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OF THE

PHILIPPINES

FROM

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MANILA
2017

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 11380. August 16, 2016]

JEN SHERRY WEE-CRUZ, *complainant, vs.* **ATTY. CHICHINA FAYE LIM,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 1, RULE 1.01; BY TAKING THE LAWYER'S OATH, LAWYERS BECOME GUARDIANS OF THE LAW AND INDISPENSABLE INSTRUMENTS FOR THE ORDERLY ADMINISTRATION OF JUSTICE; AS SUCH, THEY CAN BE DISCIPLINED FOR ANY MISCONDUCT, BE IT IN THEIR PROFESSIONAL OR IN THEIR PRIVATE CAPACITY, AND THEREBY BE RENDERED UNFIT TO CONTINUE TO BE OFFICERS OF THE COURT.— Respondent must be suspended from the practice of law for violation of Rule 1.01, Canon 1 of the Code of Professional Responsibility. Respondent cannot evade disciplinary sanctions by implying that there was no attorney-client relationship between her and complainant. In *Nulada v. Paulma,* this Court reiterated that by taking the Lawyer's Oath, lawyers become guardians of the law and indispensable instruments for the orderly administration of justice. As such, they can be disciplined for any misconduct, be it in their professional or in their private capacity, and thereby be rendered unfit to continue to be officers of the court. In this case, complainant and her brother categorically stated that they

had agreed to lend substantial amounts of money to respondent, because "she's a lawyer." Indeed, lawyers are held by the community in very high esteem; yet respondent eroded this goodwill when she repeatedly broke her promises to pay and make good on her checks.

2. ID.; ID.; THE LAWYER'S ISSUANCE OF UNFUNDED CHECK VIOLATES BP 22, AND EXHIBITS HIS INDIFFERENCE TOWARDS THE PERNICIOUS EFFECT OF HIS ILLEGAL ACT TO PUBLIC INTEREST AND PUBLIC ORDER.— On several occasions, this Court has had to discipline members of the legal profession for their issuance of worthless checks. In *Enriquez v. De Vera*, the correlation between BP 22 and administrative cases against lawyers was explained: Being a lawyer, respondent was well aware of the objectives and coverage of [BP] 22. If he did not, he was nonetheless presumed to know them, for the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated [BP] 22, and exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order. He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws.

3. ID.; ID.; DISBARMENT OR SUSPENSION; DISBARMENT SHOULD NOT BE DECREED WHERE ANY PUNISHMENT LESS SEVERE WOULD ACCOMPLISH THE END DESIRED; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW IMPOSED AGAINST RESPONDENT-LAWYER FOR ISSUANCE OF WORTHLESS CHECKS.— This Court, however, agrees with respondent that the penalty of disbarment would be too harsh. Recognizing the consequence of disbarment on the economic life and honor of an erring lawyer, this Court held in *Anacta v. Resurreccion* that disbarment should not be decreed where any punishment less severe would accomplish the end desired. In *Nulada*, this Court cited *Heenan v. Espejo*, *A-1 Financial Services, Inc. v. Valerio*, *Dizon v. De Taza*, and *Wong v. Moya II* as basis for meting out two-year suspensions to lawyers who had issued worthless checks and failed to pay their debts. x x x. As in this case, Atty. Torres exploited his friendship with

the complainant therein in order to borrow a substantial amount of money. We find it appropriate to impose the same penalty on respondent in this case.

APPEARANCES OF COUNSEL

Zozobrado Tupas Zozobrado Law Offices for complainant.
Pantojan Bernardo-Mamburam & Associates for respondent.

D E C I S I O N

SERENO, *C.J.*:

This administrative case arose from a Complaint[1] for disbarment or suspension filed by Jen Sherry Wee-Cruz (complainant) against Atty. Chichina Faye Lim (respondent) before the Integrated Bar of the Philippines (IBP). The IBP found respondent guilty of gross misconduct because of her issuance of worthless checks to complainant's brother. The IBP Board of Governors thereafter resolved to disbar respondent from the practice of law.[2]

As a preliminary matter, this Court reiterates that it alone has the power to discipline lawyers and remove their names from the rolls.[3] The IBP Board of Governors may only *recommend* the dismissal of a complaint or the imposition of disciplinary action on a respondent lawyer.[4]

While it adopts the factual findings of the IBP, this Court finds that the penalty of suspension for two years will suffice.

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[1] *Rollo*, pp. 2-7.

[2] Resolution dated 11 October 2014 in CBD Case No. 11-2949; *id*. at 379-380.

[3] Article VIII, Section 5(5) of the 1987 Constitution confers upon the Supreme Court the power to promulgate rules concerning the admission to the practice of law.

[4] Section 12(b) of Rule 139-B, as amended by Bar Matter No. 1645.

ANTECEDENT FACTS

The parties to this case were childhood friends.[5] This relationship enabled respondent to borrow substantial amounts of money from complainant and the latter's brother.[6] Complainant enumerated three instances when her trust was abused by respondent in order to obtain loans the latter could not pay.

First instance. In 2008, respondent asked if she could use the credit card of complainant to purchase something.[7] As the latter was then unable to get out of the house because of a delicate pregnancy, she had to ask respondent to withdraw ₱10,000 from her ATM card to pay for her credit card bill.[8] Complainant tendered both her ATM card, which had an available balance of ₱78,000, and her credit card.[9] She later found out that respondent had depleted all the funds in the ATM card and used up a considerable amount from the cash advance limit of the credit card.[10] Despite the repeated demands of complainant and the consequent execution of a promissory note by respondent, the latter still failed to pay the principal amount of ₱142,000 and the interests thereon that had accrued.[11]

Second instance. Also in 2008, respondent incurred a ₱1.055 million loan from complainant's brother.[12] The loan was covered by postdated checks, which were later dishonored and returned by the bank for the reason that the account had been closed.[13] In September 2010, respondent issued a promissory note, which remained unfulfilled as of the date of filing of the Complaint.[14]

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[5] *Rollo,* pp. 2, 381.

[6] *Id.* at 381.

[7] *Id.* at 5.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 2.

[13] *Id.* at 3.

[14] *Id.* at 3.

Third instance. In February 2010, respondent issued postdated checks payable to "Cash" as partial payment of the outstanding loan accommodation for more than ₱3 million, which had been extended to her by complainant.[15] These checks were later dishonored and returned by the bank for the reason that the account had been closed.[16]

Complainant and her brother repeatedly called and sent text messages to petitioner to inform her that her checks had been dishonored and to demand that she make good on her checks.[17] On 7 October 2010, complainant personally handed a demand letter to respondent.[18] As the latter still failed to honor her promises to pay, complainant instituted a criminal complaint. The Office of the City Prosecutor found probable cause to indict respondent for four counts of violation of *Batas Pambansa Blg.* 22 (B.P. 22); and Article 315, par. 2(d) of the Revised Penal Code.[19]

On 15 March 2011, complainant lodged a Complaint against respondent before the IBP.

PROCEEDINGS BEFORE THE IBP

Despite due notice, respondent did not submit an Answer, appear at the mandatory conference, or submit a position paper.[20]

IBP Commissioner Felimon C. Abelita III took the silence and nonparticipation of respondent as an admission of guilt.[21] He pointed out that her attitude was a clear defiance of the commission and the institution it represented.[22] Hence, he

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[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.* at 4.

[19] *Id.* at 5.

[20] *Id.* at 381.

[21] *Id.*

[22] *Id.*

recommended that respondent be suspended until she is able to pay in full her indebtedness to complainant's brother.[23]

The IBP Board of Governors adopted and approved the Report and Recommendation of Commissioner Abelita with the modification that respondent be disbarred, not merely suspended. The board considered her disrespect and disregard of its orders as an aggravating circumstance.[24]

On 14 April 2016, respondent filed a Petition for Review on *Certiorari* before this Court. She asserts that she did not exhibit any immoral or deceitful conduct because the acts were done in her private capacity.[25] She insists that she exhibited good faith and an honest intention to settle, as she made partial payments amounting to ₱1.2 million.[26] She blames complainant for not giving adequate time for the former to settle the face value of the checks.[27] In closing, respondent submits that disbarment would be too harsh a penalty, considering the absence of bad faith, malice or spite on her part.[28]

THE RULING OF THE COURT

Respondent must be suspended from the practice of law for violation of Rule 1.01, Canon 1 of the Code of Professional Responsibility.

Respondent cannot evade disciplinary sanctions by implying that there was no attorney-client relationship between her and complainant. In *Nulada v. Paulma*,[29] this Court reiterated that by taking the Lawyer's Oath, lawyers become guardians of the

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[23] Report and Resolution dated 7 June 2013, *id*. at 381-382.

[24] Notice of Resolution dated 11 October 2014, *id*. at 379.

[25] *Id*. at 394.

[26] *Id*. at 395-398.

[27] *Id*. at 398.

[28] *Id*. at 400-401.

[29] A.C. No. 8172 (Resolution), 12 April 2016.

law and indispensable instruments for the orderly administration of justice. As such, they can be disciplined for any misconduct, be it in their professional or in their private capacity, and thereby be rendered unfit to continue to be officers of the court.[30]

In this case, complainant and her brother categorically stated that they had agreed to lend substantial amounts of money to respondent, because "she's a lawyer."[31] Indeed, lawyers are held by the community in very high esteem; yet respondent eroded this goodwill when she repeatedly broke her promises to pay and make good on her checks.

On several occasions, this Court has had to discipline members of the legal profession for their issuance of worthless checks. In *Enriquez v. De Vera*,[32] the correlation between BP 22 and administrative cases against lawyers was explained:

> Being a lawyer, respondent was well aware of the objectives and coverage of [BP] 22. If he did not, he was nonetheless presumed to know them, for the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated [BP] 22, and exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order. He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws.

This Court, however, agrees with respondent that the penalty of disbarment would be too harsh. Recognizing the consequence of disbarment on the economic life and honor of an erring lawyer, this Court held in *Anacta v. Resurreccion*[33] that disbarment should

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[30] *Id.* citing *Foronda v. Alvarez, Jr.*, AC No. 9976, 25 June 2014, 727 SCRA 155, 164, further citing *de Chavez-Blanco v. Lumasag, Jr.*, 603 Phil. 59, 65 (2009).

[31] *See* the Judicial Affidavit executed by complainant on 8 March 2013, *rollo*, p. 70; and the Judicial Affidavit executed by complainant's brother, Bhent Jourwen T. Wee, on 8 March 2013, *id.* at 91.

[32] A.C. No. 8330, 16 March 2015.

[33] 692 Phil. 488 (2012).

not be decreed where any punishment less severe would accomplish the end desired.

In *Nulada*, this Court cited *Heenan v. Espejo*,[34] *A-1 Financial Services, Inc. v. Valerio*,[35] *Dizon v. De Taza*,[36] and *Wong v. Moya II*[37] as basis for meting out two-year suspensions to lawyers who had issued worthless checks and failed to pay their debts. In *Sanchez v. Torres*,[38] the same penalty was imposed. The respondent lawyer therein was found guilty of wilful dishonesty and unethical conduct for failing to pay his debt and for issuing checks without sufficient funds. As in this case, Atty. Torres exploited his friendship with the complainant therein in order to borrow a substantial amount of money. We find it appropriate to impose the same penalty on respondent in this case.

WHEREFORE, Atty. Chichina Faye Lim is **SUSPENDED** from the practice of law for two years. Let a copy of this Decision be entered in her personal record at the Office of the Bar Confidant, and a copy be served on the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all the courts in the land.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Brion, J., on leave.

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[34] A.C. No. 10050, 3 December 2013, 711 SCRA 290.

[35] 636 Phil. 627 (2010).

[36] A.C. 7676, 10 June 2014, 726 SCRA 70.

[37] 590 Phil. 279, 289 (2008).

[38] A.C. No. 10240, 25 November 2014, 741 SCRA 620.

PRESIDENTIAL ELECTORAL TRIBUNAL

[P.E.T. No. 004. August 16, 2016]

MANUEL A. ROXAS, *protestant, vs.* **JEJOMAR C. BINAY,** *protestee.*

SYLLABUS

POLITICAL LAW; CONSTITUTIONAL LAW; PRESIDENTIAL ELECTORAL TRIBUNAL; THE TRIBUNAL SHOULD NOT ANYMORE PROCEED IN THE CASE WHERE ANY DECISION THAT MAY BE RENDERED THEREON WILL HAVE NO PRACTICAL OR USEFUL PURPOSE, AND CANNOT BE ENFORCED; THE PROTEST AND COUNTER-PROTEST HAVE BECOME MOOT AND ACADEMIC IN CASE AT BAR.— The term of the office of Vice President being contested by the parties had expired at noon of June 30, 2016. Vice President Robredo has assumed the office thereby contested. Clearly, the protest and the counter-protest that are the subject matter of this case have become moot and academic. As such, the Tribunal is constrained to dismiss the protest and the counter-protest. It is settled rule that the Tribunal should not anymore proceed in this case because any decision that may be rendered hereon will have no practical or useful purpose, and cannot be enforced. Proceeding in this case until its resolution will then be an exercise in futility considering that there is no longer any practical reason why the Tribunal should still determine who had won as Vice President in the 2010 National and Local Elections if the term of such office had already expired.

APPEARANCES OF COUNSEL

Bienvenido I. Somera, Jr., Joe Nathan P. Tenefrancia and *Rodel A. Cruz* for protestant Roxas.

Yorac[+] *Arroyo Chua*[+] *Caedo & Coronel Law Firm* and *Subido Pagente Certeza Mendoza & Binay Law Firm* for protestee Binay.

R E S O L U T I O N

BERSAMIN, *J.*:

On June 9, 2010, Congress, in joint session assembled and sitting as the National Board of Canvassers (NBOC), proclaimed protestee Jejomar C. Binay as the Vice President duly elected in the May 10, 2010 National and Local Elections after garnering 14,645,574 votes. Protestant Manuel A. Roxas came in second with 13,918,490 votes,[1] or a margin of 727,084 votes in favor of the protestee.

On July 9, 2010, the protestant initiated this protest,[2] whereby he prayed as follows:

> WHEREFORE, protestant respectfully prays that the Honorable Tribunal:
>
> 1. Immediately upon the filing of the instant Protest, ISSUE a Precautionary Protection Order;
>
>   a. DIRECTING all City/Municipal Treasurers, Regional Election Directors, Provincial Election Supervisors, Election Officers, responsible personnel and custodians nationwide to take immediate steps and measures to safeguard the integrity of all ballot boxes and their contents, lists of voters with voting records, books of voters, audit logs, statistics report and any and all other documents or paraphernalia used in the 10 May 2010 elections, as well as data storage devices containing electronic data evidencing the conduct and the results of elections in all contested clustered precincts nationwide; and
>
>   b. DIRECTING the Chairman, Commissioners, Executive Director, Department Directors, Division Chiefs/ Heads, responsible personnel and custodians nationwide to take immediate steps and measurers to safeguard the integrity of the following:

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[1] *Rollo* (Vol. I), pp. 109-110 (Joint Resolution of Both Houses No. 01).

[2] *Id.* at 1-108.

i. The Automated Election System, which includes but is not limited to, the Electoral Management System and the Election Day Management Platform and their hardware and software components, including the source code, all encryption, decryption and conversion keys, passwords, viewing systems, readers and all necessary and incidental peripheral/ collateral systems;

ii. Back-up compact discs of the Consolidation and Canvassing Systems at the city/municipal/ provincial levels;

iii. Main and back-up compact flash cards of the Precinct Count Optical Scan machines containing the election returns as electronically transmitted to the city/municipal/provincial Boards of Canvassers; and

iv. Any and all other available sources of election data;

2. CREATE and CONSTITUTE a Technical Panel composed of independent experts appointed by the Honorable Tribunal to undertake and supervise the conduct of a comprehensive, system-wide forensic analysis of the Automated Election System, which includes but is not limited to, the Electoral Management System and the Election Day Management Platform, and their hardware and software components;

3. ORDER the conduct of a comprehensive, system-wide forensic analysis and comparison (which would not even require the bringing or transmittal of the ballot boxes) of the following, among others;

a. The Automated Election System, which includes but is not limited to, the Election Management System and the Election Day Management Platform, and their hardware and software components, including the PCOS machine, source code, all encryption, decryption and conversion keys, passwords, viewing systems, readers and all necessary and incidental peripheral/collateral systems; and

b. The genuineness, accuracy and integrity of, among others, the:

i. Printed and electronically-generated official ballots and election returns;

ii. Back-up compact discs of the Consolidating and Canvassing Systems at the city/municipal/ provincial levels;

iii. Main and back-up compact flash cards of the Precinct Optical Scan machines containing the election returns as electronically transmitted to the city/municipal/provincial Board of Canvassers;

iv. Printed and electronically-generated Statement of Votes by Precinct; and

v. Other available sources of election data, such as and compared with the Random Manual Audit Report and Reconciliation Reports;

4. ORDER the conduct of a proper, independent and transparent Random Manual Audit of votes cast for Vice-President as required by Section 29 of Republic Act No. 8436, as amended by Republic Act No. 9369, by comparing the votes contained in the official ballots with the votes as recorded by the compact flash cards;

5. ORDER the conduct of a manual revision of votes in the contested/affected clustered precincts based on the results of the forensic analysis and Random Manual Audit, and in connection therewith:

a. ORDER the ballot boxes and their contents with their keys, lists of voters with voting records, books of voters, audit logs, statistics report, electronic data storage devices and any and all other documents, paraphernalia or equipment relative to the contested clustered precincts to be brought before the Honorable Tribunal;

b. CONSTITUTE such number of Revision Committees as may be necessary to conduct the manual revision or votes; and

c. ORDER the necessary reconciliation, correction and completion of the affected Election Returns and Certificate of Canvass;

6. ANNUL and SET ASIDE the proclamation of protestee Jejomar C. Binay as the duly elected Vice-President of the Republic of the Philippines; and

7. PROCLAIM protestant Manuel A. Roxas as the duly elected Vice-President of the Republic of the Philippines.[3]

Upon being served with summons and the protest,[4] the protestee submitted his *Answer with Motion for Preliminary Hearing on Affirmative Defenses and Counter-Protest with Motion for Precautionary Protection Order*,[5] whereby he posited that the Tribunal had no jurisdiction over the protest because the protest was seeking to invalidate not only his election as the Vice President, but also the May 10, 2012 National and Local Elections "as a whole."[6] By way of counter-protest, the protestee claimed that fraud, anomalies and irregularities had occurred in 14,111 clustered precincts (or 59,696 established precincts) in the provinces comprising Regions VI, VII and CARAGA (specifically the Provinces of Aklan, Iloilo, Negros Occidental, Cebu, Bohol, Negros Oriental, Agusan del Norte and Agusan del Sur) that had unduly favored the protestant.[7] He prayed, *inter alia*, that a preliminary hearing of his affirmative defenses be held, and that the protest be dismissed.

On August 31, 2010, the Tribunal, acting on the protest and counter-protest, issued a precautionary protection order (PPO)[8] covering all the 76,340 clustered precincts, to wit:

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

[4] *Id.* at 616-617.

[5] *Id.* at 642-719.

[6] *Id.* at 650.

[7] *Id.* at 701-711.

[8] *Rollo* (Vol. II), pp. 1315-1316.

NOW, THEREFORE, pursuant to Rule 36 of the 2010 Rules of the Presidential Electoral Tribunal, You, the Commission on Elections, your agents, representatives, or persons acting in your place or stead, including the municipal treasurers, elections officers, and the responsible personnel and custodians, are hereby DIRECTED to PRESERVE and SAFEGUARD the integrity of the ballot boxes, their contents and keys, list of voters with voting records, books of voters and other documents and paraphernalia used in the May 2010 elections for the position of Vice-President of the Republic of the Philippines, as well as the data storage devices containing the electronic data evidencing the results of elections in the contested 76,340 clustered precincts subject of the Protest and Counter-Protest, effective immediately and continuing until further orders from this Tribunal.

The Tribunal thereafter set the preliminary conference on September 30, 2010, and designated Associate Justice Bernardo P. Pardo (Ret.) as the hearing commissioner.[9] However, because the parties were unable to agree on the common issues, as well as on the procedure to expedite the proceedings at said preliminary conference, Justice Pardo advised them to file their respective desired motions with the Tribunal, including those for the deferment of the retrieval of ballot boxes, and for the disposition of threshold issues.[10]

On September 24, 2012, the Tribunal held another preliminary conference[11] in order to thresh out the various motions and requests filed by the Commission on Elections (COMELEC).[12]

Meanwhile, the Tribunal received the letter[13] from Executive Director Jose M. Tolentino, Jr., of the Project Management Office (PMO) of the COMELEC requesting authority to conduct the mandatory Hardware Acceptance Test (HAT) of the PCOS

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[9] *Id.* at 1324-1326.

[10] *Id.* at 1635-1650.

[11] *Rollo* (Vol. V), pp. 3887-3888.

[12] *Id.* at 3590; *rollo* (Vol. IV), pp. 3456-3459; *rollo* (Vol. V), pp. 3583-3587; and *rollo* (Vol. V), p. 3590.

[13] *Rollo* (Vol. V), pp. 3975-3976.

Machines and other IT equipment for use during the May 13, 2013 Synchronized Automated National, Local and ARMM Regional Elections. After hearing the concerned parties, the Tribunal granted the request subject to certain conditions stated in the resolution.[14]

Consequently, the COMELEC issued Resolution No. 13-0135,[15] whereby it scheduled the retrieval of the ballot boxes for use in the May 13, 2013 National and Local Elections to commence on February 19, 2013 until March 15, 2013.

Anent the submission of inventory reports by the retrieval committees, the Chief Justice issued an order dated March 26, 2013[16] modifying the Guidelines on the Retrieval of Ballot Boxes for the August 8, 2011 ARMM Elections. The Tribunal ratified the order dated March 26, 2013 on April 2, 2013.[17]

Noting that the parties had filed their certificates of candidacy for the Presidency in the May 9, 2016 National and Local Elections, the Tribunal directed them to move in the premises[18] by expressing their interest in pursuing the case. Neither of the parties has complied with the directive as of date.

In view of the holding of the May 9, 2016 National and Local Elections, and in response to the letter request[19] of COMELEC Executive Director Tolentino for the lifting of the PPO, the Tribunal lifted the PPO on February 23, 2016.[20]

After the holding of the National and Local Elections on May 9, 2016, the Philippines elected a new set of national and

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[14] *Id.* at 4055.

[15] *Rollo* (Vol. VI), pp. 4312-4313; the resolution is entitled *In The Matter of the Retrieval of Ballot Boxes Involved in PET Case No. 004 Entitled "Manuel A. Roxas vs. Jejomar C. Binay" For Use in the May 13, 2013 Elections.*

[16] *Rollo* (Vol. VII), pp. 8-13.

[17] *Id.* at 20.

[18] *Rollo* (Vol. VIII), p. 503.

[19] *Id.* at 504.

[20] *Id.* at 508.

local officials. On May 30, 2016, the NBOC officially proclaimed Rodrigo R. Duterte as the newly elected President of the Philippines, and Ma. Leonor G. Robredo as the newly elected Vice President of the Philippines. Both of them took their respective oaths of office and assumed office at noon of June 30, 2016.

The term of the office of Vice President being contested by the parties had expired at noon of June 30, 2016. Vice President Robredo has assumed the office thereby contested. Clearly, the protest and the counter-protest that are the subject matter of this case have become moot and academic. As such, the Tribunal is constrained to dismiss the protest and the counter-protest. It is settled rule that the Tribunal should not anymore proceed in this case because any decision that may be rendered hereon will have no practical or useful purpose, and cannot be enforced.[21] Proceeding in this case until its resolution will then be an exercise in futility considering that there is no longer any practical reason why the Tribunal should still determine who had won as Vice President in the 2010 National and Local Elections if the term of such office had already expired.

WHEREFORE, the Tribunal **DISMISSES** the protest filed by protestant Manuel A. Roxas, and the counter-protest filed by protestee Jejomar C. Binay on the ground of mootness.

No pronouncement on costs of suit.

SO ORDERED.

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

Carpio, J., no part, prior inhibition.

Peralta and *del Castillo, JJ.,* no part.

Brion, J., on leave.

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[21] *Baldo, Jr. v. Commission on Elections*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310-311; *Sales v. Commission on Elections*, G.R. No. 174668, September 12, 2007, 533 SCRA 173, 176-177.

EN BANC

[G.R. No. 189185. August 16, 2016]

WILFREDO MOSQUEDA, MARCELO VILLAGANES, JULIETA LAWAGON, CRISPIN ALCOMENDRAS, CORAZON SABINADA, VIRGINIA CATA-AG, FLORENCIA SABANDON, and LEDEVINA ADLAWAN, *petitioners, vs.* **PILIPINO BANANA GROWERS & EXPORTERS ASSOCIATION, INC., DAVAO FRUITS CORPORATION, and LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION,** *respondents.*

[G.R. No. 189305. August 16, 2016]

CITY GOVERNMENT OF DAVAO, *petitioner, vs.* **COURT OF APPEALS, PILIPINO BANANA GROWERS & EXPORTERS ASSOCIATION (PBGEA), DAVAO FRUITS CORPORATION, and LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE LOCAL GOVERNMENT CODE OF 1991; LOCAL LEGISLATION; TO BE CONSIDERED AS A VALID POLICE POWER MEASURE, AN ORDINANCE MUST PASS THE FORMAL AND SUBSTANTIVE TEST; APPROVAL OF ORDINANCE, FORMAL REQUISITES.— The petitioners' assertion of its authority to enact Ordinance No. 0309-07 is upheld. To be considered as a valid police power measure, an ordinance must pass a two-pronged test: the *formal* (*i.e.*, whether the ordinance is enacted within the corporate powers of the local government unit, and whether it is passed in accordance with the procedure prescribed by law); and the *substantive* (*i.e.*, involving inherent merit, like the conformity of the ordinance with the limitations under the Constitution and the statutes, as well as with the requirements of fairness and reason, and its

consistency with public policy). The formalities in enacting an ordinance are laid down in Section 53 and Section 54 of *The Local Government Code*. These provisions require the ordinance to be passed by the majority of the members of the sanggunian concerned, and to be presented to the mayor for approval. With no issues regarding quorum during its deliberation having been raised, and with its approval of by City Mayor Duterte not being disputed, we see no reason to strike down Ordinance No. 0309-07 for non-compliance with the formal requisites under the *Local Government Code*.

2. ID.; ID.; ID.; CORPORATE POWERS OF THE GOVERNMENT UNIT; THE GENERAL WELFARE CLAUSE; THE GENERAL LEGISLATIVE POWER AND POLICE POWER PROPER OF THE LOCAL GOVERNMENT UNIT, DISCUSSED.— The corporate powers of the local government unit confer the basic authority to enact legislation that may interfere with personal liberty, property, lawful businesses and occupations in order to promote the general welfare. Such legislative powers spring from the delegation thereof by Congress through either the *Local Government Code* or a special law. The General Welfare Clause in Section 16 of the *Local Government Code* embodies the legislative grant that enables the local government unit to effectively accomplish and carry out the declared objects of its creation, and to promote and maintain local autonomy x x x. Section 16 comprehends two branches of delegated powers, namely: the *general legislative power* and the *police power proper*. General legislative power refers to the power delegated by Congress to the local legislative body, or the *Sangguniang Panlungsod* in the case of Davao City, to enable the local legislative body to enact ordinances and make regulations. This power is limited in that the enacted ordinances must not be repugnant to law, and the power must be exercised to effectuate and discharge the powers and duties legally conferred to the local legislative body. The police power proper, on the other hand, authorizes the local government unit to enact ordinances necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the local government unit and its constituents, and for the protection of their property.

3. ID.; ID.; ID.; ID.; THE LOCAL GOVERNMENT UNIT IS VESTED WITH THE REQUISITE AUTHORITY TO

ENACT AN ORDINANCE THAT SEEKS TO PROTECT THE HEALTH AND WELL-BEING OF ITS CONSTITUENTS.— Section 458 of the *Local Government Code* explicitly vests the local government unit with the authority to enact legislation aimed at promoting the general welfare x x x. In terms of the right of the citizens to health and to a balanced and healthful ecology, the local government unit takes its cue from Section 15 and Section 16, Article II of the 1987 Constitution. Following the provisions of the *Local Government Code* and the Constitution, the acts of the local government unit designed to ensure the health and lives of its constituents and to promote a balanced and healthful ecology are well within the corporate powers vested in the local government unit. Accordingly, the Sangguniang Bayan of Davao City is vested with the requisite authority to enact an ordinance that seeks to protect the health and well-being of its constituents.

4. ID.; ID.; ID.; ID.; THE AUTHORITY OF THE LOCAL GOVERNMENT UNIT TO ENACT PIECES OF LEGISLATION THAT WILL PROMOTE THE GENERAL WELFARE, SPECIFICALLY THE HEALTH OF ITS CONSTITUENTS SHOULD NOT BE CONSTRUED AS A VALID LICENSE TO ENACT ANY ORDINANCE IT DEEMS FIT TO DISCHARGE ITS MANDATE.— With or without the ban against aerial spraying, the health and safety of plantation workers are secured by existing state policies, rules and regulations implemented by the FPA, among others, which the respondents are lawfully bound to comply with. The respondents even manifested their strict compliance with these rules, including those in the UN-FAO Guidelines on Good Practice for Aerial Application of Pesticides (Rome 2001). x x x. Furthermore, the constitutional right to health and maintaining environmental integrity are privileges that do not only advance the interests of a group of individuals. The benefits of protecting human health and the environment transcend geographical locations and even generations. This is the essence of Sections 15 and 16, Article II of the Constitution. x x x. Advancing the interests of the residents who are vulnerable to the alleged health risks due to their exposure to pesticide drift justifies the motivation behind the enactment of the ordinance. The City of Davao has the authority to enact pieces of legislation that will promote the general welfare, specifically the health of its constituents. Such authority should not be construed,

however, as a valid license for the City of Davao to enact any ordinance it deems fit to discharge its mandate. A thin but well-defined line separates authority to enact legislations from the method of accomplishing the same.

5. ID.; ID.; ID.; LOCAL LEGISLATION; ORDINANCE; SUBSTANTIVE REQUIREMENTS TO BE VALID.— A valid ordinance must not only be enacted within the corporate powers of the local government and passed according to the procedure prescribed by law. In order to declare it as a valid piece of local legislation, it must also comply with the following substantive requirements, namely: (1) it must not contravene the Constitution or any statute; (2) it must be fair, not oppressive; (3) it must not be partial or discriminatory; (4) it must not prohibit but may regulate trade; (5) it must be general and consistent with public policy; and (6) it must not be unreasonable.

6. ID.; ID.; ID.; ID.; A LOCAL GOVERNMENT UNIT IS CONSIDERED TO HAVE PROPERLY EXERCISED ITS POLICE POWERS ONLY IF IT SATISFIES THE EQUAL PROTECTION CLAUSE AND THE DUE PROCESS CLAUSE OF THE CONSTITUTION.— In the State's exercise of police power, the property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the Government. A local government unit is considered to have properly exercised its police powers only if it satisfies the following requisites, to wit: (1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive. The first requirement refers to the Equal Protection Clause of the Constitution; the second, to the Due Process Clause of the Constitution.

7. ID.; ID.; ID.; ID.; SO LONG AS THE ORDINANCE REALISTICALLY SERVES A LEGITIMATE PUBLIC PURPOSE, AND IT EMPLOYS MEANS THAT ARE REASONABLY NECESSARY TO ACHIEVE THAT PURPOSE WITHOUT UNDULY OPPRESSING THE INDIVIDUALS REGULATED, THE ORDINANCE MUST SURVIVE A DUE PROCESS CHALLENGE. — Substantive due process requires that a valid ordinance must have a sufficient justification for the Government's action. This means that in exercising police power the local government unit must not

arbitrarily, whimsically or despotically enact the ordinance regardless of its salutary purpose. So long as the ordinance realistically serves a legitimate public purpose, and it employs means that are reasonably necessary to achieve that purpose without unduly oppressing the individuals regulated, the ordinance must survive a due process challenge.

8. ID.; ID.; ID.; ID.; A LANDOWNER MAY ONLY BE ENTITLED TO COMPENSATION IF THE TAKING AMOUNTS TO A PERMANENT DENIAL OF ALL ECONOMICALLY BENEFICIAL OR PRODUCTIVE USES OF THE LAND.— In *City of Manila v. Laguio, Jr.*, we have thoroughly explained that taking only becomes confiscatory if it substantially divests the owner of the beneficial use of its property x x x. The establishment of the buffer zone is required for the purpose of minimizing the effects of aerial spraying within and near the plantations. Although Section 3(e) of the ordinance requires the planting of diversified trees within the identified buffer zone, the requirement cannot be construed and deemed as confiscatory requiring payment of just compensation. A landowner may only be entitled to compensation if the taking amounts to a permanent denial of all economically beneficial or productive uses of the land. The respondents cannot be said to be permanently and completely deprived of their landholdings because they can still cultivate or make other productive uses of the areas to be identified as the buffer zones.

9. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO EQUAL PROTECTION; CONCEPT THEREOF; REQUISITES OF A VALID CLASSIFICATION.— The constitutional right to equal protection 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 guaranty of equal protection secures every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statue or by its improper execution through the State's duly constituted authorities. The concept of equal justice under the law demands that the State governs impartially, and not to draw distinctions between individuals solely on differences that are irrelevant to the legitimate governmental objective. Equal treatment neither requires

universal application of laws to all persons or things without distinction, nor intends to prohibit legislation by limiting the object to which it is directed or by the territory in which it is to operate. The guaranty of equal protection envisions equality among equals determined according to a valid classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another. In other words, a valid classification must be: (1) based on substantial distinctions; (2) germane to the purposes of the law; (3) not limited to existing conditions only; and (4) equally applicable to all members of the class.

10. ID.; ID.; ID.; ID.; THREE LEVELS OF SCRUTINY TO DETERMINE THE PROPRIETY OF CLASSIFICATION, DISCUSSED.— The reasonability of a distinction and sufficiency of the justification given by the Government for its conduct is gauged by using the *means-end test*. This test requires analysis of: (1) the interests of the public that generally require its exercise, as distinguished from those of a particular class; and (2) the means employed that are reasonably necessary for the accomplishment of the purpose and are not unduly oppressive upon individuals. To determine the propriety of the classification, courts resort to three levels of scrutiny, viz: the *rational scrutiny*, *intermediate scrutiny* and *strict scrutiny*. The *rational basis scrutiny* (also known as the rational relation test or rational basis test) demands that the classification reasonably relate to the legislative purpose. The rational basis test often applies in cases involving economics or social welfare, or to any other case not involving a suspect class. When the classification puts a quasi-suspect class at a disadvantage, it will be treated under intermediate or heightened review. Classifications based on gender or illegitimacy receives intermediate scrutiny. To survive intermediate scrutiny, the law must not only further an important governmental interest and be substantially related to that interest, but the justification for the classification must be genuine and must not depend on broad generalizations. The strict scrutiny review applies when a legislative classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar class disadvantage of a suspect class. The Government carries the burden to prove that the classification is necessary to achieve a compelling state interest, and that it is the least restrictive means to protect such interest.

11. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE OF 1991; LOCAL LEGISLATION; CLASSIFICATION UNDER ORDINANCE NO. 0309-07, RATIONAL BASIS TEST, APPLIED.— [T]he petitioners correctly argue that the rational basis approach appropriately applies herein. Under the rational basis test, we shall: (1) discern the reasonable relationship between the means and the purpose of the ordinance; and (2) examine whether the means or the prohibition against aerial spraying is based on a substantial or reasonable distinction. A reasonable classification includes all persons or things similarly situated with respect to the purpose of the law. Applying the test, the established classification under Ordinance No. 0309-07 is to be viewed in relation to the group of individuals similarly situated with respect to the avowed purpose. This gives rise to two classes, namely: (1) the classification under Ordinance No. 0309-07 (*legislative classification*); and (2) the classification based on purpose (*elimination of the mischief*). The legislative classification found in Section 4 of the ordinance refers to "all agricultural entities" within Davao City. Meanwhile, the classification based on the purpose of the ordinance cannot be easily discerned because the ordinance does not make any express or implied reference to it.

