grant of provisional liberty even to those charged with crimes punishable with *reclusion perpetua* where evidence of guilt is strong; and where exceptional circumstances are present as compelling reasons for humanitarian considerations, I submit that the Court does not stray from the parameters of judicial power if it uses equitable considerations in resolving a case. I note in this regard that together with Section 13, Article III of the Constitution x x x[,] Section 7 of Rule 114 of the Revised Rules of Court states that no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment when the evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal action. Thus, seemingly, there exists a law or, to be exact, a remedial rule, that forecloses the grant of bail to an accused who falls within the exception identified under Section 13, Article III of the Constitution. Rule 114 of the Revised Rules of Court, however, cannot foreclose the exercise by the Court of a discretionary grant of bail because the constitutional provision on bail speaks only of bail as a matter of right and does not prohibit a discretionary grant by the courts, particularly by the Supreme Court which is the fountainhead of all rules of procedure and which can, when called for, suspend the operation of a rule of procedure. In hierarchal terms, the constitutional provision on bail occupies a very much higher plane than a procedural rule. Notably, Rule 114 directly addresses the grant of a right under the constitutional provision — a situation where no equitable considerations are taken into account. In this situation, the Court's hands are in fact tied as it must comply with the direct command of the Constitution. But when compelling circumstances exist, x x x the situation cannot but change and shifts into that penumbral area that is not covered by the exact parameters of the express

words of the Constitution yet is not excluded by it. In this domain, when compelling reasons exist to carry into effect the intent of the Constitution, equity can come into play. I reiterate that the fundamental consideration in confining an accused before conviction is to assure his presence at the trial. The denial of bail in capital offense is on the theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face a verdict in court. Hence, the exception to the fundamental right to be bailed should be applied in direct ratio to the extent of the probability of the evasion of the prosecution.

6. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO BAIL; BAIL MAY BE GRANTED BASED ON HUMANITARIAN CONSIDERATIONS.— [T]he use of humanitarian considerations in the grant of bail on the basis of health is not without precedent. x x x Contrary to what the *People* insinuated in its motion, there has been no Court decision expressly abandoning *Dela Rama* [*v. People*]. That the amendments to Rule 114 did not incorporate the pronouncement in *Dela Rama* (that bail may be granted if continued confinement in prison would be injurious to their health or endanger their life) did not *ipso facto* mean that the Court was precluding an accused from citing humanitarian considerations as a ground for bail.

7. ID.; ID.; ID.; EQUAL PROTECTION CLAUSE; ANY CLAIM OF VIOLATION THEREOF MUST CONVINCINGLY SHOW THAT THERE EXISTS A CLASSIFICATION THAT IS BLATANTLY ARBITRARY OR CAPRICIOUS, AND THAT THERE IS NO RATIONAL BASIS FOR THE DIFFERING TREATMENT.— [T]he grant of provisional liberty to Enrile did not violate the equal protection clause under the Constitution. The guarantee of equal protection of the law is a branch of the right to due process embodied in Article III, Section 1 of the Constitution. It is rooted in the same concept of fairness that underlies the due process clause. In its simplest sense, it requires equal treatment, *i.e.*, the absence of discrimination, for all those under the same situation. x x x Hence, any claim of violation of the equal protection clause must convincingly show that there exists a classification that is blatantly arbitrary or capricious, and that there is no rational basis for the differing treatment. **The present motion for reconsideration had not shown that there were other**

nonagenarian charged with a capital offense who are currently behind bars.

LEONEN, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO BAIL; BAIL IS AUTOMATIC WHEN THE OFFENSE CHARGED IS NOT PUNISHABLE BY *RECLUSION PERPETUA*, BUT WHEN THE OFFENSE CHARGED IS PUNISHABLE BY *RECLUSION PERPETUA*, BAIL SHALL BE GRANTED ONLY AFTER A HEARING OCCASIONED BY A PETITION FOR BAIL.— Bail is a constitutional right of the accused. It should be correctly read in relation to his fundamental right to be presumed innocent. However, contrary to the position of the ponencia and of Associate Justice Arturo Brion in his Separate Opinion, availing of this right is also constrained by the same Constitution. When the offense charged is not punishable by *reclusion perpetua*, bail is automatic. The only discretion of the court is to determine the amount and kind of bail to be posted. When the crime is not punishable by *reclusion perpetua*, there is no need for the court to determine whether the evidence of guilt is strong. Equally fundamental, from the clear and unambiguous text of the provision of the Constitution, the Rules of Court, and our jurisprudence, is that when the offense charged is punishable by *reclusion perpetua*, bail shall be granted only after a hearing occasioned by a petition for bail. The phrase "*except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong*" found in the Constitution is a sovereign determination that qualifies the presumption of innocence and the right to bail of persons detained under custody of law. There is no room for equity when the provisions of the law are clear.

2. ID.; ID.; ID.; ID.; BAIL IS A MATTER OF DISCRETION WHEN THE OFFENSE CHARGED IS PUNISHABLE BY *RECLUSION PERPETUA*, AND AN APPLICATION FOR BAIL MUST BE FILED AND A HEARING MUST BE MANDATORILY CONDUCTED TO DETERMINE IF THE EVIDENCE OF GUILT IS STRONG.— The opportunity granted to the prosecution to prove that evidence of guilt is strong so as to defeat the prayer of an accused to be released on bail is a mandatory constitutional process. It is part of the

prosecution's right to due process. It is an elementary requirement of fairness required by law and equity. In criminal prosecutions, it is not only the accused that is involved. The state represents the People. Thus, violating the prosecution's right to due process of law trivializes the interest of the People in criminal actions. x x x [W]hen the offense charged is punishable by *reclusion perpetua*, bail is regarded as a "matter of discretion." When bail is a matter of discretion, an application for bail must be filed and a bail hearing must be mandatorily conducted to determine if the evidence of guilt is strong. Absent this, bail can neither be granted nor denied. Accused was charged with plunder. Under Republic Act No. 7080, plunder is punishable by *reclusion perpetua* to death. Accused, through counsel, submitted a Motion to Fix Bail and thereby precluded any determination on whether the evidence against him was strong. Accused, through counsel, disregarded the fundamental requirements of the Constitution, the Rules of Court that this Court promulgated, and the unflinching jurisprudence of this Court.

3. ID.; ID.; ID.; DUE PROCESS; VIOLATED WHEN THE PROSECUTION WAS NOT GIVEN THE OPPORTUNITY TO CHALLENGE THE ALLEGATIONS IN THE MOTION IN CASE AT BAR.— The basis for the Motion to Fix Bail was not the frail condition of accused. Rather, it was the Motion's argument that there were two (2) mitigating circumstances: advanced age and voluntary surrender. x x x Accused only raised his frail health in relation to the conclusion that he was not a flight risk. Accused did not justify, on the basis of his frail health, his allowance to bail without a hearing on whether the evidence of guilt was strong. As extensively discussed in the Dissenting Opinion filed with the first resolution of this case, the majority in this Court granted bail on a ground other than that which was argued or prayed for in this Petition. Furthermore, the certification relied upon by the majority was presented not for having accused released on bail. The hearing relating to this certification was to determine whether accused's detention in a hospital should continue. It was not for determining whether there were serious reasons for his urgent release. x x x Finally, we imposed an arbitrary amount of ₱1,000,000.00 as bail for accused. The prosecution was not given the opportunity to comment on the amount of bail. The sufficiency of this amount,

in relation to the net worth of accused or his sources of income, has not been presented in evidence. Whether it suffices to guarantee his appearance in further court proceedings, therefore, is the product of the collective conjecture of this Court. We are bereft with factual basis. Our rules are designed to have the Sandiganbayan or a trial court determine these facts. It is not within our competence to receive this type of evidence. Certainly, it is not within our jurisdiction to go beyond the provisions of the Constitution. In my view, these observations show a quintessential disrespect for the inherent due process rights of the prosecution. We have sprung a surprise on the prosecution, and have given an unexpected gift to accused. This is not fairness as I understand it.

4. ID.; JUDICIAL DEPARTMENT; SUPREME COURT; JUDICIAL EXCEPTIONALISM; CAUSED BY GRANTING EXCEPTIONAL TREATMENT WITHOUT BASIS IN THE CONSTITUTION OR IN THE RULES OF COURT TO FAVOR THE RICH AND THE POWERFUL; CASE AT BAR.— Justice Brion x x x suggests that the prosecution was unable to show any other nonagenarian who is incarcerated and is in the same position as petitioner in this case. This certainly is not the point. Again, the point is whether there is basis in our Constitution or in our Rules of Court to grant exceptional treatment to petitioner. I maintain that there is none. Even if there were, there are still those whose conditions are worse off than that of petitioner. x x x Indeed, petitioner is a nonagenarian who suffers from some medical ailments. Yet, we should not erase the privileges he was given. Petitioner is accused of plunder, which requires a charge that he has defrauded the people of at least ₱75,000,000.00 or more and has taken advantage of his public office. He was not accused of stealing bread because he was driven by the hopelessness of fearing that his children would go hungry. Petitioner did not share the crowded spaces of the impoverished hordes in detention facilities. He was given the privilege of being incarcerated in special quarters, and then later, in a government hospital. x x x Narrowing our vision and making his privileges invisible will result in unfounded judicial exceptionalism. Judicial exceptionalism, consciously or unconsciously, favors the rich and powerful. Injustice entrenches inequality. Inequality assures poverty. Poverty ensures crimes that provide discomfort to the rich. But crimes are expressions of hopelessness by many, no matter how illegitimate.

There may be no more nonagenarians who suffer in special confinement in government hospitals. Certainly, there are many more languishing in our ordinary detention centers. All these should bother our sense of fairness.

5. ID.; ID.; ID.; ID.; DECISIONS; DISSENTING OPINION, NATURE; AN EFFECTIVE DISSENT IS AN EFFORT TO CALL ATTENTION TO DETAILS AND PRINCIPLES THAT MAY HAVE BEEN OVERLOOKED BY THE MAJORITY AND IT IS NEVER A MEANS TO UNDERMINE THE COMPETENCE OF ANY MEMBER OF THE COURT.— A dissenting opinion, in my view, should be read to express the principled view of its author regarding the facts, issues, legal principles, and interpretative methodologies that should be applied in a case. It is never the forum to cast doubt on the character of esteemed colleagues. Dissents, by their very nature, cause a degree of discomfort to those whose views are different. This discomfort is part of a collegiate court and a vibrant judiciary. It should be appreciated by the public as reflecting competing points of view on matters of principle, not as a staged and puerile clash of gladiators. The drama lies on the points raised, not on the personalities that are mediums for these standpoints. Effective dissents strive to be articulate, but not caustic. An effective dissent is an effort to call attention to details and principles that may have been overlooked by the majority. It is never a means to undermine the competence of any member of this Court. It is the result of a constitutional duty to lay down what each of us views as a more convincing standpoint as well as a more reasoned and just conclusion.

APPEARANCES OF COUNSEL

Estelito P. Mendoza, Susan A. Mendoza, Lorenzo G. Timbol, Ma. Donnabel T. Tan and Marie Krizel P. Malabanan, Eleazar B. Reyes, Joseph B. Saganday, Jr. Edwardson L. Ong, Erwin G. Matig and Kay Angela R. Peñaflorida for petitioner.

The Solicitor General for respondents.

R E S O L U T I O N

BERSAMIN, *J.*:

The People of the Philippines, represented by the Office of the Special Prosecutor of the Office of the Ombudsman, have filed their *Motion for Reconsideration* to assail the decision promulgated on August 18, 2015 granting the petition for *certiorari* of the petitioner, and disposing thusly:

> **WHEREFORE**, the Court **GRANTS** the petition for *certiorari*; **ISSUES** the writ of *certiorari* **ANNUL[L]ING** and **SETTING ASIDE** the Resolutions issued by the Sandiganbayan (Third Division) in Case No. SB-14-CRM-0238 on July 14, 2014 and August 8, 2014; **ORDERS** the **PROVISIONAL RELEASE** of petitioner Juan Ponce Enrile in Case No. SB-14-CRM-0238 upon posting of a cash bond of ₱1,000,000.00 in the Sandiganbayan; and **DIRECTS** the immediate release of petitioner Juan Ponce Enrile from custody unless he is being detained for some other lawful cause.
>
> No pronouncement on costs of suit.
>
> SO ORDERED.[1]

The People rely on the following grounds for the reversal of the decision of August 18, 2015, to wit:

> I. THE *DECISION* GRANTING BAIL TO PETITIONER WAS PREMISED ON A FACTUAL FINDING THAT HE IS NOT A FLIGHT RISK, ON A DETERMINATION THAT HE SUFFERS FROM A FRAGILE STATE OF HEALTH AND ON OTHER UNSUPPORTED GROUNDS UNIQUE AND PERSONAL TO HIM. IN GRANTING BAIL TO PETITIONER ON THE FOREGOING GROUNDS, THE *DECISION* UNDULY AND RADICALLY MODIFIED CONSTITUTIONAL AND PROCEDURAL PRINCIPLES GOVERNING BAIL WITHOUT SUFFICIENT CONSTITUTIONAL, LEGAL AND JURISPRUDENTIAL BASIS.
>
> A. THE *DECISION* OPENLY IGNORED AND ABANDONED THE CONSTITUTIONALLY-

[1] *Rollo*, pp. 624-625.

MANDATED PROCEDURE FOR DETERMINING WHETHER A PERSON ACCUSED OF A CRIME PUNISHABLE BY *RECLUSION PERPETUA* OR LIFE IMPRISONMENT SUCH AS PLUNDER CAN BE GRANTED BAIL.

B. THE DECISION ALSO DISREGARDED CONSTITUTIONAL PRINCIPLES AND RELEVANT COURT PROCEDURES WHEN IT GRANTED PETITIONER'S REQUEST FOR BAIL ON THE GROUND THAT HE IS NOT A FLIGHT RISK, PREMISED ON A LOOSE FINDING THAT THE PRINCIPAL PURPOSE OF BAIL IS MERELY TO SECURE THE APPEARANCE OF AN ACCUSED DURING TRIAL.

C. CONTRARY TO THE STRICT REQUIREMENTS OF THE 1987 CONSTITUTION ON THE MATTER OF GRANTING BAIL TO PERSONS ACCUSED OF CRIMES PUNISHABLE BY *RECLUSION PERPETUA* OR LIFE IMPRISONMENT, THE *DECISION* ERRONEOUSLY HELD THAT PETITIONER SHOULD BE GRANTED BAIL BECAUSE OF HIS FRAGILE STATE OF HEALTH, AND BECAUSE OF OTHER UNSUPPORTED AND DEBATABLE GROUNDS AND CIRCUMSTANCES PURELY PERSONAL AND PECULIAR TO HIM, WITHOUT REFERENCE TO THE STRENGTH OF THE PROSECUTION'S EVIDENCE AGAINST HIM.

II. THE *DECISION* VIOLATES THE PEOPLE'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW SINCE IT WAS BASED ON GROUNDS NOT RAISED IN THE *PETITION* AND THEREFORE NEVER REFUTED OR CONTESTED.

III. THE *DECISION* GAVE PREFERENTIAL TREATMENT AND UNDUE FAVOR TO PETITIONER IN A MANNER INCONSISTENT WITH THE EQUAL PROTECTION CLAUSE OF THE 1987 CONSTITUTION.[2]

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[2] *Id.* at 686-687.

The People argue that the decision is inconsonant with deeply-embedded constitutional principles on the right to bail; that the express and unambiguous intent of the 1987 Constitution is to place persons accused of crimes punishable by *reclusion perpetua* on a different plane, and make their availment of bail a matter of judicial discretion, not a matter of right, only upon a showing that evidence of their guilt is not strong; and that the Court should have proceeded from the general proposition that the petitioner had no right to bail because he does not stand on equal footing with those accused of less grave crimes.

The People contend that the grant of provisional liberty to a person charged with a grave crime cannot be predicated solely on the assurance that he will appear in court, but should also consider whether he will endanger other important interests of the State, the probability of him repeating the crime committed, and how his temporary liberty can affect the prosecution of his case; that the petitioner's fragile state of health does not present a compelling justification for his admission to bail; that age and health considerations are relevant only in fixing the amount of bail; and that even so, his age and health condition were never raised or litigated in the *Sandiganbayan* because he had merely filed thereat a *Motion to Fix Bail* and did not thereby actually apply for bail.

Lastly, the People observe that the decision specially accommodated the petitioner, and thus accorded him preferential treatment that is not ordinarily enjoyed by persons similarly situated.

Ruling of the Court

The Court finds no compelling or good reason to reverse its decision of August 18, 2015.

To start with, the People were not kept in the dark on the health condition of the petitioner. Through his *Omnibus Motion* dated June 10, 2014 and his *Motion to Fix Bail* dated July 7, 2014, he manifested to the *Sandiganbayan* his currently frail health, and presented medical certificates to show that his physical condition

required constant medical attention.[3] The *Omnibus Motion* and his *Supplemental Opposition* dated June 16, 2014 were both heard by the *Sandiganbayan* after the filing by the Prosecution of its *Consolidated Opposition*.[4] Through his *Motion for Reconsideration*, he incorporated the findings of the government physicians to establish the present state of his health. On its part, the *Sandiganbayan*, to satisfy itself of the health circumstances of the petitioner, solicited the medical opinions of the relevant doctors from the Philippine General Hospital.[5] The medical opinions and findings were also included in the petition for *certiorari* and now form part of the records of the case.

Clearly, the People were *not denied* the reasonable opportunity to challenge or refute the allegations about his advanced age and the instability of his health even if the allegations had not been directly made in connection with his *Motion to Fix Bail*.

Secondly, the imputation of "preferential treatment" in "undue favor" of the petitioner is absolutely bereft of basis.[6] A reading of the decision of August 18, 2015 indicates that the Court did not grant his provisional liberty because he was a sitting Senator of the Republic. It did so because there were proper bases — legal as well as factual — for the favorable consideration and treatment of his plea for provisional liberty on bail. By its decision, the Court has recognized his right to bail by emphasizing that such right should be curtailed only if the risks of flight from this jurisdiction were too high. In our view, however, the records demonstrated that the risks of flight were low, or even nil. The Court has taken into consideration other circumstances, such as his advanced age and poor health, his past and present disposition of respect for the legal processes, the length of his public service, and his individual public and private reputation.[7]

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[3] *Id.* at 152, 160-162, 253.

[4] *Id.* at 611.

[5] *Id.* at 309-311.

[6] *Id.* at 712.

[7] *Id.* at 620.

There was really no reasonable way for the Court to deny bail to him simply because his situation of being 92 years of age when he was first charged for the very serious crime in court was quite unique and very rare. To ignore his advanced age and unstable health condition in order to deny his right to bail on the basis alone of the judicial discretion to deny bail would be probably unjust. To equate his situation with that of the other accused indicted for a similarly serious offense would be inherently wrong when other conditions significantly differentiating his situation from that of the latter's unquestionably existed.[8]

Section 2, Rule 114 of the *Rules of Court* expressly states that one of the conditions of bail is for the accused to "appear before the proper court whenever required by the court or these Rules." The practice of bail fixing supports this purpose. Thus, in *Villaseñor v. Abaño*,[9] the Court has pronounced that "the principal factor considered (in bail fixing), to the determination of which most factors are directed, is the probability of the

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[8] *E.g., Stack v. Boyle*, 342 U.S. 1 ("Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of **that defendant**. The traditional standards, as expressed in the Federal Rules of Criminal Procedure, are to be applied **in each case to each defendant**.").

In his concurring opinion in *Stack v. Boyle*, Justice Jackson reminded:

> It is complained that the District Court fixed a uniform blanket bail chiefly by consideration of the nature of the accusation, and did not take into account the difference in circumstances between different defendants. If this occurred, it is a clear violation of Rule 46 (c). **Each defendant stands before the bar of justice as an individual. Even on a conspiracy charge**, **defendants do not lose their separate-ness or identity**. While it might be possible that these defendants are identical in financial ability, character, and relation to the charge — elements Congress has directed to be regarded in fixing bail — I think it violates the law of probabilities. Each accused is entitled to any benefits due to his good record, and misdeeds or a bad record should prejudice only those who are guilty of them. The question when application for bail is made relates to each one's trustworthiness to appear for trial and what security will supply reasonable assurance of his appearance. (Bold emphasis supplied.)

[9] L-23599, September 29, 1967, 21 SCRA 312.

appearance of the accused, or of his flight to avoid punishment."[10] The Court has given due regard to the primary but limited purpose of granting bail, which was to ensure that the petitioner would appear during his trial and would continue to submit to the jurisdiction of the *Sandiganbayan* to answer the charges levelled against him.[11]

Bail exists to ensure society's interest in having the accused answer to a criminal prosecution without unduly restricting his or her liberty and without ignoring the accused's right to be presumed innocent. It does not perform the function of preventing or licensing the commission of crime. The notion that bail is required to punish a person accused of crime is, therefore, fundamentally misplaced. Indeed, the practice of admission to bail is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. The spirit of the procedure is rather to enable them to stay out of jail until a trial with all the safeguards has found and adjudged them guilty. Unless permitted this conditional privilege, the individuals wrongly accused could be punished by the period of imprisonment they undergo while awaiting trial, and even handicap them in consulting counsel, searching for evidence and witnesses, and preparing a defense.[12] Hence, bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring his presence at trial.[13]

Admission to bail always involves the risk that the accused will take flight.[14] This is the reason precisely why the probability or the improbability of flight is an important factor to be taken

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[10] *Id.* at 317.

[11] See *Basco v. Rapatalo*, A.M. No. RTJ-96-1335, March 5, 1997, 269 SCRA 220, 224.

[12] *Stack v. Boyle*, *supra* note 8.

[13] *Leviste v. Court of Appeals*, G.R. No. 189122, March 17, 2010, 615 SCRA 619, 628.

[14] See Justice Jackson's concurring opinion in *Stack v. Boyle*, *supra* note 8.

into consideration in granting or denying bail, even in capital cases. The exception to the fundamental right to bail should be applied in direct ratio to the extent of the probability of evasion of prosecution. Apparently, an accused's official and social standing and his other personal circumstances are considered and appreciated as tending to render his flight improbable.[15]

The petitioner has proven with more than sufficient evidence that he would not be a flight risk. For one, his advanced age and fragile state of health have minimized the likelihood that he would make himself scarce and escape from the jurisdiction of our courts. The testimony of Dr. Jose C. Gonzales, Director of the Philippine General Hospital, showed that the petitioner was a geriatric patient suffering from various medical conditions,[16]

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[15] See *Montano v. Ocampo*, L-6352, January 29, 1953, 49 O.G. 1855.