12. ID.; ID.; ID.; ID.; ORDINANCE NO. 0309-07 SUFFERS FROM BEING "UNDERINCLUSIVE" BECAUSE THE CLASSIFICATION DOES NOT INCLUDE ALL INDIVIDUALS TAINTED WITH THE SAME MISCHIEF THAT THE LAW SEEKS TO ELIMINATE; A CLASSIFICATION THAT IS DRASTICALLY UNDERINCLUSIVE WITH RESPECT TO THE PURPOSE OR END APPEARS AS AN IRRATIONAL MEANS TO THE LEGISLATIVE END BECAUSE IT POORLY SERVES THE INTENDED PURPOSE OF THE LAW.— The occurrence of pesticide drift is not limited to aerial spraying but results from the conduct of any mode of pesticide application. Even manual spraying or truck-mounted boom spraying produces drift that may bring about the same inconvenience, discomfort and alleged health risks to the community and to the environment. A ban against aerial spraying does not weed out the harm that the ordinance seeks to achieve. In the process, the ordinance suffers from being "underinclusive" because the classification does not include all individuals tainted with the same mischief

that the law seeks to eliminate. A classification that is drastically underinclusive with respect to the purpose or end appears as an irrational means to the legislative end because it poorly serves the intended purpose of the law. The claim that aerial spraying produces more aerial drift cannot likewise be sustained in view of the petitioners' failure to substantiate the same. The respondents have refuted this claim, and have maintained that on the contrary, manual spraying produces more drift than aerial treatment. As such, the decision of prohibiting only aerial spraying is tainted with arbitrariness.

13. ID.; ID.; ID.; ID.; ORDINANCE NO. 0309-07 TENDS TO BE "OVERINCLUSIVE" BECAUSE ITS IMPENDING IMPLEMENTATION WILL AFFECT GROUPS THAT HAVE NO RELATION TO THE ACCOMPLISHMENT OF THE LEGISLATIVE PURPOSE.— Aside from its being underinclusive, the assailed ordinance also tends to be "overinclusive" because its impending implementation will affect groups that have no relation to the accomplishment of the legislative purpose. Its implementation will unnecessarily impose a burden on a wider range of individuals than those included in the intended class based on the purpose of the law. It can be noted that the imposition of the ban is too broad because the ordinance applies irrespective of the substance to be aerially applied and irrespective of the agricultural activity to be conducted. The respondents admit that they aerially treat their plantations not only with pesticides but also vitamins and other substances. The imposition of the ban against aerial spraying of substances other than fungicides and regardless of the agricultural activity being performed becomes unreasonable inasmuch as it patently bears no relation to the purported inconvenience, discomfort, health risk and environmental danger which the ordinance seeks to address. The burden now will become more onerous to various entities, including the respondents and even others with no connection whatsoever to the intended purpose of the ordinance.

14. ID.; ID.; ID.; ID.; ORDINANCE NO. 0309-07 STRUCK DOWN FOR CARRYING AN INVIDIOUS CLASSIFICATION, AND FOR THEREBY VIOLATING THE EQUAL PROTECTION CLAUSE.— The overinclusiveness of Ordinance No. 0309-07 may also be traced

to its Section 6 by virtue of its requirement for the maintenance of the 30-meter buffer zone. This requirement applies regardless of the area of the agricultural landholding, geographical location, topography, crops grown and other distinguishing characteristics that ideally should bear a reasonable relation to the evil sought to be avoided. [O]nly large banana plantations could rely on aerial technology because of the financial capital required therefor. x x x. Section 6 also subjects to the 30-meter buffer zone requirement agricultural entities engaging in organic farming, and do not contribute to the occurrence of pesticide drift. The classification indisputably becomes arbitrary and whimsical. A substantially overinclusive or underinclusive classification tends to undercut the governmental claim that the classification serves legitimate political ends. Where overinclusiveness is the problem, the vice is that the law has a greater discriminatory or burdensome effect than necessary. In this light, we strike down Section 5 and Section 6 of Ordinance No. 0309-07 for carrying an invidious classification, and for thereby violating the Equal Protection Clause.

15. ID.; ID.; ID.; ID.; ORDINANCE NO. 0309-07 IS DISCRIMINATORY IN NATURE.— The discriminatory nature of the ordinance can be seen from its policy as stated in its Section 2 xxx. [T]he ordinance discriminates against large farmholdings that are the only ideal venues for the investment of machineries and equipment capable of aerial spraying. It effectively denies the affected individuals the technology aimed at efficient and cost-effective operations and cultivation not only of banana but of other crops as well. The prohibition against aerial spraying will seriously hamper the operations of the banana plantations that depend on aerial technology to arrest the spread of the Black Sigatoka disease and other menaces that threaten their production and harvest. [T]he effect of the ban will not be limited to Davao City in view of the significant contribution of banana export trading to the country's economy. The discriminatory character of the ordinance makes it oppressive and unreasonable in light of the existence and availability of more permissible and practical alternatives that will not overburden the respondents and those dependent on their operations as well as those who stand to be affected by the ordinance.

16. REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (A.M. NO. 09-6-8-SC); PRECAUTIONARY PRINCIPLE SHALL ONLY BE RELEVANT IF THERE IS CONCURRENCE OF UNCERTAINTY, THREAT OF ENVIRONMENTAL DAMAGE AND SERIOUS OR IRREVERSIBLE HARM; NOT PRESENT.— In this jurisdiction, the principle of precaution appearing in the *Rules of Procedure for Environmental Cases* (A.M. No. 09-6-8-SC) involves matters of evidence in cases where there is lack of full scientific certainty in establishing a causal link between human activity and environmental effect. In such an event, the courts may construe a set of facts as warranting either judicial action or inaction with the goal of preserving and protecting the environment. It is notable, therefore, that the precautionary principle shall only be relevant if there is concurrence of three elements, namely: *uncertainty, threat of environmental damage* and *serious or irreversible harm.* In situations where the threat is relatively certain, or that the causal link between an action and environmental damage can be established, or the probability of occurrence can be calculated, only preventive, not precautionary measures, may be taken. Neither will the precautionary principle apply if there is no indication of a threat of environmental harm, or if the threatened harm is trivial or easily reversible. We cannot see the presence of all the elements.

17. ID.; ID.; ID.; THE PRECAUTIONARY APPROACH SHOULD NOT BE APPLIED TO SUSTAIN THE BAN AGAINST AERIAL SPRAYING IF LITTLE OR NOTHING IS KNOWN OF THE EXACT OR POTENTIAL DANGERS THAT AERIAL SPRAYING MAY BRING TO THE HEALTH OF THE RESIDENTS WITHIN AND NEAR THE PLANTATIONS AND TO THE INTEGRITY AND BALANCE OF THE ENVIRONMENT; ORDINANCE NO. 0309-07 SHOULD BE STRUCK DOWN FOR BEING UNREASONABLE.— The only study conducted to validate the effects of aerial spraying appears to be the *Summary Report on the Assessment and Fact-Finding Activities on the Issue of Aerial Spraying in Banana Plantations*. Yet, the fact-finding team that generated the report was not a scientific study that could justify the resort to the precautionary principle. In fact, the Sangguniang Bayan ignored the findings and conclusions of the fact-finding team that recommended only a regulation,

not a ban, against aerial spraying. The recommendation was in line with the advocacy of judicious handling and application of chemical pesticides by the DOH-Center for Health Development in the Davao Region in view of the scarcity of scientific studies to support the ban against aerial spraying. We should not apply the precautionary approach in sustaining the ban against aerial spraying if little or nothing is known of the exact or potential dangers that aerial spraying may bring to the health of the residents within and near the plantations and to the integrity and balance of the environment. It is dangerous to quickly presume that the effects of aerial spraying would be adverse even in the absence of evidence. Accordingly, for lack of scientific data supporting a ban on aerial spraying, Ordinance No. 0309-07 should be struck down for being unreasonable.

18. ID.; ID.; ID.; ID.; BECAUSE THE POLICE POWER OF THE LOCAL GOVERNMENT UNITS FLOWS FROM THE EXPRESS DELEGATION OF THE POWER BY CONGRESS, ITS EXERCISE IS TO BE CONSTRUED *IN STRICTISSIMI JURIS*; THUS, ANY DOUBT OR AMBIGUITY ARISING OUT OF THE TERMS USED IN GRANTING THE POWER SHOULD BE CONSTRUED AGAINST THE LOCAL LEGISLATIVE UNITS.— Section 5(c) of the *Local Government Code* accords a liberal interpretation to its general welfare provisions. The policy of liberal construction is consistent with the spirit of local autonomy that endows local government units with sufficient power and discretion to accelerate their economic development and uplift the quality of life for their constituents. The power to legislate under the General Welfare Clause is not meant to be an invincible authority. x x x [B]ecause the police power of the local government units flows from the express delegation of the power by Congress, its exercise is to be construed *in strictissimi juris.* Any doubt or ambiguity arising out of the terms used in granting the power should be construed against the local legislative units. Judicial scrutiny comes into play whenever the exercise of police power affects life, liberty or property. The presumption of validity and the policy of liberality are not restraints on the power of judicial review in the face of questions about whether an ordinance conforms with the Constitution, the laws or public policy, or if it is unreasonable, oppressive, partial, discriminating or in derogation of a common right. The ordinance must pass

the test of constitutionality and the test of consistency with the prevailing laws.

19. ID.; ID.; ID.; ID.; THE LOCAL GOVERNMENT UNIT IS NOT VESTED WITH BLANKET AUTHORITY TO LEGISLATE UPON ANY SUBJECT THAT IT FINDS PROPER TO LEGISLATE UPON IN THE GUISE OF SERVING THE COMMON GOOD.— Although the *Local Government Code* vests the municipal corporations with sufficient power to govern themselves and manage their affairs and activities, they definitely have no right to enact ordinances dissonant with the State's laws and policy. The *Local Government Code* has been fashioned to delineate the specific parameters and limitations to guide each local government unit in exercising its delegated powers with the view of making the local government unit a fully functioning subdivision of the State within the constitutional and statutory restraints. The *Local Government Code* is not intended to vest in the local government unit the blanket authority to legislate upon any subject that it finds proper to legislate upon in the guise of serving the common good.

20. ID.; ID.; ID.; ID.; ORDINANCE NO. 0309-07 MUST BE STRUCK DOWN FOR BEING AN *ULTRA VIRES* ACT ON THE PART OF THE SANGGUNIANG BAYAN OF DAVAO CITY, FOR IT HAS NO INHERENT AND EXPLICIT AUTHORITY TO PROHIBIT THE AERIAL APPLICATION OF PESTICIDES.— [T]he enumerated devolved functions to the local government units do not include the regulation and control of pesticides and other agricultural chemicals. The non-inclusion should preclude the Sangguniang Bayan of Davao City from enacting Ordinance No. 0309-07, for otherwise it would be arrogating unto itself the authority to prohibit the aerial application of pesticides in derogation of the authority expressly vested in the FPA by Presidential Decree No. 1144. In enacting Ordinance No. 0309-07 without the inherent and explicit authority to do so, the City of Davao performed an *ultra vires* act. As a local government unit, the City of Davao could act only as an agent of Congress, and its every act should always conform to and reflect the will of its principal. x x x. Devoid of the specific delegation to its local legislative body, the City of Davao exceeded its delegated authority to enact Ordinance No. 0309-07. Hence, Ordinance

No. 0309-07 must be struck down also for being an *ultra vires* act on the part of the Sangguniang Bayan of Davao City.

LEONEN, *J., concurring opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE OF 1991; LOCAL LEGISLATION; ORDINANCE NO. 0309-07, SERIES OF 2007 PASSED BY DAVAO CITY IS TOO BROAD.— Ordinance No. 0309-07, series of 2007 passed by Davao City is too broad in that it prohibits aerial spraying in agriculture regardless of the substance and the method of aerial spraying involved. x x x. [N]othing in the disposition of this case should be construed as an absolute prohibition for the banning of aerial spraying of certain chemicals. Even if the *Sangguniang Panlungsod* properly appreciated the harm caused by the spraying of chemicals that addressed the problem of the Black Sigatoka, the resulting local legislation was too broad. Justification for one case does not necessarily always provide justification for another case.

2. ID.; ID.; ID.; ID.; PASSING AN ORDINANCE BANNING AERIAL SPRAYING OF A PESTICIDE MAY BE DONE BY A LOCAL GOVERNMENT UNIT.— [P]assing a sufficiently narrow ordinance banning aerial spraying of a pesticide may be done by a local government unit. This can be justified by Section 16 of the Local Government Code. The present code and the Constitution provide sufficient basis for that kind of autonomy. Localized harm that affect specific residents and that may be unique to a certain municipality or city should not await action from the national government. Local government units are not so inutile as to be unable to sufficiently protect its citizens. Davao City can act. It does not need Malacañang or the Congress to do what it already can.

3. ID.; ID.; ID.; PRESIDENTIAL DECREE NO. 1144 CREATING THE FERTILIZER AND PESTICIDE AUTHORITY DOES NOT PROHIBIT THE LOCAL GOVERNMENT UNITS FROM REGULATING THE MODE OF DELIVERY OF CERTAIN ALLOWED CHEMICALS SHOULD THERE BE CLEAR HARM CAUSED TO THE RESIDENTS OF A MUNICIPALITY OR CITY.— [N]othing in the Decree's [PD No. 1144] grant of powers prohibits local government units from regulating the mode of delivery of certain allowed chemicals

should there be clear harm caused to the residents of a municipality or city. Certifying that a pesticide can be used is different from preventing the harm it can do when applied in a certain way. Davao City did not intend to prohibit the pesticide, but merely the method of its application.

4. POLITICAL LAW; CONSTITUTIONAL LAW; ARTICLE II, SECTION 16 AND ARTICLE 111, SECTION 1 OF THE CONSTITUTION; PRECAUTIONARY PRINCIPLE; APPLIES IN THE CASE AT BAR; THE PRECAUTIONARY PRINCIPLE SHOULD BE QUALIFIED BY TRANSIENCE AS SCIENCE-PROGRESSIVE AND MUST BE COST-EFFECTIVE.— [T]he precautionary principle embedded both in Article II, Section 16 and Article III, Section 1of the Constitution applies in this case. There was science, but it was uncertain. The precautionary principle should also be qualified by transience as science-progressive and must be cost-effective. Environmental measures must "ensure . . . benefits at the lowest possible cost." However, [t]he precautionary principle does not make sense if there is absolutely no proof of causation.

APPEARANCES OF COUNSEL

Sentro Ng Alternatibong Lingap Panligal (Saligan) for petitioners Wilfredo Mosqueda, *et al.*

Cruz Marcelo & Tenefrancia for respondents Pilipino Banana Growers & Exporters Association, Inc., *et al.*

The City Legal Officer for petitioner City Government of Davao.

D E C I S I O N

BERSAMIN, *J.*:

This appeal through the consolidated petitions for review on *certiorari* assails the decision promulgated on January 9, 2009,[1] whereby the Court of Appeals (CA) reversed and set

[1] *Rollo* (G.R. No. 189185; Vol. I), pp. 72-115; penned by Associate Justice Jane Aurora C. Lantion, with the concurrence of Associate Justice

aside the judgment rendered on September 22, 2007 by the Regional Trial Court (RTC), Branch 17, in Davao City upholding the validity and constitutionality of Davao City Ordinance No. 0309-07, to wit:

WHEREFORE, premises considered, the appeal is **GRANTED**. The assailed September 22, 2007 Decision of the Regional Trial Court (RTC), 11th Judicial Region, Branch 17, Davao City, upholding the validity and constitutionality of Davao City Ordinance No. 0309-07, is hereby **REVERSED** and **SET ASIDE.**

FURTHER, the Writ of Preliminary Injunction dated 28 January 2008 enjoining the City Government of Davao, and any other person or entity acting in its behalf, from enforcing and implementing City Ordinance No. 0309-07, is hereby made permanent.

SO ORDERED.

Antecedents

After several committee hearings and consultations with various stakeholders, the Sangguniang Panlungsod of Davao City enacted Ordinance No. 0309, Series of 2007, to impose a ban against aerial spraying as an agricultural practice by all agricultural entities within Davao City, *viz.*:

ORDINANCE NO. 0309-07
Series of 2007

AN ORDINANCE BANNING AERIAL SPRAYING AS AN AGRICULTURAL PRACTICE IN ALL AGRICULTURAL ACTIVITIES BY ALL AGRICULTURAL ENTITIES IN DAVAO CITY

Be it enacted by the Sangguniang Panlungsod of Davao City in session assembled that:

SECTION 1. TITLE. This Ordinance shall be known as "An Ordinance Banning Aerial Spraying as an Agricultural Practice in all Agricultural Activities by all Agricultural Entities in Davao City";

Rodrigo F. Lim, Jr. (retired), Associate Justice Normandie B. Pizarro, and Associate Justice Michael P. Elbinias (deceased); while Associate Justice Romulo V. Borja dissented.

SECTION 2. POLICY OF THE CITY. It shall be the policy of the City of Davao to eliminate the method of aerial spraying as an agricultural practice in all agricultural activities by all entities within Davao City;

SECTION 3. DEFINITION OF TERMS:

a. Aerial Spraying – refers to application of substances through the use of aircraft of any form which dispenses the substances in the air.

b. Agricultural Practices – refer to the practices conducted by agricultural entities in relation to their agricultural activities;

c. Agricultural Activities – refer to activities that include, but not limited to, land preparation, seeding, planting, cultivation, harvesting and bagging;

d. Agricultural Entities – refer to persons, natural or juridical, involved in agricultural activities

e. Buffer Zone – is an identified 30-meter zone within and around the boundaries of agricultural farms/plantations that need special monitoring to avoid or minimize harm to the environment and inhabitants pursuant to policies and guidelines set forth in this Ordinance and other government regulations. It is an area of land that must lie within the property which does not include public lands, public thoroughfares or adjacent private properties. It must be planted with diversified trees that grow taller than what are usually planted and grown in the plantation to protect those within the adjacent fields, neighboring farms, residential area, schools and workplaces.

SECTION 4. SCOPE AND APPLICABILITY – The provisions of this Ordinance shall apply to all agricultural entities within the territorial jurisdiction of Davao City;

SECTION 5. BAN OF AERIAL SPRAYING – A ban on aerial spraying shall be strictly enforced in the territorial jurisdiction of Davao City three (3) months after the effectivity of this Ordinance.

SECTION 6. BUFFER ZONE – Consistent with national legislation and government regulations, all agricultural entities must provide for a thirty (30) meter buffer zone within the boundaries of their agricultural farms/plantations. This buffer zone must be properly identified through Global Positioning System (GPS) survey. A survey plan showing the metes and bounds of each agricultural farm/plantation

must be submitted to the City Mayor's Office, with the buffer zone clearly identified therein;

SECTION 7. PENAL PROVISION – Violation of any provision of this Ordinance shall be punished as follows:

a. First Offense: Fine of ₱5,000.00 and imprisonment of not less than one (1) month but not more than three (3) months;

b. Second Offense: Fine of ₱5,000.00 and imprisonment of not less than three (3) months but not more than six (6) months and suspension of City-issued permits and licenses for one (1) year;

c. Third Offense: Fine of ₱5,000.00 and imprisonment of not less than six (6) months but not more than one (1) year and perpetual cancellation of City-issued permits and licenses;

Provided, that in case the violation has been committed by a juridical person, the person in charge of the management thereof shall be held liable;

SECTION 8. REPEALING CLAUSE - Any Ordinance that is contrary to or inconsistent with any of the provisions of this Ordinance shall be deemed amended or repealed accordingly.

SECTION 9. EFFECTIVITY – This Ordinance shall take effect thirty (30) days from its publication in a newspaper of general circulation in Davao City;

ENACTED, January 23, 2007 by a majority vote of all the Members of the Sangguniang Panlungsod.[2]

City Mayor Rodrigo Duterte approved the ordinance on February 9, 2007.[3] The ordinance took effect on March 23, 2007 after its publication in the newspaper *Mindanao Pioneer*.[4] Pursuant to Section 5 of the ordinance, the ban against aerial spraying would be strictly enforced three months thereafter.

The Pilipino Banana Growers and Exporters Association, Inc. (PBGEA) and two of its members, namely: Davao Fruits

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[2] Records no. 1, pp. 67-69.

[3] *Id*. at 69.

[4] *Rollo* (G.R. No. 189185; Vol. I), p. 74.

Corporation and Lapanday Agricultural and Development Corporation (PBGEA, *et al*.), filed their petition in the RTC to challenge the constitutionality of the ordinance, and to seek the issuance of provisional reliefs through a temporary restraining order (TRO) and/or writ of preliminary injunction.[5] They alleged that the ordinance exemplified the unreasonable exercise of police power; violated the equal protection clause; amounted to the confiscation of property without due process of law; and lacked publication pursuant to Section 511[6] of Republic Act No. 7160 (*Local Government Code*).

On May 8, 2007, the residents living within and adjacent to the banana plantations in Davao City led by Wilfredo Mosqueda,[7] joined by other residents of Davao City,[8] (Mosqueda, *et al*.) submitted their *Motion for Leave to Intervene and Opposition*

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[5] Records no. 1, pp. 2-60; Entitled "*Pilipino Banana Growers and Export Association, Inc., Davao Fruits Corporation and Lapanday Agricultural and Development Corporation, petitioners, versus City of Davao, respondent,*" docketed as Civil Case No. 31, 837-07.

[6] Section 511. *Posting and Publication of Ordinances with Penal Sanctions.* – (a) Ordinances with penal sanctions shall be posted at prominent places in the provincial capitol, city, municipal or barangay hall, as the case may be, for a minimum period of three (3) consecutive weeks. Such ordinances shall also be published in a newspaper of general circulation, where available, within the territorial jurisdiction of the local government unit concerned, except in the case of barangay ordinances. Unless otherwise provided therein, said ordinances shall take effect on the day following its publication, or at the end of the period of posting, whichever occurs later.

(b) x x x

(c) The secretary to the sanggunian concerned shall transmit official copies of such ordinances to the chief executive officer of the Official Gazette within seven (7) days following the approval of the said ordinance for publication purposes. The Official Gazette may publish ordinances with penal sanctions for archival and reference purposes.

[7] Namely: Wilfredo Mosqueda, Marcelo Villaganes, Crispin Alcomendras, Corazon Sabinada, Rebecca Saligumba, Carolina Pilongo, Alejandra Bentoy, Ledevina Adlawan, and Virginia Cata-ag.

[8] Namely: Geraldine Catalan, Julieta Lawagon and Florencia Sabandon.

to the Issuance of a Preliminary Injunction.[9] The RTC granted their motion on June 4, 2007.[10]

On June 20, 2007, the RTC granted the prayer for issuance of the writ of preliminary injunction, and subsequently issued the writ.[11]

Judgment of the RTC

On September 22, 2007, after trial, the RTC rendered judgment declaring Ordinance No. 0309-07 valid and constitutional, decreeing thusly:

> **WHEREFORE**, finding the subject [O]rdinance No. 0309-07 valid and constitutional in all aspect of the grounds assailed by the petitioner, said [C]ity [O]rdinance No. 0309-07, is sustained of its validity and constitutionality.
>
> Accordingly, the order of this court dated June 20, 2007, granting the writ of preliminary injunction as prayed for by petitioner is ordered cancelled and set aside as a result of this decision.
>
> SO ORDERED.[12]

The RTC opined that the City of Davao had validly exercised police power[13] under the General Welfare Clause of the *Local Government Code*;[14] that the ordinance, being based on a valid classification, was consistent with the Equal Protection Clause; that aerial spraying was distinct from other methods of pesticides application because it exposed the residents to a higher degree of health risk caused by aerial drift;[15] and that the ordinance

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[9] Records no. 1, pp. 228-245.

[10] Records no. 4, pp. 1115-1120.

[11] Records no. 5, pp. 1422-1430, (The RTC issued the writ of preliminary injunction on June 25, 2007 after the PBGEA posted a ₱1,000,000.00 bond).

[12] Records no. 10, p. 2928.

[13] *Id*. at 2914-2918.

[14] *Id*. at 2912.

[15] *Id*. at 2919-2920.

enjoyed the presumption of constitutionality, and could be invalidated only upon a clear showing that it had violated the Constitution.[16]

However, the RTC, recognizing the impracticability of the 3-month transition period under Section 5 of Ordinance No. 0309-07, recommended the parties to agree on an extended transition period.[17]

Decision of the CA

PBGEA, *et al*. appealed,[18] and applied for injunctive relief from the CA,[19] which granted the application[20] and consequently issued a TRO to meanwhile enjoin the effectivity of the ordinance.[21]

On January 9, 2009, the CA promulgated its assailed decision reversing the judgment of the RTC.[22] It declared Section 5 of Ordinance No. 0309-07 as void and unconstitutional for being unreasonable and oppressive; found the three-month transition period impractical and oppressive in view of the engineering and technical requirements of switching from aerial spraying to truck-mounted boom spraying; and opined that the ban ran afoul with the Equal Protection Clause inasmuch as Section 3(a) of the ordinance – which defined the term *aerial spraying* – did not make reasonable distinction between the hazards, safety and beneficial effects of liquid substances that were being applied aerially; the different classes of pesticides or fungicides; and the levels of concentration of these substances that could be beneficial and could enhance agricultural production.

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[16] *Id*. at 2921.

[17] *Id*. at 2926-2927.

[18] *Id*. at 2947-2948.

[19] CA *rollo* (Vol. I), pp. 10-92.

[20] *Id*. at 297-299.

[21] *Id*. at 573-574.

[22] *Supra* note 1.

The CA did not see any established relation between the purpose of protecting the public and the environment against the harmful effects of aerial spraying, on one hand, and the imposition of the ban against aerial spraying of all forms of substances, on the other. It ruled that the maintenance of the 30-meter buffer zone within and around the agricultural plantations under Section 6 of Ordinance No. 0309-07 constituted taking of property without due process because the landowners were thereby compelled to cede portions of their property without just compensation; that the exercise of police power to require the buffer zone was invalid because there was no finding that the 30-meter surrounding belt was obnoxious to the public welfare; and that, accordingly, Ordinance No. 0309-07 was unconstitutional because of the absence of a separability clause.

The City of Davao and the intervenors filed their respective motions for reconsideration, but the CA denied the motions on August 7, 2009.[23]

Hence, the separate, but now consolidated, appeals by petition for review on *certiorari*.

Issues

In G.R. No. 189185, petitioners Mosqueda, *et al*. rely on the following grounds, namely:

I

THE COURT OF APPEALS IGNORED FUNDAMENTAL PRECEPTS AND CONCEPTS OF LAW WHICH, PROPERLY CONSIDERED, NECESSARILY LEAD TO THE CONCLUSION THAT THE DAVAO ORDINANCE IS CONSTITUTIONAL AND VALID

II

THE DAVAO ORDINANCE IS CONSISTENT WITH THE EQUAL PROTECTION CLAUSE

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[23] *Rollo* (G.R. No. 189185; Vol. I), pp. 209-227.

III

THE MEANS EMPLOYED BY THE DAVAO ORDINANCE IS MORE THAN REASONABLY RELATED TO THE PURPOSE IT SEEKS TO ACHIEVE

IV

THE DAVAO ORDINANCE IS VALID, BEING DEMONSTRABLY REASONABLE AND FAIR

V

THE REQUIREMENT RELATING TO THE 30-METER BUFFER ZONE ARE [SIC] CONSISTENT WITH DUE PROCESS OF LAW, BEING A VALID EXERCISE OF POLICE POWER

Mosqueda, *et al*. state that the CA ignored well-established precepts like the primacy of human rights over property rights and the presumption of validity in favor of the ordinance; that the CA preferred the preservation of the profits of respondents PBGEA, *et al*. to the residents' right to life, health and ecology,[24] thereby disregarding the benevolent purpose of the ordinance; that the CA assumed the functions of the lawmaker when it set aside the wisdom behind the enactment of the ordinance; that the CA failed to apply the precautionary principle, by which the State was allowed to take positive actions to prevent harm to the environment and to human health despite the lack of scientific certainty; that the CA erred in applying the "strict scrutiny method" in holding that the ordinance violated the Equal Protection Clause because it only thereby applied in reviewing classifications that affected fundamental rights; that there was nothing wrong with prohibiting aerial spraying *per se* considering that even the aerial spraying of water produced drift that could affect unwilling neighbors whose constitutional right to a clean and healthy environment might be impinged;[25] that as far as the three-month period was concerned, the CA should have considered that manual spraying could be conducted while the PBGEA, *et al*. laid down the preparations for the

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[24] *Rollo* (G.R. No. 189195; Vol. I), pp. 39-42.

[25] *Id*. at 49-50.

conduct of boom spraying;[26] that "reasonableness" could be more appropriately weighed by balancing the interests of the parties against the protection of basic rights, like the right to life, to health, and to a balanced and healthful ecology;[27] that PBGEA, *et al*. did not substantiate their claim of potential profit losses that would result from the shift; that business profits should remain inferior and subordinate to their fundamental rights as residents of Davao City, which were the rights that the assailed ordinance has sought to protect;[28] that PBGEA, *et al*. did not explore other modes of pesticide treatment either as a stop-gap or as a temporary measure while shifting to truck mounted boom spraying;[29] that the imposition of the 30-meter buffer zone was a valid exercise of police power that necessarily flowed from the protection afforded by the ordinance from the unwanted effects of ground spraying; that the imposition of the buffer zone did not constitute compensable taking under police power, pursuant to the pronouncements in *Seng Kee & Co. v. Earnshaw and Piatt*,[30] *Patalinghug v. Court of Appeals*,[31] and *Social Justice Society (SJS) v. Atienza, Jr.*;[32] and that the 30-meter buffer zone conformed with the ISO 14000[33] and the DENR Environmental Compliance Certificate (ECC) requirement.[34]

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[26] *Id*. at 54-55.

[27] *Id*. at 56-57.

[28] *Id*. at pp. 51-54.

[29] *Id*. at 56.

[30] 56 Phil. 204 (1931).

[31] G.R. No. 104786, January 27, 1994, 229 SCRA 554, 559.

[32] G.R. No. 156052, February 13, 2008, 545 SCRA 92, 142.

[33] The ISO 14000 family of international standards provides practical management tools for companies and organizations in the management of environmental aspects and assessment of their environmental performance. (See International Organization for Standardization, "Environmental Management: The ISO 14000 family of International Standards," (wnd ed., 2010) available at www.iso.org/iso/home/store/publication_item.htm?pid=PUB100238 last opened on July 14, 2016 at 9:00 a.m.)

[34] *Rollo* (G.R. No. 189185; Vol. I), p. 62.

In G.R. No. 189305, petitioner City of Davao submits the following as the issues to be considered and resolved, to wit:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT SECTION 5 OF ORDINANCE NO. 0309-07, SERIES OF 2007 IS OPPRESSIVE AND AN UNREASONABLE EXERCISE OF DELEGATED POLICE POWER

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT ORDINANCE NO. 0309-07 IS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION;

III

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT ORDINANCE NO. 0309-07 CONSTITUTES TAKING OF PROPERTY WITHOUT COMPENSATION, THUS, VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION

IV

WHETHER OR NOT AERIAL SPRAYING OF FUNGICIDES IS SAFE TO THE PEOPLE AND THE ENVIRONMENT

The City of Davao explains that it had the authority to enact the assailed ordinance because it would thereby protect the environment and regulate property and business in the interest of the general welfare pursuant to Section 458 of the *Local Government Code*;[35] that the ordinance was enacted to carry out its mandate of promoting the public welfare under the General Welfare Clause (Section 16 of the *Local Government Code*); that the ordinance did not violate the Equal Protection Clause because the distinction lies in aerial spray as a method of application being more deleterious than other modes; that aerial spraying produces more drift that causes discomfort, and an

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[35] *Rollo* (G.R. No. 189305; Vol. I), pp. 82-83.

extremely offensive and obnoxious experience on the part of the residents; that spray drift cannot be controlled even with the use by the respondents of highly advanced apparatus, such as the Differential Global Positioning System, Micronair Rotary Drift Control Atomizers, Intellimap, Intelliflow Spray Valve System, Control and Display Unit and the Target Flow Spray Valve Switch System;[36] that because of the inherent toxicity of Mancozeb (the fungicide aerially applied by the respondents), there is no need to provide for a substantial distinction based on the level of concentration;[37] that as soon as fungicides are released in the air, they become air pollutants pursuant to Section 5 of Republic Act No. 8749 (*Philippine Clean Air Act of 1999*),[38] and the activity thus falls under the authority of the local government units to ban; and that the ordinance does not only seek to protect and promote human health but also serves as a measure against air pollution.

The City of Davao insists that it validly exercised police power because it does not thereby oblige the shift from aerial to truck-mounted boom spraying; that the respondents only choose boom spraying to justify the alleged impracticability of the transition period by erroneously adding the months required for each of the stages without considering other steps that may be simultaneously undertaken;[39] that the Court should apply its ruling in *Social Justice Society v. Atienza, Jr.*,[40] by which the six-month period for the folding-up of business operations was declared a legitimate exercise of police power; that the respondents did not present any documentary evidence on the feasibility of adopting other methods;[41] that only 1,800 hectares out of 5,200 hectares of plantations owned and operated by

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[36] *Id*. at 88-89.

[37] *Id*. at 89-90.

[38] *Id*. at 68-89.

[39] *Id*. at 45-49.

[40] *Supra*.

[41] *Rollo* (G.R. No. 189305; Vol. I), pp. 61-64.

PBGEA's members use aerial spraying, hence, the perceived ominous consequence of imposing a ban on aerial spray to the banana industry is entirely misleading;[42] that the urgency of prohibiting aerial spray justifies the three-month transition period; that the complaints of the community residents – ranging from skin itchiness, contraction and/or tightening in the chest, nausea, appetite loss and difficulty in breathing after exposure to spray mist – only prove that aerial spraying brings discomfort and harm to the residents; that considering that the testimony of Dr. Lynn Crisanta R. Panganiban, a pharmacologist and toxicologist, established that fungicides could cause debilitating effects on the human body once inhaled or digested, the CA erred in holding that there was no correlation between aerial application and the complaints of the residents; that given that aerial spray produces more drift and is uncontrollable compared to the other methods of applying fungicides, the ordinance becomes reasonable;[43] and that the medical-related complaints of the residents need not be proven by medical records considering that these were based on personal knowledge.[44]

The City of Davao contends that the imposition of the 30-meter buffer zone is a valid exercise of police power, rendering the claim for just compensation untenable; that the maintenance of the buffer zone does not require the respondents to cede a portion of their landholdings; that the planting of diversified trees within the buffer zone will serve to insulate the residents from spray drift; that such buffer zone does not deprive the landowners of the lawful and beneficial use of their property;[45] and that the buffer zone is consistent with the Constitution, which reminds property owners that the use of property bears a social function.[46]

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[42] *Id*. at 66.

[43] *Id*. at 71-73.

[44] *Id*. at 77.

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

[46] Section 6, Article XII, 1987 Constitution.

In their comment, the respondents posit that the petition of the City of Davao should be dismissed for failure to attach material portions of the records, and for raising factual errors that are not within the realm of this appeal by petition for review on certiorari;[47] that the CA correctly declared the ordinance as unreasonable due to the impossibility of complying with the three-month transition period; that shifting from aerial to truck-mounted boom spraying will take at least three years and entails careful planning, equipment and machineries, civil works, and capital funding of at least ₱400,000,000.00;[48] that the Court could rely on its ruling in *City of Manila v. Laguio, Jr.*,[49] where an ordinance directing an existing establishment to wind up or to transfer its business was declared as confiscatory in nature, and, therefore, unconstitutional;[50] that the total ban against aerial spraying, coupled with the inadequate time to shift to truck-mounted boom spraying, effectively deprives the respondents with an efficient means to control the spread of the Black Sigatoka disease that threatens the banana plantations; that the ordinance will only expose the plantations to the virulent disease that is capable of infecting 60% of the plantations on a single cycle[51] missed;[52] that compared with other modes of application, aerial spraying is more cost-efficient, safe and accurate; that truck-mounted boom spraying, for instance, requires 80-200 liters of solution per hectare,[53] while manual spraying uses 200-300 liters of solution per hectare; that aerial spraying only requires 30 liters per hectare; that in terms of safety and accuracy, manual spraying is the least safe and accurate,[54] and produces more

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[47] *Rollo* (G.R. No. 189185; Vol. I), p. 375.

[48] *Rollo* (G.R. No. 189185; Vol. II), pp. 1244-1251.

[49] G.R. No. 118127, April 12, 2005, 455 SCRA 308, 342.

[50] *Rollo* (G.R. No. 189185; Vol. II), pp. 1265-1266.

[51] A period of four (4) to twelve (12) days.

[52] *Rollo* (G.R. No. 189185; Vol. II), pp. 1266-1267.

[53] *Id*. at 1331.

[54] *Id*. at 1256.

drift than aerial spraying;[55] that due to the 300-liter solution required, the workers will be more exposed to the solution during manual application and such application will thus be more in conflict with the purpose of the ordinance to prevent human exposure;[56] that the respondents also find the irrigation sprinklers suggested by the City of Davao as wasteful, unsafe and impractical because it cannot provide the needed coverage for application of the solution to effectively control the Black Sigatoka disease; that in contrast, aerial application, coupled with the latest state-of-the art technology and equipment, ensures accuracy, effectiveness, efficiency and safety compared to the other methods of application; that the respondents vouch for the safety of the fungicides they use by virtue of such fungicides having been registered with the Fertilizer and Pesticide Authority (FPA) and classified as Category IV,[57] and found to be mild;

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[55] *Id*. at 1257-1258; according to the respondents' witness, Mr. Richard Billington, the drift at the edge of an area sprayed from the air results to approximately half of the corresponding value for ground application. This observation was based on the AgDrift Model, developed under a Cooperative Research and Development Agreement (CRADA) between the Spray Drift Task Force (SDTF) of the US Environmental Protection Agency (EPA) and the US Department of Agriculture – Agricultural Research Service (USDA-ARS).

[56] *Id*. at 1255.

[57]

Category and Signal Words	Color Band Symbol	Acute Toxicity to Rat			
		Oral LD^{50} (mg/kg BW)		Dermal LD^{50} (mg/kg BW)	
		Solid	Liquid	Solid	Liquid
CATEGORY I DANGER:POISON	RED	50 or less	200 or less	100 or less	400 or less
CATEGORY II WARNING: HARMFUL	YELLOW	51 to 500	201 to 200	101 to 1000	401 to 4000
CATEGORY III CAUTION	BLUE	501 to 20000	2001 to 3000	Over 1000	Over 4000
CATEGORY IV	GREEN	Over 2000	Over 3000	N/A	N/A

FPA ClassificationTable of pesticides adopted from the World Health Organization (WHO) Classification by Hazards (RTC Records, No. 1, p. 41).

and that oral ingestion in large doses is required before any adverse effects to humans may result.[58]

The respondents lament that the ban was imposed without any scientific basis; that the report[59] prepared by a fact-finding team (composed of the Vice Mayor, the City Health Officer, The City Planning and Development Coordinator and the Assistance City Planning and Development Coordinator) organized by the City of Davao revealed that there was no scientific evidence to support the clamor for the ban against aerial spraying; that furthermore, national government agencies like the Department of Agriculture (DA), Department of Health (DOH) and the Department of Trade and Industry (DTI) similarly concluded that there was no scientific evidence to support the ban;[60] that for four decades since the adoption of aerial spraying, there has been no reported outbreak or any predisposition to ailment connected with the pesticides applied; that the testimonies of the residents during the trial were mere "emotional anecdotal evidence" that did not establish any scientific or medical bases of any causal connection between the alleged health conditions complained of and the fungicides applied during aerial spraying;[61] that the allegations of health and environmental harm brought by the pesticides used to treat the banana plantations were unfounded; that the 2001 study of the International Agency for Research on Cancer showed that, contrary to the claim of Dra. Panganiban, the by-product of Mancozeb (*Ethylenethiourea* or ETU) was "non-genotoxic" and not expected to produce

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[58] According to the respondents' witness, Anacleto M. Pedrosa, Jr., Ph.D, acute toxicity to rats of Category IV fungicides require oral ingestion of over 2000 milligrams in solid form per kilogram of body weight and over 3000 milligrams of such fungicide in liquid form per kilogram of body weight to have any adverse effect. (See RTC Records, No. 4, pp. 1095-1096.)

[59] *Rollo* (G.R. No. 189185; Vol. III), pp. 1545-1554; Entitled "Summary Report on the Assessment and Factfinding Activities on the Issue of Aerial Spraying in Banana Plantations".

[60] *Rollo* (G.R. No. 189185; Vol. II), pp. 1271-1273.

[61] *Id*. at 1278-1284.

thyroid cancer;[62] that Carlos Mendoza, a geo-hydrologist and geophysicist, testified that underground water contamination through aerial spraying would be impossible because of the presence of latex, thick layers of clay and underlying rock formations;[63] that even the study conducted by the Philippine Coconut Authority (PCA) showed that the rhinoceros beetle infestation in coconut plantations adjacent to the banana plantations was due to the farmer's failure to observe phyto-sanitary measures, not to aerial spraying;[64] that furthermore, aerial spraying is internationally accepted as a "Good Agricultural Practice" (GAP)[65] under the International Code of Conduct on the Distribution and Use of Pesticides by the United Nations-Food and Agricultural Organization (UN-FAO); that as such, they observe the standards laid down by the UN-FAO, and utilize aerial spraying equipment that will ensure accuracy, safety and efficiency in applying the substances, and which more than complies with the requirement under the Guidelines on Good Practice for Aerial Application of Pesticides (Rome 2001);[66]

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[62] *Id*. at 1285-1286.

[63] *Id*. at 1291.

[64] *Id*. at 1293-1296.

[65] "*Good agricultural practice*" is broadly defined as applying knowledge to addressing environmental, economic and social sustainability for on-farm production and post-production processes resulting in safe and healthy food and non-food agricultural products. The use of pesticides includes the officially recommended or nationally authorized uses of pesticides under actual conditions necessary for effective and reliable pest control. It encompasses a range of levels of pesticide applications up to the highest authorized use, applied in a manner that leaves a residue which is the smallest amount practicable. See FAO-Committee on Agriculture, "Development of a Framework for Good Agricultural Practices" (Rome. March 31-April 4, 2003), http://www.fao.org/docrep/meeting/006/y8704e.htm last accessed July 14, 2016 at 9:40 a.m.

[66] The Guide offers practical help and guidance to individuals and entities involved in using pesticides for food and fibre production as well as in Public Health programmes. They cover the main terrestrial and aerial spray application techniques. The guide also identifies some of the problems and suggest means of addressing them. See FAO-Committee on Agriculture and Consumer Protection, "Guidelines on Good Practice for Aerial Application

that in addition, they strictly observe standard operating procedures prior to take-off,[67] in-flight[68] and post-flight;[69] that they substantially invested in state-of-the-art technology and equipment designed to ensure safety, accuracy, and effectiveness of aerial spraying operations, to avoid aerial drift;[70] that their equipment include: wind meters (to measure the wind velocity in a specific area), wind cones (to determine the wind direction, and whether the wind is a headwind, tailwind or a crosswind); central weather station (to measure wind speed, the temperature and relative humidity), Differential Global Positioning System (DGPS),[71]

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of Pesticides (Rome, 2001), http://www.fao.org/docrep/006/y2766e/y2766e00.htm last accessed July 14, 2016 at 9:42 a.m.

[67] *Rollo* (G.R. No. 189185; Vol. II), pp. 1300-1301; this includes: (a) notice to the community through the advisory board at least three (3) days before the scheduled date of spraying; (b) determining the flight pattern for the aircraft applicator using the Differential Global Positioning system (DGPS) to establish precise swath patterns and determine specific points during the flight for the spray valve to be turned on and shut off; (c) pre-inflight inspection of the aircraft, including the cleaning and checking of the spray valves in the Micronair Rotary Drift Control Atomizers (AU 5000 Low-Drift model) that disperses the solution being sprayed for a consistent droplet-size of 200 to 250 microns to control drift; (d) monitoring by the Spray Supervisor of the weather and environmental conditions in the weather station; and (e) sounding of alarms for fifteen (15) minutes prior to take-off.

[68] *Id*. at 1301; the following are observed: (a) monitoring of wind speed and direction, and weather conditions, and maintaining radio contact with the pilot during aerial spraying operations; (b) diverting road traffic to prevent people from traversing in areas near the plantations; (c) maintaining a flying height clearance of about 3.5 meters above the leaf canopy; (d) ensuring that spraying valves are shut-off at least 50 meters before the edge of the perimeter and before the 30 meter buffer zone.

[69] *Id*. at 1302; includes: (a) DGPS data card recording the swath pattern submitted to the Spray Supervisor; and (b) cleaning of aircraft including the Micronair Rotary Drift Control Atomizers which is being calibrated monthly.

[70] *Id*. at 1302-1303; respondents allegedly invested in sensors, wind meters, wind cones, field thermometers and a central weather station.

[71] *Id*. at 1330; A precision satellite-based navigational system that accurately plots the plantation and guides the pilot in conducting aerial spraying.

Intellimap,[72] Control and Display Unit,[73] Micronair Rotary Drift Control Atomizers (AU 5000 Low-Drift model),[74] Intelliflow Spray Valve System,[75] and Target Flow Spray Valve Switch System;[76] and that they want to minimize, if not, eliminate the occurrence of spray drift in order to minimize wastage of resources and reduced efficiency of spraying programs implemented to control the Black Sigatoka disease.[77]

The respondents maintain that Ordinance No. 0309-07 will regulate aerial spraying as a method of application, instead of the substances being used therein; that the prohibition is overbroad in light of other available reasonable measures that may be resorted to by the local government; that the ordinance is unreasonable, unfair, oppressive, and tantamount to a restriction or prohibition of trade;[78] that the ordinance will effectively impose a prohibition against all pesticides, including fungicides that fall under the mildest type of substance; that as such, the petitioner has disregarded existing valid and substantive classifications established and recognized by the World Health

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[72] *Id*.; An instrument that depicts an accurate map of the plantation, indicating the turn-on and shut-off spray valve points during the flight, and records swath patterns while the aerial spraying is being conducted.

[73] *Id*.; Allows the pilot to program the grid coordinates of a particular plantation on the DGPS, retrieve navigational guidance for the pilot, monitor ground speed (tailwind and headwind), program and retrieve date to record the actual spraying operation.

[74] *Id*.; Ensures that the droplets of solution released for aerials praying are consistently delivered with each droplet with a size of 250 microns to control drift. It controls the flow and the drift of the solution released for aerial spraying even when the aircraft applicator is operating at 145-240 kilometers per hour.

[75] *Id*.; Controls the rate of application of the solution for aerial application to ensure that the substance being aerially sprayed is consistently and equally applied throughout the entire banana plantation.

[76] *Id*.; A device that will automatically turn on and shut off the spray valves on precise points within the target area as programmed in the GPS.

[77] *Rollo* (G.R. No. 189185; Vol. II), p. 1331.

[78] *Id*. at 1307-1311.

Organization (WHO) that are adopted by the FPA; that the FPA is the national agency armed with the professional competence, technical expertise, and legal mandate to deal with the issue of use and application of pesticides in our country; that the fungicides they administer are duly registered with the FPA, and with other more developed countries that have observed a stricter environmental and public health regulation such as the United States Environmental Protection Agency (EPA) and the European Union (EU); that as such, the City of Davao has disregarded valid, substantial and significant distinctions between levels of concentration of the fungicides in the water solution aerially sprayed; that it is the FPA that regulates the level of concentration of agricultural chemicals prior to commercial distribution and use in the country; that the members of PBGEA only spray a water solution (water cocktail) containing 0.1 liter to 1.5 liters of the active ingredient of fungicide in a 30-liter water solution per hectare that has undergone rigorous testing and evaluation prior to registration by the FPA; that the active ingredients of the fungicide are so diluted that no harm may be posed to public health or to the environment through aerial application;[79] that the ordinance was so broad that it prohibits aerial application of any substance, including water;[80] and that aside from fungicides, the respondents also aerially apply vitamins, minerals and organic fertilizers.[81]

The respondents submit that the maintenance of the 30-meter buffer zone under Section 5 of the ordinance constitutes an improper exercise of police power; that the ordinance will require all landholdings to maintain the buffer zone, thereby diminishing to a mere 1,600 square meters of usable and productive land for every hectare of the plantation bounding residential areas, with the zone being reserved for planting "diversified trees;" that this requirement amounts to taking without just compensation or due process; and that the imposition of the buffer zone unduly

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[79] *Id*. at 1322.

[80] *Id*. at 1316-1317.

[81] *Id*. at 1297-1298.

deprives all landowners within the City of Davao the beneficial use of their property;[82] that the precautionary principle cannot be applied blindly, because its application still requires some scientific basis; that the principle is also based on a mere declaration that has not even reached the level of customary international law, not on a treaty binding on the Government.[83]

The respondents argue that the illegality of the transition period results in the invalidity of the ordinance as it does not carry a separability clause; and that the absence of such clause signifies the intention of the Sangguniang Panlungsod of City of Davao to make the ordinance effective as a whole.[84]

The main issue is whether or not Ordinance No. 0309-07 is unconstitutional on due process and equal protection grounds for being unreasonable and oppressive, and an invalid exercise of police power: (*a*) in imposing a ban on aerial spraying as an agricultural practice in Davao City under Section 5; (*b*) in decreeing a 3-month transition period to shift to other modes of pesticide application under Section 5; and (*c*) in requiring the maintenance of the 30-meter buffer zone under Section 6 thereof in all agricultural lands in Davao City.

Ruling of the Court

We deny the petitions for review for their lack of merit.

I

Preliminary considerations: The significant role of the banana industry in ensuring economic stability and food security

There is no question that the implementation of Ordinance No. 0309-07, although the ordinance concerns the imposition of the ban against aerial spraying in all agricultural lands within

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[82] *Id*. at 1340-1342.

[83] *Id*. at 1318-1319.

[84] *Id*. at 1264.

Davao City, will inevitably have a considerable impact on the country's banana industry, particularly on export trading.

Banana exportation plays a significant role in the maintenance of the country's economic stability and food security. Banana is a consistent dollar earner and the fourth largest produced commodity in the Philippines.[85] In 2010, the Philippines figured among the top three banana producing countries in the world.[86] In 2014, fresh bananas accounted for 17% of the country's top agricultural export commodities, gaining a close second to coconut oil with 18%.[87] The Davao Region (Region XI)[88] was the top banana producing region in 2013, with a production growth rate of 16.4%, and 33.76% share in the total agricultural output of the Region.[89]

Despite these optimistic statistics, the banana industry players struggle to keep up with the demands of the trade by combatting the main threat to production posed by two major fungal diseases: the Panama Disease Tropical Race 4 (*Fusarium oxysprum f.sp. cubense*) and the Black Sigatoka leaf spot disease (*Mycosphaerella fjiensis morelet*). Pesticides have proven to be effective only against the Black Sigatoka disease. There is yet no known cure for the Panama disease.[90]

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[85] Philippine Center for Postharvest Development and Mechanization (PhilMech), "Banana Post-harvest Situationer," http://www.philmech.gov.ph/phindustry/banana.htm., last accessed July 14, 2016 at 9:44 a.m.

[86] DA High Value Crops Development Program, http://hvcc.da.gov.ph/banana.htm, last accessed July 14, 2016 at 9:46 a.m.

[87] Philippine Statistics Authority, "Philippine Agriculture in Figures, 2013," http://countrystat.psa.gov.ph/?cont=3, last accessed July 14, 2016 at 9:50 a.m.

[88] Includes Davao del Norte, Davao City, Compostela Valley, Davao Oriental and Davao del Sur, Panabo City, Tagum, Digos, Island Garden City of Samal.

[89] Philippine Satistics Authority, "Regional Profile: Davao," http://countrystat.psa.gov.ph/?cont=16&r=11, last accessed July 14, 2016 at 9:55 a.m.

[90] Farms infested by Panama disease are abandoned and left idle for about five years before re-cultivation. In Davao City, only 1,800 hectares

The menace of the Black Sigatoka disease cannot be taken lightly. The disease causes destruction of the plant by significantly reducing the leaf area, leading to premature ripening of the produce and resulting in yield losses of at least 50%.[91] Due to its effects on banana export trading, the disease has emerged as a global concern that has correspondingly forced banana producers to increase the use of chemical pesticides.[92] Protectant fungicides such as Mancozeb, chlorothalonil and Propiconazole are applied to combat the disease.[93] These agricultural chemicals are aerially applied by the respondents in the banana plantations within the jurisdiction of Davao City to arrest the proliferation of the disease.

Considering that banana export plantations exist in vast monocultures, effective treatment of the Black Sigatoka disease is done by frequent aerial application of fungicides. This is an expensive practice because it requires permanent landing strips, facilities for the mixing and loading of fungicides, and high recurring expense of spray materials.[94] The cost of aerial spraying

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of the original 5,200 hectares planted to bananas have remained due to the infection. (http://www.ugnayan.com/ph/DavaodelSur/Davao/article/YCL, last accessed April 4, 2015 at 1:57 p.m.) Only two (2) varieties of Cavendish banana are recommended for planting in affected soil. Otherwise, new crops such as corn, cacao and oil palm are recommended for cultivation. See Manuel Cayon, "DA allots ₱102 million for Panama-disease control among banana growers: Business Mirror (28 April 2015), www.businessmirror.com.ph/2015/04/28/da-allots-p102million-for-panama-disease-control-among-banana-growers).

[91] Ploetz, Randy, "*Black Sigatoka of Banana: The Most Important Disease of a Most Important Fruit*," APS, 2001, http://www.apsnet.org/publications/apsnetfeatures/Pages/blacksigatoka.aspx, last accessed July 14, 2016 at 10:08 a.m.

[92] https://www.wageningenur.nl/en/show/Another-major-step-in-better-disease-management-in-the-global-banana-sector.htm, last accessed July 14, 2016 at 10:11 a.m.

[93] Banana: Diseases, http://nhb.gov.in/fruits/banana/ban002.pdf, last accessed July 14, 2016 at 10:15 a.m.

[94] Ploetz, Randy, *Black Sigatoka in Pesticide Outlook*, Vol. 11, Issue 2000, www.researchinformation.co.uk/pest/2000/B006308H/.pdf, last accessed July 14, 2016 at 10:21 a.m.

accounts to 15-20% of the final retail price of the crop, making the technology essentially unavailable to small landholdings that are more vulnerable to the disease.[95]

Aerial spraying has become an agricultural practice in Davao City since the establishment of the banana plantations in 1960.[96] Out of the 5,205 hectares of commercial plantations devoted to Cavendish banana being operated by the respondents in Davao City,[97] around 1,800 hectares receive treatment through aerial application. These plantations are situated in Barangays Sirib, Manuel Guianga, Tamayong, Subasta Dacudao, Lasang, Mandug, Waan, Tigatto and Callawa,[98] and are affected by the ban imposed by Ordinance No. 0309-07. The DTI has issued a statement to the effect that the ban against aerial spraying in banana plantations "is expected to kill the banana industry," affects the socio-economic development of the barangays hosting the affected plantations, and has a disastrous impact on export trading. The DTI has forecasted that the ban would discourage the entry of new players in the locality, which would have a potential drawback in employment generation.[99]

II
The Sangguniang Bayan of Davao City enacted Ordinance No. 0309-07 under its corporate powers

The petitioners assert that Ordinance No. 0309-07 is a valid act of the Sangguniang Bayan of Davao City pursuant to its

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[95] Ploetz, Randy, "*Black Sigatoka of Banana: The Most Important Disease of a Most Important Fruit*," APS, 2001, http://www.apsnet.org/publications/apsnetfeatures/Pages/blacksigatoka.aspx, last accessed July 14, 2016 at 10:13 a.m.

[96] *Rollo* (G.R. No. 189185; Vol. III), p. 1548; Summary Report on the Assessment and Factfinding Activities on the Issue of Aerial Spraying in Banana Plantations.

[97] *Id*. at 1547; Summary Report on the Assessment and Factfinding Activities on the Issue of Aerial Spraying in Banana Plantations.

[98] *Id*. at 1549; Summary Report on the Assessment and Factfinding Activities on the Issue of Aerial Spraying in Banana Plantations.

[99] *Id*. at 1568-1569.

delegated authority to exercise police power in the furtherance of public welfare and in ensuring a sound and balanced environment for its constituents. The respondents negate this assertion, describing the ordinance as unreasonable, discriminatory and oppressive.

The petitioners' assertion of its authority to enact Ordinance No. 0309-07 is upheld.

To be considered as a valid police power measure, an ordinance must pass a two-pronged test: the *formal* (*i.e.*, whether the ordinance is enacted within the corporate powers of the local government unit, and whether it is passed in accordance with the procedure prescribed by law); and the *substantive* (*i.e.*, involving inherent merit, like the conformity of the ordinance with the limitations under the Constitution and the statutes, as well as with the requirements of fairness and reason, and its consistency with public policy).[100]

The formalities in enacting an ordinance are laid down in Section 53[101] and Section 54[102] of *The Local Government Code*. These provisions require the ordinance to be passed by the majority of the members of the sanggunian concerned, and to be presented to the mayor for approval. With no issues regarding quorum during its deliberation having been raised, and with its approval of by City Mayor Duterte not being disputed, we see no reason to strike down Ordinance No. 0309-07 for non-compliance with the formal requisites under the *Local Government Code*.

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[100] *Legaspi v. City of Cebu*, G.R. No. 159110, December 10, 2013, 711 SCRA 771, 785.

[101] Section 53. Quorum. – (a) A majority of all the members of the sanggunian who have been elected and qualified shall constitute a quorum to transact official business. xxx

[102] Section 54. Approval of Ordinances. – (a) Every ordinance enacted by the x x x sangguniang panlungsod x x x shall be presented to the xxx city or municipal mayor, as the case may be. If the local chief executive concerned approves the same, he shall affix his signature on each and every page thereof; x x x.

We next ascertain whether the City of Davao acted within the limits of its corporate powers in enacting Ordinance No. 0309-07.

The corporate powers of the local government unit confer the basic authority to enact legislation that may interfere with personal liberty, property, lawful businesses and occupations in order to promote the general welfare.[103] Such legislative powers spring from the delegation thereof by Congress through either the *Local Government Code* or a special law. The General Welfare Clause in Section 16 of the *Local Government Code* embodies the legislative grant that enables the local government unit to effectively accomplish and carry out the declared objects of its creation, and to promote and maintain local autonomy.[104] Section 16 reads:

> Sec. 16. *General Welfare*. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

Section 16 comprehends two branches of delegated powers, namely: the *general legislative power* and the *police power proper*. General legislative power refers to the power delegated by Congress to the local legislative body, or the *Sangguniang Panlungsod* in the case of Davao City,[105] to enable the local

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[103] *Social Justice Society (SJS) v. Atienza, Jr.*, G.R. No. 156502, 13 February 2008, 545 SCRA 92, 139-140.

[104] *Rural Bank of Makati, Inc. v. Municipality of Makati*, G.R. No. 150763, July 2, 2004, 433 SCRA 362, 371.

[105] Sec. 458, Article III, Title III, Book III, R.A. No. 7160.

legislative body to enact ordinances and make regulations. This power is limited in that the enacted ordinances must not be repugnant to law, and the power must be exercised to effectuate and discharge the powers and duties legally conferred to the local legislative body. The police power proper, on the other hand, authorizes the local government unit to enact ordinances necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the local government unit and its constituents, and for the protection of their property.[106]

Section 458 of the *Local Government Code* explicitly vests the local government unit with the authority to enact legislation aimed at promoting the general welfare, *viz.*:

> Section 458. *Powers, Duties, Functions and Compensation.* — (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, x x x

In terms of the right of the citizens to health and to a balanced and healthful ecology, the local government unit takes its cue from Section 15 and Section 16, Article II of the 1987 Constitution. Following the provisions of the *Local Government Code* and the Constitution, the acts of the local government unit designed to ensure the health and lives of its constituents and to promote a balanced and healthful ecology are well within the corporate powers vested in the local government unit. Accordingly, the Sangguniang Bayan of Davao City is vested with the requisite authority to enact an ordinance that seeks to protect the health and well-being of its constituents.

The respondents pose a challenge against Ordinance No. 0309-07 on the ground that the Sangguniang Bayan of Davao City

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[106] *Rural Bank of Makati, Inc. v. Municipality of Makati*, G.R. No. 150763, July 2, 2004, 433 SCRA 362, 371-372; *United States v. Salaveria*, 39 Phil. 102, 110 (1918).

has disregarded the health of the plantation workers, contending that by imposing the ban against aerial spraying the ordinance would place the plantation workers at a higher health risk because the alternatives of either manual or truck-boom spraying method would be adopted; and that exposing the workers to the same risk sought to be prevented by the ordinance would defeat its purported purpose.

We disagree with the respondents.

With or without the ban against aerial spraying, the health and safety of plantation workers are secured by existing state policies, rules and regulations implemented by the FPA, among others, which the respondents are lawfully bound to comply with. The respondents even manifested their strict compliance with these rules, including those in the UN-FAO Guidelines on Good Practice for Aerial Application of Pesticides (Rome 2001). We should note that the Rome 2001 guidelines require the pesticide applicators to observe the standards provided therein to ensure the health and safety of plantation workers. As such, there cannot be any imbalance between the right to health of the residents vis-à-vis the workers even if a ban will be imposed against aerial spraying and the consequent adoption of other modes of pesticide treatment.

Furthermore, the constitutional right to health and maintaining environmental integrity are privileges that do not only advance the interests of a group of individuals. The benefits of protecting human health and the environment transcend geographical locations and even generations. This is the essence of Sections 15 and 16, Article II of the Constitution. In *Oposa v. Factoran, Jr.*[107] we declared that the right to a balanced and healthful ecology under Section 16 is an issue of transcendental importance with intergenerational implications. It is under this milieu that the questioned ordinance should be appreciated.

Advancing the interests of the residents who are vulnerable to the alleged health risks due to their exposure to pesticide

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[107] G.R. No. 101083, July 30, 1993, 224 SCRA 792, 805.

drift justifies the motivation behind the enactment of the ordinance. The City of Davao has the authority to enact pieces of legislation that will promote the general welfare, specifically the health of its constituents. Such authority should not be construed, however, as a valid license for the City of Davao to enact any ordinance it deems fit to discharge its mandate. A thin but well-defined line separates authority to enact legislations from the method of accomplishing the same.

By distinguishing authority from method we face this question: Is a prohibition against aerial spraying a lawfully permissible method that the local government unit of Davao City may adopt to prevent the purported effects of aerial drift? To resolve this question, the Court must dig deeper into the intricate issues arising from these petitions.

II
Ordinance No. 0309-07 violates the Due Process Clause

A valid ordinance must not only be enacted within the corporate powers of the local government and passed according to the procedure prescribed by law.[108] In order to declare it as a valid piece of local legislation, it must also comply with the following substantive requirements, namely: (1) it must not contravene the Constitution or any statute; (2) it must be fair, not oppressive; (3) it must not be partial or discriminatory; (4) it must not prohibit but may regulate trade; (5) it must be general and consistent with public policy; and (6) it must not be unreasonable.[109]

In the State's exercise of police power, the property rights of individuals may be subjected to restraints and burdens in

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[108] *Fernando v. St. Scholastica's College*, G.R. No. 161107, March 12, 2013, 693 SCRA 141, 157, citing *White Light Corporation v. City of Manila*, G.R. No. 122846, January 20, 2009, 576 SCRA 416, 433.

[109] *Legaspi v. City of Cebu*, G.R. No. 159110, December 10, 2013, 711 SCRA 771, 784-785; citing *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308, 326.

order to fulfill the objectives of the Government.[110] A local government unit is considered to have properly exercised its police powers only if it satisfies the following requisites, to wit: (1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive.[111] The first requirement refers to the Equal Protection Clause of the Constitution; the second, to the Due Process Clause of the Constitution.[112]

Substantive due process requires that a valid ordinance must have a sufficient justification for the Government's action.[113] This means that in exercising police power the local government unit must not arbitrarily, whimsically or despotically enact the ordinance regardless of its salutary purpose. So long as the ordinance realistically serves a legitimate public purpose, and it employs means that are reasonably necessary to achieve that purpose without unduly oppressing the individuals regulated, the ordinance must survive a due process challenge.[114]

The respondents challenge Section 5 of Ordinance No. 0309-07 for being unreasonable and oppressive in that it sets the effectivity of the ban at three months after publication of the ordinance. They allege that three months will be inadequate time to shift from aerial to truck-mounted boom spraying, and effectively deprives them of efficient means to combat the Black Sigatoka disease.

The petitioners counter that the period is justified considering the urgency of protecting the health of the residents.

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[110] *Supra* note 103, at 139.

[111] *Id.* at 138.

[112] *Parayno v. Jovellanos*, G.R. No. 148408, July 14, 2006, 495 SCRA 85, 93.

[113] *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308, 330.

[114] *State v. Old South Amusements, Inc.*, 564 S.E.2d 710 (2002).

We find for the respondents.

The impossibility of carrying out a shift to another mode of pesticide application within three months can readily be appreciated given the vast area of the affected plantations and the corresponding resources required therefor. To recall, even the RTC recognized the impracticality of attaining a full-shift to other modes of spraying within three months in view of the costly financial and civil works required for the conversion.[115] In the assailed decision, the CA appropriately observed:

> There appears to be three (3) forms of ground spraying, as distinguished from aerial spraying, which are: 1. "Truck-mounted boom spraying;" 2. "manual or backpack spraying." and 3. "sprinkler spraying." Petitioners-appellants claim that it was physically impossible for them to shift to "truck-mounted boom spraying" within three (3) months before the aerial spraying ban is actually enforced. They cited the testimony of Dr. Maria Emilia Rita G. Fabregar, Ph.D, PBGEA Chairperson, to the effect that since banana plantations in Davao City were configured for aerial spraying, the same lack the road network to make "truck-mounted boom spraying" possible. According to Dr. Fabregar, it was impossible to construct such road networks in a span of three (3) months. Engr. Magno P. Porticos, Jr., confirmed that the shift demands the construction of three hundred sixty (360) linear kilometers of road which cannot be completed in three (3) months.
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> In their separate testimonies, Dr. Fabregar and Engr. Porticos explained that a shift to "truck-mounted boom spraying" requires the following steps which may be completed in three (3) years:
>
> 1. six (6) months for planning the reconfiguration of banana plantations to ensure effective truck-mounted boom spraying for the adequate protections of the plantations from the Black Sigatoka fungus and other diseases, while maximizing land use;
>
> 2. two (2) months to secure government permits for infrastructure works to be undertaken thereon;
>
> 3. clearing banana plants and dismantling or reconstructing fixed infrastructures, such as roads, drains, cable ways, and

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[115] See RTC Decision, RTC records No. 10, pp. 2926-2927.

irrigation facilities, which phase may be completed in eighteen (18) months;

4. importation and purchase of trucks mounted with boom spraying, nurse trucks and protective gears. The placing of orders and delivery of these equipments, including the training [of] the personnel who would man the same, would take six (6) months; and

5. securing the needed capitalization to finance these undertakings would take six (6) months to a year.

Ms. Maria Victoria E. Sembrano, CPA, Chairperson of the PBGEA Finance Committee, testified that her committee and the Technical Committee and Engineering Group of PBGEA conducted a feasibility study to determine the cost in undertaking the shift to ground spraying. Their findings fixed the estimated cost for the purpose at Php 400 Million.

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Both appellees failed to rebut the foregoing testimonies with empirical findings to the contrary.

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Thus, in view of the infrastructural requirements as methodically explained, We are convinced that it was physically impossible for petitioners-appellants to carry out a carefully planned configuration of vast hectares of banana plantations and be able to actually adopt "truck-mounted boom spraying" within three (3) months. To compel petitioners-appellants to abandon aerial spraying in favor of "manual or backpack spraying" or "sprinkler spraying" within 3 months puts petitioners-appellants in a vicious dilemma between protecting its investments and the health of its workers, on the one hand, and the threat of prosecution if they refuse to comply with the imposition. We even find the 3-months transition period insufficient, not only in acquiring and gearing-up the plantation workers of safety appurtenances, but more importantly in reviewing safety procedures for "manual or backpack spraying" and in training such workers for the purpose. Additionally, the engineering works for a sprinkler system in vast hectares of banana plantations could not possibly be completed within such period, considering that safety and efficiency factors need to be considered in its structural re-designing.

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Respondent-appellee argues that the Ordinance merely banned an agricultural practice and did not actually prohibit the operation of banana plantations; hence, it is not oppressive. While We agree that the measure did not impose a closure of a lawful enterprise, the proviso in Section 5, however, compels petitioners-appellants to abandon aerial spraying without affording them enough time to convert and adopt other spraying practices. This would preclude petitioners-appellants from being able to fertilize their plantations with essential vitamins and minerals substances, aside from applying thereon the needed fungicides or pesticides to control, if not eliminate the threat of, plant diseases. Such an apparent eventuality would prejudice the operation of the plantations, and the economic repercussions thereof would just be akin to shutting down the venture.

This Court, therefore, finds Section 5 of Ordinance No. 0309-07 an invalid provision because the compulsion thereunder to abandon aerial spraying within an impracticable period of "three (3) months after the effectivity of this Ordinance" is "unreasonable, oppressive and impossible to comply with."[116]

The required civil works for the conversion to truck-mounted boom spraying alone will consume considerable time and financial resources given the topography and geographical features of the plantations.[117] As such, the conversion could not be completed within the short timeframe of three months. Requiring the respondents and other affected individuals to comply with the consequences of the ban within the three-month period under pain of penalty like fine, imprisonment and even cancellation of business permits would definitely be oppressive as to constitute abuse of police power.

The respondents posit that the requirement of maintaining a buffer zone under Section 6 of the ordinance violates due process

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[116] *Rollo* (G.R. No. 189185; Vol. I), pp. 86-91.

[117] *Id*. at 1542-2543; based on the report submitted by Engr. Magno Porticos, Jr., the cost and time frame estimate submitted to the PBGEA was based on the requirements of lowland and relatively flat lands where road and drainage system to be constructed will be uniformly straight and equidistant. The cost for plantations consisting of slope terrains and gullies, will vary. See Engineering Committee Report on the Main Engineering Works Needed to Comply with the Ordinance Banning Aerial Spray.

for being confiscatory; and that the imposition unduly deprives all agricultural landowners within Davao City of the beneficial use of their property that amounts to taking without just compensation.

The position of the respondents is untenable.

In *City of Manila v. Laguio, Jr.*,[118] we have thoroughly explained that taking only becomes confiscatory if it substantially divests the owner of the beneficial use of its property, *viz.*:

> An ordinance which permanently restricts the use of property that it cannot be used for any reasonable purpose goes beyond regulation and must be recognized as a taking of the property without just compensation. It is intrusive and violative of the private property rights of individuals.
>
> The Constitution expressly provides in Article III, Section 9, that "private property shall not be taken for public use without just compensation." The provision is the most important protection of property rights in the Constitution. This is a restriction on the general power of the government to take property. The constitutional provision is about ensuring that the government does not confiscate the property of some to give it to others. In part too, it is about loss spreading. If the government takes away a person's property to benefit society, then society should pay. The principal purpose of the guarantee is "to bar the Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.
>
> There are two different types of taking that can be identified. A "possessory" taking occurs when the government confiscates or physically occupies property. A "regulatory" taking occurs when the government's regulation leaves no reasonable economically viable use of the property.
>
> In the landmark case of *Pennsylvania Coal v. Mahon*, it was held that a taking also could be found if government regulation of the use of property went "too far." When regulation reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to support the act. While property

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[118] G.R. No. 118127, April 12, 2005, 455 SCRA 308, 339-342.

may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.