[16] (1) Chronic Hypertension with fluctuating blood pressure levels on multiple drug therapy;

(2) Diffure atherosclerotic cardiovascular disease composed of the following:

a. Previous history of cerebrovascular disease with carotid and vertebral artery disease;

b. Heavy coronary artery classifications;

c. Ankle Brachial Index suggestive of arterial classifications.

(3) Atrial and Ventricular Arrhythmia (irregular heart beat) documented by Holter monitoring;

(4) Asthma-COPD Overlap Syndrome (ACOS) and postnasal drip syndrome;

(5) Ophthalmology:

a. Age-related mascular degeneration, neovascular s/p laser of the Retina, s/p Lucentis intra-ocular injections;

b. S/p Cataract surgery with posterior chamber intraocular lens.

(6) Historical diagnoses of the following:

a. High blood sugar/diabetes on medications;

b. High cholesterol levels/dyslipidemia;

c. Alpha thalassemia;

d. Gait/balance disorder;

e. Upper gastrointestinal bleeding (etiology uncertain) in 2014;

f. Benign prostatic hypertrophy (with documented enlarged prostate on recent ultrasound).

which, singly or collectively, could pose significant risks to his life. The medical findings and opinions have been uncontested by the Prosecution in their present *Motion for Reconsideration*.

WHEREFORE, the Court **DENIES** the *Motion for Reconsideration* for lack of merit.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, Perez, and *Mendoza JJ.,* concur.

Sereno, C.J., Carpio, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* join the dissent opinion of *J. Leonen.*

Brion, J., see separate concurring opinion.

Leonen, J., dissents, see separate opinion.

Reyes, J., on official leave.

Jardeleza, J., no part.

SEPARATE CONCURRING OPINION

BRION, *J.*:

I write this **Separate Opinion** to reflect my view and explain my vote on the deliberations of the Court *En Banc* on August 18, 2015 on the issue of the provisional release of petitioner Juan Ponce Enrile from detention. I also explain in this Opinion why I vote to deny the motion for reconsideration filed by the People of the Philippines.

On August 18, 2015, the Court, voting 8-4, granted the petition for *certiorari* filed by Enrile to assail and annul the resolutions dated July 14, 2014 and August 8, 2014 issued by the Sandiganbayan (Third Division) in Case No. SB-14-CRM-0238. The dispositive portion of this decision provides:

WHEREFORE, the Court **GRANTS** the petition for *certiorari*; **ISSUES** the writ of *certiorari* **ANNULING** and **SETTING ASIDE** the Resolutions issued by the Sandiganbayan (Third Division) in Case No. SB-14-CRM-0238 on July 14, 2014 and August 8, 2014;

ORDERS the **PROVISIONAL RELEASE** of petitioner Juan Ponce Enrile in Case No. SB-14-CRM-0238 upon posting of a cash bond of ₱1,000,000.00 in the Sandiganbayan; and **DIRECTS** the immediate release of petitioner Juan Ponce Enrile from custody unless he is being detained for some other lawful cause.

No pronouncement on costs of suit.

SO ORDERED.

The *People*, through the Office of the Special Prosecutor, moved to reconsider this decision, and claimed that the grant of bail to Enrile "unduly and radically modified constitutional and procedural principles governing bail without sufficient constitutional, legal and jurisprudential basis."[1] It argued that since Enrile was charged with a grave crime punishable by *reclusion perpetua* to death, he cannot be admitted to bail as a matter of right unless it had been determined that evidence of his guilt was not strong.

The *People* further alleged that the *ponencia* erred in granting Enrile provisional liberty on the erroneous premise that the principal purpose of bail is to ensure the appearance of the accused during trial. It maintained that the grant of provisional liberty must be counter-balanced with the legitimate interests of the State to continue placing the accused under preventive detention when circumstances warrant.

The *People* further claimed that there is no obligation on the part of the State to allow Enrile to post bail even under international law since the latter's detention was an incident of a lawful criminal prosecution. It added that age and health are not relevant in the determination of whether the evidence of guilt against Enrile is strong; and that "there is no provision in the 1987 Constitution, in any statute or in the Rules of Court"[2] that allows the grant of bail for humanitarian considerations.

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[1] Motion for Reconsideration, pp. 3-4.

[2] *Id.* at 21.

The *People* likewise claimed that its constitutional right to due process had been violated since the Court granted provisional liberty to Enrile based on grounds that were not raised by Enrile in connection with his bail request.

Finally, the *People* alleged that the *ponencia* violated the equal protection clause of the 1987 Constitution when it "gave preferential treatment and undue favor"[3] to Enrile.

My Position:

I reiterate that Enrile should be admitted to bail. I likewise vote to deny the motion for reconsideration filed by the Office of the Special Prosecutor.

The Right to Bail and the Court's Equity Jurisdiction

Our Constitution zealously guards every person's right to life and liberty against unwarranted state intrusion; indeed, no state action is permitted to invade this sacred zone except upon observance of due process of law.

Like the privilege of the writ of *habeas corpus*, the right to bail provides complete substance to the ***guarantee of liberty*** under the Constitution; without it, the right to liberty would not be meaningful, while due process would almost be an empty slogan.[4] A related ***right is the right to be presumed innocent*** from where, the right to bail also draws its strength.

Bail is accorded to a person under the custody of the law who, before conviction and *while he enjoys the presumption of innocence*, may be allowed provisional liberty upon the filing of a bond to secure his appearance before any court, as required under specified conditions.[5] State interest is recognized through the submitted bond and by the guarantee that the accused would appear before any court as required under the terms of the bail.

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[3] *Id.* at 28.

[4] See Separate Opinion of Chief Justice Reynato Puno in *Government of the United States of America v. Hon. Purganan*, 438 Phil. 417, 471 (2002).

[5] See *Heirs of Delgado v. Gonzales*, 612 Phil. 817 (2009).

In *Leviste v. Court of Appeals*,[6] the Court explained the nature of bail in the following manner:

> Bail, the security given by an accused who is in the custody of the law for his release to guarantee his appearance before any court as may be required, is the answer of the criminal justice system to a vexing question: what is to be done with the accused, whose guilt has not yet been proven, in the "dubious interval," often years long, between arrest and final adjudication. Bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring the accused's presence at trial.

The constitutional mandate is that "[a]ll persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. x x x"[7]

Under this provision, bail is clearly a *demandable constitutional right*; it only ceases to be so recognized when evidence of guilt of the person — charged with a crime that carries the penalty of *reclusion perpetua*, life imprisonment, or death — is found to be strong. From the *perspective* of *innocence*, this degree of evidence apparently renders less certain the presumption of innocence that the accused enjoys before conviction.

But while bail is separately treated for those charged with a crime that carries the penalty of *reclusion perpetua or higher*, t***he Constitution does not expressly and absolutely prohibit the grant of bail even for the accused who are so charged.***

If the evidence of guilt is *not strong*, as the courts may determine *in their discretion*, then the accused may be demanded still as of right.

If the evidence of guilt, on the other hand, is strong, this preliminary evaluation, made prior to conviction, may *render the presumption of innocence lighter in its effects, but does*

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[6] G.R. No. 189122, March 17, 2010, 615 SCRA 619, 627-628.

[7] Article III, Section 13 of the 1987 Constitution.

not totally negate it; constitutionally, the presumption of innocence that the accused enjoys still exists as only final conviction erases it.

Hand in hand with these thoughts, I have considered the judicial power that the courts have been granted under the Constitution. This power ***includes*** the duty to settle actual controversies involving rights which are legally demandable and enforceable. It likewise encompasses the protection and enforcement of constitutional rights, through promulgated rules that also cover pleading, practice and procedure.[8]

I hold the view that judicial power, *by its express terms*, is **inclusive** rather than exclusive: the specific powers mentioned in the Constitution do not constitute the totality of the judicial power that the Constitution grants the courts. Time and again, the Supreme Court has given this constitutional reality due recognition by acting, not only within the clearly defined parameters of the law, but also within that *penumbral area not definitively defined by the law but not excluded from the Court's authority by the Constitution and the law*.

The Court has particularly recognized its authority to so act if sufficiently compelling reasons exist that would serve the ends of the Constitution — the higher interests of justice, in this case, the protection and recognition of the right to liberty based on the special circumstances of the accused.

A prime example of an *analogous* Court action would be in the case of Leo Echagaray where the Court issued a temporary restraining order (*TRO*) to postpone the execution of Echegaray and asserted its authority to act even in the face of the clear authority of the President to implement the death penalty.

In *Echegaray v. Secretary of Justice*,[9] the public respondents (Secretary of Justice, et al.) questioned the Court's resolution dated January 4, 1999 temporarily restraining the execution of Leo Echegaray and argued, among others, that the decision

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[8] Article VIII, Section 5 (5), Constitution.

[9] 361 Phil. 73 (1999).

had already become final and executory, and that the grant of reprieve encroaches into the exclusive authority of the executive department to grant reprieve.

In ruling that it had jurisdiction to issue the disputed TRO, the Court essentially held that an [a]ccused who has been convicted by final judgment still possesses collateral rights and these rights can be claimed in the appropriate courts. We further reasoned out that the powers of the Executive, the Legislative and the Judiciary to save the life of a death convict do not exclude each other for the simple reason that there is no higher right than the right to life.[10]

While *Echegaray* did not involve the right to bail, it nonetheless shows that the Court will not hesitate to invoke its jurisdiction to effectively safeguard constitutional rights and liberties.

In *Secretary of Justice v. Hon. Lantion*,[11] the Court applied what it termed as "rules of fair play" so as not to deny due process to Mark Jimenez during the evaluation process of an extradition proceeding.

In this case, the United States Government requested the Philippine Government for the extradition of Mark Jimenez to the United States. The Secretary of Foreign Affairs forwarded this request to the Department of Justice. Pending the evaluation of the extradition documents by the DOJ, Jimenez requested

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[10] In his Separate Opinion. Associate Justice (ret.) Jose C. Vitug supported this view, and explained that:

> x x x the authority of the Court to see to the proper execution of its final judgment, the power of the President to grant pardon, commutation or reprieve, and the prerogative of Congress to repeal or modify the law that could benefit the convicted accused are not essentially preclusive of one another nor constitutionally incompatible and may each be exercised within their respective spheres and confines. Thus, the stay of execution issued by the Court would not prevent either the President from exercising his pardoning power or Congress from enacting a measure that may be advantageous to the adjudged offender.

[11] 379 Phil. 165 (2000).

for copies of the official extradition request and all pertinent documents, and the holding in abeyance of the proceedings.

When the DOJ denied his request for being premature, Jimenez filed an action for mandamus, *certiorari* and prohibition before the Regional Trial Court, Branch 25, Manila. The RTC issued an order directing the Secretary of Justice, the Secretary of Foreign Affairs, and the NBI to maintain the *status quo* by refraining from conducting proceedings in connection with the extradition request of the US Government. The Secretary of Justice questioned the RTC's order before this Court.

In dismissing this petition, the Court ruled that although the Extradition Law does not specifically indicate whether the extradition proceeding is criminal, civil, or a special proceeding, the evaluation process — understood as the extradition proceedings proper — belongs to a class by itself; it is *sui generis*. **The Court thus characterized the evaluation process to be similar to a preliminary investigation in criminal cases** so that certain constitutional rights are available to the prospective extraditee. Accordingly, the Court ordered the Secretary of Justice to furnish Jimenez copies of the extradition request and its supporting papers, and to grant him a reasonable time within which to file his comment with supporting evidence.

The Court explained that although there was a gap in the provisions of the RP-US Extradition Treaty regarding the basic due process rights available to the prospective extraditee at the evaluation stage of the proceedings, the prospective extraditee faces the threat of arrest, not only after the extradition petition is filed in court, but even during the evaluation proceeding itself by virtue of the provisional arrest allowed under the treaty and the implementing law. It added that the Rules of Court guarantees the respondent's basic due process rights in a preliminary investigation, granting him the right to be furnished a copy of the complaint, the affidavits and other supporting documents, and the right to submit counter-affidavits and other supporting documents, as well as the right to examine all other evidence submitted by the complainant.

While the Court in *Lantion* applied the "rules of fair play" and not its equity jurisdiction, the distinction between the two with respect to this case, to me, is just pure semantics. I note in this case that the Court still recognized Jimenez's right to examine the extradition request and all other pertinent documents pertaining to his extradition despite the gap in the law regarding the right to due process of the person being extradited during the evaluation stage.

Based on these constitutional considerations, on the dictates of equity and the need to serve the higher interest of justice, I believe that it is within the authority of the Court to inquire if the special circumstances the accused submitted are sufficiently compelling reasons for the grant of bail to Enrile.

Equity jurisdiction is used to describe the power of the court to resolve issues presented in a case in accordance with *natural rules of fairness and justice in the absence of a clear, positive law governing the resolution of the issues posed*.[12] Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.[13]

In *Daan v. Hon. Sandiganbayan (Fourth Division)*,[14] we further expounded on this concept as follows:

> Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do. Equity regards the spirit of and not the letter, the intent and not the form, the substance

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[12] See Riano, Willard, Civil Procedure (A Restatement for the Bar), 2007, p. 30.

[13] See *Reyes v. Lim*, 456 Phil. 1, 10 (2003).

[14] 573 Phil. 368, 378-379 (2008), citing *Poso v. Judge Mijares*, 436 Phil. 295, 324 (2002).

rather than the circumstance, as it is variously expressed by different courts.

I am not unaware that courts exercising equity jurisdiction must still apply the law and have no discretion to disregard the law.[15] Equitable principles must always remain subordinate to positive law, and cannot be allowed to subvert it, nor do these principles give to the Courts authority to make it possible to do so.[16] Thus, where the law prescribes a particular remedy with fixed and limited boundaries, the court cannot, by exercising equity jurisdiction, extend the boundaries further than the law allows.[17] As the Court explained in *Mangahas v. Court of Appeals*:[18]

> For all its conceded merits, equity is available only in the absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. x x x all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force.

Similarly, in *Phil. Rabbit Bus Lines, Inc. v. Judge Arciaga*,[19] the Court held [t]hat there are instances, indeed, in which a

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[15] *Arsenal v. IAC*, 227 Phil. 36 (1986).

[16] See J.B.L. Reyes, The Trend Toward Equity Versus Positive Law in Philippine Jurisprudence, 58 Phil. L.J. 1, 4).

[17] *Alvendia v. Intermediate Appellate Court*, G.R. No. 72138, January 22, 1990, 181 SCRA 252.

[18] 588 Phil. 61 (2008).

[19] 232 Phil. 400, 405 (1987). See also *Agra v. Philippine National Bank* (368 Phil. 829, 844, [1999]) where the Court declared that:

> "As for equity, which has been aptly described as 'justice outside legality,' this is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure. *Aequetas nunquam contravenit legis*. This pertinent positive rules being present here, they should pre-empt and prevail over all abstract arguments based only on equity.' x x x"

court of equity gives a remedy, where the law gives none; but where a particular remedy is given by the law, and that remedy is bounded and circumscribed by particular rules, it would be very improper for the court to take it up where the law leaves it and to extend it further than the law allows.

Where the *libertarian intent* of the Constitution, however, is beyond dispute; where this same Constitution itself does not *substantively* prohibit the grant of provisional liberty even to those charged with crimes punishable with *reclusion perpetua* where evidence of guilt is strong; and where exceptional circumstances are present as compelling reasons for humanitarian considerations, I submit that the Court does not stray from the parameters of judicial power if it uses equitable considerations in resolving a case.

I note in this regard that together with Section 13, Article III of the Constitution which provides that:

> **[a]ll persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong**, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. x x x

Section 7 of Rule 114 of the Revised Rules of Court states that no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment when the evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal action. Thus, seemingly, there exists a law or, to be exact, a remedial rule, that forecloses the grant of bail to an accused who falls within the exception identified under Section 13, Article III of the Constitution.

Rule 114 of the Revised Rules of Court, however, cannot foreclose the exercise by the Court of a discretionary grant of bail because the constitutional provision on bail speaks only of bail as a matter of right and does not prohibit a discretionary grant by the courts, particularly by the Supreme Court which is the fountainhead of all rules of procedure and which can, when called for, suspend the operation of a rule of procedure.

In hierarchal terms, the constitutional provision on bail occupies a very much higher plane than a procedural rule.

Notably, Rule 114 directly addresses the grant of a right under the constitutional provision — a situation where no equitable considerations are taken into account. In this situation, the Court's hands are in fact tied as it must comply with the direct command of the Constitution.

But when compelling circumstances exist, as has been described above, the situation cannot but change and shifts into that penumbral area that is not covered by the exact parameters of the express words of the Constitution yet is not excluded by it. In this domain, when compelling reasons exist to carry into effect the intent of the Constitution, equity can come into play.

I reiterate that the fundamental consideration in confining an accused before conviction is to assure his presence at the trial. The denial of bail in capital offense is on the theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face a verdict in court. Hence, the exception to the fundamental right to be bailed should be applied in direct ratio to the extent of the probability of the evasion of the prosecution.[20]

As the *ponencia* recognized, these circumstances are Enrile's advanced age (91), his state of health (he has been in and out of hospital before and since his arrest, a condition that is not surprising based on his age alone), and the almost nil chance that Enrile would evade arrest.

Dr. Jose C. Gonzales, the Director of the PGH, testified that Enrile underwent clinical and laboratory examinations, as well as pulmonary evaluation and pulmonary function tests on various dates on August 2014, and was found to be suffering from the following conditions:

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[20] Herrera, Oscar M., Remedial Law, Vol. IV, 2007 ed., p. 466 (citation omitted).

(1) Chronic Hypertension with fluctuating blood pressure levels on multiple drug theraphy;

(2) Diffuse atherosclerotic cardiovascular disease composed of the following:

   a. Previous history of cerebrovascular disease with carotid and vertebral artery disease;

   b. Heavy coronary artery calcifications;

   c. Ankle Brachial Index suggestive of arterial calcifications.

(3) Atrial and ventricular Arrhythmia (irregular heartbeat) documented by Holter monitoring;

(4) Asthma-COPD Overlap Syndrome and postnasal drip syndrome;

(5) Ophthalmology:

   a. Age-related macular degeneration, neovascular s/p laser of the Retina, s/p Lucentis intra-ocular injections

   b. S/p Cataract surgery with posterior chamber intraocular lens

(6) Historical diagnoses of the following:

   a. High blood sugar/diabetes on medications;

   b. High cholesterol levels/dyslipidemia;

   c. Alpha thalassemia;

   d. Gait/balance disorder;

   e. Upper gastrointestinal bleeding (etiology uncertain) in 2014;

   f. Benign prostatic hypertrophy (with documented enlarged prostate on recent ultrasound).

In his Manifestation and Compliance, Dr. Gonzales further added that "the following medical conditions of Senator Enrile pose a significant risk for life-threatening events": (1) fluctuating hypertension, which may lead to brain or heart complications,

including recurrence of stroke; (2) arrhythmias, which may lead to fatal or nonfatal cardiovascular events; (3) diffuse atherosclerotic vascular disease may indicate a high risk for cardiovascular events; (4) exacerbations of asthma-COPD Overlap Syndrome may be triggered by certain circumstances (excessive heat, humidity, dust or allergen exposure) which may cause a deterioration in patients with Asthma or COPD.

During the July 14, 2014 hearing, the witness-cardiologist expounded on the delicate and unpredictable nature of Enrile's arrhythmia under the following exchange with the court:

AJ MARTIRES:

Q: So, the holter monitoring was able to record that the accused is suffering from arrhythmia?

What is arrhythmia, Doctor?

CARDIOLOGIST:

A: Arrhythmia is an irregular heartbeat. We just reviewed the holter of Senator Enrile this morning again, prior to coming here, and we actually identified the following irregularities:

There were episodes of atrial fibrillation, which is a very common arrhythmia in elderly individuals, pre-disposing elderly dangers for stroke;

There were episodes of premature ventricular contractions of PVCs; and episodes of QT tachy cardia.

xxx xxx xxx

Q: So, what are these different types of arrhythmia?

A: Okay, Senator Enrile actually has three (3) different types of arrhythmia, at least, based on our holter.

One is atrial fibrillation. I would say that it is the most common arrhythmia found in our geriatric patients. It is a very important arrhythmia, because it is a risk factor for stroke, and Senator Enrile actually already has one documentation of previous stroke based on an MRI study.

Second, he has premature ventricular contractions (PVCs). Again, very normal in patients who are in his age group; and

Third, is the atrial tachy cardia, which is another form of atrial fibrillation. He has these three types of irregular heartbeat.

Q: These three types are all dangerous?

A: Yes, your Honor. These arrhythmias are dangerous under stressful conditions. There is no way we can predict when these events occur which can lead to life-threatening events.

xxx xxx xxx.[21] (Emphasis supplied)

Dr. Gonzales likewise classified Enrile as a patient "under pharmacy medication" owing to the fact that for arrhythmia alone, he is taking the following medications: cilostazol; telmisartan; amlodipine; Coumadin; norvasc; rosuvastin; pantoprazole; metformin; glycoside; centrum silver; nitramine and folic acid.

The records further disclosed that: (1) Enrile has "diabetes mellitus, dyslipidemia, essential hypertension, extensive coronary artery calcification in the right coronary, left anterior descending and left circumflex, multifocal ventricular premature beats, episodes of bradycardia, colonic diverticulosis, thoracic and lumbar spondylosis L4-L5, alpha thalassemia and mucular degeneration, chronic lacunar ischemic zones, scattered small luminal plaques of proximal middle segments of basilar artery, both horizontal and insular opercural branches of middle cerebral arteries," and that he takes approximately 20 medicines a day; and (2) Enrile needs to undergo "regular ophthalmologic check-up, monitoring and treatment for his sight threatening condition;" and that since 2008, he has been receiving monthly intravitreal injections to maintain and preserve his vision.