No formula or rule can be devised to answer the questions of what is too far and when regulation becomes a taking. In *Mahon*, Justice Holmes recognized that it was "a question of degree and therefore cannot be disposed of by general propositions." On many other occasions as well, the U.S. Supreme Court has said that the issue of when regulation constitutes a taking is a matter of considering the facts in each case. The Court asks whether justice and fairness require that the economic loss caused by public action must be compensated by the government and thus borne by the public as a whole, or whether the loss should remain concentrated on those few persons subject to the public action.

What is crucial in judicial consideration of regulatory takings is that government regulation is a taking if it leaves no reasonable economically viable use of property in a manner that interferes with reasonable expectations for use. A regulation that permanently denies all economically beneficial or productive use of land is, from the owner's point of view, equivalent to a "taking" unless principles of nuisance or property law that existed when the owner acquired the land make the use prohibitable. When the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.

A regulation which denies all economically beneficial or productive use of land will require compensation under the takings clause. Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations and the character of government action. These inquiries are informed by the purpose of the takings clause which is to prevent the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

A restriction on use of property may also constitute a "taking" if not reasonably necessary to the effectuation of a substantial public purpose or if it has an unduly harsh impact on the distinct investment-backed expectations of the owner. (bold emphasis supplied)

The establishment of the buffer zone is required for the purpose of minimizing the effects of aerial spraying within and near the plantations. Although Section 3(e) of the ordinance requires the planting of diversified trees within the identified buffer zone, the requirement cannot be construed and deemed as confiscatory requiring payment of just compensation. A landowner may only be entitled to compensation if the taking amounts to a permanent denial of all economically beneficial or productive uses of the land. The respondents cannot be said to be permanently and completely deprived of their landholdings because they can still cultivate or make other productive uses of the areas to be identified as the buffer zones.

III
Ordinance No. 0309-07 violates the Equal Protection Clause

A serious challenge being posed against Ordinance No. 0309-07 rests on its supposed collision with the Equal Protection Clause. The respondents submit that the ordinance transgresses this constitutional guaranty on two counts, to wit: (1) by prohibiting aerial spraying *per se*, regardless of the substance or the level of concentration of the chemicals to be applied; and (2) by imposing the 30-meter buffer zone in all agricultural lands in Davao City regardless of the sizes of the landholding.

The constitutional right to equal protection 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 guaranty of equal protection secures every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statue or by its improper execution through the State's duly constituted authorities. The concept of equal justice under the law demands that the State governs impartially, and not to draw distinctions between individuals

solely on differences that are irrelevant to the legitimate governmental objective.[119]

Equal treatment neither requires universal application of laws to all persons or things without distinction,[120] nor intends to prohibit legislation by limiting the object to which it is directed or by the territory in which it is to operate.[121] The guaranty of equal protection envisions equality among equals determined according to a valid classification.[122] If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another.[123] In other words, a valid classification must be: (1) based on substantial distinctions; (2) germane to the purposes of the law; (3) not limited to existing conditions only; and (4) equally applicable to all members of the class.[124]

Based on these parameters, we find for the respondents.

The reasonability of a distinction and sufficiency of the justification given by the Government for its conduct is gauged by using the *means-end test*.[125] This test requires analysis of:

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[119] *Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 167.

[120] *Bartolome v. Social Security System*, G.R. No. 192531, November 12, 2014; *Garcia v. Executive Secretary*, G.R. No. 198554, July 30, 2012, 677 SCRA 750, 177.

[121] *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319, 331.

[122] *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010, 606 SCRA 258, 414.

[123] *Tiu v. Court of Appeals*, G.R. No. 127410, January 20, 1999, 301 SCRA 278, 288.

[124] *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308, 348-349.

[125] Russell W. Galloway, "*Means-End Scrutiny in American Constitutional Law*," Loyola of Los Angeles Law Review, Vol. 21, p. 449, available at http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1557& context=llr last accessed August 16, 2016.

(1) the interests of the public that generally require its exercise, as distinguished from those of a particular class; and (2) the means employed that are reasonably necessary for the accomplishment of the purpose and are not unduly oppressive upon individuals.[126] To determine the propriety of the classification, courts resort to three levels of scrutiny, viz: the *rational scrutiny*, *intermediate scrutiny* and *strict scrutiny*.

The *rational basis scrutiny* (also known as the rational relation test or rational basis test) demands that the classification reasonably relate to the legislative purpose.[127] The rational basis test often applies in cases involving economics or social welfare,[128] or to any other case not involving a suspect class.[129]

When the classification puts a quasi-suspect class at a disadvantage, it will be treated under intermediate or heightened review. Classifications based on gender or illegitimacy receives intermediate scrutiny.[130] To survive intermediate scrutiny, the law must not only further an important governmental interest and be substantially related to that interest, but the justification for the classification must be genuine and must not depend on broad generalizations.[131]

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[126] *Social Justice Society (SJS) v. Atienza, Jr.*, G.R. No. 156052, February 13, 2008, 455 SCRA 92, 138.

[127] See the Concurring Opinion of Justice Teresita J. de Castro in *Garcia v. Drilon*, G.R. No. 179267, June 25, 2013, 699 SCRA 435, 447.

[128] *Graham v. Richardson*, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 532 (1971).

[129] *Id.* Suspect class refers to alienage such as that based on nationality or race.

[130] Marcy Strauss, *Reevaluating Suspect Classifications*, Seattle University Law Review, Vol. 35:135, p. 146, available at http://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=2059&context=sulr, last accessed August 16, 2016; *White Light Corporation v. City of Manila*, G.R. No. 122846, January 20, 2009, 576 SCRA 416, 436-437.

[131] See Separate Concurring Opinion of J. Puno (ret.) in *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, April 8, 2010, 618 SCRA 81, 94.

The strict scrutiny review applies when a legislative classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar class disadvantage of a suspect class. The Government carries the burden to prove that the classification is necessary to achieve a compelling state interest, and that it is the least restrictive means to protect such interest.[132]

The petitioners advocate the rational basis test. In particular, the petitioning residents of Davao City argue that the CA erroneously applied the strict scrutiny approach when it declared that the ordinance violated the Equal Protection Clause because the ban included all substances including water and vitamins. The respondents agree with the CA, however, and add that the ordinance does not rest on a valid distinction because it has lacked scientific basis and has ignored the classifications of pesticides observed by the FPA.

We partly agree with both parties.

In our view, the petitioners correctly argue that the rational basis approach appropriately applies herein. Under the rational basis test, we shall: (1) discern the reasonable relationship between the means and the purpose of the ordinance; and (2) examine whether the means or the prohibition against aerial spraying is based on a substantial or reasonable distinction. A reasonable classification includes all persons or things similarly situated with respect to the purpose of the law.[133]

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[132] *Disini, Jr. v. Secretary of Justice*, G.R. No. 203335, February 18, 2014, 716 SCRA 237, 301.

[133] In determining the reasonableness of a classification, one must look beyond the classification to the purpose of the law which is the elimination of a mischief. This gives rise to two (2) classes: the first consists of all individuals possessing the defining character or characteristics of the legislative classification ("Trait"); the second would consist of all individuals possessing or tainted by the mischief at which the law aims. See Joseph Tussman and Jacobus tenBroek, *The Equal Protection of the Laws*, 37 CAL. L. REV. 341 (1949), available at http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi? article=3493econtext=californialawreview Last accessed August 16, 2016.

Applying the test, the established classification under Ordinance No. 0309-07 is to be viewed in relation to the group of individuals similarly situated with respect to the avowed purpose. This gives rise to two classes, namely: (1) the classification under Ordinance No. 0309-07 (*legislative classification*); and (2) the classification based on purpose (*elimination of the mischief*). The legislative classification found in Section 4 of the ordinance refers to "all agricultural entities" within Davao City. Meanwhile, the classification based on the purpose of the ordinance cannot be easily discerned because the ordinance does not make any express or implied reference to it. We have to search the voluminous records of this case to divine the *animus* behind the action of the Sangguniang Panglungsod in prohibiting aerial spraying as an agricultural activity. The effort has led us to the following proposed resolution of the Sangguniang Panglungsod,[134] *viz*.:

RESOLUTION NO. ____
Series of 2007

A RESOLUTION TO ENACT AN ORDINANCE BANNING AERIAL SPRAYING AS AN AGRICULTURAL PRACTICE IN ALL AGRICULTURAL ENTITIES IN DAVAO CITY

WHEREAS, the City of Davao, with fertile lands and ideal climactic condition, hosts various large farms planted with different crops;

WHEREAS, these farms lay adjacent to other agricultural businesses and that residential areas abuts these farm boundaries;

WHEREAS, aerial spraying as a mode of applying chemical substances such as fungicides and pesticides is being used by investors/ companies over large agricultural plantations in Davao City;

WHEREAS,, the Davao City watersheds and ground water sources, located within and adjacent to Mount Apo may be affected by the aerial spraying of chemical substances on the agricultural farms and plantations therein;

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[134] RTC records no. 8, pp. 2361-2362 (Submitted as Exhibit "10" of the petitioners-intervenors).

WHEREAS, the effects of aerial spraying are found to be detrimental to the health of the residents of Davao City most especially the inhabitants nearby agricultural plantations practicing aerials spraying;

WHEREAS, the unstable wind direction during the conduct of aerial spray application of these chemical substances pose health hazards to people, animals, other crops and ground water sources;

WHEREAS, in order to achieve sustainable development, politics must be based on the Precautionary Principle. Environment measures must anticipate, prevent, and attack the causes of environmental degradation. Where there are threats of serious, irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

WHEREAS, it is the policy of the City of Davao to ensure the safety of its inhabitants from all forms of hazards, especially if such hazards come from development activities that are supposed to be beneficial to everybody;

WHEREAS, pesticides are by its nature poisonous, it is all the more dangerous when dispensed aerially through aircraft because of unstable wind conditions which in turn makes aerial spray drifting to unintended targets a commonplace.

WHEREAS, aerial spraying of pesticides is undeniably a nuisance.

WHEREAS, looking at the plight of the complainants and other stakeholders opposed to aerial spraying, the issue of aerial spraying of pesticides is in all fours a nuisance. Given the vastness of the reach of aerial spraying, the said form of dispensation falls into the category of a public nuisance. Public nuisance is defined by the New Civil Code as one which affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal.

WHEREAS, the General Welfare Clause of the Local Government Code empowers Local Government Units to enact ordinances that provide for the health and safety, promote the comfort and convenience of the City and the inhabitants thereof.

NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, that for the health, safety and peace of mind of all the inhabitants of Davao City, let an ordinance be enacted banning aerial spraying as an agricultural practice in all agricultural entities in Davao City.

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The proposed resolution identified aerial spraying of pesticides as a nuisance because of the unstable wind direction during the aerial application, which (1) could potentially contaminate the Davao City watersheds and ground water sources; (2) was detrimental to the health of Davao City residents, most especially those living in the nearby plantations; and (3) posed a hazard to animals and other crops. Plainly, the mischief that the prohibition sought to address was the fungicide drift resulting from the aerial application; hence, the classification based on the intent of the proposed ordinance covered all agricultural entities conducting aerial spraying of fungicides that caused drift.

The assailed ordinance thus becomes riddled with several distinction issues.

A brief discussion on the occurrence of the drift that the ordinance seeks to address is necessary.

Pesticide treatment is based on the use of different methods of application and equipment,[135] the choice of which methods depend largely on the objective of distributing the correct dose to a defined target with the minimum of wastage due to "drift."[136] The term "drift" refers to the movement of airborne spray

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[135] This includes Hand sprayers and atomizers, Hand compressed sprayers, Knapsack sprayers, Tractor-mounted sprayer, Motorized knapsack mist blowers, Ultra low volume or controlled-droplet applicators (ULV/CDA), Fogging machines/fogair sprayers, Hand-carried dusters, Hand-carried granule applicators, Power dusters, Aerial application (Aircraft sprayers), and Injectors and fumigation equipment (S.K. Pal and S.K. Das Gupta, "*Pesticide Application*" Skill Development Series No. 17, ICRISAT Training and Fellowship Program, International Crops Research Institute for the Semi-Arid Tropics, available at http://oar.icrisat.org/2430/1/Pesticide-Application.pdf, accessed August 16, 2016, 1:52 p.m.

[136] Food and Agriculture Organization of the United States. *Guidelines on Good Agricultural Practice for Ground Application of Pesticides*. Rome 2001.

droplets, vapors, or dust particles away from the target area during pesticide application.[137] Inevitably, any method of application causes drift, which may either be primary or secondary. As fittingly described by scholars:[138]

> *Primary* drift is the off-site movement of spray droplets at, or very close to, the time of application. For example, a field application using a boom in a gusty wind situation could easily lead to a primary drift. *Primary* spray drift is *not* product specific, and the active ingredients *do not differ* in their potential to drift. However, the type of formulation, surfactant, or other adjuvant may affect spray drift potential.
>
> *Secondary* drift is associated with pesticide vapor. Pesticide vapor drift is the movement of the gas that forms when an active ingredient evaporates from plants, soil, or other surfaces. And while vapor drift is an important issue, it only pertains to certain volatile products. Vapor drift and other forms of *secondary* drift *are* product specific. Water-based sprays will volatize more quickly than oil-based sprays. However, oil-based sprays can drift farther, especially above 95°F, because they are lighter.

Understandably, aerial drift occurs using any method of application, be it through airplanes, ground sprayers, airblast sprayers or irrigation systems.[139] Several factors contribute to the occurrence of drift depending on the method of application, *viz.*:

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[137] Susan Cordell, and Paul B. Baker, *Pesticide Drift*, available at http://extension.arizona.edu/sites/extension.arizona.edu/files/pubs/az1050.pdf, last accessed August 16, 2016.

[138] *Id*.

[139] F.M. Fishel and J.A. Ferrell, *Managing Pesticide Drift*, available at http://edis.ifas.ufl.edu/pi232, last accessed August 16, 2016.

AERIAL	AIRBLAST	GROUND	CHEMIGATION
Droplet size	Crop canopy	Droplet size	Application height
Application height	Droplet size	Boom height	Wind speed
Wind speed	Wind speed	Wind speed	
Swath adjustment			
Canopy			
Boom length			
Tank mix physical properties			

Source: F.M. Fishel and J.A. Ferrell, "*Managing Pesticide Drift,*" available at http://edis.ifas.edu/pi232, citing Pesticide Notes, MSU Extension.

The four most common pesticide treatment methods adopted in Davao City are aerial, truck-mounted boom, truck-mounted mechanical, and manual spraying.[140] However, Ordinance No. 0309-07 imposes the prohibition only against aerial spraying.

Davao City justifies the prohibition against aerial spraying by insisting that the occurrence of drift causes inconvenience and harm to the residents and degrades the environment. Given this justification, does the ordinance satisfy the requirement that the classification must rest on substantial distinction?

We answer in the negative.

The occurrence of pesticide drift is not limited to aerial spraying but results from the conduct of any mode of pesticide application. Even manual spraying or truck-mounted boom spraying produces drift that may bring about the same inconvenience, discomfort and alleged health risks to the community and to the environment.[141] A ban against aerial

[140] *Rollo* (G.R. No. 189185; Vol. III), p. 1548; Summary Report on the Assessment and Factfinding Activities on the Issue of Aerial Spraying in Banana Plantations.

[141] *Rollo* (G.R. No. 189185; Vol. III), p. 1549; Summary Report on the Assessment and Factfinding Activities on the Issue of Aerial Spraying in Banana Plantations.

spraying does not weed out the harm that the ordinance seeks to achieve.[142] In the process, the ordinance suffers from being "underinclusive" because the classification does not include all individuals tainted with the same mischief that the law seeks to eliminate.[143] A classification that is drastically underinclusive with respect to the purpose or end appears as an irrational means to the legislative end because it poorly serves the intended purpose of the law.[144]

The claim that aerial spraying produces more aerial drift cannot likewise be sustained in view of the petitioners' failure to substantiate the same. The respondents have refuted this claim, and have maintained that on the contrary, manual spraying produces more drift than aerial treatment.[145] As such, the decision of prohibiting only aerial spraying is tainted with arbitrariness.

Aside from its being underinclusive, the assailed ordinance also tends to be "overinclusive" because its impending implementation will affect groups that have no relation to the accomplishment of the legislative purpose. Its implementation will unnecessarily impose a burden on a wider range of

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[142] *Id*. at 1566; According to Regional Health Director of the Department of Health (DOH) Paulyn Jean B. Rosell-Ubial (**now the Secretary of Health)**, the ban against aerial spraying and adoption of ground spraying would not eliminate the hazards of the pesticides to which workers and residents within and around banana plantations might be exposed.

[143] Tussman and tenBroek.

[144] David M. Treiman, *Equal Protection and Fundamental Rights – A Judicial Shell Game*, 15 Tulsa L. J. 183, 191 (1979), available at: http://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=1510&context=/tlr, last accessed August 16, 2016.

[145] *Rollo,* (G.R. No. 189185; Vol. II), pp. 1257-1258; According to respondents' witness, Mr. Richard Billington, the drift at the edge of an area sprayed from the air results to approximately half of the corresponding value for ground application. This observation was based on the AgDrift Model, developed under a Cooperative Research and Development Agreement (CRADA) between the Spray Drift Task Force (SDTF) of the US Environmental Protection Agency (EPA) and the US Department of Agriculture – Agricultural Research Service (USDA-ARS).

individuals than those included in the intended class based on the purpose of the law.[146]

It can be noted that the imposition of the ban is too broad because the ordinance applies irrespective of the substance to be aerially applied and irrespective of the agricultural activity to be conducted. The respondents admit that they aerially treat their plantations not only with pesticides but also vitamins and other substances. The imposition of the ban against aerial spraying of substances other than fungicides and regardless of the agricultural activity being performed becomes unreasonable inasmuch as it patently bears no relation to the purported inconvenience, discomfort, health risk and environmental danger which the ordinance seeks to address. The burden now will become more onerous to various entities, including the respondents and even others with no connection whatsoever to the intended purpose of the ordinance.

In this respect, the CA correctly observed:

> Ordinance No. 0309-07 defines "aerial spraying" as the "application of substances through the use of aircraft of any form which dispenses the substances in the air." Inevitably, the ban imposed therein encompasses aerial application of practically all substances, not only pesticides or fungicides but including water and all forms of chemicals, regardless of its elements, composition, or degree of safety.
>
> Going along with respondent-appellee's ratiocination that the prohibition in the Ordinance refers to aerial spraying as a method of spraying pesticides or fungicides, there appears to be a need to single out pesticides or fungicides in imposing such a ban because there is a striking distinction between such chemicals and other substances (including water), particularly with respect to its safety implications to the public welfare and ecology.
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> x x x x x x x x x
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> We are, therefore, convinced that the total ban on aerial spraying runs afoul with the equal protection clause because it does not classifiy which substances are prohibited from being applied aerially even as

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[146] Tussman and tenBroek, *supra* at 133.

reasonable distinctions should be made in terms of the hazards, safety or beneficial effects of liquid substances to the public health, livelihood and the environment.[147]

We clarify that the CA did not thereby apply the strict scrutiny approach but only evaluated the classification established by the ordinance in relation to the purpose. This is the essence of the rational basis approach. The petitioners should be made aware that the rational basis scrutiny is not based on a simple means-purpose correlation; nor does the rational basis scrutiny automatically result in a presumption of validity of the ordinance or deference to the wisdom of the local legislature.[148] To reiterate, aside from ascertaining that the means and purpose of the ordinance are reasonably related, the classification should be based on a substantial distinction.

However, we do not subscribe to the respondents' position that there must be a distinction based on the level of concentration or the classification imposed by the FPA on pesticides. This strenuous requirement cannot be expected from a local government unit that should only be concerned with general policies in local administration and should not be restricted by technical concerns that are best left to agencies vested with the appropriate special competencies. The disregard of the pesticide classification is not an equal protection issue but is more relevant in another aspect of delegated police power that we consider to be more appropriate in a later discussion.

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[147] *Rollo*, G.R. No. 189185, Vol. I, pp. 102-103.

[148] The rational basis approach partakes of two (2) forms: the *deferential* and the *nondeferential* rational relation test. In deferential rational basis test, the government action is always deemed constitutional if it has any conceivable valid purpose and if the means chosen are arguably rational. In contrast, the nondeferential rational basis test requires a determination that the government action serves an actual valid interest, hence (1) the government actually has a valid purpose and (2) the means chosen are demonstrably rational (effective), see Galloway, Russell W., *Means-End Scrutiny in American Constitutional Law*, Loyola of Los Angeles Review, Vol. 21, pp. 451-452, available at http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1557&context=llr, last accessed August 16, 2016.

The overinclusiveness of Ordinance No. 0309-07 may also be traced to its Section 6 by virtue of its requirement for the maintenance of the 30-meter buffer zone. This requirement applies regardless of the area of the agricultural landholding, geographical location, topography, crops grown and other distinguishing characteristics that ideally should bear a reasonable relation to the evil sought to be avoided. As earlier discussed, only large banana plantations could rely on aerial technology because of the financial capital required therefor.

The establishment and maintenance of the buffer zone will become more burdensome to the small agricultural landholders because: (1) they have to reserve the 30-meter belt surrounding their property; (2) that will have to be identified through GPS; (3) the metes and bounds of the buffer zone will have to be plotted in a survey plan for submission to the local government unit; and (4) will be limited as to the crops that may be cultivated therein based on the mandate that the zone shall be devoted to "diversified trees" taller than what are being grown therein.[149] The arbitrariness of Section 6 all the more becomes evident when the land is presently devoted to the cultivation of root crops and vegetables, and trees or plants slightly taller than the root crops and vegetables are then to be planted. It is seriously to be doubted whether such circumstance will prevent the occurrence of the drift to the nearby residential areas.

Section 6 also subjects to the 30-meter buffer zone requirement agricultural entities engaging in organic farming, and do not contribute to the occurrence of pesticide drift. The classification indisputably becomes arbitrary and whimsical.

A substantially overinclusive or underinclusive classification tends to undercut the governmental claim that the classification serves legitimate political ends.[150] Where overinclusiveness is the problem, the vice is that the law has a greater discriminatory or burdensome effect than necessary.[151] In this light, we strike

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[149] Section 3(e).

[150] *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982), 70 L.Ed.2d 677.

[151] Treiman, *supra* at 148.

down Section 5 and Section 6 of Ordinance No. 0309-07 for carrying an invidious classification, and for thereby violating the Equal Protection Clause.

The discriminatory nature of the ordinance can be seen from its policy as stated in its Section 2, to wit:

> Section 2. POLICY OF THE CITY. It shall be the policy of the City of Davao to eliminate the method of aerial spraying as an agricultural practice in all agricultural activities by all entities within Davao City.

Evidently, the ordinance discriminates against large farmholdings that are the only ideal venues for the investment of machineries and equipment capable of aerial spraying. It effectively denies the affected individuals the technology aimed at efficient and cost-effective operations and cultivation not only of banana but of other crops as well. The prohibition against aerial spraying will seriously hamper the operations of the banana plantations that depend on aerial technology to arrest the spread of the Black Sigatoka disease and other menaces that threaten their production and harvest. As earlier shown, the effect of the ban will not be limited to Davao City in view of the significant contribution of banana export trading to the country's economy.

The discriminatory character of the ordinance makes it oppressive and unreasonable in light of the existence and availability of more permissible and practical alternatives that will not overburden the respondents and those dependent on their operations as well as those who stand to be affected by the ordinance. In the view of Regional Director Roger C. Chio of DA Regional Field Unit XI, the alleged harm caused by aerial spraying may be addressed by following the GAP that the DA has been promoting among plantation operators. He explained his view thusly:

> The allegation that aerial spraying is hazardous to animal and human being remains an allegation and assumptions until otherwise scientifically proven by concerned authorities and agencies. This issue can be addressed by following Good Agricultural Practices, which DA is promoting among fruit and vegetable growers/plantations.

Any method of agri-chemical application whether aerial or non-aerial if not properly done in accordance with established procedures and code of good agricultural practices and if the chemical applicators and or handlers lack of necessary competency, certainly it could be hazardous. For the assurance that commercial applicators/aerial applicators possessed the competency and responsibility of handling agri-chemical, such applicators are required under Article III, Paragraph 2 of FPA Rules and Regulation No. 1 to secure license from FPA.

Furthermore users and applicators of agri-chemicals are also guided by Section 6 Paragraph 2 and 3 under column of Pesticides and Other agricultural Chemicals of PD 11445 which stated: "FPA shall establish and enforce tolerance levels and good agricultural practices in raw agricultural commodities; to restrict or ban the use of any chemical or the formulation of certain pesticides in specific areas or during certain period upon evidence that the pesticide is eminent [sic] hazards has caused, or is causing widespread serious damage to crops, fish, livestock or to public health and environment."

Besides the aforecited policy, rules and regulation enforced by DA, there are other laws and regulations protecting and preserving the environment. If the implementation and monitoring of all these laws and regulation are closely coordinated with concerned LGUs, Gas and NGAs and other private sectors, perhaps we can maintain a sound and health environment x x x.[152]

Indeed, based on the *Summary Report on the Assessment and Factfinding Activities on the Issue of Aerial Spraying in Banana Plantations*,[153] submitted by the fact-finding team organized by Davao City, only three out of the 13 barangays consulted by the fact-finding team opposed the conduct of aerial spraying; and of the three barangays, aerial spraying was conducted only in Barangay Subasta. In fact, the fact-finding team found that the residents in those barangays were generally in favor of the operations of the banana plantations, and did not oppose the conduct of aerial spraying.

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[152] *Rollo* (G.R. No. 189185; Vol. III), pp. 1564-1565.

[153] *Id.* at 1549.

IV
The Precautionary Principle still requires scientific basis

The petitioners finally plead that the Court should look at the merits of the ordinance based on the precautionary principle. They argue that under the precautionary principle, the City of Davao is justified in enacting Ordinance No. 0309-07 in order to prevent harm to the environment and human health despite the lack of scientific certainty.

The petitioners' plea and argument cannot be sustained.

The principle of precaution originated as a social planning principle in Germany. In the 1980s, the Federal Republic of Germany used the *Vorsogeprinzip* ("foresight principle") to justify the implementation of vigorous policies to tackle acid rain, global warming and pollution of the North Sea.[154] It has since emerged from a need to protect humans and the environment from increasingly unpredictable, uncertain, and unquantifiable but possibly catastrophic risks such as those associated with Genetically Modified Organisms and climate change,[155] among others. The oft-cited Principle 15 of the 1992 Rio Declaration on Environment and Development (1992 Rio Agenda), first embodied this principle, as follows:

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

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[154] Andrew Jordan and Timothy O'Riordan, "*The Precautionary Principle: A Legal and Policy History*," in The precautionary principle: Protecting Public Health, The Environment and The Future of Our Children, p. 33, available at http://www.euro.who.int/__data/assets/pdf_file/0003/91173/E83079.pdf, last accessed August 16, 2016.

[155] UNESCO. The Precautionary Principle, World Commission on the Ethics of Scientific Knowledge and Technology (COMEST), p. 7, available at http://www.eubios.info/UNESCO/precprin.pdf, last accessed August 16, 2016.

In this jurisdiction, the principle of precaution appearing in the *Rules of Procedure for Environmental Cases* (A.M. No. 09-6-8-SC) involves matters of evidence in cases where there is lack of full scientific certainty in establishing a causal link between human activity and environmental effect.[156] In such an event, the courts may construe a set of facts as warranting either judicial action or inaction with the goal of preserving and protecting the environment.[157]

It is notable, therefore, that the precautionary principle shall only be relevant if there is concurrence of three elements, namely: *uncertainty, threat of environmental damage* and *serious or irreversible harm*. In situations where the threat is relatively certain, or that the causal link between an action and environmental damage can be established, or the probability of occurrence can be calculated, only preventive, not precautionary measures, may be taken. Neither will the precautionary principle apply if there is no indication of a threat of environmental harm, or if the threatened harm is trivial or easily reversible.[158]

We cannot see the presence of all the elements. To begin with, there has been no scientific study. Although the precautionary principle allows lack of full scientific certainty in establishing a connection between the serious or irreversible harm and the human activity, its application is still premised on empirical studies. Scientific analysis is still a necessary basis for effective policy choices under the precautionary principle.[159]

Precaution is a risk management principle invoked after scientific inquiry takes place. This scientific stage is often

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[156] Section 1, Rule 20, Part V.

[157] Annotation to the Rules of Procedure on Environmental Cases, p. 158.

[158] IUCN, *Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management*, available at http://www.cmsdata.iucn.org/downloads/ln250507_ppguidelines.pdf. Last accessed August 16, 2016.

[159] *Supra* at 157.

considered synonymous with risk assessment.[160] As such, resort to the principle shall not be based on anxiety or emotion, but from a rational decision rule, based in ethics.[161] As much as possible, a complete and objective scientific evaluation of the risk to the environment or health should be conducted and made available to decision-makers for them to choose the most appropriate course of action.[162] Furthermore, the positive and negative effects of an activity is also important in the application of the principle. The potential harm resulting from certain activities should always be judged in view of the potential benefits they offer, while the positive and negative effects of potential precautionary measures should be considered.[163]

The only study conducted to validate the effects of aerial spraying appears to be the *Summary Report on the Assessment and Fact-Finding Activities on the Issue of Aerial Spraying in Banana Plantations*.[164] Yet, the fact-finding team that generated the report was not a scientific study that could justify the resort to the precautionary principle. In fact, the Sangguniang Bayan ignored the findings and conclusions of the fact-finding team that recommended only a regulation, not a ban, against aerial spraying. The recommendation was in line with the advocacy of judicious handling and application of chemical pesticides by the DOH-Center for Health Development in the Davao Region

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[160] Andrew Stirling and Joel Tickner, "*Implementing Precaution: Assessment and Application Tools for Health and Environmental Decision-Making*," in The Precautionary Principle: Protecting Public Health, The Environment and The Future of Our Children, p. 182, available at http://www.euro.who.int/__data/assets/pdf_file/0003/91173/E83079.pdf Last accessed August 16, 2016.

[161] *Supra* note 157, at 16.

[162] European Commission. Communication from the Commission on the Precautionary Principle, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A132042. Last accessed August 16, 2016.

[163] *Supra* note 157, at 29.

[164] *Supra* note 153.

in view of the scarcity of scientific studies to support the ban against aerial spraying.[165]

We should not apply the precautionary approach in sustaining the ban against aerial spraying if little or nothing is known of the exact or potential dangers that aerial spraying may bring to the health of the residents within and near the plantations and to the integrity and balance of the environment. It is dangerous to quickly presume that the effects of aerial spraying would be adverse even in the absence of evidence. Accordingly, for lack of scientific data supporting a ban on aerial spraying, Ordinance No. 0309-07 should be struck down for being unreasonable.

V

Ordinance No. 0309-07 is an ultra vires act

The Court further holds that in addition to its unconstitutionality for carrying an unwarranted classification that contravenes the Equal Protection Clause, Ordinance No. 0309-07 suffers from another legal infirmity.

The petitioners represent that Ordinance No. 0309-07 is a valid exercise of legislative and police powers by the Sangguniang Bayan of Davao City pursuant to Section 458 in relation to Section 16 both of the *Local Government Code*. The respondents counter that Davao City thereby disregarded the regulations implemented by the Fertilizer and Pesticide Authority (FPA), including its identification and classification of safe pesticides and other agricultural chemicals.

We uphold the respondents.

An ordinance enjoys the presumption of validity on the basis that:

The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things,

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[165] Position Paper of the Department of Health-Center for Health Development, Davao Region, On the Issue of Aerial Spraying in Banana Plantations Within the Jurisdiction of Davao City, in G.R. No. 189185, Vol. III, pp. 1566-1567.

be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject, and necessities of their particular municipality and with all the facts and circumstances which surround the subject, and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well-being of the people.[166]

Section 5(c) of the *Local Government Code* accords a liberal interpretation to its general welfare provisions. The policy of liberal construction is consistent with the spirit of local autonomy that endows local government units with sufficient power and discretion to accelerate their economic development and uplift the quality of life for their constituents.

Verily, the Court has championed the cause of public welfare on several occasions. In so doing, it has accorded liberality to the general welfare provisions of the *Local Government Code* by upholding the validity of local ordinances enacted for the common good. For instance, in *Social Justice Society (SJS) v. Atienza, Jr.*,[167] the Court validated a zoning ordinance that reclassified areas covered by a large oil depot from industrial to commercial in order to ensure the life, health and property of the inhabitants residing within the periphery of the oil depot. Another instance is *Gancayco v. City Government of Quezon City*,[168] where the Court declared as valid a city ordinance ordering the construction of arcades that would ensure the health and safety of the city and its inhabitants, improvement of their morals, peace, good order, comfort and convenience, as well as the promotion of their prosperity. Even in its early years, the Court already extended liberality towards the exercise by the local government units of their legislative powers in order to promote the general welfare of their communities. This was exemplified in *United States v. Salaveria*,[169] wherein gambling

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[166] *United States v. Salaveria,* 39 Phil. 102, 111 (1918).

[167] *Supra* note 103, at 111.

[168] G.R. No. 177807, October 11, 2011, 658 SCRA 853, 865-866.

[169] *Supra* note 166, at 112.

was characterized as "an act beyond the pale of good morals" that the local legislative council could validly suppress to protect the well-being of its constituents; and in *United States v. Abendan*,[170] whereby the right of the then Municipality of Cebu to enact an ordinance relating to sanitation and public health was upheld.

The power to legislate under the General Welfare Clause is not meant to be an invincible authority. In fact, *Salaveria* and *Abendan* emphasized the reasonableness and consistency of the exercise by the local government units with the laws or policies of the State.[171] More importantly, because the police power of the local government units flows from the express delegation of the power by Congress, its exercise is to be construed *in strictissimi juris.* Any doubt or ambiguity arising out of the terms used in granting the power should be construed against the local legislative units.[172] Judicial scrutiny comes into play whenever the exercise of police power affects life, liberty or property.[173] The presumption of validity and the policy of liberality are not restraints on the power of judicial review in the face of questions about whether an ordinance conforms with the Constitution, the laws or public policy, or if it is unreasonable, oppressive, partial, discriminating or in derogation of a common right. The ordinance must pass the test of constitutionality and the test of consistency with the prevailing laws.[174]

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[170] 24 Phil. 165, 169 (1913).

[171] *De la Cruz v. Paras*, G.R. Nos. L-42571-72, July 25, 1983, 123 SCRA 569, 578.

[172] *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308, 353.

[173] *White Light Corporation v. City of Manila*, G.R. No. 122846, January 20, 2009, 576 SCRA 417, 442 citing *Morfe v. Mutuc*, G.R. No. L-20387, January 31, 1968, 22 SCRA 424, 441.

[174] *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308, 327.

Although the *Local Government Code* vests the municipal corporations with sufficient power to govern themselves and manage their affairs and activities, they definitely have no right to enact ordinances dissonant with the State's laws and policy. The *Local Government Code* has been fashioned to delineate the specific parameters and limitations to guide each local government unit in exercising its delegated powers with the view of making the local government unit a fully functioning subdivision of the State within the constitutional and statutory restraints.[175] The *Local Government Code* is not intended to vest in the local government unit the blanket authority to legislate upon any subject that it finds proper to legislate upon in the guise of serving the common good.