Notably, when Dr. Gonzales (PGH Medical Director) was asked during the July 14, 2014 hearing on whether Enrile — based on his observation — was capable of escaping, he replied that Enrile "has a problem with ambulation;" and that "even in sitting down, he needs to be assisted."

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[21] TSN, July 14, 2014, pp. 22-24.

Significantly, the use of humanitarian considerations in the grant of bail on the basis of health is not without precedent.

In *Dela Rama v. People*,[22] accused Francisco Dela Rama filed a motion before the People's Court asking for permission to be confined and treated in a hospital while his bail petition was being considered. The People's Court ordered that the Dela Rama be temporarily confined and treated at the Quezon Institute. It also rejected Dela Rama's bail application.

During Dela Rama's stay in the hospital, Dr. Miguel Cañizares of the Quezon Institute submitted a report to the People's Court stating that Dela Rama suffered from a minimal, early, unstable type of pulmonary tuberculosis, and chronic granular pharyngitis. He also recommended that Dela Rama continue his stay in the sanatorium for purposes of proper management, treatment and regular periodic radiographic check-up up of his illness.[23]

Dela Rama re-applied for bail on the grounds of poor health, but the People's Court rejected his petition for bail was again rejected. Instead, it ordered that Dela Rama be further treated at the Quezon Institute, and that the Medical Director of the Quezon Institute submit monthly reports on the patient's condition.

Acting on Dela Rama's second petition for *certiorari*, this Court ruled that the People's Court had acted with grave abuse of discretion by refusing to release Dela Rama on bail. It reasoned out as follows:

> The fact that the denial by the People's Court of the petition for bail is accompanied by the above quoted order of confinement of the petitioner in the Quezon Institute for treatment without the latter's consent, does not in any way modify or qualify the denial so as to meet or accomplish the humanitarian purpose or reason underlying the doctrine adopted by modern trend of court's decision which permit bail to prisoners, **irrespective of the nature and merits of the charge against them, if their continuous confinement during the pendency**

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[22] 77 Phil. 461 (1946).

[23] See also http://www.globalhealthrights.org/asia/francisco-c-de-la-rama-v-the-peoples-court/ (last visited on August 15, 2015).

of their case would be injurious to their health or endanger their life.

xxx xxx xxx

Considering the report of the Medical Director of the Quezon Institute to the effect that the petitioner "is actually suffering from minimal, early, unstable type of pulmonary tuberculosis, and chronic, granular pharyngitis," and that in said institute they "have seen many similar cases, later progressing into advance stages when treatment and medicine are no longer of any avail;" taking into consideration that the petitioner's previous petition for bail was denied by the People's Court on the ground that the petitioner was suffering from quieseent and not active tuberculosis, and the implied purpose of the People's Court in sending the petitioner to the Quezon Institute for clinical examination and diagnosis of the actual condition of his lungs, was evidently to verify whether the petitioner is suffering from active tuberculosis, in order to act accordingly in deciding his petition for bail; and considering further that the said People's Court has adopted and applied the well-established doctrine cited in our above quoted resolution, in several cases, among them, the cases against Pio Duran (case No. 3324) and Benigno Aquino (case No. 3527), in which the said defendants were released on bail **on the ground that they were ill and their continued confinement in New Bilibid prison would be injurious to their health or endanger their life**; it is evident and we consequently hold that the People's Court acted with grave abuse of discretion in refusing to release the petitioner on bail. (Emphasis ours).

Contrary to what the *People* insinuated in its motion, there has been no Court decision expressly abandoning *Dela Rama*. That the amendments to Rule 114 did not incorporate the pronouncement in *Dela Rama* (that bail may be granted if continued confinement in prison would be injurious to their health or endanger their life) did not *ipso facto* mean that the Court was precluding an accused from citing humanitarian considerations as a ground for bail.

In *United States v. Jones*,[24] the United States Circuit Court held that "[w]here an application for bail showed that the prisoner's health was bad, his complaint pulmonary, and that,

[24] 3 Wn. (C.C.) 224, Fed. Cas. No. 15,495.

in the opinion of his physician, confinement during the summer might so far increase his disorder as to render it ultimately dangerous, x x x [t]he humanity of our laws, not less than the feelings of the court, favor the liberation of a prisoner upon bail under such circumstances." According to the court, it is not necessary that the danger which may arise from his confinement should be either immediate or certain. If, in the opinion of a skillful physician, the nature of his disorder is such that the confinement must be injurious and may be fatal, the prisoner "ought to be bailed."

I also point out that *per* the testimony of Dr. Servillano, the facilities of the PNP General Hospital (where Enrile had been detained) were inadequate to address emergency situations, such as when Enrile's condition suddenly worsens. Thus, Enrile's continued confinement at this hospital endangered his life.

While it could be argued that Enrile could have been transferred to another, better-equipped, hospital, this move does not guarantee that his health would improve. The dangers associated with a prolonged hospital stay were revealed in court by the government's own doctor, Dr. Gonzales. To directly quote from the records:

> AJ QUIROZ:
>
> Q: Being confined in a hospital is also stressful, right?
>
> DIRECTOR GONZALES:
>
> A: Yes, your Honor, you can also acquire pneumonia, hospital intensive pneumonia, if you get hospital acquired pneumonia, these are bacteria or micro organisms that can hit you, such that we don't usually confine a patient.
>
> If it is not really life threatening, such that it is better to have a community acquired pneumonia, because you don't have to use sophisticated antibiotics. But if you have a prolonged hospital stay, definitely, you would get the bacteria in there, which will require a lot of degenerational antibiotics.
>
> xxx xxx xxx[25]

[25] TSN, July 14, 2014, p. 33.

I therefore reiterate, to the point of repetition, that Enrile is already 91-years old, and his immune system is expectedly weak. His body might not adjust anymore to another transfer to a different medical facility.

To be sure, Enrile's medical condition was not totally unknown to the prosecution. To recall, Enrile filed his *Motion for Detention at the PNP General Hospital and his Motion to Fix Bail* before the Sandiganbayan on July 4, 2014 and July 7, 2014, respectively. In the former motion, Enrile claimed that "his advanced age and frail medical condition'' merited hospital arrest in the Philippine National Police General Hospital under such conditions that may be prescribed by the Sandiganbayan. He additionally prayed that in the event of a medical emergency that cannot be addressed by the Philippine National Police General Hospital, he may be allowed to access an outside medical facility. In his motion to fix bail, Enrile argued that his age and voluntary surrender were mitigating and extenuating circumstances. The Office of the Ombudsman filed its Opposition to the Motion to Fix Bail on July 9, 2014; the prosecution also submitted its Opposition to the Motion for Detention at the PNP General Hospital. To be sure, the prosecution had not been kept in the dark as regards the medical condition of Enrile.

I also submit, on the matter of evasion, that we can take judicial notice that Enrile had been criminally charged in the past and not once did he attempt to evade the jurisdiction of the courts; he submitted himself to judicial jurisdiction and met the cases against him head-on.[26]

The *People's* insinuation that Enrile has shown "propensity to take exception to the laws and rules that are otherwise applicable to all, perhaps out of a false sense of superiority or entitlement" due to his refusal to enter a plea before the Sandiganbayan; his act of questioning the insufficiency of the details of his indictment; a *motion to fix bail* that he filed instead of a *petition for bail*; and his act of seeking detention in a hospital instead of in a regular facility, were uncalled for. Enrile was

[26] See *Enrile v. Salazar*, G.R. No. 92163, June 5, 1990, 186 SCRA 217.

well within his right to avail of those remedies or actions since they were not prohibited by the Rules.

We are well aware that Enrile, after posting bail, immediately reported for work in the Senate. This circumstance, however, does not *ipso facto* mean that he is not suffering from the ailments we enumerated above (as found and testified to by the physicians).

To be fair, the majority did not hold that Enrile was so weak and ill that he was incapacitated and unable to perform his duties as Senator; it merely stated that he should be admitted to bail due to his old age and ill health.

Surely, one may be ill, and yet still opt to report for work. We note that Enrile told the media that he reported to work "to earn my pay," adding that, "I will perform my duty for as long as I have an ounce of energy."[27] If Enrile chose to continue reporting for work despite his ailments, that is his prerogative.

Misplaced reliance on the equal protection clause

Contrary to the Ombudsman's claim, the grant of provisional liberty to Enrile did not violate the equal protection clause under the Constitution.

The guarantee of equal protection of the law is a branch of the right to due process embodied in Article III, Section 1 of the Constitution. It is rooted in the same concept of fairness that underlies the due process clause. In its simplest sense, it requires equal treatment, *i.e.*, the absence of discrimination, for all those under the same situation.[28]

In *Biraogo v. Philippine Truth Commission of 2010*,[29] the Court explained this concept as follows:

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[27] See http://www.gmanetwork.com/news/story/534135/news/nation/out-on-bail-enrile-returns-to-work-at-the-senate (last visited, September 21, 2015).

[28] See Separate Opinion of Justice Brion in *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78.

[29] G.R. No. 192935, December 7, 2010, 637 SCRA 78, 167 (citations omitted).

x x x [E]qual protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. It requires public bodies and institutions to treat similarly situated individuals in a similar manner." "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.

Hence, any claim of violation of the equal protection clause must convincingly show that there exists a classification that is blatantly arbitrary or capricious, and that there is no rational basis for the differing treatment. **The present motion for reconsideration had not shown that there were other nonagenarian charged with a capital offense who are currently behind bars.**

We note in this regard that Resolution No. 24-4-10 (Re: Amending and Repealing Certain Rules and Sections of the Rules on Parole and Amended Guidelines for Recommending Executive Clemency of the 2006 Revised Manual of the Board of Pardons and Parole) directs the Board to recommend to the President the grant of executive clemency of, among other, **inmates who are seventy (70) years old and above whose continued imprisonment is inimical to their health** as recommended by a phys*ic*ian of the Bureau of Corrections Hospital and certified under oath by a physician designated by the Department of Health. If **convicted persons** (*i.e.*, persons whose guilt have been proven with moral certainty) are allowed to be released on account of their old age and health, then there is no reason why a **mere accused** could not be released on bail based on the same grounds.

The Joint Resolution of the Ombudsman did not show any direct link of Enrile to the so-called PDAF scam

As the *ponente* of another Enrile case, I also made a painstaking cross-reference to the 144-page Joint Resolution of the Office

of the Ombudsman dated March 28, 2014 (which became the basis of Enrile's indictment before the Sandiganbayan), but did not see anything there to show that Enrile received kickbacks and/or commissions from Napoles or her representatives.

This Joint Resolution contained an enumeration of the amounts of Special Allotment Release Order (SARO) released by the DBM; the projects and activities; the intended beneficiaries/ LGUs; the total projects/activities cost; the implementing agency; the project partners/NGOs; the disbursement vouchers and their respective amounts and dates; the check numbers; the paying agencies/claimant or payee; the signatories of the vouchers; and the signatories of the Memorandum of Agreement (MOA).