The function of pesticides control, regulation and development is within the jurisdiction of the FPA under Presidential Decree No. 1144.[176] The FPA was established in recognition of the need for a technically oriented government entity[177] that will protect the public from the risks inherent in the use of pesticides.[178] To perform its mandate, it was given under Section 6 of Presidential Decree No. 1144 the following powers and functions with respect to pesticides and other agricultural chemicals, *viz*.:

> Section 6. Powers and functions. The FPA shall have jurisdiction, on over all existing handlers of pesticides, fertilizers and other agricultural chemical inputs. The FPA shall have the following powers and functions:
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> x x x x x x x x x

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[175] *Legaspi v. City of Cebu*, G.R. No. 159692, December 10, 2013, 711 SCRA 771, 785.

[176] Creating the Fertilizer and Pesticide Authority and Abolishing the Fertilizer Industry Authority.

[177] The eighth Whereas clause.

[178] Section 1, P.D. No. 1144.

III. Pesticides and Other Agricultural Chemicals

1. To determine specific uses or manners of use for each pesticide or pesticide formulation;

2. To establish and enforce levels and good agricultural practices for use of pesticides in raw agricultural commodities;

3. To restrict or ban the use of any pesticide or the formulation of certain pesticides in specific areas or during certain periods upon evidence that the pesticide is an imminent hazard, has caused, or is causing widespread serious damage to crops, fish or livestock, or to public health and environment;

x x x x x x x x x

5. To inspect the establishment and premises of pesticide handlers to insure that industrial health and safety rules and anti-pollution regulations are followed;

6. To enter and inspect farmers' fields to ensure that only the recommended pesticides are used in specific crops in accordance with good agricultural practice;

x x x x x x x x x

(Emphasis supplied).

Evidently, the FPA was responsible for ensuring the compatibility between the usage and the application of pesticides in agricultural activities and the demands for human health and environmental safety. This responsibility includes not only the identification of safe and unsafe pesticides, but also the prescription of the safe modes of application in keeping with the standard of good agricultural practices.

On the other hand, the enumerated devolved functions to the local government units do not include the regulation and control of pesticides and other agricultural chemicals.[179] The non-inclusion should preclude the Sangguniang Bayan of Davao

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[179] The delivery of basic services is devolved to the local government units. Sections 22 and 458 of the Local Government Code provide for an exhaustive enumeration of the functions and duties devolved to the local government units.

City from enacting Ordinance No. 0309-07, for otherwise it would be arrogating unto itself the authority to prohibit the aerial application of pesticides in derogation of the authority expressly vested in the FPA by Presidential Decree No. 1144.

In enacting Ordinance No. 0309-07 without the inherent and explicit authority to do so, the City of Davao performed an *ultra vires* act. As a local government unit, the City of Davao could act only as an agent of Congress, and its every act should always conform to and reflect the will of its principal.[180] As clarified in *Batangas CATV, Inc. v. Court of Appeals*:[181]

> [W]here the state legislature has made provision for the regulation of conduct, it has manifested its intention that the subject matter shall be fully covered by the statute, and that a municipality, under its general powers, cannot regulate the same conduct. In *Keller vs. State*, it was held that: "*Where there is no express power in the charter of a municipality authorizing it to adopt ordinances regulating certain matters which are specifically covered by a general statute, a municipal ordinance, insofar as it attempts to regulate the subject which is completely covered by a general statute of the legislature, may be rendered invalid. x x x Where the subject is of statewide concern, and the legislature has appropriated the field and declared the rule, its declaration is binding throughout the State*." A reason advanced for this view is that such ordinances are in excess of the powers granted to the municipal corporation.

Since E.O. No. 205, a general law, mandates that the regulation of CATV operations shall be exercised by the NTC, an LGU cannot enact an ordinance or approve a resolution in violation of the said law.

It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state

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[180] *Batangas CATV v. Court of Appeals*, G.R. No. 138810, September 29, 2004, 439 SCRA 326, 340.

[181] *Id*.

law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law.[182] (Emphasis ours)

For sure, every local government unit only derives its legislative authority from Congress. In no instance can the local government unit rise above its source of authority. As such, its ordinance cannot run against or contravene existing laws, precisely because its authority is only by virtue of the valid delegation from Congress. As emphasized in *City of Manila v. Laguio, Jr.*:[183]

> The requirement that the enactment must not violate existing law gives stress to the precept that local government units are able to legislate only by virtue of their derivative legislative power, a delegation of legislative power from the national legislature. The delegate cannot be superior to the principal or exercise powers higher than those of the latter.
>
> This relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. The national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.[184]

Moreover, Ordinance No. 0309-07 proposes to prohibit an activity already covered by the jurisdiction of the FPA, which has issued its own regulations under its Memorandum Circular No. 02, Series of 2009, entitled *Good Agricultural Practices for Aerial Spraying of Fungicide in Banana Plantations.*[185] While Ordinance No. 0309-07 prohibits aerial spraying in banana plantations within the City of Davao, Memorandum Circular No. 02 seeks to regulate the conduct of aerial spraying in banana

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[182] *Id.* at 341-342.

[183] G.R. No. 118127, April 12, 2005, 455 SCRA 308, 327.

[184] *Id.*

[185] Issued on August 3, 2009.

plantations[186] pursuant to Section 6, Presidential Decree No. 1144, and in conformity with the standard of Good Agricultural Practices (GAP). Memorandum Circular No. 02 covers safety procedures,[187] handling[188] and post-application,[189] including the qualifications of applicators,[190] storing of fungicides,[191] safety and equipment of plantation personnel,[192] all of which are incompatible with the prohibition against aerial spraying under Ordinance No. 0309-07.

Although Memorandum Circular No. 02 and Ordinance No. 0309-07 both require the maintenance of the buffer zone, they differ as to their treatment and maintenance of the buffer zone. Under Memorandum Circular No. 02, a 50-meter "no-spray boundary" buffer zone should be observed by the spray pilots,[193] and the observance of the zone should be recorded in the Aerial Spray Final Report (ASFR) as a post-application safety measure.[194] On the other hand, Ordinance No. 0309-07 requires the maintenance of the 30-meter buffer zone to be planted with diversified trees.[195]

Devoid of the specific delegation to its local legislative body, the City of Davao exceeded its delegated authority to enact

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[186] The memorandum provides for the safety procedures in pesticide spraying, (Paragraph II [1]), safety handling (Paragraph II [2]) and post-application (Paragraph II [3]), including the qualification of applicators (Paragraph III), storing of fungicides (Paragraph IV), safety and equipment of plantation personnel (Paragraph V).

[187] Paragraph II (1).

[188] Paragraph II (2).

[189] Paragraph II (3).

[190] Paragraph III.

[191] Paragraph IV.

[192] Paragraph V.

[193] Paragraph II(1)(b).

[194] Paragraph II(3)(d)(8).

[195] Section 3(e).

Ordinance No. 0309-07. Hence, Ordinance No. 0309-07 must be struck down also for being an *ultra vires* act on the part of the Sangguniang Bayan of Davao City.

We must emphasize that our ruling herein does not seek to deprive the LGUs their right to regulate activities within their jurisdiction. They are empowered under Section 16 of the *Local Government Code* to promote the general welfare of the people through regulatory, not prohibitive, ordinances that conform with the policy directions of the National Government. Ordinance No. 0309-07 failed to pass this test as it contravenes the specific regulatory policy on aerial spraying in banana plantations on a nationwide scale of the National Government, through the FPA.

Finally, the unconstitutionality of the ban renders nugatory Ordinance No. 0309-07 in its entirety. Consequently, any discussion on the lack of the separability clause becomes entirely irrelevant.

WHEREFORE, the Court **DENIES** the consolidated petitions for review on *certiorari* for their lack of merit; **AFFIRMS** the decision promulgated on January 9, 2009 in C.A.-G.R. CV No. 01389-MIN. declaring Ordinance No. 0309-07 **UNCONSTITUTIONAL; PERMANENTLY ENJOINS** respondent City of Davao, and all persons or entities acting in its behalf or under its authority, from enforcing and implementing Ordinance No. 0309-07; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

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

Leonen, J., see separate concurring opinion.

Carpio, J., no part. Former law partners are counsels.

Brion, J., on leave.

CONCURRING OPINION

LEONEN, *J.*:

I concur in the result. Ordinance No. 0309-07, Series of 2007 passed by Davao City is too broad in that it prohibits aerial spraying in agriculture regardless of the substance and the method of aerial spraying involved. This Court's Decision should be read in this narrow sense.

I add the following points to clarify the reasons for my vote.

First, nothing in the disposition of this case should be construed as an absolute prohibition for the banning of aerial spraying of certain chemicals. Even if the *Sangguniang Panlungsod* properly appreciated the harm caused by the spraying of chemicals that addressed the problem of the Black Sigatoka, the resulting local legislation was too broad. Justification for one case does not necessarily always provide justification for another case.

Second, it is clear that passing a sufficiently narrow ordinance banning aerial spraying of a pesticide may be done by a local government unit. This can be justified by Section 16[1] of the Local Government Code. The present code and the Constitution[2] provide sufficient basis for that kind of autonomy.

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[1] Loc. Gov. Code, Sec. 16 provides:

SECTION 16. General Welfare. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[2] Const., Art. II, Sec. 25 provides:

SECTION 25. The State shall ensure the autonomy of local governments.

Localized harm that affect specific residents and that may be unique to a certain municipality or city should not await action from the national government. Local government units are not so inutile as to be unable to sufficiently protect its citizens. Davao City can act. It does not need Malacañang or the Congress to do what it already can.

I differ from the ponencia with respect to its interpretation of Presidential Decree No. 1144[3] creating the Fertilizer and Pesticide Authority. In my view, nothing in the Decree's grant of powers[4] prohibits local government units from regulating

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[3] Pres. Decree No. 1144 (1977), Creating the Fertilizer and Pesticide Authority and Abolishing the Fertilizer Industry Authority.

[4] Pres. Decree No. 1144 (1977), Sec. 6 provides:

SECTION 6. Powers and Functions. — The FPA shall have jurisdiction, on over all existing handlers of pesticides, fertilizers and other agricultural chemical inputs. The FPA shall have the following powers and functions:

I. Common to Fertilizers, Pesticides and other Agricultural Chemicals

1. To conduct an information campaign regarding the safe and effective use of these products;
2. To promote and coordinate all fertilizer and pesticides research in cooperation with the Philippine Council for Agriculture and Resources Research and other appropriate agencies to ensure scientific pest control in the public interest, safety in the use and handling of pesticides, higher standards and quality of products and better application methods;
3. To call upon any department, bureau, office, agency or instrumentality of the government, including government-owned or controlled corporations, or any officer or employee thereof and on the private sector, for such information or assistance as it may need in the exercise of its powers and in the performance of its functions and duties;
4. To promulgate rules and regulations for the registration and licensing of handlers of these products, collect fees pertaining thereto, as well as the renewal, suspension, revocation, or cancellation of such registration or licenses and such other rules and regulations as may be necessary to implement this Decree;
5. To establish and impose appropriate penalties on handlers of these products for violations of any rules and regulations established by the FPA;
6. To institute proceedings against any person violating any provisions of this Decree and/or such rules and regulations as may be

the mode of delivery of certain allowed chemicals should there be clear harm caused to the residents of a municipality or city. Certifying that a pesticide can be used is different from preventing the harm it can do when applied in a certain way. Davao City did not intend to prohibit the pesticide, but merely the method of its application.

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promulgated to implement the provisions of this Decree after due notice and hearing;

7. To delegate such selected privileges, powers or authority as may be allowed by law to corporation, cooperatives, associations or individuals as may presently exist or be organized to assist the FPA in carrying out its functions, and;
8. To do any and all acts not contrary to law or existing decrees and regulations as may be necessary to carry out the functions of the FPA.

II. Fertilizers

1. To make a continuous assessment of the fertilizer supply and demand situation, both domestic and worldwide;
2. To establish and enforce sales quotas, production schedules, distributions areas and such other marketing regulations as may be necessary to assure market stability and viable operations in the industry;
3. To determine and set the volume and prices both wholesale and retail; of fertilizer and fertilizer inputs;
4. To establish and implement regulations governing the import and export of fertilizer and fertilizer inputs, and when necessary, to itself import and/or export such items, including the negotiating and contracting of such imports and exports;
5. To import fertilizer and fertilizer inputs exempt from customs duties, compensating and sales taxes and all other taxes, and to purchase naptha locally free from specific taxes and the corresponding duty on the imported crude, and to sell or convey such fertilizer or fertilizer input to any individual association, or corporation likewise exempt from the payment of customs duties and all other taxes;
6. To control and regulate all marketing companies, whether importer, indentor, wholesaler or retailer; by controlling and regulating prices, terms, mark-ups, distribution channels, promotion, storage and other marketing factors in the domestic fertilizer market;
7. To regulate and control quality of the different grades of fertilizer and to set new grades when necessary;
8. To control and regulate all aspects of domestic fertilizer production, including the utilization of idle capacity and the orderly expansion

Third, the precautionary principle embedded both in Article II,

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of the industry and to compel the utilization of unused or underutilized capacities of fertilizer companies and to direct any improvements, modifications or repairs as may be necessary to accomplish this;

9. To approve or to reject the establishment of new fertilizer or fertilizer input plants and the expansion or contraction of existing capacities;
10. To obtain complete assess to all pertinent information on the operations of the industry, including audited and/or unaudited financial statements, marketing, production, and inventory data;
11. To control and assist in the financing of the importation of fertilizer and fertilizers inputs of production, of inventory and working capital, and of the expansion of the industry;
12. To do all such things as may be necessary to maintain an adequate supply of fertilizers to the domestic market at reasonable prices while maintaining the long-term viability of the industry.

III. Pesticides and Other Agricultural Chemicals

1. To determine specific uses or manners of use for each pesticide or pesticide formulation;
2. To establish and enforce tolerance levels and good agricultural practices for use of pesticides in raw agricultural commodities;
3. To restrict or ban the use of any pesticide or the formulation of certain pesticides in specific areas or during certain periods upon evidence that the pesticide is an imminent hazard, has caused, or is causing widespread serious damage to crops, fish or livestock, or to public health and the environment;
4. To prevent the importation of agricultural commodities containing pesticide residues above the accepted tolerance levels and to regulate the exportation of agricultural products containing pesticide residue above accepted tolerance levels;
5. To inspect the establishment and premises of pesticide handlers to insure that industrial health and safety rules and anti-pollution regulations are followed;
6. To enter and inspect farmers' fields to ensure that only the recommended pesticides are used in specific crops in accordance with good agricultural practice;
7. To require if and when necessary, of every handler of these products, the submission to the FPA of a report stating the quantity, value of each kind of product exported, imported, manufactured, produced, formulated, repacked, stored, delivered, distributed, or sold;
8. Should there by any extraordinary and unreasonable increases in prices or a severe shortage in supply of pesticides, or imminent

Section 16[5] and Article III, Section 1[6] of the Constitution applies in this case.

There was science, but it was uncertain.

The precautionary principle should also be qualified by transience as science-progressive and must be cost-effective. Environmental measures must "ensure . . . benefits at the lowest possible cost."[7]

However, I agree that the precautionary principle does not make sense if there is absolutely no proof of causation.

Fourth, I do not see the application of the equal protection clause. The discrimination against large plantation owners enjoying huge economies of scale is, at this point, speculative.

Lastly, nothing in this Decision should, in my view, be construed as a negation of the findings of fact of the trial court. This is especially with regard to the testimony of the persons affected by the aerial spray.

The broad construction of the prohibition in the Ordinance should not be viewed as erasing the experience of the residents of Davao City. In other words, government still needs to address their problems with the most urgent dispatch.

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dangers or either occurrences, the FPA is empowered to impose such controls as may be necessary in the public interest, including but not limited to such restrictions and controls as the imposition of price ceilings, controls on inventories, distribution and transport, and tax-free importations of such pesticides or raw materials thereof as may be in short supply.

[5] Const., Art. II, Sec. 16 provides:

SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

[6] Const., Art. III, Sec. 1 provides:

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

[7] United Nations Framework Convention on Climate Change, Art. 3(3).

EN BANC

[G.R. No. 198756. August 16, 2016]

BANCO DE ORO, BANK OF COMMERCE, CHINA BANKING CORPORATION, METROPOLITAN BANK & TRUST COMPANY, PHILIPPINE BANK OF COMMUNICATIONS, PHILIPPINE NATIONAL BANK, PHILIPPINE VETERANS BANK, AND PLANTERS DEVELOPMENT BANK, *petitioners,*

RIZAL COMMERCIAL BANKING CORPORATION AND RCBC CAPITAL CORPORATION, *petitioners-intervenors,*

CAUCUS OF DEVELOPMENT NGO NETWORKS, *petitioner-intervenor, vs.* **REPUBLIC OF THE PHILIPPINES, COMMISSIONER OF INTERNAL REVENUE, BUREAU OF INTERNAL REVENUE, SECRETARY OF FINANCE, DEPARTMENT OF FINANCE, THE NATIONAL TREASURER, AND BUREAU OF TREASURY,** *respondents.*

SYLLABUS

1. TAXATION; COURT OF TAX APPEALS; REPUBLIC ACT NO. 9282 (AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS); EXCLUSIVE APPELLATE JURISDICTION OF THE COURT OF TAX APPEALS; THE COURT OF TAX APPEALS MAY TAKE COGNIZANCE OF CASES DIRECTLY CHALLENGING THE CONSTITUTIONALITY OR VALIDITY OF A TAX LAW OR REGULATION OR ADMINISTRATIVE ISSUANCES.— In 2004, Republic Act no. 9282 was enacted. It expanded the jurisdiction of the Court of Tax Appeals and elevated its rank to the level of a collegiate court with special jurisdiction. x x x. Section 7, as amended, grants the Court of Tax appeals the exclusive jurisdiction to resolve all tax-related issues x x x. The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a

tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended. This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings). Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals. In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals. Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

2. ID.; NATIONAL INTERNAL REVENUE CODE; TAX ON INCOME; DEPOSIT SUBSTITUTES; 20-LENDER RULE; IF THERE ARE 20 OR MORE LENDERS, THE DEBT INSTRUMENT IS CONSIDERED A DEPOSIT SUBSTITUTE AND SUBJECT TO 20% FINAL WITHHOLDING TAX.— 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. The definition of deposit substitutes in Section 22(Y) specifically defined "public" to mean "twenty (20) or more individual or corporate lenders at any one time." The qualifying phrase for public introduced by the National Internal Revenue Code shows that a change in the meaning of the provision was intended, and this Court should

construe the provision as to give effect to the amendment. Hence, in light of Section 22(Y), the reckoning of whether there are 20 or more individuals or corporate lenders is crucial in determining the tax treatment of the yield from the debt instrument. In other words, if there are 20 or more lenders, the debt instrument is considered a *deposit substitute* and subject to 20% final withholding tax.

3. ID.; ID.; ID.; ID.; IF THERE ARE AT LEAST TWENTY LENDERS OR CREDITORS, THE FUNDS ARE CONSIDERED OBTAINED FROM THE PUBLIC.— The definition of deposit substitutes under the National Internal Revenue Code was lifted from Section 95 of Republic Act No. 7653, otherwise known as the New Central Bank Act xxx. As defined in the banking sector, the term "public" refers to 20 or more lenders. "What controls is the actual number of persons or entities to whom the products or instruments are issued. If there are at least twenty (20) lenders or creditors, then the funds are considered obtained from the public." If a bank or non-bank financial intermediary sells debt instruments to 20 or more lenders/placers at any one time, irrespective of outstanding amounts, for the purpose of relending or purchasing of receivables or obligations, it is considered to be performing a quasi-banking function and consequently subject to the appropriate regulations of the Bangko Sentral ng Pilipinas (BSP).

4. ID.; ID.; ID.; ID.; ID.; DEBT INSTRUMENTS ISSUED AND SOLD TO 20 OR MORE LENDERS/INVESTORS BY COMMERCIAL OR INDUSTRIAL COMPANIES TO FINANCE THEIR OWN NEEDS ARE CONSIDERED DEPOSIT SUBSTITUTES, TAXABLE AS SUCH.— Under the National Internal Revenue Code, however, deposit substitutes include not only the issuances and sales of banks and quasi-banks for relending or purchasing receivables and other similar obligations, but also debt instruments issued by commercial, industrial, and other non-financial companies to finance their own needs or the needs of their agents or dealers. This can be deduced from a reading together of Section 22(X) and (Y) x x x. For internal revenue tax purposes, therefore, even debt instruments issued and sold to 20 or more lenders/investors by commercial or industrial companies to finance their own needs are considered deposit substitutes, taxable as such.

5. ID.; ID.; ID.; ID.; ID.; THE EXISTENCE OF 20 OR MORE LENDERS SHOULD BE RECKONED AT THE TIME WHEN THE GSED DISTRIBUTES THE GOVERNMENT SECURITIES TO FINAL HOLDERS; THE GOVERNMENT SECURITIES SOLD BY THE GOVERNMENT SECURITIES ELIGIBLE DEALERS (GSEDs) TO 20 OR MORE INVESTORS ARE DEEMED TO BE IN THE NATURE OF A DEPOSIT SUBSTITUTE, TAXABLE AS SUCH.— The Secretary of Finance, through the Bureau of Treasury, is authorized under Section 1 of Republic Act No. 245, as amended, to issue evidences of indebtedness such as treasury bills and bonds to meet public expenditures or to provide for the purchase , redemption, or refunding of any obligations. These treasury bills and bonds are issued and sold by the Bureau of Treasury to lenders/investors through a network of licensed dealers (called Government Securities Eligible Dealers or GSEDs). The winning GSED bidder acquires the privilege to on-sell government securities to other financial institutions or final investors who need not be GSEDs. x x x. In effecting a sale or distribution of government securities, a GSED acts in a certain sense as the "agent" of the Bureau of Treasury. x x x .[T]he existence of 20 or more lenders should be reckoned at the time when the successful GSED-bidder distributes (either by itself or through an underwriter) the government securities to final holders. When the GSED sells the government securities to 20 or more investors, the government securities are deemed to be in the nature of a deposit substitute, taxable as such.

6. ID.; ID.; ID.; ID.; THE GSED, AS AGENT OF THE BUREAU OF TREASURY, HAS THE PRIMARY RESPONSIBILITY TO WITHHOLD THE 20% FINAL WITHHOLDING TAX ON THE INTEREST VALUED AT PRESENT VALUE, WHEN ITS SALE AND DISTRIBUTION OF THE GOVERNMENT SECURITIES CONSTITUTES A DEPOSIT SUBSTITUTE TRANSACTION.— Section 57 prescribes the withholding tax on interest or yield on deposit substitutes, among others, and the person obligated to withhold the same. Likewise, Section 2.57 of Revenue Regulations No. 2-98 (implementing the National Internal Revenue Code relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax) states that the liability for payment of the tax rests primarily on the payor as

a withholding agent x x x. From these provisions, it is the payor-borrower who primarily has the duty to withhold and remit the 20% final tax on interest income or yield from deposit substitutes. This does not mean, however, that only the payor-borrower can be constituted as withholding agent. Under Section 59 of the National Internal Revenue Code, any person who has control, receipt, custody, or disposal of the income may be constituted as withholding agent x x x. [T]he successful GSED-bidder, as agent of the Bureau of Treasury, has the primary responsibility to withhold the 20% final withholding tax on the interest valued at present value, when its sale and distribution of the government securities constitutes a deposit substitute transaction. The 20% final tax is deducted by the buyer from the discount of the bonds and included in the remittance of the purchase price.

7. ID.; ID.; ID.; ID.; PEACe BONDS ARE CONSIDERED DEPOSIT SUBSTITUTES SUBJECT TO 20% FINAL WITHHOLDING TAX WHERE THE SAME WAS SOLD TO 20 OR MORE INVESTORS; THE PETITIONERS-INTERVENORS ARE LIABLE TO PAY THE 20% FINAL WITHHOLDING TAX.— In this case, The PEACe Bonds were awarded to petitioners-intervenors RCBC/CODE-NGO as the winning bidder in the primary auction. At the same time, CODE-NGO got RCBC Capital as underwriter, to distribute and sell the bonds to the public. The reckoning of the phrase "20 or more lenders" should be at the time when petitioner-intervenor RCBC Capital sold the PEACe bonds to investors. Should the number of investors to whom petitioner-intervenor RCBC Capital distributed the PEACe bonds, therefore, be found to be 20 or more, the PEACe Bonds are considered deposit substitutes subject to the 20% final withholding tax. Petitioner-intervenors RCBC/CODE-NGO and RCBC Capital, as well as the final bondholders who have recourse to government upon maturity, are liable to pay the 20% final withholding tax.

8. ID.; ID.; ID.; ID.; THE PREVIOUS INTERPRETATIONS GIVEN TO AN AMBIGUOUS LAW BY THE COMMISSIONER OF INTERNAL REVENUE, WHO IS CHARGED TO CARRY OUT ITS PROVISIONS, ARE ENTITLED TO GREAT WEIGHT, AND TAXPAYERS WHO RELIED ON THE SAME SHOULD NOT BE PREJUDICED IN THEIR RIGHTS.— We find merit on the

claim of petitioners-intervenors RCBC, RCBC Capital, and CODE-NGO for prospective application of our Decision. The phrase "at any one time" is ambiguous in the context of the financial market. Hence, petitioner-intervenor RCBC and the rest of the investors relied on the opinions of the Bureau of Internal Revenue in BIR Ruling Nos. 020-2001, 035-2001 dated August 16, 2001, and DA-175-01dated September 29, 2001 to vested their rights in the exemption from the final withholding tax. In sum, these rulings pronounced that to determine whether the financial assets, *i.e.*, debt instruments and securities, are deposit substitutes, the "20 or more individual or corporate lenders" rule must apply. Moreover, the determination of the phrase "at any one time" to determine the "20 or more lenders" is to be determined at the time of the original issuance. This being the case, the PEACe Bonds were not to be treated as deposit substitutes x x x. The previous interpretations given to an ambiguous law by the Commissioner of Internal Revenue, who is charged to carry out its provisions, are entitled to great weight, and taxpayers who relied on the same should not be prejudiced in their rights. Hence, this Court's construction should be prospective; otherwise, there will be a violation of due process for failure to accord persons, especially the parties affected by it, fair notice of the special burdens imposed on them.

9. ID.; ID.; ID.; ID.; CLAIM OF ACTUAL REMITTANCE OF FINAL 20% WITHHOLDING TAX, NOT PROVED; THUS, NO LEGAL IMPEDIMENT FOR THE BUREAU OF TREASURY, AS AGENT OF THE PETITIONERS, TO RELEASE THE FUNDS TO PETITIONERS TO BE PLACED IN ESCROW, PENDING RESOLUTION OF THE CASE.— Respondents did not submit any withholding tax return or tax remittance advice to prove that the 20% final withholding tax was, indeed, remitted by the Bureau of Treasury to the Bureau of Internal Revenue on October 18, 2011, and consequently became part of the general fund of the government. The corresponding journal entry in the books of both the Bureau of Treasury and Bureau of Internal Revenue showing the transfer of the withheld funds to the Bureau of Internal Revenue was likewise not submitted to this Court. The burden of proof lies on them to show their claim of remittance. Until now, respondents have failed to submit sufficient supporting evidence

to prove their claim. In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*, this Court upheld the right of a withholding agent to file a claim for refund of the withheld taxes of its foreign parent company x x x. Since respondents have not sufficiently shown the actual remittance of the 20% final withholding taxes withheld from the proceeds of the PEACe bonds to the Bureau of Internal Revenue, there was no legal impediment for the Bureau of Treasury (as agent of petitioners) to release the monies to petitioners to be placed in escrow, pending resolution of the motions for reconsideration filed in this case by respondents and petitioners-intervenors RCBC and RCBC Capital.

10. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERESTS; LEGAL INTEREST OF 6% PER ANNUM IMPOSED AGAINST THE BUREAU OF TREASURY FOR UNJUSTIFIED REFUSAL TO RELEASE THE FUNDS TO BE DEPOSITED IN ESCROW, IN UTTER DISREGARD OF THE ORDERS OF THE COURT.— This Court has previously granted interest in cases where patent arbitrariness on the part of the revenue authorities has been shown, or where the collection of tax was illegal x x x. In our Decision dated January 13, 2015, we reprimanded the Bureau of Treasury for its continued retention of the amount corresponding to the 20% final withholding tax, in wanton disregard of the orders of this Court. We further ordered the Bureau of Treasury to immediately release and pay the bondholders the amount corresponding to the 20% final withholding tax that it withheld on October 18, 2011. However, respondent remained obstinate in its refusal to release the monies and exhibited utter disregard and defiance of this Court. As early as October 19, 2011, petitioners could have deposited the amount of ₱4,966,207,796.41 in escrow and earned interest, had respondent Bureau of Treasury complied with the temporary restraining order and released the funds. It was inequitable for the Bureau of Treasury to have withheld the potential earnings of the funds in escrow from petitioners. Due to the Bureau of Treasury's unjustified refusal to release the funds to be deposited in escrow, in utter disregard of the orders of the Court, it is held liable to pay legal interest of 6% per annum on the amount of ₱4,966,207,796.41 representing the 20% final withholding tax on the PEACe Bonds.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners Banco de Oro, Bank of Commerce, China Banking Corporation, Metropolitan Bank & Trust Company, Philippine Bank of Communications, Philippine National Bank and Philippine Veterans Bank.

Odel Sarmiento Janda for petitioner Planters Development Bank.

Law Firm of Diaz Del Rosario and Associates and *Villaraza & Angangco* for petitioners-intervenors Rizal Commercial Banking Corporation and RCBC Capital Corporation. for petitioners-intervenors Rizal Commercial Banking Corporation (RCBC) and RCBC Capital Corporation (RCAP).

The Solicitor General for public respondents.

Baniqued & Baniqued for respondent Caucus of Development NGO Networks.

R E S O L U T I O N

LEONEN, *J.*:

This resolves separate motions for reconsideration and clarification filed by the Office of the Solicitor General[1] and petitioners-intervenors Rizal Commercial Banking Corporation and RCBC Capital Corporation[2] of our Decision dated January 13, 2015, which: (1) granted the Petition and Petitions-in-Intervention and nullified Bureau of Internal Revenue (BIR) Ruling Nos. 370-2011 and DA 378-2011; and (2) reprimanded the Bureau of Treasury for its continued retention of the amount corresponding to the 20% final withholding tax that it withheld on October 18, 2011, and ordered it to release the withheld amount to the bondholders.

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[1] *Rollo*, pp. 2193-2239.

[2] *Id*. at 2253-2309.

In the notice to all Government Securities Eligible Dealers (GSEDs) entitled Public Offering of Treasury Bonds[3] (Public Offering) dated October 9, 2001, the Bureau of Treasury announced that "₱30.0 [billion] worth of 10-year Zero[-]Coupon Bonds [would] be auctioned on October 16, 2001[.]"[4] It stated that "the issue being limited to 19 lenders and while taxable shall not be subject to the 20% final withholding [tax]."[5]

On October 12, 2001, the Bureau of Treasury released a memo on the Formula for the Zero-Coupon Bond.[6] The memo stated

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[3] *Id*. at 130.

[4] *Id*.

[5] *Id*.

[6] *Id*. at 131. The memo states:

Below is the formula in determining the purchase price and settlement amount of the ₱30B Zero-Coupon Bond to be auctioned on October 16, 2001. Please be advised that this is only applicable to the zeroes that are not subject to the 20% final withholding due to the 19 buyer/lender limit

1. SA = PP*FV
2. PP = $1/[1+i/m]^n$

n = (MP * m) - E/x

x = 360/m

E = Settlement Date - Original Issue Date

(Y2 - Y1) 360 + (M2 - M1) 30 + (D2 - D1)

Where:

Y2 M2 D2 = Settlement Date/Value Date

Y1 M1 D1 = Original Issue Date

Note:

a) Based on 30/360 days count, compounded semi[-]annually

b) If D1-31 change it to 30

c) Up to at least 10 decimal places

Where:

SA = Settlement Amount Cash Out —

PP = Purchase Price

FV = Face Value

i = Yield to Maturity

x = days in the present compounding period

m = no. of conversion per year

(1 = annual, 2 = semi-annual, 4 = quarterly)

MP = Maturity Period (or tenor) in years

E = Bond Lapsed Days

in part that the formula, in determining the purchase price and settlement amount, "is only applicable to the zeroes that are not subject to the 20% final withholding due to the 19 buyer/lender limit."[7]

On October 15, 2001, one (1) day before the auction date, the Bureau of Treasury issued the Auction Guidelines for the 10-year Zero-Coupon Treasury Bond to be Issued on October 16, 2001 (Auction Guidelines).[8] The Auction Guidelines reiterated that the Bonds to be auctioned are "[n]ot subject to 20% withholding tax as the issue will be limited to a maximum of 19 lenders in the primary market (pursuant to BIR Revenue Regulation No. 020 2001)."[9]

At the auction held on October 16, 2001, Rizal Commercial Banking Corporation (RCBC) participated on behalf of Caucus of Development NGO Networks (CODE-NGO) and won the bid.[10] Accordingly, on October 18, 2001, the Bureau of Treasury issued ₱35 billion worth of Bonds at yield-to-maturity of 12.75% to RCBC for approximately ₱10.17 billion,[11] resulting in a discount of approximately ₱24.83 billion.

Likewise, on October 16, 2001, RCBC Capital entered into an underwriting agreement[12] with CODE-NGO, where RCBC Capital was appointed as the Issue Manager and Lead Underwriter for the offering of the PEACe Bonds.[13] RCBC Capital agreed to underwrite[14] on a firm basis the offering, distribution, and

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[7] *Id.*

[8] *Id.* at 132.

[9] *Id.*

[10] *Id.* at 27.

[11] *Id.* at 27 and 497.

[12] *Id.* at 1060-1074.

[13] *Id.* at 1060.

[14] *Id.* at 1066. Section 5 of the underwriting agreement provides that the "underwriting fee and selling commission [shall be] in such amount as may

sale of the ₱35 billion Bonds at the price of ₱11,995,513,716.51.[15] In Section 7(r) of the underwriting agreement, CODE-NGO represented that "[a]ll income derived from the Bonds, inclusive of premium on redemption and gains on the trading of the same, are exempt from all forms of taxation as confirmed by [the] Bureau of Internal Revenue . . . letter rulings dated 31 May 2001 and 16 August 2001, respectively."[16]

RCBC Capital sold and distributed the Government Bonds for an issue price of ₱11,995,513,716.51.[17] Banco de Oro, et al. purchased the PEACe Bonds on different dates.[18]

On October 7, 2011, barely 11 days before maturity of the PEACe Bonds, the Commissioner of Internal Revenue issued **BIR Ruling No. 370-2011**[19] declaring that the PEACe Bonds, being deposit substitutes, were subject to 20% final withholding tax.[20] Under this ruling, the Secretary of Finance directed the Bureau of Treasury to withhold a 20% final tax from the face value of the PEACe Bonds upon their payment at maturity on October 18, 2011.[21]

On October 17, 2011, replying to an urgent query from the Bureau of Treasury, the Bureau of Internal Revenue issued **BIR Ruling No. DA 378-2011**[22] clarifying that the final withholding tax due on the discount or interest earned on the PEACe Bonds should "be imposed and withheld not only on

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be agreed upon between CODE NGO and [RCBC Capital] but not to exceed two percent (2%) of the total issue price of the total Bonds sold[.]"

[15] *Id*. at 1062.

[16] *Id*. at 1069.

[17] *Id*. at 28.

[18] *Id*.

[19] *Id*. at 217-230.

[20] *Id*. at 222.

[21] *Id*. at

[22] *Id*. at 634-637.

RCBC/CODE NGO but also [on] 'all subsequent holders of the Bonds.'"[23]

On October 17, 2011, petitioners filed before this Court a Petition for Certiorari, Prohibition, and/or Mandamus (with urgent application for a temporary restraining order and/or writ of preliminary injunction).[24]

On October 18, 2011, this Court issued a temporary restraining order[25] "enjoining the implementation of BIR Ruling No. 370-2011 against the [PEACe Bonds,] . . . subject to the condition that the 20% final withholding tax on interest income therefrom shall be withheld by the petitioner banks and placed in escrow pending resolution of [the] petition."[26]

RCBC and RCBC Capital, as well as CODE-NGO separately moved for leave of court to intervene and to admit the Petition-in-Intervention. The Motions were granted by this Court.[27]

Meanwhile, on November 9, 2011, petitioners filed their Manifestation with Urgent Ex Parte Motion to Direct Respondents to Comply with the TRO.[28]

On November 15, 2011, this Court directed respondents to: "(1) show cause why they failed to comply with the October 18, 2011 resolution; and (2) comply with the Court's resolution in order that petitioners may place the corresponding funds in escrow pending resolution of the petition."[29]

On December 6, 2011, this Court noted respondents' compliance.[30]

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[23] *Id*. at 637.

[24] *Id*. at 13-83.

[25] *Id*. at 235-237.

[26] *Id*. at 236.

[27] *Id*. at 1164-1166.

[28] *Id*. at 1094-1109.

[29] *Id*. at 1164.

[30] *Id*. at 1346-1347.

On November 27, 2012, petitioners filed their Manifestation with Urgent Reiterative Motion [To Direct Respondents to Comply with the Temporary Restraining Order].[31]

On December 4, 2012, this Court noted petitioners' Manifestation with Urgent Reiterative Motion and required respondents to comment.[32]

Respondents filed their Comment,[33] to which petitioners filed the Reply.[34]

On January 13, 2015, this Court promulgated the Decision[35] granting the Petition and the Petitions-in-Intervention. Applying Section 22(Y) of the National Internal Revenue Code, we held that the number of lenders/investors at every transaction is determinative of whether a debt instrument is a deposit substitute subject to 20% final withholding tax. When at any transaction, funds are simultaneously obtained from 20 or more lenders/investors, there is deemed to be a public borrowing and the bonds at that point in time are deemed deposit substitutes. Consequently, the seller is required to withhold the 20% final withholding tax on the imputed interest income from the bonds. We further declared void BIR Rulings Nos. 370-2011 and DA 378-2011 for having disregarded the 20-lender rule provided in Section 22(Y). The Decision disposed as follows:

WHEREFORE, the petition for review and petitions-in-intervention are **GRANTED**. BIR Ruling Nos. 370-2011 and DA 378-2011 are **NULLIFIED**.

Furthermore, respondent Bureau of Treasury is **REPRIMANDED** for its continued retention of the amount corresponding to the 20% final withholding tax despite this court's directive in the temporary restraining order and in the resolution dated November 15, 2011 to

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[31] *Id*. at 1938-1964.

[32] *Id*. at 1965.

[33] *Id*. at 1995-2010.

[34] *Id*. at 2044-2060.

[35] *Id*. at 2072-2116.

deliver the amounts to the banks to be placed in escrow pending resolution of this case.

Respondent Bureau of Treasury is hereby **ORDERED** to immediately release and pay to the bondholders the amount corresponding to the 20% final withholding tax that it withheld on October 18, 2011.[36]

On March 13, 2015, respondents filed by registered mail their Motion for Reconsideration and Clarification.[37]

On March 16, 2015, petitioners-intervenors RCBC and RCBC Capital moved for clarification and/or partial reconsideration.[38]

On July 6, 2015, petitioners Banco de Oro, et al. filed their Consolidated Comment[39] on respondents' Motion for Reconsideration and Clarification and petitioners-intervenors RCBC and RCBC Capital Corporation's Motion for Clarification and/or Partial Reconsideration.

On October 29, 2015, petitioners Banco de Oro, et al. filed their Urgent Reiterative Motion [to Direct Respondents to Comply with the Temporary Restraining Order].[40]

The issues raised in the motions revolve around the following:

First, the proper interpretation and application of the 20-lender rule under Section 22(Y) of the National Internal Revenue Code, particularly in relation to issuances of government debt instruments;

Second, whether the seller in the secondary market can be the proper withholding agent of the final withholding tax due on the yield or interest income derived from government debt instruments considered as deposit substitutes;

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[36] *Id*. at 2115.

[37] *Id*. at 2193-2239.

[38] *Id*. at 2253-2309.

[39] *Id*. at 2566-2603.

[40] *Id*. at 2675-2684.

Third, assuming the PEACe Bonds are considered "deposit substitutes," whether government or the Bureau of Internal Revenue is estopped from imposing and/or collecting the 20% final withholding tax from the face value of these Bonds. Further:

(a) Will the imposition of the 20% final withholding tax violate the non-impairment clause of the Constitution?

(b) Will it constitute a deprivation of property without due process of law?

Lastly, whether the respondent Bureau of Treasury is liable to pay 6% legal interest.

I

Before going into the substance of the motions for reconsideration, we find it necessary to clarify on the procedural aspects of this case. This is with special emphasis on the jurisdiction of the Court of Tax Appeals in view of the previous conflicting rulings of this Court.

Earlier, respondents questioned the propriety of petitioners' direct resort to this Court. They argued that petitioners should have challenged first the 2011 Bureau of Internal Revenue rulings before the Secretary of Finance, consistent with the doctrine on exhaustion of administrative remedies.

In the assailed Decision, we agreed that interpretative rulings of the Bureau of Internal Revenue are reviewable by the Secretary of Finance under Section 4[41] of the National Internal Revenue Code. However, we held that because of the special circumstances availing in this case—namely: the question involved is purely legal; the urgency of judicial intervention given the impending maturity of the PEACe Bonds; and the futility of an appeal to

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[41] TAX CODE, Sec. 4 provides:

SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

the Secretary of Finance as the latter appeared to have adopted the challenged Bureau of Internal Revenue rulings—there was no need for petitioners to exhaust all administrative remedies before seeking judicial relief.

We also stated that:

> [T]he jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals. The questioned BIR Ruling Nos. 370-2011 and DA 378-2011 were issued in connection with the implementation of the 1997 National Internal Revenue Code on the taxability of the interest income from zero-coupon bonds issued by the government.
>
> Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act No. 9282, such rulings of the Commissioner of Internal Revenue are appealable to that court, thus:
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> SEC. 7. *Jurisdiction*. – The CTA shall exercise:
>
> a. *Exclusive appellate jurisdiction to review by appeal*, as herein provided:
>
> *1. Decisions of the Commissioner of Internal Revenue in* cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other *matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue*;
>
> . . . . . .
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue,* the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts *may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling* or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> . . . . . .

> SEC. 18. *Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matters arising under the National Internal Revenue Code*, the Tariff and Customs Code or the Local Government Code *shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.*

In *Commissioner of Internal Revenue v. Leal*, citing *Rodriguez v. Blaquera*, this court emphasized the jurisdiction of the Court of Tax Appeals over rulings of the Bureau of Internal Revenue, thus:

> While the Court of Appeals correctly took cognizance of the petition for *certiorari*, however, *let it be stressed that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not to the RTC.*
>
> *The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops.*
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> . . . . . .
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> . . . . . .
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> Such revenue orders were issued pursuant to petitioner's powers under Section 245 of the Tax Code, which states:
>
> > "SEC. 245. *Authority of the Secretary of Finance to promulgate rules and regulations*. — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.
> >
> > The authority of the Secretary of Finance to determine articles similar or analogous to those subject to a rate of sales tax under certain category enumerated in Section 163 and 165 of this Code shall be without prejudice to *the power of the Commissioner of Internal Revenue to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes*."
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> . . . . . .

The Court, in *Rodriguez, etc. vs. Blaquera, etc.*, ruled:

> "Plaintiff maintains that this is not an appeal from a ruling of the Collector of Internal Revenue, but merely an attempt to nullify General Circular No. V-148, which does not adjudicate or settle any controversy, and that, accordingly, this case is not within the jurisdiction of the Court of Tax Appeals.
>
> We find no merit in this pretense. General Circular No. V-148 directs the officers charged with the collection of taxes and license fees to adhere strictly to the interpretation given by the defendant to the statutory provisions abovementioned, as set forth in the Circular. The same incorporates, therefore, a decision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) on the manner of enforcement of the said statute, the administration of which is entrusted by law to the Bureau of Internal Revenue. As such, it comes within the purview of Republic Act No. 1125, Section 7 of which provides that the Court of Tax Appeals 'shall exercise exclusive appellate jurisdiction to review by appeal . . . decisions of the Collector of Internal Revenue in . . . matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue.'"[42]

In *Commissioner of Internal Revenue v. Leal*,[43] the Commissioner issued Revenue Memorandum Order (RMO) No. 15-91 imposing 5% lending investors tax on pawnshops, and Revenue Memorandum Circular (RMC) No. 43-91 subjecting the pawn ticket to documentary stamp tax.[44] Leal, a pawnshop

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[42] *Banco de Oro v. Republic*, G.R. No. 198756, January 13, 2015, 745 SCRA 361, 400-403 [Per *J.* Leonen, *En Banc*], citing *Commissioner of Internal Revenue v. Leal*, 440 Phil. 477, 485-487 (2002) [Per Sandoval-Gutierrez, Third Division], as, in turn, cited in *Asia International Auctioneers, Inc. v. Hon. Parayno, Jr.*, 565 Phil. 255, 268-269 (2007) [Per *C.J.* Puno, First Division]; *Rodriguez v. Blaquera*, 109 Phil. 598 (1960) [Per *J.* Concepcion, *En Banc*].

[43] 440 Phil. 477 (2002) [Per Sandoval-Gutierrez, Third Division].

[44] *Id.* at 480.

owner and operator, asked for reconsideration of the revenue orders, but it was denied by the Commissioner in BIR Ruling No. 221-91.[45] Thus, Leal filed before the Regional Trial Court a petition for prohibition seeking to prohibit the Commissioner from implementing the revenue orders.[46] This Court held that Leal should have filed her petition for prohibition before the Court of Tax Appeals, not the Regional Trial Court, because "the questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops."[47] This Court held that such rulings in connection with the implementation of internal revenue laws are appealable to the Court of Tax Appeals under Republic Act No. 1125, as amended.[48]

Likewise, in *Asia International Auctioneers, Inc. v. Hon. Parayno, Jr.*,[49] this Court upheld the jurisdiction of the Court of Tax Appeals over the Regional Trial Courts, on the issue of the validity of revenue memorandum circulars.[50] It explained that "the assailed revenue regulations and revenue memorandum circulars [were] actually rulings or opinions of the [Commissioner of Internal Revenue] on the tax treatment of motor vehicles sold at public auction within the [Subic Special Economic Zone] to implement Section 12 of [Republic Act] No. 7227." This Court further held that the taxpayers' invocation of this Court's intervention was premature for its failure to first ask the Commissioner of Internal Revenue for reconsideration of the assailed revenue regulations and revenue memorandum circulars.

However, a few months after the promulgation of *Asia International Auctioneers, British American Tobacco v.*

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[45] *Id.* at 481.

[46] *Id.*

[47] *Id.* at 485.

[48] *Id.*

[49] 565 Phil. 255 (2007) [Per *C.J.* Puno, First Division].

[50] *Id.* at 269.

Camacho[51] pointed out that although Section 7 of Republic Act No. 1125, as amended, confers on the Court of Tax Appeals jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Thus:

> The jurisdiction of the Court of Tax Appeals is defined in Republic Act No. 1125, as amended by Republic Act No. 9282. Section 7 thereof states, in pertinent part:
>
> . . . . . .
>
> While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and 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.
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> In *Drilon v. Lim*, it was held:
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> > We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, B.P.

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[51] 584 Phil. 489 (2008) [Per *J.* Ynares-Santiago, *En Banc*].

> 129 vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation, even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights. Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
>
> The petition for injunction filed by petitioner before the RTC is a direct attack on the constitutionality of Section 145(C) of the NIRC, as amended, and the validity of its implementing rules and regulations. In fact, the RTC limited the resolution of the subject case to the issue of the constitutionality of the assailed provisions. The determination of whether the assailed law and its implementing rules and regulations contravene the Constitution is within the jurisdiction of regular courts. The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. Petitioner, therefore, properly filed the subject case before the RTC.[52] (Citations omitted)

British American Tobacco involved the validity of: (1) Section 145 of Republic Act No. 8424; (2) Republic Act No. 9334, which further amended Section 145 of the National Internal Revenue Code on January 1, 2005; (3) Revenue Regulations Nos. 1-97, 9-2003, and 22-2003; and (4) RMO No. 6-2003.[53]

A similar ruling was made in *Commissioner of Customs v. Hypermix Feeds Corporation*.[54] Central to the case was Customs Memorandum Order (CMO) No. 27-2003 issued by the Commissioner of Customs. This issuance provided for the

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[52] *Id*. at 510-512.

[53] *Id*. at 498.

[54] 680 Phil. 681 (2012) [Per *J*. Sereno, Second Division].

classification of wheat for tariff purposes. In anticipation of the implementation of the CMO, Hypermix filed a Petition for Declaratory Relief before the Regional Trial Court. Hypermix claimed that said CMO was issued without observing the provisions of the Revised Administrative Code; was confiscatory; and violated the equal protection clause of the 1987 Constitution.[55] The Commissioner of Customs moved to dismiss on the ground of lack of jurisdiction.[56] On the issue regarding declaratory relief, this Court ruled that the petition filed by Hypermix had complied with all the requisites for an action of declaratory relief to prosper. Moreover:

> Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments.[57]

We revert to the earlier rulings in *Rodriguez, Leal,* and *Asia International Auctioneers, Inc.* The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue.

Article VIII, Section 1 of the 1987 Constitution provides the general definition of judicial power:

> ARTICLE VII
> JUDICIAL DEPARTMENT
>
> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable

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[55] *Id.* at 686.

[56] *Id*.

[57] *Id*. at 689, citing *Smart Communications v. National Telecommunications Commission*, 456 Phil. 145 (2003) [Per *J*. Ynares-Santiago, First Division].

and enforceable, and *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.* (Emphasis supplied)

Based on this constitutional provision, this Court recognized, for the first time, in *The City of Manila v. Hon. Grecia-Cuerdo*,[58] the Court of Tax Appeals' jurisdiction over petitions for *certiorari* assailing interlocutory orders issued by the Regional Trial Court in a local tax case. Thus:

> [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **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**.
>
> On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases.[59] (Emphasis in the original)

This Court further explained that the Court of Tax Appeals' authority to issue writs of certiorari is inherent in the exercise of its appellate jurisdiction:

> A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect

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[58] 726 Phil. 9 (2014) [Per *J.* Peralta, *En Banc*].

[59] *Id*. at 24.

that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and

decide matters which, as original causes of action, would not be within its cognizance.[60] (Citations omitted)

Judicial power likewise authorizes lower courts to determine the constitutionality or validity of a law or regulation in the first instance.[61] This is contemplated in the Constitution when it speaks of appellate review of final judgments of inferior courts in cases where such constitutionality is in issue.[62]

On, June 16, 1954, Republic Act No. 1125 created the Court of Tax Appeals not as another superior administrative agency as was its predecessor—the former Board of Tax Appeals—but as a part of the judicial system[63] with exclusive jurisdiction to act on appeals from:

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

(3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

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

[61] *Ynot v. IAC*, 232 Phil. 615, 621 (1987) [Per J. Cruz, *En Banc*]. See also *Garcia v. Drilon*, 712 Phil. 44, 78-80 (2013) [Per J. Perlas-Bernabe, *En Banc*].

[62] CONST., Art. VIII, Sec. 5.

[63] *Ursal v. Court of Tax Appeals*, 101 Phil. 209, 211 (1957) [Per J. Bengzon, *En Banc*].

Republic Act No. 1125 transferred to the Court of Tax Appeals jurisdiction over all matters involving assessments that were previously cognizable by the Regional Trial Courts (then courts of first instance).[64]

In 2004, Republic Act No. 9282 was enacted. It expanded the jurisdiction of the Court of Tax Appeals and elevated its rank to the level of a collegiate court with special jurisdiction. Section 1 specifically provides that the Court of Tax Appeals is of the same level as the Court of Appeals and possesses "all the inherent powers of a Court of Justice."[65]

Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:

> Section 7. *Jurisdiction* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> 2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by

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[64] See *Republic v. Abella*, 190 Phil. 630 (1981) [Per *C.J.* Fernando, Second Division], citing *Good Day Trading v. Board of Tax Appeals*, 95 Phil. 569, 575 (1954) [Per *J.* Montemayor, *En Banc*]; *Millarez v. Amparo*, 97 Phil. 282, 284 (1955) [*J.* Bengzon, *En Banc*]; *Ollada v. Court of Tax Appeals*, 99 Phil. 604, 608-609 (1956) [Per *J.* Bautista Angelo, *En Banc*]; *Castro v. David*, 100 Phil. 454, 457 (1956) [Per *J.* Padilla, *En Banc*]; and *Ledesma v. Court of Tax Appeals*, 102 Phil. 931, 934 (1955) [Per *J.* Montemayor, *En Banc*].

[65] Rep. Act No. 1125 (1954), Sec. 1, as amended by Rep. Act No. 9282 (2004).

the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all maters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies[66] (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.[67]

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129[68] provides an exception to the original

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[66] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 202-203 (2001) [Per *C.J.* Davide, Jr., First Division]: "A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts."

[67] We apply by analogy the ruling in *National Water Resources Board v. A. L. Ang Network, Inc.*, 632 Phil. 22, 28-29 (2010) [Per *J.* Carpio Morales, First Division], which states that "[s]ince the appellate court has *exclusive* appellate jurisdiction over quasi-judicial agencies under Rule 43 of the Rules of Court, petitions for writs of *certiorari*, prohibition or *mandamus* against the acts and omissions of quasi-judicial agencies, like petitioner, should be filed with it."

[68] An Act Reorganizing the Judiciary, Appropriating Funds therefor, and for Other Purposes (1981).

jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations.[69] Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.[70]

We now proceed to the substantive aspects.

II

Respondents contend that the 20-lender rule should not strictly apply to issuances of government debt instruments, which by nature, are borrowings from the public.[71] Applying the rule otherwise leads to an absurd result.[72] They point out that in

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[69] Revenue Memorandum Order No. 9-2014 (2014).

[70] TAX CODE, Sec. 4 provides:

SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

[71] *Rollo*, p. 2207.

[72] *Id.* at 2210.

BIR Ruling No. 007-04[73] dated July 16, 2004 (the precursor of BIR Ruling Nos. 370-2011 and DA 378-2011), the Bureau of Treasury's admitted intent to make the government securities freely tradable to an unlimited number of lenders/investors in the secondary market was considered in place of an actual head count of lenders/investors due to the limitations brought about by the absolute confidentiality of investments in government bonds under Section 2 of Republic Act No. 1405, otherwise known as the Bank Secrecy Law.[74]

Considering that the PEACe Bonds were intended to be freely tradable in the secondary market to 20 or more lenders/investors, respondents contend that they, like other similarly situated government securities—awarded to 19 or less GSEDs in the primary market but freely tradable to 20 or more lenders/investors in the secondary market—should be treated as deposit substitutes subject to the 20% final withholding tax.[75]

Petitioners and petitioners-intervenors RCBC and RCBC Capital counter that Section 22(Y) of the National Internal Revenue Code applies to all types of securities, including those issued by government. They add that under this provision, it is the actual number of lenders at any one time that is material in determining whether an issuance is to be considered a deposit substitute and not the intended distribution plan of the issuer.

Moreover, petitioners and petitioners-intervenors RCBC and RCBC Capital argue that the real intent behind the issuance of the PEACe Bonds, as reflected by the representations and assurances of government in various issuances and rulings, was to limit the issuance to 19 lenders and below. Hence, they contend that government cannot now take an inconsistent position.

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[73] BIR Ruling No. 007-04 (2004), signed by Commissioner Guillermo L. Parayno, Jr. essentially held that government debt instruments are deposit substitutes irrespective of the number of lenders at the time of origination.

[74] *Rollo*, p. 2209.

[75] *Id*. at 2211.

We find respondents' proposition to consider the intended public distribution of government securities—in this case, the PEACe Bonds—in place of an actual head count to be untenable.

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.[76]

The definition of deposit substitutes in Section 22(Y) specifically defined "public" to mean "twenty (20) or more individual or corporate lenders at any one time."[77] The qualifying phrase for public introduced[78] by the National Internal Revenue

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[76] *Commissioner of Internal Revenue v. Philippine American Accident Insurance Co., Inc.*, 493 Phil. 785, 793-794 (2005) [Per *J*. Carpio, First Division]: "Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import."

Commissioner of Internal Revenue v. Court of Appeals, 338 Phil. 322 (1997) [Per *J*. Panganiban, Third Division]; *Marinduque Lion Mines Agents, Inc. vs. Hinabangan, Samar*, 120 Phil. 413, 418 (1964) [Per *J*. Reyes, J.B.L., *En Banc*].

[77] TAX CODE, Sec. 22(Y).

[78] The 20% final tax treatment of interest from bank deposits and yield from deposit substitutes was first introduced in the 1977 Tax Code through Presidential Decree No. 1739 issued in 1980. Later, Presidential Decree No. 1959, effective on October 15, 1984, formally added the definition of deposit substitutes, *viz*:

> (y) **'Deposit substitutes'** shall mean **an alternative form of obtaining funds from the public, other than deposits, 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 promissory notes, repurchase agreements, certificates of assignment or participation and similar instrument 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

Code shows that a change in the meaning of the provision was intended, and this Court should construe the provision as to give effect to the amendment.[79] Hence, in light of Section 22(Y), the reckoning of whether there are 20 or more individuals or corporate lenders is crucial in determining the tax treatment of the yield from the debt instrument. In other words, if there are 20 or more lenders, the debt instrument is considered a *deposit substitute* and subject to 20% final withholding tax.

II.A

The definition of deposit substitutes under the National Internal Revenue Code was lifted from Section 95 of Republic Act No. 7653, otherwise known as the New Central Bank Act:

> SEC. 95. *Definition of Deposit Substitutes. The term "deposit substitutes" is defined as an alternative form of obtaining funds from the public, other than deposits, 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.* These instruments may include, but need not be limited to, bankers' acceptances, promissory notes, participations, certificates of assignment and similar instruments with recourse, and repurchase agreements. The Monetary Board shall determine what specific instruments shall be considered as deposit substitutes for the purposes of Section 94 of this Act: Provided, however, That deposit substitutes of commercial, industrial and other nonfinancial companies issued for the limited purpose of financing their own needs or the needs of their agents or dealers shall not be covered by the provisions of Section 94 of this Act. (Emphasis supplied)

> Commission of the Philippines for commercial, industrial, finance companies and either 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.

[79] *Commissioner of Customs v. Court of Tax Appeals*, G.R. Nos. L-48886-88, July 21, 1993, 224 SCRA 665 [Per *J.* Melo, Third Division].

Banks are entities engaged in the lending of funds obtained from the public in the form of deposits.[80] Deposits of money in banks and similar institutions are considered simple loans.[81] Hence, the relationship between a depositor and a bank is that of creditor and debtor. The ownership of the amount deposited is transmitted to the bank upon the perfection of the contract and it can make use of the amount deposited for its own transactions and other banking operations. Although the bank has the obligation to return the *amount deposited*, it has no obligation to return or deliver the *same money* that was deposited.[82]

The definition of deposit substitutes in the banking laws was brought about by an observation that banks and non-bank financial intermediaries have increasingly resorted to issuing a variety of debt instruments, other than bank deposits, to obtain funds from the public. The definition also laid down the groundwork for the supervision by the Central Bank of quasi-banking functions.[83]

As defined in the banking sector, the term "public" refers to 20 or more lenders.[84] "What controls is the actual number of

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[80] Rep. Act No. 8791 (2000), Secs. 3 and 8.

[81] CIVIL CODE, Art. 1980; *Guingona, Jr. v. City Fiscal of Manila*, 213 Phil. 516, 523 (1984) [Per *J.* Makasiar, Second Division].

[82] *Guingona, Jr. v. City Fiscal of Manila*, 213 Phil. 516, 523 (1984) [Per *J.* Makasiar, Second Division].

[83] I THE NEW CENTRAL BANK ACT ANNOTATED, 328 (2010).

[84] Pres. Decree No. 71 (1972), Sec. 2-D provides:

Sec. 2-D. For purposes of Sections Two, Two-A, Two-B, and Two-C the following definition or terms shall apply:

(a) 'Public' shall mean twenty or more lenders;

(b) 'Quasi-Banking Functions' shall mean borrowing funds, for the borrower's own account, through the issuance, endorsement or acceptance of debt instruments of any kind other than deposits, or through the issuance of participations, certificates of assignment, or similar instruments with recourse, trust certificates, or of repurchase agreements, from twenty or more lenders at any one time, for purposes of relending or purchasing of

persons or entities to whom the products or instruments are issued. If there are at least twenty (20) lenders or creditors, then the funds are considered obtained from the public."[85]

If a bank or non-bank financial intermediary sells debt instruments to 20 or more lenders/placers at any one time, irrespective of outstanding amounts, for the purpose of relending or purchasing of receivables or obligations, it is considered to be performing a quasi-banking function and consequently subject to the appropriate regulations of the Bangko Sentral ng Pilipinas (BSP).

II.B

Under the National Internal Revenue Code, however, deposit substitutes include not only the issuances and sales of banks and quasi-banks for relending or purchasing receivables and other similar obligations, but also debt instruments issued by commercial, industrial, and other non-financial companies to finance their own needs or the needs of their agents or dealers. This can be deduced from a reading together of Section 22(X) and(Y):

Section 22. *Definitions* – When used in this Title:

. . . . . .

(X) The term *'quasi-banking activities' means borrowing funds* from twenty (20) or more personal or corporate lenders at any one time, through the issuance, endorsement, or acceptance of debt instruments of any kind other than deposits for the borrower's own account, or through the issuance of certificates of assignment or similar instruments, with recourse, or of repurchase agreements *for purposes of re-lending or purchasing receivables and other similar obligations:*

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receivables and other obligations: Provided, however, That commercial, industrial, and other non-financial companies, which borrow funds through any of these means for the limited purpose of financing their own needs or the needs of their agents or dealers, shall not be considered as performing quasi-banking functions.

[85] II THE NEW CENTRAL BANK ACT ANNOTATED 75 (2010).

Provided, however, That *commercial industrial and other non-financial companies, which borrow funds through any of these means for the limited purpose of financing their own needs or the needs of their agents or dealers, shall not be considered as performing quasi-banking functions.*

(Y) The term *'deposit substitutes'* shall mean *an alternative form of obtaining funds from the public (**the term 'public' means borrowing from 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 borrower's own account, ***for the purpose of*** re-lending or purchasing of receivables and other obligations, or ***financing their own needs or the needs of their agent or dealer***. (Emphasis supplied)

For internal revenue tax purposes, therefore, even debt instruments issued and sold to 20 or more lenders/investors by commercial or industrial companies to finance their own needs are considered deposit substitutes, taxable as such.

II.C

The interest income on bank deposits was subjected for the first time to the withholding tax system under Presidential Decree No. 1156,[86] which was promulgated in 1977. The whereas clauses spell the reasons for the law:

[I]nterest on bank deposit is one of the items includible in gross income. . . . [M]any bank depositors fail to declare interest income in their income tax returns. . . . [I]n order to maximize the collection of the income tax on interest on bank deposits, it is necessary to apply the withholdings system on this type of fixed or determinable income.

In the same year, Presidential Decree No. 1154[87] was also promulgated. It imposed a 35% transaction tax (final tax) on

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[86] Amending Sections 30 and 53 of the National Internal Revenue Code.

[87] Further Amending Certain Sections of the National Internal Revenue Code, as amended, so as to impose a final tax on the interests derived from every commercial paper issued in the primary market. Issued on June 3, 1977.

interest income from every commercial paper issued in the primary market, regardless of whether they are issued to the public or not.[88] Commercial paper was defined as "an instrument

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[88] 1977 TAX CODE, Sec. 210 provides:

SEC. 210. *Percentage tax on certain transactions*. — (a) *Stock transactions*. — . . .

(b) Commercial paper transactions.—There shall be levied, assessed, collected and paid on every commercial paper issued in the primary market as principal instrument, a transaction tax equivalent to thirty-five per cent (35%) based on the gross amount of interest thereto as defined hereunder, which shall be paid by the borrower/issuer: Provided, however, That in the case of a long-term commercial paper whose maturity exceeds one year, the borrower shall pay the tax based on the amount of interest corresponding to one year, and thereafter shall pay the tax upon accrual or actual payment (whichever is earlier) of the untaxed portion of the interest which corresponds to a period not exceeding one year. The transaction tax imposed in this section shall be a final tax to be paid by the borrower and shall be allowed as a deductible item for purposes of computing the borrower's taxable income, For purposes of this tax—

(1) "Commercial paper" shall be defined as an instrument evidencing indebtedness of any person or entity, including banks and non-banks performing quasi-banking functions, which is issued, endorsed, sold, transferred or in any manner conveyed to another person or entity, either with or without recourse and irrespective of maturity. Principally, commercial papers are promissory notes and/or similar instruments issued in the primary market and shall not include repurchase agreements, certificates of assignments, certificates of participations, and such other debt instruments issued in the secondary market.

(2) The term "interest" shall mean the difference between what the principal borrower received and the amount it paid upon maturity of the commercial paper which shall, in no case, be lower than the interest rate prevailing at the time of the issuance or renewal of the commercial paper. Interest shall be deemed synonymous with discount and shall include all fees, commissions, premiums and other payments which form integral parts of the charges imposed as a consequence of the use of money. In all cases, where no interest rate is stated or if the rate stated is lower than the prevailing interest rate at the time of the issuance or renewal of commercial paper, the Commissioner of Internal Revenue, upon consultation with the Monetary Board of the Central Bank of the Philippines, shall adjust the interest rate in accordance herewith, and assess the tax on the basis thereof.

The tax herein imposed shall be remitted by the borrower to the Commissioner of Internal Revenue or his Collection Agent in the municipality where such

evidencing indebtedness of any person of entity, including banks and non-banks performing quasi-banking functions, which is issued, endorsed, sold, transferred or in any manner conveyed to another person or entity, either with or without recourse and irrespective of maturity." The imposition of a final tax on commercial papers was "aimed primarily to improve the administrative provisions of the National Internal Revenue Code to ensure the collection on the tax on interest on commercial papers used as principal instruments issued in the primary market."[89] It was reported that "the [Bureau of Internal Revenue had] no means of enforcing strictly the taxation on interest income earned in the money market transactions."[90]

These presidential decrees, as well as other new internal revenue laws and various laws and decrees that have so far amended the provisions of the 1939 National Internal Revenue Code were consolidated and codified into the 1977 National Internal Revenue Code.[91]

In 1980, Presidential Decree No. 1739[92] was promulgated, which further amended certain provisions of the 1977 National Internal Revenue Code and repealed Section 210 (the provision embodying the percentage tax on commercial paper transactions). The Decree imposed a final tax of 20% on interests from yields on deposit substitutes issued to the public.[93] The tax was required

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borrower has its principal place of business within five (5) working days from the issuance of the commercial paper. In the case of long term commercial paper, the tax upon the untaxed portion of the interest which corresponds to a period not exceeding one year shall be paid upon accrual payment, whichever is earlier.

[89] Pres. Decree No. 1154 (1977).

[90] Pres. Decree No. 1154 (1977).

[91] Pres. Decree No. 1158 (1977), A Decree to Consolidate and Codify all the Internal Revenue Laws of the Philippines.

[92] Providing Fiscal Incentives by Amending Certain Provisions of the National Internal Revenue Code, and for Other Purposes.

[93] *Western Minolco Corporation v. Commissioner of Internal Revenue*, 209 Phil. 90, 101 (1983) [Per *J.* Gutierrez, Jr., *En Banc*].

to be withheld by banks and non-bank financial intermediaries and paid to the Bureau of Internal Revenue in accordance with Section 54 of the 1977 National Internal Revenue Code. Presidential Decree No. 1739, as amended by Presidential Decree No. 1959 in 1984 (which added the definition of deposit substitutes) was subsequently incorporated in the National Internal Revenue Code.

These developments in the National Internal Revenue Code reflect the rationale for the application of the withholding system to yield from deposit substitutes, which is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source,[94] as with the case of the interest on bank deposits. When banks sell deposit substitutes to the public, the final withholding tax is imposed on the interest income because it would be difficult to collect from the public. Thus, the incipient scheme in the final withholding tax is to achieve an effective administration in capturing the interest-income windfall from deposit substitutes as a source of revenue.

It must be emphasized, however, that withholding tax is merely a method of collecting income tax in advance. The perceived tax is collected at the source of income payment to ensure collection. Consequently, those subjected to the final withholding tax are no longer subject to the regular income tax.

III

Respondents maintain that the phrase "at any one time" must be given its ordinary meaning, i.e. "at any given time" or "during any particular point or moment in the day."[95] They submit that the correct interpretation of Section 22(Y) does not look at any specific transaction concerning the security; instead, it considers the existing number of lenders/investors of such security at any moment in time, whether in the primary or

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[94] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 95022, March 23, 1992, 207 SCRA 487 [Per J. Melencio-Herrera, *En Banc*].

[95] *Rollo*, pp. 2609-2610.

secondary market.[96] Hence, when during the lifetime of the security, there was any one instance where twenty or more individual or corporate lenders held the security, the borrowing becomes "public" in character and is ipso facto subject to 20% final withholding tax.[97]

Respondents further submit that Section 10.1(k) of the Securities Regulation Code and its Implementing Rules and Regulations may be applied by analogy, such that if at any time, (a) the lenders/investors number 20 or more; or (b) should the issuer merely offer the securities publicly or to 20 or more lenders/investors, these securities should be deemed deposit substitutes.[98]

On the other hand, petitioners-intervenors RCBC and RCBC Capital insist that the phrase "at any one time" only refers to transactions made in the primary market. According to them, the PEACe Bonds are not deposit substitutes since CODE-NGO, through petitioner-intervenor RCBC, is the sole lender in the primary market, and all subsequent transactions in the secondary market merely pertain to a sale and/or assignment of credit and not borrowings from the public.[99]

Similarly, petitioners contend that for a government security, such as the PEACe Bonds, to be considered as deposit substitutes, it is an indispensable requirement that there is "borrowing" between the issuer and the lender/investor in the primary market and between the transferee and the transferor in the secondary market. Petitioners submit that in the secondary market, the transferee/buyer must have recourse to the selling investor as required by Section 22(Y) of the National Internal Revenue Code so that a borrowing "for the borrower's (transferor's) own account" is created between the buyer and the seller. Should the transferees in the secondary market who have recourse to

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[96] *Id.* at 2611.

[97] *Id.* at 2610.

[98] *Id.* at 2215-2219.

[99] *Id.* at 2258-2265.

the transferor reach 20 or more, the transaction will be subjected to a final withholding tax.[100]

Petitioners and petitioners-intervenors RCBC and RCBC Capital contend that respondents' proposed application of Section 10.1(k) of the Securities Regulation Code and its Implementing Rules is misplaced because: (1) the National Internal Revenue Code clearly provides the conditions when a security issuance should qualify as a deposit substitute subject to the 20% final withholding tax; and (2) the two laws govern different matters.

III.A

Generally, a corporation may obtain funds for capital expenditures by floating either shares of stock (equity) or bonds (debt) in the capital market. Shares of stock or equity securities represent ownership, interest, or participation in the issuer-corporation. On the other hand, bonds or debt securities are evidences of indebtedness of the issuer-corporation.

New securities are issued and sold to the investing public for the first time in the primary market. Transactions in the primary market involve an actual transfer of funds from the investor to the issuer of the new security. The transfer of funds is evidenced by a security, which becomes a financial asset in the hands of the buyer/investor.

New issues are usually sold through a registered underwriter, which may be an investment house or a bank registered as an underwriter of securities.[101] An underwriter helps the issuer find

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[100] *Id*. at 2582-2583.