Notably, Enrile's signature did not appear in any of the documents listed by the prosecution. The sworn statements of the so-called whistleblowers, namely Benhur Luy, Marina Sula, Merlina Suñas, as well as Ruby Tuason's Counter-Affidavit, also did not state that Enrile personally received money, rebates, kickbacks or commissions. In her affidavit, Tuason also *merely presumed* that whatever Reyes "was doing was with Senator Enrile's blessing" since there were occasions when "Senator Enrile would join us for a cup of coffee when he would pick her up." Luy's records also showed that that the commissions, rebates, or kickbacks amounting to at least ₱172,834,500.00 (the amount alleged in the plunder charge) were received by *either Reyes or Tuason.*

My findings were verified by recent news reports stating that the prosecutors admitted that they had no evidence indicating that Enrile personally received kickbacks from the multi-billion-peso pork barrel scam during the oral summation for the petition to post bail of alleged pork scam mastermind Janet Lim-Napoles before the Sandiganbayan Third Division. These reports also stated that prosecutor Edwin Gomez admitted that the endorsement letters identifying the Napoles-linked foundations as the beneficiaries of Enrile's PDAF were not signed by Enrile (Gomez said six of the endorsement letters were signed by Reyes

while the rest were signed by Enrile's other chief of staff, Atty. Jose Antonio Evangelista).[30]

I make it clear that I am not in any way prejudging the case against Enrile before the Sandiganbayan. I am simply pointing out that *based on the records available to* me as the ponente of a related Enrile case, there was no showing that Enrile received kickbacks or commissions relating to his PDAF. Whether Enrile conspired with his co-accused is a matter that needs to be threshed out by the Anti-Graft Court.

WHEREFORE, premises considered, I vote to **DENY** the present motion for reconsideration.

DISSENTING OPINION

LEONEN, *J.*:

After his release solely on the basis of his frail health, Senator Juan Ponce Enrile immediately reported for work at the Senate.[1]

Until the end of his term on June 30, 2016, he actively and publicly participated in the affairs of the Senate.[2] The majority

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[30] http://www.gmanetwork.com/news/story/536830/news/nation/no-proof-enrile-got-kickbacks-from-napoles-prosecution (last visited September 15, 2015); and http://newsinfo.inquirer.net/721987/court-told-no-proof-enrile-got-kickbacks (last visited September 16, 2015).

[1] See Patricia Lourdes Viray, *Enrile returns to work at Senate*, PHILIPPINE STAR, August 24, 2015 <http://www.philstar.com/headlines/2015/08/24/1491693/enrile-returns-work-senate> (visited July 7, 2016).

[2] See Maila Ager, *Enrile returns to Senate after dengue bout, gives warning to non-performing agencies*, PHILIPPINE DAILY INQUIRER, October 5, 2015 <http://newsinfo.inquirer.net/728017/enrile-returns-to-senate-after-dengue-bout-gives-warning-to-non-performing-agencies> (visited July 7, 2016); Leila B. Salaverria, *Enrile seeks reopening of Mamasapano probe*, PHILIPPINE DAILY INQUIRER, November 10, 2015 <http://newsinfo.inquirer.net/738231/enrile-seeks-reopening-of-mamasapano-probe> (visited July 7, 2016); Maila Ager, *Enrile proposes to raise OVP's 2016 budget to ₱500 million*, INQUIRER.NET, November 23, 2015 <http://newsinfo.inquirer.net/741700/enrile-proposes-to-raise-ovps-2016-budget-to-

maintains that his release on humanitarian grounds due to his frail health still stands.[3] This is a contradiction I cannot accept.

With due respect to my esteemed colleagues, I maintain my dissent.

The reversal of the Sandiganbayan Decision on its actions on the Motion to Fix Bail filed by petitioner is an unacceptable deviation from clear constitutional norms and procedural precepts. Carving this extraordinary exception is dangerous. The ponencia opens the opportunity of unbridled discretion of every trial court. It erases canonical and textually based interpretations of our Constitution. It undermines the judicial system and weakens our resolve to ensure that we guarantee the rule of law.

I

Fundamental to resolving this Petition for Certiorari is Article III, Section 13 of the Constitution:

ARTICLE III
BILL OF RIGHTS

xxx xxx xxx

SECTION 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released

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p500-million> (visited July 7, 2016); Ruth Abbey Gita, *Enrile question ₱250M intel fund for Aquino office*, SUNSTAR DAILY, November 23, 2015 <http://www.sunstar.com.ph/manila/local-news/2015/11/23/enrile-questions-p250m-intel-fund-aquino-office-443088> (visited July 7, 2016); Charissa Luci, *Enrile: Senate could override presidential veto on SSS pension hike bill*, MANILA BULLETIN, January 17, 2016 <http://www.mb.com.ph/enrile-senate-could-override-presidential-veto-on-sss-pension-hike-bill> (visited July 8, 2016); Maila Ager, *Enrile blocks confirmation of COA, CSC officials*, PHILIPPINE DAILY INQUIRER, February 3, 2016 <http://newsinfo.inquirer.net/761183/enrile-blocks-confirmation-of-audit-civil-service-appointments-officials> (visited July 7, 2016); and *Enrile censures AMLC over stolen Bangladesh millions*, GMA News Online, March 29, 2016 <http://www.gmanetwork.com/news/story/560759/money/companies/enrile-censures-amlc-over-stolen-bangladesh-millions> (visited July 7, 2016).

[3] See Ponencia, p. 4.

on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Bail is a constitutional right of the accused. It should be correctly read in relation to his fundamental right to be presumed innocent.[4] However, contrary to the position of the ponencia and of Associate Justice Arturo Brion in his Separate Opinion, availing of this right is also constrained by the same Constitution.

When the offense charged is not punishable by *reclusion perpetua*, bail is automatic. The only discretion of the court is to determine the amount and kind of bail to be posted.[5] When the crime is not punishable by *reclusion perpetua*, there is no need for the court to determine whether the evidence of guilt is strong.

Equally fundamental, from the clear and unambiguous text of the provision of the Constitution, the Rules of Court, and our jurisprudence, is that when the offense charged is punishable by *reclusion perpetua*, bail shall be granted only after a hearing

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[4] CONST., Art. III, Sec. 14 (2) provides:

SECTION 14 . . . . .

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[5] RULES OF COURT, Rule 114, Sec. 4 provides:

SEC. 4. *Bail, a matter of right; exception*. — All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognize as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment.

occasioned by a petition for bail. The phrase "*except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong*" found in the Constitution is a sovereign determination that qualifies the presumption of innocence and the right to bail of persons detained under custody of law. There is no room for equity when the provisions of the law are clear.

The Sandiganbayan, in that hearing, provides the prosecution with the opportunity to overcome its burden of proving that the evidence of guilt is strong.

The opportunity granted to the prosecution to prove that evidence of guilt is strong so as to defeat the prayer of an accused to be released on bail is a mandatory constitutional process.[6] It is part of the prosecution's right to due process. It is an elementary requirement of fairness required by law and equity. In criminal prosecutions, it is not only the accused that is involved. The state represents the People. Thus, violating the prosecution's right to due process of law trivializes the interest of the People in criminal actions.

Thus, when the offense charged is punishable by *reclusion perpetua*, bail is regarded as a "matter of discretion."[7]

When bail is a matter of discretion,[8] an application for bail must be filed and a bail hearing must be mandatorily conducted to determine if the evidence of guilt is strong.[9] Absent this, bail can neither be granted nor denied.

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[6] Const., Art. III, Sec. 13.

[7] See RULES OF COURT, Rule 114, Sec. 5.

[8] See RULES OF COURT, Rule 114, Secs. 4 and 5.

[9] See *Teehankee v. Rovira*, 75 Phil. 634, 640-643 (1945) [Per *J.* Hilado, *En Banc*]; *Herras Teehankee v. Director of Prisons*, 76 Phil. 756, 774 (1946) [Per *J.* Hilado, *En Banc*]; *Ocampo v. Bernabe*, 77 Phil. 55, 62-63 (1946) [Per *C.J.* Moran, *En Banc*]; *Feliciano v. Pasicolan*, 112 Phil. 781 (1961) [Per *J.* Natividad, *En Banc*]; *Siazon v. Presiding Justice of Circuit Criminal Court, 16th Judicial District, Davao City*, 149 Phil. 241, 249 (1971) [Per *J.* Makalintal, *En Banc*]; *Basco v. Repatalo*, 336 Phil. 214, 219-221 (1997) [Per *J.* Romero, Second Division]; *People v. Honorable Presiding Judge of*

Accused was charged with plunder. Under Republic Act No. 7080,[10] plunder is punishable by *reclusion perpetua* to death. Accused, through counsel, submitted a Motion to Fix Bail and thereby precluded any determination on whether the evidence against him was strong. Accused, through counsel, disregarded the fundamental requirements of the Constitution, the Rules of Court that this Court promulgated, and the unflinching jurisprudence of this Court.

The strength or weakness of the evidence has not been conclusively determined by the Sandiganbayan. The Sandiganbayan could not do so because accused's Motion to Fix Bail did not provide the prosecution the opportunity to present proof of whether the evidence of guilt is strong. Rather, the Motion to Fix Bail was premised on the following grounds:

First, the mitigating circumstances of accused's advanced age and his alleged voluntary surrender.[11] Second, his allegation that his age and phys*ic*al condition ensured that he was not a flight risk.[12]

To repeat for purposes of emphasis, the prosecution did not have the opportunity to present evidence of whether the evidence of guilt was strong. This opportunity was truncated by accused himself when his counsel filed a Motion to Fix Bail, and not an application or a petition for bail as required by existing rules.

Justice Brion reveals that he has weighed the evidence still being presented before the Sandiganbayan.[13] In his Separate Opinion, he points to his evaluation of the annexes attached to another Petition filed before this Court, which had nothing to

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the Regional Trial Court of Muntinlupa (Branch 276), G.R. No. 151005, June 8, 2004, 431 SCRA 319, 324 [Per *J*. Panganiban, First Division]; and *People v. Gako*, 401 Phil. 514, 536-537 (2000) [Per J. Gonzaga-Reyes, Third Division].

[10] An Act Defining and Penalizing the Crime of Plunder (1989).

[11] *Rollo*, pp. 252-253, Motion to Fix Bail.

[12] *Id.*

[13] See *J*. Brion, Separate Opinion, pp. 15-16.

do with the weight of the evidence or with whether accused is entitled to bail.

Enrile v. People,[14] docketed as G.R. No. 213455, has nothing to do with this case. It cannot even be consolidated with this case docketed as G.R. No. 213847. That case raised the issue of whether there were sufficient allegations in the Information to sustain an arraignment.[15] It did not occasion a hearing to determine whether the evidence of guilt was strong. To sustain the relief of petitioner, there was no need to examine the admissibility and weight of the evidence.

Documentary annexes attached to the pleadings in G.R. No. 213455 do not appear to have been evidence presented, admitted, and weighed by the Sandiganbayan in an application for bail. Neither, then, should a news report[16] — hearsay in character — be accepted by any Justice of the Supreme Court as proof without the news report having undergone the fair process of presentation and admission during trial or in a proper hearing before the Sandiganbayan. Not only is it improper; it is unfair to the prosecution, and it is another extraordinary deviation from our Rules of Court.

II

I am also unable to accept the ponencia's ruling that:

> Clearly, the People were *not denied* the reasonable opportunity to challenge or refute the allegations about his advanced age and the instability of his health even if the allegations had not been directly made in connection with his *Motion to Fix Bail*.[17] (Emphasis in the original)

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[14] *Enrile v. People*, G.R. No. 213455, August 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213847.pdf> [Per *J.* Brion, En Banc].

[15] *Id.* at 5-8.

[16] See *J.* Brion, Separate Opinion, pp. 15-16.

[17] Ponencia, p. 3.

With all due respect, this conclusion is based on an inaccurate appreciation of what happened before the Sandiganbayan and the content of the present Petition for Certiorari. To recall:

On June 5, 2014, Senator Juan Ponce Enrile (Enrile) was charged with the crime of plunder punishable under Republic Act No. 7080. Section 2 of this law provides:

> SEC. 2. *Definition of the Crime of Plunder, Penalties.* — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder *and shall be punished by reclusion perpetua to death*[.]

On June 10, 2014, Enrile filed an Omnibus Motion before the Sandiganbayan, praying that he be allowed to post bail if the Sandiganbayan should find probable cause against him. On July 3, 2014, the Sandiganbayan denied the Omnibus Motion on the ground of prematurity since no warrant of arrest had been issued at that time. In the same Resolution, the Sandiganbayan ordered Enrile's arrest.

On the same day the warrant of arrest was issued and served, Enrile proceeded to the Criminal Investigation and Detection Group of the Philippine National Police in Camp Crame, Quezon City.

On July 7, 2014, Enrile filed a Motion to Fix Bail, arguing that his alleged age and voluntary surrender were mitigating and extenuating circumstances that would lower the imposable penalty to reclusion temporal. He also argued that his alleged age and physical condition indicated that he was not a flight risk. His prayer states:

> WHEREFORE, accused Enrile prays that the Honorable Court allow Enrile to post bail, and forthwith set the amount of bail pending determination that (a) evidence of guilt is strong; (b) uncontroverted mitigating circumstances of at least 70 years old and voluntary surrender will not lower the imposable penalty to reclusion temporal; and (c) Enrile is a flight risk [sic].

The Office of the Ombudsman filed its Opposition to the Motion to Fix Bail dated July 9, 2014. Enrile filed a Reply dated July 11, 2014.

Pending the resolution of his Motion to Fix Bail, Enrile filed a Motion for Detention at the PNP General Hospital dated July 4, 2014, arguing that "his advanced age and frail medical condition" merit hospital arrest in the Philippine National Police General Hospital under such conditions that may be prescribed by the Sandiganbayan. He also prayed that in the event of a medical emergency that cannot be addressed by the Philippine National Police General Hospital, he may be allowed to access an outside medical facility. His prayer states:

> WHEREFORE, accused Enrile prays that the Honorable Court temporarily place him under hospital confinement at the PNP General Hospital at Camp Crame, Quezon City, with continuing authority given to the hospital head or administrator to exercise his professional medical judgment or discretion to allow Enrile's immediate access of, or temporary visit to, another medical facility outside of Camp Crame, in case of emergency or necessity, secured with appropriate guards, but after completion of the appropriate medical treatment or procedure, he be returned forthwith to the PNP General Hospital.

After the prosecution's submission of its Opposition to the Motion for Detention at the PNP General Hospital, the Sandiganbayan held a hearing on July 9, 2014 to resolve this Motion.

On July 9, 2014, the Sandiganbayan issued an Order allowing Enrile to remain at the Philippine National Police General Hospital for medical examination until further orders of the court.[18]

What is clear is that there were two (2) Motions separately filed, separately heard, and were the subjects of separate orders issued by the Sandiganbayan.

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[18] *J.* Leonen, Dissenting Opinion in *Enrile v. Sandiganbayan* (*Third Division*), G.R. No. 213847, August 18, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213847_leonen.pdf> 3-4 [Per J. Bersamin, *En Banc*], citing Petition for *Certiorari*, Annex I, pp. 4-5, 6-7; Annex J; Annex K; Annex H; and Annex O, p. 5.

The Motion to Fix Bail was filed on July 7, 2014.[19] The Ombudsman filed its Opposition to the Motion to Fix Bail on July 9, 2014.[20] Accused filed his Reply on July 11, 2014.[21] The Sandiganbayan Resolution denying accused's Motion to Fix Bail for being premature was issued on July 14, 2014.[22]

It is this Resolution dated July 14, 2014 — *only* this Resolution, together with the denial of the Motion for Reconsideration of this Resolution, and no other — that is the subject of the present Petition for Certiorari.

The other motion was a Motion for Detention at the Philippine National Police General Hospital dated July 4, 2014. It was in this Motion that accused argued "his advanced age and frail medical condition."[23] The prosecution submitted an Opposition to this Motion on July 7, 2014.[24] This Motion was orally heard on July 9, 2014.[25] There was a separate Order allowing accused to remain at the Philippine National Police General Hospital. This Order was dated July 9, 2014.[26]

The Order dated July 9, 2014, which allowed accused's detention in a hospital, is not the subject of this Petition for Certiorari. Apart from his hospital detention not being the subject of this Petition, accused did not question the conditions of his detention. The prosecution had conclusive basis to rely on accused's inaction. While evidence of his advanced age and frail medical condition was presented, accused was satisfied with hospital arrest and not release.

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[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Rollo*, p. 245, Petition for *Certiorari*, Annex H.

[24] *Id.* at 307, Petition for *Certiorari*, Annex O.

[25] *Id.* at 306.

[26] *Id.* at 306-308.

The basis for the Motion to Fix Bail was not the frail condition of accused. Rather, it was the Motion's argument that there were two (2) mitigating circumstances: advanced age and voluntary surrender.

Thus, the Sandiganbayan Resolution, the subject of this Petition for Certiorari, states:

> [I]t is only after the prosecution shall have presented its evidence and the Court shall have made a determination that the evidence of guilt is not strong against accused Enrile can he demand bail as a matter of right. Then and only then will the Court be duty-bound to fix the amount of his bail.
>
> To be sure, no such determination has been made by the Court. In fact, accused Enrile has not filed an application for bail. Necessarily, no bail hearing can even commence. It is thus exceedingly premature for accused Enrile to ask the Court to fix his bail.[27]

Accused, through counsel, filed a Motion for Reconsideration[28] based on the same argument, but this was similarly denied.[29] Accused only raised his frail health in relation to the conclusion that he was not a flight risk.[30]

Accused did not justify, on the basis of his frail health, his allowance to bail without a hearing on whether the evidence of guilt was strong. As extensively discussed in the Dissenting Opinion filed with the first resolution of this case, the majority in this Court granted bail on a ground other than that which was argued or prayed for in this Petition.

Furthermore, the certification relied upon by the majority was presented not for having accused released on bail. The hearing relating to this certification was to determine whether accused's

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[27] *Id.* at 84, Petition for *Certiorari*, Annex A.

[28] *Id.* at 271-277, Petition for *Certiorari*, Annex L.

[29] *Id.* at 89-102, Petition for *Certiorari*, Annex B.

[30] *Id.* at 274-275.

detention in a hospital should continue.[31] It was not for determining whether there were serious reasons for his urgent release.

Dr. Jose C. Gonzales' certification was in a Manifestation and Compliance dated August 28, 2014.[32] This certification was submitted as an annex to a Manifestation[33] before this Court regarding the remoteness of the possibility of flight of accused. This certification was not submitted to release accused on bail due to his ailments.

Finally, we imposed an arbitrary amount of ₱1,000,000.00 as bail for accused.[34] The prosecution was not given the opportunity to comment on the amount of bail. The sufficiency of this amount, in relation to the net worth of accused or his sources of income, has not been presented in evidence. Whether it suffices to guarantee his appearance in further court proceedings, therefore, is the product of the collective conjecture of this Court. We are bereft with factual basis. Our rules are

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[31] *Id.* at 309-312, Petition for *Certiorari*, Annex P.

[32] *Id.* at 373-375, Manifestation, Annex B.

[33] *Id.* at 323-328.

[34] RULES OF COURT, Rule 114, Sec. 9 provides:

> SEC. 9. *Amount of bail; guidelines.* — The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to the following factors:
>
> (a) Financial ability of the accused to give bail;
>
> (b) Nature and circumstances of the offense;
>
> (c) Penalty for the offense charged;
>
> (d) Character and reputation of the accused;
>
> (e) Age and health of the accused;
>
> (f) Weight of the evidence against the accused;
>
> (g) Probability of the accused appearing at the trial;
>
> (h) Forfeiture of other bail;
>
> (i) The fact that accused was a fugitive from justice when arrested; and
>
> (j) Pendency of other cases where the accused is on bail.
>
> Excessive bail shall not be required.

designed to have the Sandiganbayan or a trial court determine these facts. It is not within our competence to receive this type of evidence. Certainly, it is not within our jurisdiction to go beyond the provisions of the Constitution.

In my view, these observations show a quintessential disrespect for the inherent due process rights of the prosecution. We have sprung a surprise on the prosecution, and have given an unexpected gift to accused.

This is not fairness as I understand it.

III

Justice Brion further suggests that the prosecution was unable to show any other nonagenarian who is incarcerated and is in the same position as petitioner in this case.[35]

This certainly is not the point. Again, the point is whether there is basis in our Constitution or in our Rules of Court to grant exceptional treatment to petitioner. I maintain that there is none.

Even if there were, there are still those whose conditions are worse off than that of petitioner.

Those of us who have prosecuted or defended an accused at various levels in our court system know the conditions of detention facilities in this country. Many of my colleagues have had the privilege of serving as judges of both the first- and second-level trial courts. They have more intimate knowledge of the conditions of our detention because they have supervised detention facilities as executive judges of their various stations.

To say that detention facilities are overcrowded is an understatement. In many places, detention prisoners have nowhere to get sound sleep. These facilities are populated by those who are under detention for allegedly selling less than one (1) gram of shabu, for allegedly stealing a cell phone, for allegedly committing estafa against their employers, and for

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[35] *J.* Brion, Separate Opinion, p. 15.

the countless allegations of crimes committed only by those who do not have as many opportunities as petitioner in this case. They do not have the resources to hire their own medical specialists. They do not have the ability to pay for focused legal assistance. Thus, they suffer in silence. They await the ordinary course of justice required by our law and our Rules of Court. They do not have the resources to craft exceptions to what is contained in our law.

Indeed, petitioner is a nonagenarian who suffers from some medical ailments. Yet, we should not erase the privileges he was given.

Petitioner is accused of plunder, which requires a charge that he has defrauded the people of at least ₱75,000,000.00 or more and has taken advantage of his public office.[36] He was not accused of stealing bread because he was driven by the hopelessness of fearing that his children would go hungry.

Petitioner did not share the crowded spaces of the impoverished hordes in detention facilities. He was given the privilege of being incarcerated in special quarters, and then later, in a government hospital. There was a constant stream of clothes and food that came to him through his friends, family, and staff.

Upon his release, petitioner would have mansions to go home to, with facilities full of comfort. He would not need to live in unnumbered shanties that could barely survive the vagaries of our weather systems.

Narrowing our vision and making his privileges invisible will result in unfounded judicial exceptionalism. Judicial exceptionalism, consciously or unconsciously, favors the rich and powerful. Injustice entrenches inequality. Inequality assures poverty. Poverty ensures crimes that provide discomfort to the rich. But crimes are expressions of hopelessness by many, no matter how illegitimate.

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[36] Rep. Act No. 7080 (2007), Sec. 2.