[101] Pres. Decree No. 129 (1973), The Investment Houses Law, Secs. 2 and 7 provide:

SECTION 2. *Scope*. — Any enterprise which engages in the underwriting of securities of other corporations shall be considered an "Investment House" and shall be subject to the provisions of this Decree and of other pertinent laws.

SECTION 7. Powers. — In addition to the powers granted to corporations in general, an Investment House is authorized to do the following:

buyers for its securities. In some cases, the underwriter buys the whole issue from the issuer and resells this to other security dealers and the public.[102] When a group of underwriters pool

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(1) Arrange to distribute on a guaranteed basis securities of other corporations and of the Government or its instrumentalities;
(2) Participate in a syndicate undertaking to purchase and sell, distribute or arrange to distribute on a guaranteed basis securities of other corporations and of the Government or its instrumentalities;
(3) Arrange to distribute or participate in a syndicate undertaking to purchase and sell on a best-efforts basis securities of other corporations and of the Government or its instrumentalities;
(4) Participate as soliciting dealer or selling group member in tender offers, block sales, or exchange offering or securities; deal in options, rights or warrants relating to securities and such other powers which a dealer may exercise under the Securities Act (Act No. 83), as amended);
(5) Promote, sponsor, or otherwise assist and implement ventures, projects and programs that contribute to the economy's development;
(6) Act as financial consultant, investment adviser, or broker;
(7) Act as portfolio manager, and/or financial agent, but not as trustee of a trust fund or trust property as provided for in Chapter VII of Republic Act No. 337, as amended;
(8) Encourage companies to go public, and utilities and/or promote, whenever warranted, the formation, merger, consolidation, reorganization, or recapitalization of productive enterprises, by providing assistance or participation in the form of debt or equity financing or through the extension of financial or technical advice or service;
(9) Undertake or contract for researches, studies and surveys on such matters as business and economic conditions of various countries, the structure of financial markets, the institutional arrangements for mobilizing investments;
(10) Acquire, own, hold, lease or obtain an interest in real and/or personal property as may be necessary or appropriate to carry on its objectives and purposes;
(11) Design pension, profit-sharing and other employee benefits plans; and
(12) Such other activities or business ventures as are directly or indirectly related to the dealing in securities and other commercial papers, unless otherwise governed or prohibited by special laws, in which case the special law shall apply.

[102] Pres. Decree No. 129, Sec. 3(a) provides:

together their resources to underwrite an issue, they are called the "underwriting syndicate."[103]

On the other hand, secondary markets refer to the trading of outstanding or already-issued securities. In any secondary market trade, the cash proceeds normally go to the selling investor rather than to the issuer.

To illustrate: *A* decides to issue bonds to raise capital funds. *X* buys and is issued *A* bonds. The proceeds of the sale go to *A*, the issuer. The sale between *A* and *X* is a primary market transaction.

Before maturity, *X* trades its *A* bonds to *Y*. The *A* bonds sold by *X* are not *X*'s indebtedness. The cash paid for the bonds no longer go to *A*, but remains with *X*, the selling investor/holder. The transfer of *A* bonds from *X* to *Y* is considered a secondary market transaction. Any difference between the purchase price of the assets (*A* bonds) and the sale price is a trading gain subject to a different tax treatment, as will be explained later.

When *Y* trades its *A* bonds to *Z*, the sale is still considered a secondary market transaction. In other words, the trades from *X* to *Y*, *Y* to*Z*, and *Z* to subsequent holders/investors are considered

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(a) "Underwriting" is defined as the act or process of guaranteeing the distribution and sale of securities of any kind issued by another corporation.
The Omnibus Rules and Regulations for Investment Houses and Universal Banks Registered as Underwriters of Securities (July 23, 2002) defines underwriting as follows:
Underwriting of Securities is the act or process of guaranteeing by an Investment House duly licensed under P.D. 129 or a Universal Bank registered as an Underwriter of Securities with the Commission, the distribution and sale of securities issued by another person or enterprise, including securities of the Government or its instrumentalities. The distribution and sale may be on a public or private placement basis: Provided, That nothing shall prevent an Investment House or Universal Bank registered as Underwriter of Securities from entering into a contract with another entity to further distribute securities that it has underwritten.

[103] HERBERT B. MAYO, *BASIC INVESTMENTS* 15-27 (2006).

secondary market transactions. If *Z* holds on to the bonds and the bonds mature, *Z* will receive from *A* the face value of the bonds.

A bond is similar to a bank deposit in the sense that the investor lends money to the issuer and the issuer pays interest on the invested amount. However, unlike bank deposits, bonds are marketable securities. The market mechanism provides quick mobility of money and securities.[104] Thus, bondholders can sell their bonds before they mature to other investors, in turn converting their financial assets to cash. In contrast, deposits, in the form of savings accounts for instance, can only be redeemed by the issuing bank.

III.B

An investor in bonds may derive two (2) types of income:

First, the interest or the amount paid by the borrower to the lender/investor for the use of the lender's money.[105] For interest-

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[104] *Perez v. Court of Appeals*, 212 Phil. 587, 596-597 (1984) [Per *J.* Melencio-Herrera, First Division] discusses the nature of a money market transaction: "As defined by Lawrence Smith, 'the money market is a market dealing in standardized short-term credit instruments (involving large amounts) where lenders and borrowers do not deal directly with each other but through a middle man or dealer in the open market.' It involves 'commercial papers' which are instruments 'evidencing indebtedness of any person or entity . . . which are issued, endorsed, sold or transferred or in any manner conveyed to another person or entity, with or without recourse.' The fundamental function of the money market device in its operation is to match and bring together in a most impersonal manner both the 'fund users' and the 'fund suppliers.' The money market is an 'impersonal market,' free from personal considerations. The market mechanism is intended 'to provide quick mobility of money and securities.'

"The impersonal character of the money market device overlooks the individuals or entities concerned. The issuer of a commercial paper in the money market necessarily knows in advance that it would be expeditiously transacted and transferred to any investor/lender without need of notice to said issuer. In practice, no notification is given to the borrower or issuer of commercial paper of the sale or transfer to the investor."

[105] CIVIL CODE, Art. 1956; *China Banking Corporation v. Court of Appeals*, 451 Phil. 772 (2003) [Per *J.* Carpio, First Division].

bearing bonds, interest is normally earned at the coupon date. In zero-coupon bonds, the discount is an interest amortized up to maturity.

Second, the gain, if any, that is earned when the bonds are traded before maturity date or when redeemed at maturity.

The 20% final withholding tax imposed on interest income or yield from deposit substitute does not apply to the gains derived from trading, retirement, or redemption of the instrument.

It must be stressed that interest income, derived by individuals from long-term deposits or placements made with banks in the form of deposit substitutes, is exempt from income tax. Consequently, it is likewise exempt from the final withholding tax under Sections 24(B)(1) and 25(A)(2) of the National Internal Revenue Code. However, when it is pre-terminated by the individual investor, graduated rates of 5%, 12%, or 20%, depending on the remaining maturity of the instrument, will apply on the entire income, to be deducted and withheld by the depository bank.

With respect to gains derived from long-term debt instruments, Section 32(B)(7)(g) of the National Internal Revenue Code provides:

Sec. 32. *Gross Income*. –

. . . . . .

(B) Exclusions from Gross Income. – The following items shall not be included in gross income and shall be exempt from taxation under this title:

. . . . . .

(7) Miscellaneous Items. –

. . . . . .

(g) Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness. - Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years.

Thus, trading gains, or gains realized from the sale or transfer of bonds (*i.e.*, those with a maturity of more than five years) in the secondary market, are exempt from income tax. These "gains" refer to the difference between the selling price of the bonds in the secondary market and the price at which the bonds were purchased by the seller. For discounted instruments such as the zero-coupon bonds, the trading gain is the excess of the selling price over the book value or accreted value (original issue price plus accumulated discount from the time of purchase up to the time of sale) of the instruments.[106]

Section 32(B)(7)(g) also includes gains realized by the last holder of the bonds when the bonds are redeemed at maturity, which is the difference between the proceeds from the retirement of the bonds and the price at which the last holder acquired the bonds.

On the other hand, gains realized from the trading of short-term bonds (*i.e.*, those with a maturity of less than five years) in the secondary market are subject to regular income tax rates (ranging from 5% to 32% for individuals, and 30% for corporations) under Section 32[107] of the National Internal Revenue Code.

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[106] *See* BIR Ruling No. 026-02 (2002).

[107] TAX CODE, Sec. 32 provides:

SEC. 32. *Gross Income*. —

(A) *General Definition*. – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;

III.C

The Secretary of Finance, through the Bureau of Treasury,[108] is authorized under Section 1 of Republic Act No. 245, as amended, to issue evidences of indebtedness such as treasury bills and bonds to meet public expenditures or to provide for the purchase, redemption, or refunding of any obligations.

These treasury bills and bonds are issued and sold by the Bureau of Treasury to lenders/investors through a network of licensed dealers (called Government Securities Eligible Dealers or GSEDs).[109] GSEDs are classified into primary and ordinary dealers.[110] A primary dealer enjoys certain privileges such as eligibility to participate in the competitive bidding of regular issues, eligibility to participate in the issuance of special issues such as zero-coupon treasury bonds, and access to tap facility

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(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional partnership.

[108] Exec. Order No. 449 (1997), Sec. 1.

[109] Bureau of the Treasury, About Government Securities <http://www.treasury.gov.ph/?page_id=1430> (last visited on August 1, 2016). A Government Securities Eligible Dealer (GSED) is a Securities and Exchange Commission-licensed securities dealer belonging to a service industry regulated by the government (Securities and Exchange Commission, Bangko Sentral ng Pilipinas or Insurance Commission) and accredited by the Bureau of Treasury as eligible to participate in the primary auction of government securities. It must meet the following requirements:

(a) ₱100 million unimpaired capital and surplus account;
(b) Statutory ratios prescribed for the industry; and
(c) Infrastructure for an electronic interface with the Automated Debt Auction Processing System (ADAPS) and the official Registry of Scripless Securities (RoSS) of the Bureau of the Treasury using Bridge Information Systems (BIS).

The List of GSEDs are mostly banks with a few non-banks with quasi-banking license.

[110] Treasury Memo. Circ. No. 2-2004 (2004), Sec. 1.

window.[111] On the other hand, ordinary dealers are only allowed to participate in the non-competitive bidding.[112] Moreover, primary dealers are required to meet the following obligations:

a. Must submit at least one competitive bid in each scheduled auction.
b. Must have total awards of at least 2% of the total amount of bills or bonds awarded within a particular quarter. This requirement does not cover special issues.
c. Must be active in the trading of GS [government securities] in the secondary market.[113]

A primary dealer who fails to comply with its obligations will be dropped from the roster of primary dealers and classified as an ordinary dealer.

The auction method is the main channel used for originating government securities.[114] Under this method, the Bureau of Treasury issues a public notice offering treasury bills and bonds for sale and inviting tenders.[115] The GSEDs tender their bids electronically;[116] after the cut-off time, the Auction Committee deliberates on the bids and decide on the award.[117]

The Auction Committee then downloads the awarded securities to the winning bidders' Principal Securities Account in the Registry of Scripless Securities (RoSS). The RoSS, an electronic book-entry system established by the Bureau of Treasury, is the official Registry of ownership of or interest in government securities.[118] All government securities floated/originated by

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[111] Treasury Memo. Circ. No. 2-2004 (2004), Sec. 1.

[112] Treasury Memo. Circ. No. 2-2004 (2004), Sec. 1.

[113] Treasury Memo. Circ. No. 2-2004 (2004), Sec. 3.

[114] Other selling arrangements provided in DOF Department Order No. 141-95 are over the counter (Section 15) and tap method (Section 26).

[115] DOF Department Order No. 141-95, Sec. 9.

[116] DOF Department Order No. 141-95, Sec. 10.

[117] DOF Department Order No. 141-95, Secs. 11 and 12.

[118] DOF Department Order No. 141-95, Sec. 29.

the National Government under its scripless policy, as well as subsequent transfers of the same in the secondary market, are recorded in the RoSS in the principal Securities Account of the GSED.[119]

A GSED is required to open and maintain Client Securities Accounts in the name of its respective clients for segregating government securities acquired by such clients from the GSED's own securities holdings. A GSED may also lump all government securities sold to clients in one account, provided that the GSED maintains complete records of ownership/other titles of its clients in the GSED's own books.[120]

Thus, primary issues of treasury bills and bonds are supposed to be issued only to GSEDs. By participating in auctions, the GSED acts as a channel between the Bureau of Treasury and investors in the primary market. The winning GSED bidder acquires the privilege to on-sell government securities to other financial institutions or final investors who need not be GSEDs.[121] Further, nothing in the law or the rules of the Bureau of Treasury prevents the GSED from entering into contract with another entity to further distribute government securities.

In effecting a sale or distribution of government securities, a GSED acts in a certain sense as the "agent" of the Bureau of Treasury. In *Doles v. Angeles*,[122] the basis of an agency is

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[119] Handbill on Eligibility to Bid for Government Securities in the Primary Market: Oath of Undertaking for Registry of Scripless Securities <http://www.treasury.gov.ph/wp-content/uploads/2014/04/handbill.pdf> (visited August 1, 2016).

[120] Handbill on Eligibility to Bid for Government Securities in the Primary Market: Oath of Undertaking for Registry of Scripless Securities <http://www.treasury.gov.ph/wp-content/uploads/2014/04/oathrossgsed.pdf> (visited August 1, 2016).

[121] See *Bank of Commerce v. Nite*, G.R. No. 211535, July 22, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/211535.pdf> [Per Acting *C.J.* Carpio, Second Division].

[122] 525 Phil. 673 (2006) [Per *J.* Austria-Martinez, First Division].

representation.[123] The question of whether an agency has been created may be established by direct or circumstantial evidence.[124] For an agency to arise, it is not necessary that the principal personally encounter the third person with whom the agent interacts.[125] The law contemplates impersonal dealings where the principal need not personally know or meet the third person with whom the agent transacts: precisely, the purpose of agency is to extend the personality of the principal through the facility of the agent.[126] It was also stressed that the manner in which the parties designate the relationship is not controlling.[127] If an act done by one person on behalf of another is in its essential nature one of agency, the former is the agent of the latter, notwithstanding he or she is not so called.[128]

Through the use of GSEDs, particularly primary dealers, government is able to ensure the absorption of newly issued securities and promote activity in the government securities market. The primary dealer system allows government to access potential investors in the market by taking advantage of the GSEDs' distribution capacity. The sale transactions executed by the GSED are indirectly for the benefit of the issuer. An investor who purchases bonds from the GSED becomes an indirect lender to government. The financial asset in the hand

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The case was cited in *Bank of the Philippine Islands v. Laingo*, G.R. No. 205206, March 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/205206.pdf> [Per J. Carpio, Second Division], where this Court held that BPI acted as agent of FGU Insurance with respect to the insurance feature of its own marketed product, and consequently obligated to give proper notice of the existence of the insurance coverage and the stipulation in the insurance contract for filing a claim to the beneficiary, upon the insured's death.

[123] *Id*. at 688.

[124] *Id*.

[125] *Id*.

[126] *Id*.

[127] *Id*.

[128] *Id*.

of the investor represents a claim to future cash, which the borrower-government must pay at maturity date.[129]

Accordingly, the existence of 20 or more lenders should be reckoned at the time when the successful GSED-bidder distributes (either by itself or through an underwriter) the government securities to final holders. When the GSED sells the government securities to 20 or more investors, the government securities are deemed to be in the nature of a deposit substitute, taxable as such.

On the other hand, trading of bonds between two (2) investors in the secondary market involves a purchase or sale transaction. The transferee of the bonds becomes the new owner, who is entitled to recover the face value of the bonds from the issuer at maturity date. Any profit realized from the purchase or sale transaction is in the nature of a trading gain subject to a different tax treatment, as explained above.

Respondents contend that the literal application of the "20 or more lenders at any one time" to government securities would lead to: (1) impossibility of tax enforcement due to limitations imposed by the Bank Secrecy Law; (2) possible uncertainties[130]; and (3) loopholes.[131]

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[129] *Constantino, Jr. v. Cuisia*, 509 Phil. 486, 509-510 (2005) [Per J. Tinga, *En Banc*] holds that "[b]onds are interest-bearing or discounted government or corporate securities that obligate the issuer to pay the bondholder a specified sum of money, usually at specific intervals, and to repay the principal amount of the loan at maturity. An investor who purchases a bond is lending money to the issuer, and the bond represents the issuer's contractual promise to pay interest and repay principal according to specific terms."

[130] *Rollo*, pp. 2213-2214. Respondents contend that the application of the 20-lender rule as per the court's decision creates an uncertainty due to the possibility that regular government securities may be held by less than 20 investors at any one time as reflected in the Registry of Scripless Securities (ROSS). Respondents provide two illustrations:

> [a] ... In the case of T-Bills, there have been instances before that only one (1) GSED was awarded the full volume issued. Given that transactions in T-bills attract non-resident investors, there could be an instance where there would apparently only be a few transfers in ownership from a ROSS records standpoint despite an actual

These concerns, however, are not sufficient justification for us to deviate from the text of the law.[132] Determining the wisdom, policy or expediency of a statute is outside the realm of judicial power.[133] These are matters that should be addressed to the legislature. Any other interpretation looking into the purported effects of the law would be tantamount to judicial legislation.

IV

Section 57 prescribes the withholding tax on interest or yield on deposit substitutes, among others, and the person obligated to withhold the same. Section 57 reads:

Section 57. *Withholding of Tax at Source.* —

(A) **Withholding of Final Tax on Certain Incomes.** — Subject to rules and regulations, the Secretary of Finance may

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transfer of beneficial ownership to 20 or more (foreign or combination of foreign and local investors). This is because these non-resident lenders/investors together with resident lenders/ investors may be lumped together in a common custodian account in the ROSS.

[b] ... In the case of T-Bonds, during auctions, most of the time, if not all the time, the Auction Committee awards to less than 20 GSEDs. While technically these GSEDs redistribute these bonds in the secondary market to a wider pool of investors, the settlement convention in the market (T+1 or T+2) may create a lag or delay in the actual transfers of the bonds from one registered holder to another. Hence, the ROSS records may technically reflect 19 or less lenders/investors at a given time, when the beneficial owners of the government securities may in fact be 20 or more depending on the number of "lagging" or not-yet-settled transactions.

[131] *Id*. at 2215. Respondents argue that the requirement that "funds are *simultaneously* obtained from 20 or more lenders/investors" provides a loophole in that a bondholder may conveniently turn around and sell his holdings in several tranches to 19 or less investors for each tranche. Thus, even if he eventually sold his entire stock to 1000 investors, as long as there is no element of simultaneous sale to 20 people, there is no deposit substitute.

[132] See *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, 500 Phil. 586, 608 (2005) [Per *J.* Panganiban, Third Division].

[133] *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 120 (2005) [Per *J.* Austria-Martinez, *En Banc*].

> promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c), 33 and 282 of the Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.

Likewise, Section 2.57 of Revenue Regulations No. 2-98 (implementing the National Internal Revenue Code relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax) states that the liability for payment of the tax rests primarily on the payor as a withholding agent. Section 2.57 reads:

> **Sec. 2.57. WITHHOLDING OF TAX AT SOURCE. —**
> (A) **Final Withholding Tax** — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee of said income. *The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent*[.] (Emphasis supplied)

From these provisions, it is the payor-borrower who primarily has the duty to withhold and remit the 20% final tax on interest income or yield from deposit substitutes.

This does not mean, however, that only the payor-borrower can be constituted as withholding agent. Under Section 59 of the National Internal Revenue Code, any person who has control, receipt, custody, or disposal of the income may be constituted as withholding agent:

> **SEC. 59. Tax on Profits Collectible from Owner or Other Persons.** – The tax imposed under this Title upon gains, profits, and income

not falling under the foregoing and not returned and paid by virtue of the foregoing or as otherwise provided by law shall be assessed by personal return under rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner. The intent and purpose of the Title is that all gains, profits and income of a taxable class, as defined in this Title, shall be charged and assessed with the corresponding tax prescribed by this Title, and said tax shall be paid by the owners of such gains, profits and income, *or the proper person having the receipt, custody, control or disposal of the same*. For purposes of this Title, ownership of such gains, profits and income or liability to pay the tax shall be determined as of the year for which a return is required to be rendered. (Emphasis supplied)

The intent and purpose of the National Internal Revenue Code provisions on withholding taxes is also explicitly stated, *i.e.*, that all gains, profits, and income "are charged and assessed with the corresponding tax"[134] and said tax paid by "the owners of such gains, profits and income, or the proper person having the receipt, custody, control or disposal of the same."[135]

The obligation to deduct and withhold tax at source arises at the time an income subject to withholding is paid or payable, whichever comes first.[136] In interest-bearing bonds, the interest is taxed at every instance that interest is paid (and income is earned) on the bond. However, in a zero-coupon bond, it is expected that no periodic interest payments will be made. Rather, the investor will be paid the principal and interest (discount) together when the bond reaches maturity.

As explained by respondents, "the discount is the imputed interest earned on the security, and since payment is made at maturity, there is an accreted interest that causes the price of a zero coupon instrument to accordingly increase with time, all things being constant."[137]

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[134] TAX CODE, Sec. 59.

[135] TAX CODE, Sec. 59.

[136] Revenue Regulations No. 2-98, Sec. 2.57.4.

[137] *Rollo*, pp. 2626-2627.

In a 10-year zero-coupon bond, for instance, the discount (or interest is not earned in the first period, *i.e.*, the value of the instrument does not equal par at the end of the first period. The total discount is earned over the life of the instrument. Nonetheless, the total discount is considered earned on the year of sale based on current value.[138]

In view of this, the successful GSED-bidder, as agent of the Bureau of Treasury, has the primary responsibility to withhold the 20% final withholding tax on the interest valued at present value, when its sale and distribution of the government securities constitutes a deposit substitute transaction. The 20% final tax is deducted by the buyer from the discount of the bonds and included in the remittance of the purchase price.

The final tax withheld by the withholding agent is considered as a "full and final payment of the income tax due from the payee on the said income [and the] payee is not required to file an income tax return for the particular income."[139] Section 10 of Department of Finance Department Order No. 020-10[140] in relation to the National Internal Revenue Code also provides that no other tax shall be collected on subsequent trading of the securities that have been subjected to the final tax.

V

In this case, the PEACe Bonds were awarded to petitioners-intervenors RCBC/CODE-NGO as the winning bidder in the primary auction. At the same time, CODE-NGO got RCBC Capital as underwriter, to distribute and sell the bonds to the public.

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[138] *See* BIR Ruling No. 177-95.

[139] Revenue Regulations No. 2-98, Sec. 2.57(A).

[140] Omnibus Revised Rules and Regulations Implementing Rep. Act No. 245, as amended, and Rep. Act No. 1000, as amended, in Relation to Rep. Act No. 7653 (2010). The Order superseded and repealed DOF Dep. O. No. 141-95.

The Underwriting Agreement[141] and RCBC Term Sheet[142] for the sale of the PEACe bonds show that the settlement dates for the issuance by the Bureau of Treasury of the Bonds to petitioners-intervenors RCBC/CODE-NGO and the distribution by petitioner-intervenor RCBC Capital of the PEACe Bonds to various investors fall on the same day, October 18, 2001. This implies that petitioner-intervenor RCBC Capital was authorized to perform a book-building process,[143] a customary method of initial distribution of securities by underwriters, where it could collate orders for the securities ahead of the auction or before the securities were actually issued. Through this activity, the underwriter obtains information about market conditions and preferences ahead of the auction of the government securities.

The reckoning of the phrase "20 or more lenders" should be at the time when petitioner-intervenor RCBC Capital sold the PEACe bonds to investors. Should the number of investors to whom petitioner-intervenor RCBC Capital distributed the PEACe bonds, therefore, be found to be 20 or more, the PEACe Bonds are considered deposit substitutes subject to the 20% final withholding tax. Petitioner-intervenors RCBC/CODE-NGO and RCBC Capital, as well as the final bondholders who have recourse to government upon maturity, are liable to pay the 20% final withholding tax.

We note that although the originally intended negotiated sale of the bonds by government to CODE-NGO did not materialize, CODE-NGO, a private entity—still through the participation

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[141] *Rollo*, pp. 560-575. Under the *Definitions and Interpretation*, Issue Date shall be on October 18, 2001; Offering Period shall mean the period commencing on 9:00 a.m. of October 17, 2001 and ending on 12:00 noon of October 17, 2001. (p. 561); Under *Terms and Conditions of Application and Payment for the Bonds*, RCBC Capital will submit to CODE NGO a consolidated report on sales made not later than 4:00 p.m. of the last day of the Offering Period; and remittance of the purchase price for the bonds should be made not later than 10:00 a.m. of the Issue Date.

[142] *Id.* at 576.

[143] *See* Omnibus Rules and Regulations for Investment Houses and Universal Banks Registered as Underwriters of Securities (2002), Sec. 8.

of petitioners-intervenors RCBC and RCBC Capital—ended up as the winning bidder for the government securities and was able to use for its projects the profit earned from the sale of the government securities to final investors.

Giving unwarranted benefits, advantage, or preference to a party and causing undue injury to government expose the perpetrators or responsible parties to liability under Section 3(e) of Republic Act No. 3019. Nonetheless, this is not the proper venue to determine and settle any such liability.

VI

Petitioners-intervenors RCBC and RCBC Capital contend that they cannot be held liable for the 20% final withholding tax for two (2) reasons. First, at the time the required withholding should have been made, their obligation was not clear since BIR Ruling Nos. 370-2011 and DA 378-2011 stated that the 20% final withholding tax does not apply to PEACe Bonds.[144] Second, to punish them under the circumstances (*i.e.*, when they secured the PEACe Bonds from the Bureau of Treasury and sold the Bonds to the lenders/investors, they had no obligation to remit the 20% final withholding tax) would violate due process of law and the constitutional proscription on *ex post facto* law.[145]

Petitioner-intervenor RCBC Capital further posits that it cannot be held liable for the 20% final withholding tax even as a taxpayer because it never earned interest income from the PEACe Bonds, and any income earned is deemed in the nature of an underwriting fee.[146] Petitioners-intervenors RCBC and RCBC Capital instead argue that the liability falls on the Bureau of Treasury and CODE-NGO, as withholding agent and taxpayer, respectively, considering their explicit representation that the PEACe Bonds are exempt from the final withholding tax.[147]

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[144] *Rollo*, pp. 2271 and 2274-2275.

[145] *Id*. at 2276-2277.

[146] *Id*. at 2280-2281.

[147] *Id*. at 2281-2284.

Petitioners-intervenors RCBC and RCBC Capital add that the Bureau of Internal Revenue is barred from assessing and collecting the 20% final withholding tax, assuming it was due, on the ground of prescription.[148] They contend that the three (3)-year prescriptive period under Section 203, rather than the 10-year assessment period under Section 222, is applicable because they were compliant with the requirement of filing monthly returns that reflect the final withholding taxes due or remitted for the relevant period. No false or fraudulent return was made because they relied on the 2001 BIR Rulings and on the representations made by the Bureau of Treasury and CODE-NGO that the PEACe Bonds were not subject to the 20% final withholding tax.[149]

Finally, petitioners-intervenors RCBC and RCBC Capital argue that this Court's interpretation of the phrase "at any one time" cannot be applied to the PEACe Bonds and should be given prospective application only because it would cause prejudice to them, among others. They cite Section 246 of the National Internal Revenue Code on *non-retroactivity of rulings*, as well as *Commissioner of Internal Revenue v. San Roque Power Corporation*,[150] which held that taxpayers may rely upon a rule or ruling issued by the Commissioner from the time it was issued up to its reversal by the Commissioner or the court. According to them, the retroactive application of the court's decision would impair their vested rights, violate the constitutional prohibition on non-impairment of contracts, and constitute a substantial breach of obligation on the part of government.[151] In addition, the imposition of the 20% final withholding tax on the PEACe Bonds would allegedly have pernicious effects on the integrity of existing securities that is contrary to the state policies of stabilizing the financial system and of developing the capital markets.[152]

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[148] *Id*. at 2277.

[149] *Id*. at 2277-2279 and 2288-2291.

[150] 703 Phil. 310 (2013) [Per *J*. Carpio, *En Banc*].

[151] *Rollo*, pp. 2292-2304.

[152] *Id*. at 2304-2306.

CODE-NGO likewise contends that it merely relied in good faith on the 2001 BIR Rulings confirming that the PEACe Bonds were not subject to the 20% final withholding tax.[153] Therefore, it should not be prejudiced if the BIR Rulings are found to be erroneous and reversed by the Commissioner or this court.[154] CODE-NGO argues that this Court's Decision construing the phrase "at any one time" to determine the phrase "20 or more lenders" to include both the primary and secondary market should be applied prospectively.[155]

Assuming it is liable for the 20% final withholding tax, CODE-NGO argues that the collection of the final tax was barred by prescription.[156] CODE-NGO points out that under Section 203 of the National Internal Revenue Code, internal revenue taxes such as the final tax, should be assessed within three (3) years after the last day prescribed by law for the filing of the return.[157] It further argues that Section 222(a) on exceptions to the prescribed period, for tax assessment and collection does not apply.[158] It claims that there is no fraud or intent to evade taxes as it relied in good faith on the assurances of the Bureau of Internal Revenue and Bureau of Treasury the PEACe Bonds are not subject to the 20% final withholding tax.[159]

We find merit on the claim of petitioners-intervenors RCBC, RCBC Capital, and CODE-NGO for prospective application of our Decision.

The phrase "at any one time" is ambiguous in the context of the financial market. Hence, petitioner-intervenor RCBC and the rest of the investors relied on the opinions of the Bureau of

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[153] *Id*. at 2389.

[154] *Id*. at 2390.

[155] *Id*. at 2395.

[156] *Id*.

[157] *Id*. at 2395-2396.

[158] *Id*. at 2397.

[159] *Id*. at 2398.

Internal Revenue in BIR Ruling Nos. 020-2001, 035-2001[160] dated August 16, 2001, and DA-175-01[161] dated September 29, 2001 to vest their rights in the exemption from the final withholding tax. In sum, these rulings pronounced that to determine whether the financial assets, *i.e.*, debt instruments and securities, are deposit substitutes, the "20 or more individual or corporate lenders" rule must apply. Moreover, the determination of the phrase "at any one time" to determine the "20 or more lenders" is to be determined at the time of the original issuance. This being the case, the PEACe Bonds were not to be treated as deposit substitutes.

In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*,[162] the Commissioner demanded from petitioner deficiency withholding income tax on film rentals remitted to foreign corporations for the years 1965 to 1968. The assessment was made under Revised Memo Circular No. 4-71 issued in 1971, which used *gross income* as tax basis for the required withholding tax, instead of one-half of the film rentals as provided under General Circular No. V-334. In setting aside the assessment, this Court ruled that in the interest of justice and fair play, rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where applying them would prove prejudicial to taxpayers who relied in good faith on previous issuances of the Commissioner. This Court further held that Section 24(b) of then National Internal Revenue Code sought to be implemented by General Circular No. V-334 was neither too plain nor simple to understand and was capable of different interpretations. Thus:

> The rationale behind General Circular No. V-334 was clearly stated therein, however: "It ha[d] been determined that the tax is still imposed on income derived from capital, or labor, or both combined, in accordance with the basic principle of income taxation . . . and that a mere return of capital or investment is not income. . . ." "A part

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[160] *Id*. at 138-140.

[161] *Id*. at 141-143.

[162] 195 Phil. 33 (1981) [Per *J*. Melencio-Herrera, First Division].

of the receipts of a non-resident foreign film distributor derived from said film represents, therefore, a return of investment." The circular thus fixed the return of capital at 50% to simplify the administrative chore of determining the portion of the rentals covering the return of capital.

Were the "gross income" base clear from Sec. 24(b), perhaps, the ratiocination of the Tax Court could be upheld. It should be noted, however, that said Section was not too plain and simple to understand. The fact that the issuance of the General Circular in question was rendered necessary leads to no other conclusion than that it was not easy of comprehension and could be subjected to different interpretations.

In fact, Republic Act No. 2343, dated June 20, 1959, *supra*, which was the basis of General Circular No. V-334, was just one in a series of enactments regarding Sec. 24(b) of the Tax Code. Republic Act No. 3825 came next on June 22, 1963 without changing the basis but merely adding a proviso (in bold letters).

> *(b) Tax on foreign corporation.* — (1) *Non-resident corporations.* — There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by the preceding paragraph, upon the amount received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income, a tax equal to thirty *per centum of such amount*: PROVIDED, HOWEVER, THAT PREMIUMS SHALL NOT INCLUDE REINSURANCE PREMIUMS." (double emphasis ours)

Republic Act No. 3841, dated likewise on June 22, 1963, followed after, omitting the proviso and inserting some words (also in bold letters).

> "(b) *Tax on foreign corporations.* — (1) *Non-resident corporations.* — There shall be levied, collected and paid for each taxable year, in lieu of the tax imposed by the preceding paragraph, upon the amount received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities,

compensations, remunerations, emoluments, or other fixed or determinable annual or periodical OR CASUAL gains, profits and income, AND CAPITAL GAINS, a tax equal to thirty *per centum of such amount*."

The principle of legislative approval of administrative interpretation by re-enactment clearly obtains in this case. It provides that "the re-enactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction." Note should be taken of the fact that this case involves not a mere opinion of the Commissioner or ruling rendered on a mere query, but a Circular formally issued to "all internal revenue officials" by the then Commissioner of Internal Revenue.

It was only on June 27, 1968 under Republic Act No. 5431, *supra*, which became the basis of Revenue Memorandum Circular No. 4-71, that Sec. 24(b) was amended to refer specifically to 35% of the "*gross income*."[163] (Emphasis supplied)

San Roque has held that the 120-day and the 30-day periods under Section 112 of the National Internal Revenue Code are mandatory and jurisdictional. Nevertheless, *San Roque* provided an exception to the rule, such that judicial claims filed by taxpayers who relied on BIR Ruling No. DA-489-03—from its issuance on December 10, 2003 until its reversal by this Court in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[164] on October 6, 2010—are shielded from the vice of prematurity. The BIR Ruling declared that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the C[ourt] [of] T[ax] A[ppeals] by way of Petition for Review." The Court reasoned that:

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the Atlas doctrine by Mirant and Aichi is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the Atlas

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

[164] 646 Phil. 710 (2010) [Per *J.* Del Castillo, First Division].

doctrine did not result in Atlas, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under Atlas prior to its abandonment. This Court is applying Mirant and Aichi prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. . . .

. . . . . .

Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.[165] (Emphasis supplied)

The previous interpretations given to an ambiguous law by the Commissioner of Internal Revenue, who is charged to carry out its provisions, are entitled to great weight, and taxpayers who relied on the same should not be prejudiced in their rights.[166] Hence, this Court's construction should be prospective;

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[165] *Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 310, 375-376 (2013) [Per *J.* Carpio, *En Banc*].

[166] See *Everett v. Bautista*, 69 Phil. 137, 140-141 (1939) [Per *J.* Diaz, *En Banc*].

otherwise, there will be a violation of due process for failure to accord persons, especially the parties affected by it, fair notice of the special burdens imposed on them.

VII

Urgent Reiterative Motion [to Direct Respondents to Comply with the Temporary Restraining Order]

Petitioners Banco de Oro, et al. allege that the temporary restraining order issued by this Court on October 18, 2011 continues to be effective under Rule 58, Section 5 of the Rules of Court and the Decision dated January 13, 2015. Thus, considering respondents' refusal to comply with their obligation under the temporary restraining order, petitioners ask this Court to issue a resolution directing respondents, particularly the Bureau of Treasury, "to comply with its order by immediately releasing to the petitioners during the pendency of the case the 20% final withholding tax" so that the monies may be placed in escrow pending resolution of the case.[167]

We recall that in its previous pleadings, respondents remain firm in its stance that the October 18, 2011 temporary restraining order could no longer be implemented because the acts sought to be enjoined were already *fait accompli*.[168] They allege that the amount withheld was already remitted by the Bureau of Treasury to the Bureau of Internal Revenue. Hence, it became part of the General Fund, which required legislative appropriation before it could validly be disbursed.[169] Moreover, they argue that since the amount in question pertains to taxes alleged to be erroneously withheld and collected by government, the proper recourse was for the taxpayers to file an application for tax refund before the Commissioner of Internal Revenue under Section 204 of the National Internal Revenue Code.[170]

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[167] *Rollo*, pp. 2677-2678.