There may be no more nonagenarians who suffer in special confinement in government hospitals. Certainly, there are many more languishing in our ordinary detention centers.

All these should bother our sense of fairness.

IV

A lot of media coverage was given to my statements in Part IV of my Dissenting Opinion of the first resolution of this case. Many have concluded that my point was to imply that my colleagues who voted for the majority did not have the opportunity to read and reflect on the final contents of the Decision. Memes were generated to cast the result of this case as a battle between the Justices of this Court.

That was neither my express nor implied intention. No opinion of this Court should be interpreted in that manner. Every member of this Court knew the consequences of his or her position.

The purpose of that narrative was to explain why another Associate Justice chose not to write her separate dissenting opinion[37] and to put in context the "apparent delay in the announcements regarding the vote and the date of promulgation"[38] of the judgment.

A dissenting opinion, in my view, should be read to express the principled view of its author regarding the facts, issues, legal principles, and interpretative methodologies that should be applied in a case. It is never the forum to cast doubt on the character of esteemed colleagues.

Dissents, by their very nature, cause a degree of discomfort to those whose views are different. This discomfort is part of a collegiate court and a vibrant judiciary. It should be appreciated by the public as reflecting competing points of view on matters

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[37] See J. Leonen, Dissenting Opinion in *Enrile v. Sandiganbayan* (*Third Division*), G.R. No. 213847, August 18, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213847.pdf> 16 [Per *J.* Bersamin, *En Banc*].

[38] *Id.* at 17.

of principle, not as a staged and puerile clash of gladiators. The drama lies on the points raised, not on the personalities that are mediums for these standpoints.

Effective dissents strive to be articulate, but not caustic. An effective dissent is an effort to call attention to details and principles that may have been overlooked by the majority. It is never a means to undermine the competence of any member of this Court. It is the result of a constitutional duty to lay down what each of us views as a more convincing standpoint as well as a more reasoned and just conclusion.

Thus, I maintain my dissent. Justice should always be in accordance with law. Accommodations given to select accused on very shaky legal foundations weaken the public's faith on our judicial institutions.

I urge that we reconsider.

ACCORDINGLY, I vote to **GRANT** the Motion for Reconsideration.

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ATTORNEYS

Admission to the bar — No applicant for admission to the Bar Examination shall be admitted unless he had pursued and satisfactorily completed a pre-law course. (Caronan *vs.* Caronan *a.k.a.* "Atty. Patrick A. Caronan," A.C. No. 11316, July 12, 2016) p. 628

Code of Professional Responsibility — It is unethical for a lawyer to obtain loans from Complainant during the existence of a lawyer-client relationship. (Aguilar-Dyquiangco *vs.* Atty. Arellano, A.C. No. 10541[Formerly CBD Case No. 11-3046], July 12, 2016) p. 600

— Lawyers are duty-bound to maintain at all times a high standard of legal proficiency, morality, honesty, integrity, and fair dealing; if the lawyer falls short of this standard, the Court will not hesitate to discipline the lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion. (Gutierrez *vs.* Atty. Maravilla-Ona, A.C. No. 10944, July 12, 2016) p. 619

— Rule 16.03 of the Code obligates a lawyer to deliver the client's funds and property when due or upon demand. (*Id*.)

— The failure of a lawyer to file a complaint with the court in behalf of his client, despite receiving the necessary fees from the latter is a violation of Canon 18. (Aguilar-Dyquiangco *vs.* Atty. Arellano, A.C. No. 10541[Formerly CBD Case No. 11-3046], July 12, 2016) p. 600

Disbarment — An attack on a person's citizenship may only be done through a direct action for its nullity; disbarment case is definitely not the proper venue to attack someone's citizenship; for the lack of any ruling from a competent court on respondent's citizenship, this disbarment case loses its only leg to stand on and, hence, must be dismissed. (Vazquez *vs.* Atty. Lim Queco Kho, A.C. No. 9492, July 11, 2016) p. 368

Culpa contractual — Action for breach of contract (*culpa contractual)* and an action for *quasi-delict* (*culpa aquiliana),* distinguished; in *culpa contractual,* the plaintiff only needs to establish the existence of the contract and the obligor's failure to perform his obligation; it is not necessary for the plaintiff to prove or even allege that the obligor's non-compliance was due to fault or negligence because Art. 1735 already presumes that the common carrier is negligent; a common carrier can only free itself from liability by proving that it observed extraordinary diligence; on the other hand, the plaintiff in *culpa aquiliana* must clearly establish the defendant's fault or negligence because this is the very basis of the action; if the injury to the plaintiff resulted from the act or omission of the defendant's employee or servant, the defendant may absolve himself by proving that he observed the diligence of a good father of a family to prevent the damage. (Torres-Madrid Brokerage, Inc. *vs.* Feb Mitsui Marine Ins. Co., Inc., G.R. No. 194121, July 11, 2016) p. 413

Liability of — A common carrier's extraordinary responsibility over the shipper's goods lasts from the time these goods are unconditionally placed in the possession of, and received by, the carrier for transportation, until they are delivered, actually or constructively, by the carrier to the consignee. (Torres-Madrid Brokerage, Inc. *vs.* Feb Mitsui Marine Ins. Co., Inc., G.R. No. 194121, July 11, 2016) p. 413

— In cases of theft or robbery, a common carrier is presumed to have been at fault or to have acted negligently, unless it can prove that it observed extraordinary diligence; the theft or the robbery of the goods is not considered a fortuitous event or a *force majeure*; a common carrier may absolve itself of liability for a resulting loss: (1) if it proves that it exercised extraordinary diligence in transporting and safekeeping the goods; or (2) if it stipulated with the shipper/owner of the goods to limit its liability for the loss, destruction, or deterioration of the goods to a degree less than extraordinary diligence. (*Id*.)

— The first stage in the chain of custody is the marking of the dangerous drugs; marking, which is the affixing on the dangerous drugs or substance by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. (*Id*.)

— The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general stipulation on the chemist's competence and the existence of the chemistry report; instead of the forensic chemist turning over the substance to the court and testifying, it was the prosecutor who obtained the specimen from the laboratory and turned it over to the court; the court can only conclude that the integrity of the *corpus delicti* was not preserved. (*Id*.)

— The marking of the seized items, to truly ensure that the same items that enter the chain are eventually the same ones offered in evidence, should be done in the presence of the apprehended violator immediately upon confiscation. (People *vs*. Cayas *y* Calitis @ "Tetet", G.R. No. 206888, July 4, 2016) p. 70

— Unexplained gaps of how the specimen was handled while in the custody of a police officer and how the same was subsequently turned over to the chemist who conducted the examination taint the integrity of the *corpus delicti*. (People *vs.* Siaton *y* Bate, G.R. No. 208353, July 4, 2016) p. 87

Illegal possession of dangerous drugs — In criminal cases involving drugs, failure of the prosecution to introduce the seized drugs as exhibits during trial is fatal. (People *vs.* Garrucho *y* Serrano, G.R. No. 220449, July 4, 2016) p. 163

— It must be shown that: (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and

is offered in opposition to it. (Ambray *vs.* Tsourous, G.R. No. 209264, July 5, 2016) p. 226

— The genuineness of handwriting may be proved in the following manner: (1) by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted or been charged; and (2) by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party, against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (*Id*.)

INTEREST

Legal interest — When the judgment of the court awarding the sum of money becomes final and executory, the rate of legal interest shall be six percent (6%) *per annum* from such finality until its satisfaction, taking the form of a judicial debt. (Techno Dev't. & Chemical Corp. *vs.* Viking Metal Industries, Incorporated, G.R. No. 203179, July 4, 2016) p. 10

INTERVENTION

Concept — A remedy by which a third party, who is not originally impleaded in a proceeding, becomes a litigant for purposes of protecting his or her right or interest that may be affected by the proceedings; it is not an absolute right but may be granted by the court when the movant shows facts which satisfy the requirements of the statute authorizing intervention. (Neptune Metal Scrap Recycling, Inc. *vs.* Mla. Electric Co., G.R. No. 204222, July 4, 2016) p. 30

— The rules on intervention are procedural rules, which are mere tools designed to expedite the resolution of cases pending in court; courts can avoid a strict and rigid application of these rules if such application would result in technicalities that tend to frustrate rather than promote substantial justice. (*Id*.)

NEGOTIABLE INSTRUMENTS LAW

Bill of exchange — A manager's check is a bill of exchange drawn by a bank upon itself and is accepted by its issuance; it is an order of the bank to pay, drawn upon itself, committing in effect its total resources, integrity, and honor behind its issuance; the check is signed by the manager or some other authorized officer for the bank. (Land Bank of the Phils. *vs.* Kho, G.R. No. 205839, July 7, 2016) p. 306

— Client's act of furnishing another person with a photocopy of the manager's check as well as his failure to inform the bank that the transaction did not push through cannot justify the banks's confirmation and clearing of a fake check. (*Id*.)

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presumption of innocence would be an unconstitutional act. (People *vs*. Cayas *y* Calitis @ "Tetet", G.R. No. 206888, July 4, 2016) p. 70

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Adverse claims — An adverse claim is a type of involuntary dealing designed to protect the interest of a person over a piece of real property by apprising third persons that there is a controversy over the ownership of the land; it seeks to preserve and protect the right of the adverse claimant during the pendency of the controversy, where registration of such interest or right is not otherwise provided for by the Property Registration Decree; an adverse claim serves as a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute. (Logarta *vs*. Mangahis, G.R. No. 213568, July 5, 2016) p. 244

— Voluntary instruments such as contracts of sale, contracts to sell, and conditional sales are registered by presenting the owner's duplicate copy of the title for annotation, pursuant to Secs. 51 to 53 of P.D. No. 1529; exception to this rule is when the registered owner refuses or fails to surrender his duplicate copy of the title, in which case the claimant may file with the Register of Deeds a statement setting forth his adverse claim. (*Id*.)

— When there was no showing that the registered owner failed or refused to present the owner's duplicate copy of the title, cancellation of the annotation must be made pursuant to Sec. 54 of P.D. No. 1529 and not Sec. 70. (*Id*.)

Registration of a conditional deed of sale — In a deed of conditional sale, ownership is transferred after the full payment of the installments of the purchase price or the fulfillment of the condition and the execution of a definite or absolute deed of sale. (Logarta *vs*. Mangahis, G.R. No. 213568, July 5, 2016) p. 244

— By claiming retention rights, petitioner impliedly acknowledged that the subject property is covered by P.D. No. 27. (*Id*.)

— Heirs may exercise the original landowner's right to retention if they can prove that the decedent had no knowledge of OLT Coverage over the subject property; the intent must be proven by the heirs seeking to exercise the right. (*Id*.)

WITNESSES

Credibility of — A recantation or an affidavit of desistance is viewed with suspicion and reservation; jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. (People *vs.* Fuentes, Jr., G.R. No. 212337, July 4, 2016) p. 133

— Factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance. (People *vs.* Pusing *y* Tamor, G.R. No. 208009, July 11, 2016) p. 541

— Findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case. (People *vs.* Fuentes, Jr., G.R. No. 212337, July 4, 2016) p. 133

— Findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude under gruelling examination. (People *vs.* Concepcion *y* Nimenda, G.R. No. 212206, July 4, 2016) p. 124

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