[168] *Id*. at 394.

[169] *Id*. at 396 and 2228-2235.

[170] *Id*. at 2235.

In our January 13, 2015 Decision, we rejected respondents' defense of *fait accompli*. We held that the amount withheld were yet to be remitted to the Bureau of Internal Revenue, and the evidence (journal entry voucher) submitted by respondents was insufficient to prove the fact of remittance. Thus:

> The temporary restraining order enjoins the entire implementation of the 2011 BIR Ruling that constitutes both the *withholding* and *remittance* of the 20% final withholding tax to the Bureau of Internal Revenue. Even though the Bureau of Treasury had already withheld the 20% final withholding tax when they received the temporary restraining order, it had yet to remit the monies it withheld to the Bureau of Internal Revenue, a remittance which was due only on November 10, 2011. The act enjoined by the temporary restraining order had not yet been fully satisfied and was still continuing.
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> Under DOF-DBM Joint Circular No. 1-2000A dated July 31, 2001 which prescribes to national government agencies such as the Bureau of Treasury the procedure for the remittance of all taxes they withheld to the Bureau of Internal Revenue, a national agency shall file before the Bureau of Internal Revenue a Tax Remittance Advice (TRA) supported by withholding tax returns on or before the 10th day of the following month after the said taxes had been withheld. The Bureau of Internal Revenue shall transmit an original copy of the TRA to the Bureau of Treasury, which shall be the basis in recording the remittance of the tax collection. The Bureau of Internal Revenue will then record the amount of taxes reflected in the TRA as tax collection in the Journal of Tax Remittance by government agencies based on its copies of the TRA. Respondents did not submit any withholding tax return or TRA to prove that the 20% final withholding tax was indeed remitted by the Bureau of Treasury to the Bureau of Internal Revenue on October 18, 2011.
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> Respondent Bureau of Treasury's Journal Entry Voucher No. 11-10-10395 dated October 18, 2011 submitted to this court shows:

	Account Code	Debit Amount	Credit Amount
Bonds Payable-L/T, Dom-Zero	442-360	35,000,000,000.00	
Coupon T/Bonds (Peace Bonds) - 10 yr Sinking Fund-Cash (BSF)	198-001	30,033,792,203.59	
Due to BIR	412-002		4,966,207,796.41

To record redemption of 10 yr Zero coupon (Peace Bond) net of the 20% final withholding tax pursuant to BIR Ruling No. 378-2011, value date, October 18, 2011 per BTr letter authority and BSP Bank Statements.

The foregoing journal entry, however, does not prove that the amount of ₱4,966,207,796.41, representing the 20% final withholding tax on the PEACe Bonds, was disbursed by it and remitted to the Bureau of Internal Revenue on October 18, 2011. The entries merely show that the monies corresponding to 20% final withholding tax was set aside for remittance to the Bureau of Internal Revenue.[171]

Respondents did not submit any withholding tax return or tax remittance advice to prove that the 20% final withholding tax was, indeed, remitted by the Bureau of Treasury to the Bureau of Internal Revenue on October 18, 2011, and consequently became part of the general fund of the government. The corresponding journal entry in the books of both the Bureau of Treasury and Bureau of Internal Revenue showing the transfer of the withheld funds to the Bureau of Internal Revenue was likewise not submitted to this Court. The burden of proof lies on them to show their claim of remittance. Until now, respondents have failed to submit sufficient supporting evidence to prove their claim.

In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*,[172] this Court upheld the right of a withholding agent to file a claim for refund of the withheld taxes of its foreign parent company. This Court, citing *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*,[173] ruled that inasmuch as it is an agent of government for the withholding of the proper amount of tax, it is also an agent of its foreign parent company with respect to the filing

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[171] *Banco de Oro v. Republic*, G.R. No. 198756, January 13, 2015, 745 SCRA 361, 428-430 [Per *J.* Leonen, *En Banc*].

[172] 281 Phil. 425 (1991) [Per *J.* Feliciano, *En Banc*].

[173] 121 Phil. 755 (1965) [Per *J.* Bengzon, *En Banc*].

of the necessary income tax return and with respect to actual payment of the tax to the government. Thus:

> The term "taxpayer" is defined in our NIRC as referring to "any person subject to tax imposed by the Title [on Tax on Income]." It thus becomes important to note that under Section 53 (c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "personally liable for such tax" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.
>
> A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as not "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.

In *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

> The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax

> to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law.

If, as pointed out in *Philippine Guaranty, the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim.* This implied authority is especially warranted where, as in the instant case, the withholding agent is the wholly owned subsidiary of the parent-stockholder and therefore, at all times, under the effective control of such parent-stockholder. In the circumstances of this case, it seems particularly unreal to deny the implied authority of P&G-Phil. to claim a refund and to commence an action for such refund.

. . . . . .

We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a "taxpayer" within the meaning of Section 309, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim.[174] (Emphasis supplied, citations omitted)

In *Commissioner of Internal Revenue v. Smart Communication, Inc.*:[175]

[W]hile the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer. As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund.[176]

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[174] *Commissioner of Internal Revenue v. Procter & Gamble Phil. Mfg. Corp.*, 281 Phil. 425, 441-444 (1991) [Per *J.* Feliciano, *En Banc*].

[175] 643 Phil. 550 (2010) [Per *J.* Del Castillo, First Division].

[176] *Id.* at 563-564.

Since respondents have not sufficiently shown the actual remittance of the 20% final withholding taxes withheld from the proceeds of the PEACe bonds to the Bureau of Internal Revenue, there was no legal impediment for the Bureau of Treasury (as agent of petitioners) to release the monies to petitioners to be placed in escrow, pending resolution of the motions for reconsideration filed in this case by respondents and petitioners-inervenors RCBC and RCBC Capital.

Moreover, Sections 204 and 229 of the National Internal Revenue Code are not applicable since the Bureau of Treasury's act of withholding the 20% final withholding tax was done after the Petition was filed.

Petitioners also urge[177] us to hold respondents liable for 6% legal interest reckoned from October 19, 2011 until they fully pay the amount corresponding to the 20% final withholding tax.

This Court has previously granted interest in cases where patent arbitrariness on the part of the revenue authorities has been shown, or where the collection of tax was illegal.[178]

In *Philex Mining Corp. v. Commissioner of Internal Revenue*:[179]

> [T]he rule is that no interest on refund of tax can be awarded unless authorized by law or the collection of the tax was attended by arbitrariness. An action is not arbitrary when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. *Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions.*[180] (Emphasis supplied, citations omitted)

Here, the Bureau of Treasury made no effort to release the amount of ₱4,966,207,796.41, corresponding to the 20% final withholding tax, when it could have done so.

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[177] *Rollo*, pp. 2593-2597.

[178] *Blue Bar Coconut Co. v. City of Zamboanga*, 122 Phil. 929, 930 (1965) [Per *J*. J.B.L. Reyes, *En Banc*]; *Carcar Electric & Ice Plant Co., Inc. v. Collector of Internal Revenue*, 100 Phil. 50, 56 and 59 (1956) [Per *J*. J.B.L. Reyes, *En Banc*].

[179] 365 Phil. 572 (1999) [Per *J*. Quisumbing, Second Division].

[180] *Id*. at 580.

In the Court's temporary restraining order dated October 18, 2011,[181] which respondent received on October 19, 2011, we "enjoin[ed] the implementation of BIR Ruling No. 370-2011 against the [PEACe Bonds,] . . . subject to the condition that *the 20% final withholding tax on interest income therefrom shall be withheld by the petitioner banks and placed in escrow pending resolution of [the] petition*."[182]

Subsequently, in our November 15, 2011 Resolution, we directed respondents to "show cause why they failed to comply with the [temporary restraining order]; and [to] comply with the [temporary restraining order] *in order that petitioners may place the corresponding funds in escrow pending resolution of the petition*."[183]

Respondent did not heed our orders.

In our Decision dated January 13, 2015, we reprimanded the Bureau of Treasury for its continued retention of the amount corresponding to the 20% final withholding tax, in wanton disregard of the orders of this Court.

We further ordered the Bureau of Treasury to immediately release and pay the bondholders the amount corresponding to the 20% final withholding tax that it withheld on October 18, 2011.

However, respondent remained obstinate in its refusal to release the monies and exhibited utter disregard and defiance of this Court.

As early as October 19, 2011, petitioners could have deposited the amount of ₱4,966,207,796.41 in escrow and earned interest, had respondent Bureau of Treasury complied with the temporary restraining order and released the funds. It was inequitable for the Bureau of Treasury to have withheld the potential earnings of the funds in escrow from petitioners.

Due to the Bureau of Treasury's unjustified refusal to release the funds to be deposited in escrow, in utter disregard of the

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[181] *Rollo*, pp. 235-237.

[182] *Id.* at 236.

[183] *Id.* at 1164.

orders of the Court, it is held liable to pay legal interest of 6% per annum[184] on the amount of ₱4,966,207,796.41 representing the 20% final withholding tax on the PEACe Bonds.

WHEREFORE, respondents' Motion for Reconsideration and Clarification is **DENIED**, and petitioners-intervenors RCBC and RCBC Capital Corporation's Motion for Clarification and/or Partial Reconsideration is **PARTLY GRANTED**.

Respondent Bureau of Treasury is hereby **ORDERED** to immediately release and pay the bondholders the amount of ₱4,966,207,796.41, representing the 20% final withholding tax on the PEACe Bonds, with legal interest of 6% per annum from October 19, 2011 until full payment.

SO ORDERED.

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

Carpio and *Jardeleza, JJ.,* no part.

Brion, J., on leave.

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[184] Circ. No. 799 (2013), of the Bangko Sentral ng Pilipinas Monetary Board effective July 1, 2013, states in part: The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) *per annum*.

Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.

This Circular shall take effect on 1 July 2013.

See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*].

EN BANC

[G.R. No. 207342. August 16, 2016]

GOVERNMENT OF HONGKONG SPECIAL ADMINISTRATIVE REGION, represented by the PHILIPPINE DEPARTMENT OF JUSTICE, *petitioner, vs.* **JUAN ANTONIO MUÑOZ,** *respondent.*

SYLLABUS

1. POLITICAL LAW; INTERNATIONAL LAW; PRESIDENTIAL DECREE NO. 1069, OTHERWISE KNOWN AS THE PHILIPPINES EXTRADITION LAW; EXTRADITION; DEFINED; THE RIGHT OF A STATE TO SUCCESSFULLY REQUEST THE EXTRADITION OF A CRIMINAL OFFENDER ARISES FROM A TREATY WITH THE REQUESTED STATE, AND IN THE ABSENCE OF A TREATY, THE DUTY TO SURRENDER A PERSON WHO HAS SOUGHT ASYLUM WITHIN ITS BOUNDARIES DOES NOT INHERE IN THE STATE, WHICH, IF IT SO WISHES, CAN EXTEND TO HIM A REFUGE AND PROTECTION EVEN FROM THE STATE THAT HE HAS FLED.— Extradition is "the surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to punish him, demands the surrender." It is not part of customary international law, although the duty to extradite exists only for some international crimes. Thus, a state must extradite only when obliged by treaty to do so. The right of a state to successfully request the extradition of a criminal offender arises from a treaty with the requested state. Absent the treaty, the duty to surrender a person who has sought asylum within its boundaries does not inhere in the state, which, if it so wishes, can extend to him a refuge and protection even from the state that he has fled. Indeed, in granting him asylum, the state commits no breach of international law. But by concluding the treaty, the asylum state imposes limitations on itself, because it thereby agrees to do something it was free not to do. The extradition treaty creates the reciprocal obligation

to surrender persons from the requested state's jurisdiction charged or convicted of certain crimes committed within the requesting state's territory, and is of the same level as a law passed by the Legislatures of the respective parties.

2. ID.; ID.; ID.; ID.; DOUBLE CRIMINALITY RULE; THE EXTRADITABLE OFFENSE MUST BE CRIMINAL UNDER THE LAWS OF BOTH THE REQUESTING AND THE REQUESTED STATES. AS SUCH, THE REQUESTED STATE COMES UNDER NO OBLIGATION TO SURRENDER THE PERSON IF ITS LAWS DO NOT REGARD THE CONDUCT COVERED BY THE REQUEST FOR EXTRADITION AS CRIMINAL.— The RP-HK Agreement is still in full force and effect as an extradition treaty. The procedures therein delineated regulate the rights and obligations of the Republic of the Philippines and the HKSAR under the treaty in the handling of extradition requests. x x x. Although the crime of *conspiracy to defraud* was included among the offenses covered by the RP-Hong Kong Agreement, and the RTC and the CA have agreed that the crime was analogous to the felony of *estafa through false pretense* as defined and penalized under Article 315(2) of the *Revised Penal Code*, it was disputed whether or not the other crime of *accepting an advantage as an agent* was also punished as a crime in the Philippines. A such, the applicability of the double criminality rule became the issue. Under the double criminality rule, the extraditable offense must be criminal under the laws of both the requesting and the requested states. This simply means that the requested state comes under no obligation to surrender the person if its laws do not regard the conduct covered by the request for extradition as criminal.

3. ID.; ID.; ID.; ID.; ID.; THE CRIME OF *ACCEPTING AN ADVANTAGE AS AN AGENT* MUST BE DROPPED FROM THE REQUEST FOR EXTRADITION FOR NON COMPLIANCE WITH THE DOUBLE CRIMINALITY RULE.— The HKSAR defines the crime of *accepting an advantage as an agent* under Section 9(1)(a) of the Prevention of Bribery Ordinance (POBO), Cap. 201 x x x. x x x. The CA ultimately concluded that the crime of *accepting an advantage as an agent* did not have an equivalent in this jurisdiction considering that when the unauthorized giving and receiving

of benefits happened in the private sector, the same was not a crime because there was no law that defined and punished such act as criminal in this jurisdiction. We uphold the conclusion and observation by the CA. A careful reading shows that the foreign law subject-matter of this controversy deals with bribery in both public and private sectors. However, it is also quite evident that the particular provision of the POBO allegedly violated by Muñoz, *i.e*., Section 9(1)(a), deals with private sector bribery – this, despite the interpretation under Section 2 of the POBO that an "agent includes a public servant and any person employed by or acting for another." The POBO clearly states that the interpretation shall apply unless the *context* otherwise requires. x x x. Considering that the transactions were entered into by and in behalf of the Central Bank of the Philippines, an instrumentality of the Philippine Government, Muñoz should be charged for the offenses not as a regular agent or one representing a private entity but as a public servant or employee of the Philippine Government. Yet, because of the offense of *accepting an advantage as an agent* charged against him in the HKSAR is one that deals with private sector bribery, the conditions for the application of the double criminality rule are obviously not met. Accordingly, the crime of *accepting an advantage as an agent* must be dropped from the request for extradition. Conformably with the principle of specialty embodied in Article 17 of the RP-KH Agreement, Muñoz should be proceeded against only for the seven counts of *conspiracy to defraud*. As such, the HKSAR shall hereafter arrange for Muñoz's surrender within the period provided under Article 15 of the RP-HK Agreement.

LEONEN, *J., dissenting opinion:*

1. POLITICAL LAW; INTERNATIONAL LAW; EXTRADITION; AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF HONGKONG FOR THE SURRENDER OF ACCUSED AND CONVICTED PERSONS (RP-HK AGREEMENT); THE TOTALITY OF THE ACTS OR OMISSIONS ALLEGED AGAINST THE PERSON WHOSE SURRENDER IS SOUGHT, WITHOUT REFERENCE TO THE ELEMENTS OF THE OFFENSE PRESCRIBED BY

THE LAW OF THE REQUESTING PARTY, MUST CONSTITUTE AN OFFENSE AGAINST THE LAWS OF HONG KONG AND THE PHILIPPINES; RESPONDENT'S ACTS ARE CORRUPT PRACTICES PUNISHABLE UNDER SECTION 3(b) AND 3(h) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019) AND SECTION 9(1)(a) OF THE PREVENTION OF BRIBERY ORDINANCE, CAP. 201.— Under Presidential Decree No. 1069, otherwise known as the Philippine Extradition Law, extradition may be granted only under a treaty or convention. In this case, the relevant treaty is the Agreement Between the Government of the Republic of the Philippines and the Government of Hong Kong for the Surrender of Accused and Convicted Persons (RP-HK Agreement) x x x. [A] request for extradition shall be granted for certain offenses, provided that according to the laws of both the Philippines and Hong Kong, the offense is punishable by imprisonment or other form of detention for the duration of more than one (1) year, or by a more severe penalty. Further, to determine whether the offense is punishable under the laws of the Philippines and Hong Kong, the RP-HK Agreement states that "the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account without reference to the elements of the offence prescribed by the law of the requesting Party." In this case, respondent is wanted for three (3) counts of the offense of "accepting an advantage as an agent" (punished by Section 9(1)(a) of the Prevention of Bribery Ordinance, Cap. 201) and for seven (7) counts of the offense of "conspiracy to defraud" (contrary to the Common Law of Hong Kong). x x x. The RP-HK Agreement requires us to ask, *without reference to the elements of the offense prescribed by the law of the requesting party*, whether the totality of the acts or omissions alleged against respondent constitutes an offense against the laws of Hong Kong. It likewise requires us to ask whether the totality of the acts or omissions alleged against respondent constitutes an offense against the laws of the Philippines. Respondent's acts are corrupt practices under Section 3(b) of Republic Act No. 3019 x x x. They also appear to be an offense under Section 3(h) x x x. Thus, the totality of the acts or omissions alleged against respondent constitutes an offense against Philippine laws. Respondent's acts likewise constitute an offense

under Section 9(1)(a) of the Prevention of Bribery Ordinance, Cap. 201.

2. ID.; ID.; ID.; ID.; ID.; BOTH JURISDICTIONS SHOULD NOT FRUSTRATE THE ENDS OF JUSTICE BY UNNECESSARILY TRUNCATING THE ACTS BEING PUNISHED THROUGH RESORT TO CONJECTURAL TECHNICAL POSSIBILITIES; THE LETTER AND INTENT OF BOTH THE TREATY AND OUR CRIMINAL LAWS SHOULD BE RESPECTED; REQUEST FOR THE EXTRADITION OF RESPONDENT SHOULD BE GRANTED.—The intent of both statutes is the same. Corruption is accepted as a bane to good governance. Its eradication is not merely desirable; it is a necessity. Corruption undermines the totality of government. The fair but decisive prosecution of those responsible for the acts contributes to its effective deterrence. Every act of corruption involves both a public officer and a private individual or entity. The private individual may have actively participated in conspiracy or as the principal by inducement. It may likewise be the beneficiary of decisions made by public officers, and may be done primarily or solely for motives that do not redound to the public's welfare. The treaty clearly commands both jurisdictions not to frustrate the ends of justice by unnecessarily truncating the acts being punished through resort to conjectural technical possibilities. The letter and intent of both the treaty and our criminal laws should be respected. Thus, as the totality of the acts alleged against respondent is punishable under the laws of both the Philippines and Hong Kong and is punishable by imprisonment of more than one (1) year, surrender should be granted under Article 2 of the RP-HK Agreement.

3. ID.; ID.; ID.; ID.; ID.; THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT INAPPROPRIATELY WENT BEYOND THE ALLEGATIONS IN THE CHARGES AND PROCEEDED TO GO INTO THE MERITS OF THE CASE FILED IN HONG KONG, IN VIOLATION OF THE BASIC PRINCIPLES OF INTERNATIONAL COMITY AND DUE PROCESS.— When the Court of Appeals dropped the charge of *accepting an advantage as an agent* instead of looking at the totality of the acts alleged, it delved into the provisions of Hong Kong law, as well as the intent behind it x x x. However,

there is no question that Hong Kong law punishes the acts alleged against respondent. Consequently, under the RP-HK Agreement, the legislative intent behind the enactment of the Prevention of Bribery Ordinance is irrelevant in determining whether the offense is extraditable. Further, although the Court of Appeals maintained that the unauthorized giving and receiving of bribes was "alleged" to have happened in the private sector, a close reading of the acts alleged in the first charge reveals no mention of the private sector. Thus, the Court of Appeals went inappropriately beyond the allegations in the charges and proceeded to go into the merits of the case filed in Hong Kong. In essence, it predicted the evidence, weighed it as a conjecture, and rendered a judgment of fact for Hong Kong. This violates the basic principles of international comity and due process. Therefore, the Court of Appeals gravely abused its discretion.

APPEARANCES OF COUNSEL

Office of the Chief State Counsel for petitioner.
Agabin Verzola & Layaoen Law Offices for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This case is the third in the trilogy of cases that started with the 2000 case of *Cuevas v. Muñoz*,[1] which dealt with respondent Juan Antonio Muñoz's provisional arrest as an extraditee, and the 2007 case of *Government of Hong Kong Special Administrative Region v. Olalia, Jr.*,[2] which resolved the question of Muñoz's right to bail as a potential extraditee. Both rulings dealt with and resolved incidents arising during the process of having Muñoz extradited to Hong Kong under and pursuant to the *Agreement Between the Government of the Republic of the Philippines and the Government of Hong Kong for the Surrender of Accused and Convicted Persons* (RP-HK Agreement).

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[1] G.R. No. 140520, December 18, 2000, 348 SCRA 542.

[2] G.R. No. 153675, April 19, 2007, 521 SCRA 470.

Up for our consideration and resolution in the current case is whether or not the extradition request of the Government of Hong Kong Special Administrative Region (HKSAR) sufficiently complied with the RP-HK Agreement and Presidential Decree No. 1069 (*Philippine Extradition Law*). On November 28, 2006, the Regional Trial Court (RTC), Branch 8, in Manila granted the request for the extradition of Muñoz.[3] Although the CA at first ruled that Muñoz could be tried in Hong Kong for the crimes of *conspiracy to defraud* and *accepting an advantage as an agent*, it granted his motion for reconsideration and promulgated the now assailed amended decision on March 1, 2013 in CA-G.R. CV No. 88610,[4] in which it pronounced that the crime of *accepting an advantage as an agent* should be excluded from the charges for which he would be tried in Hong Kong due to non-compliance with the double criminality rule. Also being challenged is the resolution promulgated on May 29, 2013 by the CA (denying the motion for reconsideration of the petitioner).[5]

Antecedents

As factual antecedents, the CA narrated the following:

> Bared to its essentials, the record shows that in late 1991, respondent-appellant, as Head of the Treasury Department of the Central Bank of the Philippines (CBP), was instructed by its Governor to raise Seven Hundred Million US Dollars (US$700M) in order to fund the buyback of Philippine debts and the purchase of zero coupon US Treasury Bonds. To this end, respondent-appellant recommended that the amount be obtained through gold loans/swaps, for which, seven (7) contracts of about One Hundred Million US Dollars (US$100M) each were to be awarded to certain accredited parties. Two (2) of these contracts were granted to Mocatta, London. These in turn were rolled over as they matured, hence, totaling five (5) gold loan/swap agreements in Mocatta, London's favor.

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[3] CA *rollo*, pp. 97-120.

[4] *Rollo*, pp. 20-26; penned by Associate Justice Hakim S. Abdulwahid (retired), and concurred in by Associate Justice Marlene Gonzales-Sison and Associate Justice Edwin D. Sorongon.

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

In relation to this, petitioner-appellee narrates:

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2. At all material times, Mr. Juan Antonio E. MUÑOZ ("MUÑOZ") was the Head of the Treasury Department of the Central Bank of the Philippines ("CBP"). In July 1993, CBP changed its name to the Bangko Sentral ng Pilipinas.

3. At all material times, Mr. Ho CHI ("CHI") was the Chief Executive of Standard Chartered Bank – The Mocatta Group (Hong Kong) ("MHK"). MHK was a branch of the Mocatta Group in London ("Mocatta London") which was a division of the Standard Chartered Bank.

4. CBP and MHK had been dealing in small gold transactions for several years prior to 1991. During the latter part of 1991, MUÑOZ and CHI began negotiating larger deals up to US$100 M. CBP were (sic) reluctant to deal with MHK for such large amounts and wanted to deal directly with Mocatta (London).

5. CHI approached Philip WILSON ("WILSON"), the then Chief Dealer of Mocatta (London) about the proposed deals. CHI indicated that to get business it would be necessary for Mocatta (London) to pay rebates to an unnamed group of people at CBP. WILSON told CHI that that was wrong in principal (sic). CHI, however, approached Keith SMITH, the then Managing Director of Mocatta (London), who approved the payments.

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6. Between February 1992 to March 1993, there were a series of "gold swaps" and gold backed loans between CBP (sic) and Mocatta (London) through MHK in Hong Kong. The transactions were a means for CBP to raise finance.

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9. As a result of these transactions, Mocatta (London) paid out rebates of **US$1,703,304.87** to an account ("the Sundry Creditors Account") held with MHK for onward transmission by MHK to destinations as instructed by CHI. Funds from this Sundry Creditors Account were subsequently disbursed to the benefit of CHI and MUÑOZ personally (x x x).

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10. In addition to the gold swaps and the gold backed loans referred to above, there were option agreements created between CBP and MHK. Under an option agreement, CBP granted a right to MHK to exercise (or not to exercise) the option to buy gold at a fixed price on a fixed date.

11. As a result, between 27 July 1992 and 6 May 1993, MHK paid **US$4,026,000** into the Sundry Creditors Account, ostensibly for CBP, as premiums for these options. x x x

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13. CHI operated an account at Mocatta Hong Kong, called the MHK No. 3 Account, purportedly on behalf of CBP, for trading in gold. Profits from the trading were accrued to the amount of US$1,625,000. The trading and the profits were unknown to CBP.

14. On 12 October 1993, this **US$1,625,000** was transferred to the Sundry Creditors Account. Funds from this Sundry Creditors Account were subsequently disbursed to the benefit of CHI and MUÑOZ personally (xxx).

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15. Apart from the aforesaid, there were other payments made by MHK to the Sundry Creditors Account, ostensibly for CBP, namely:

commission on gold location swaps	US$227,086.18
commission on silver location swaps	US$ 47,524.69
commission on options	US$ 9,750.00
interest	US$ 32,889.61

16. None of the above payments were known to CBP and none of them ever reached CBP. Funds from this Sundry Creditors Account were subsequently disbursed to the benefit of CHI and MUÑOZ personally (x x x).

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On the other hand, respondent-appellant gives his version, thus:

x x x the Central Bank executed all these gold loan/swap agreements with the same counter party, namely, **Mocatta London.** Muñoz signed in behalf of the Central Bank while Phil Wilson signed for Mocatta London.

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In late 1992 (around November or December), Muñoz received a note from Mocatta London requesting that their accreditation as official counter party of the Central Bank be transferred to Standard Chartered Bank (SCB) in view of an ongoing reorganization which will result in Mocatta London being a mere division of SCB. Before such reorganization, both Mocatta London and Mocatta Hong Kong operated as independent subsidiaries of SCB.

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As mentioned earlier, the Monetary Board approved the transfer of the accreditation of Mocatta London as authorized counter party of the bank to SCB sometime in February or March of 1993. Mocatta London became known as SCB–The Mocatta Group, or SCB-The Mocatta Group (sic), or SCB-The Mocatta Group London, while Mocatta became known as SCB-the Mocatta Group Hong Kong. Phil Wilson was the Chief Executive Officer for London, while Ho Chi was the Chief Executive for Hong Kong. The Group Chief Executive Officer was Ron Altringham.

As can be seen in **Annex 'C',** even with the SCB reorganization, the gold [loan]/swap agreements continued to be contracted with Mocatta London. As shown, both the gold loan/swap agreements dated March 25, 1993 and June 30, 1993 were signed by Phil Wilson for Mocatta London (SCB-The Mocatta Group London). With the accreditation of SCB as the official counter party of the bank, however, CB did allow the dealers to transact minor trading transactions with Mocatta Hong Kong. CB also allowed Mocatta Hong Kong to quote on the gold and silver location swaps CB periodically did to decongest its vaults at the gold plant in Quezon City. The gold swap/loan agreements, however, as shown in the Annex, continued to be rolled over with Mocatta London.

During Muñoz's stay in Treasury at the bank as its Head, he did not involve himself in the details of work done by the Dealing

> Group, Treasury Service Group (TSG) and Accounting which were all headed by either Director or a Deputy Director who could clarify any issue that may arise, and who consult with him on matters they were unsure. The department had been operational over 6 years when Muñoz joined, and the Treasury transactions had already become routine for majority of the staff. Muñoz meet (sic) weekly with senior officers to inform of development and discuss problems of the department.
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> In respect to the five gold loan/swap agreements with Mocatta London (as well as the agreements contracted with other official counter parties), upon the signing of each agreement, a copy of the agreement was forwarded to the Dealing Group for proper implementation. The Treasury dealers usually coordinated with dealers of the counter party involved in effecting the necessary transactions.

These agreements are the subject of ten (10) criminal cases filed against respondent-appellant in Hong Kong – i.e., three (3) counts of *accepting an advantage as an agent,* contrary to Section 9(1) (a) of the Prevention of Bribery Ordinance, Cap. 201 and seven (7) counts of *conspiracy to defraud*, contrary to the common law of HKSAR.[6]

Invoking the *Agreement Between the Government of the Republic of the Philippines and the Government of Hong Kong for the Surrender of Accused and Convicted Persons* (RP-HK Agreement), which was signed in Hong Kong on January 30, 1995, the Hong Kong Special Administrative Region (HKSAR) sent Note No. SBCR 11/1/2716/80 dated July 9, 1997 to the Philippine Consulate General in Hong Kong to inquire on which agency of the Philippine Government should handle a request for extradition under the RP-HK Agreement. The Philippine Consulate General replied through Note No. 78-97 dated October 16, 1997 that the proper agency was the Department of Justice (DOJ).[7] On September 13, 1999, therefore, the DOJ received the request for the provisional arrest of Muñoz pursuant to Article 11(1) of the RP-HK Agreement. On September 17, 1999, the

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[6] CA *rollo*, pp. 224-228.

[7] *Id*. at 228.

National Bureau of Investigation (NBI), acting for and in behalf of HKSAR, initiated the proceedings for his arrest in the RTC, whose Branch 19 then issued on September 3, 1999 the order granting the application for the provisional arrest of Muñoz. Branch 19 consequently issued the corresponding order of arrest. On October 14, 1999, Muñoz challenged through *certiorari*, prohibition and *mandamus* the validity of the order for his arrest in the CA, which declared the order of arrest null and void in its judgment promulgated on November 9, 1999. DOJ Secretary Serafin R. Cuevas consequently appealed the decision of the CA to this Court, which reversed the CA on December 18, 2000 in *Cuevas v. Muñoz*,[8] disposing:

> WHEREFORE, the petition is GRANTED, and the assailed Decision of the Court of Appeals, dated November 9, 1999, in CA-G.R. SP No. 55343 is hereby REVERSED and SET ASIDE. Respondent's "Urgent Motion For Release Pending Appeal" is hereby DENIED.
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> SO ORDERED.

Meantime, on November 22, 1999,[9] the DOJ, representing the HKSAR, filed a petition in the RTC for the surrender of Muñoz to the HKSAR to face the criminal charges against him in Hong Kong. He filed a petition for bail. Initially, on October 8, 2001, the RTC, through Presiding Judge Ricardo Bernardo, Jr. of Branch 10, denied the petition for bail after hearing on the ground that there was no Philippine law that allowed bail in extradition cases, and that he was a high "flight risk." But after the case was re-assigned to Branch 8, presided by Judge Felixberto T. Olalia, Jr., following the inhibition of Judge Bernardo, Jr., Muñoz filed his motion for reconsideration against the denial of his petition for bail. Granting the motion for reconsideration on December 20, 2001,[10] Judge Olalia, Jr. allowed bail to Muñoz under the conditions stated in the order of that date. Not satisfied, the DOJ assailed the granting of bail to

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[8] *Supra* note 1.

[9] *Rollo*, p. 10.

[10] *Id*.

Muñoz as a potential extraditee by petition for *certiorari* directly filed in this Court. The matter of bail for Muñoz was ultimately settled by the Court in *Government of Hong Kong Special Administrative Region v. Olalia, Jr.*,[11] *viz.*:

> While our extradition law does not provide for the grant of bail to an extraditee, however, there is no provision prohibiting him or her from filing a motion for bail, a right to due process under the Constitution.
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> The applicable standard of due process, however, should not be the same as that in criminal proceedings. In the latter, the standard of due process is premised on the presumption of innocence of the accused. As *Purganan* correctly points out, it is from this major premise that the ancillary presumption in favor of admitting to bail arises. Bearing in mind the purpose of extradition proceedings, the premise behind the issuance of the arrest warrant and the "temporary detention" is the possibility of flight of the potential extraditee. This is based on the assumption that such extraditee is a fugitive from justice. Given the foregoing, the prospective extraditee thus bears the *onus probandi* of showing that he or she is not a flight risk and should be granted bail.
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> The time-honored principle of *pacta sunt servanda* demands that the Philippines honor its obligations under the Extradition Treaty it entered into with the Hong Kong Special Administrative Region. Failure to comply with these obligations is a setback in our foreign relations and defeats the purpose of extradition. However, it does not necessarily mean that in keeping with its treaty obligations, the Philippines should diminish a potential extraditee's rights to life, liberty, and due process. More so, where these rights are guaranteed, not only by our Constitution, but also by international conventions, to which the Philippines is a party. We should not, therefore, deprive an extraditee of his right to apply for bail, provided that a certain standard for the grant is satisfactorily met.
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> An extradition proceeding being *sui generis*, the standard of proof required in granting or denying bail can neither be the proof beyond reasonable doubt in criminal cases nor the standard of proof of preponderance of evidence in civil cases. While administrative in character, the standard of substantial evidence used in administrative

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[11] *Supra* note 2.

cases cannot likewise apply given the object of extradition law which is to prevent the prospective extraditee from fleeing our jurisdiction. In his Separate Opinion in *Purganan*, then Associate Justice, now Chief Justice Reynato S. Puno, proposed that a new standard which he termed **"clear and convincing evidence" should be used in granting bail in extradition cases.** According to him, this standard should be lower than proof beyond reasonable doubt but higher than preponderance of evidence. The potential extraditee must prove by "clear and convincing evidence" that he is not a flight risk and will abide with all the orders and processes of the extradition court.

In this case, there is no showing that private respondent presented evidence to show that he is not a **flight risk.** Consequently, this case should be remanded to the trial court to determine whether private respondent may be granted bail on the basis of "clear and convincing evidence."

WHEREFORE, we DISMISS the petition. This case is REMANDED to the trial court to determine whether private respondent is entitled to bail on the basis of "clear and convincing evidence." If not, the trial court should order the cancellation of his bail bond and his immediate detention; and thereafter, conduct the extradition proceedings with dispatch.

SO ORDERED.[12]

Eventually, on November 28, 2006, the RTC ruled on the main case of extradition by holding that the extradition request sufficiently complied with the RP-HK Agreement and Presidential Decree No. 1069.[13]

In due course, Muñoz elevated the adverse decision of November 28, 2006 to the CA upon the following issues, namely: (1) the enforceability of the RP-HK Agreement, including the HKSAR's personality to institute the petition under its current status as a special administrative region; (2) the DOJ's authority to receive the request for extradition and to file the petition despite Presidential Decree No. 1069 naming the Secretary of Foreign Affairs for that purpose; (3) the extraditability of the

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[12] *Id.* at 486-488.

[13] CA *rollo*, p. 230.

offense, considering the nature of the crimes charged and the pieces of evidence presented in support of the petition; and (4) the limits of the jurisdiction of the extradition court, *i.e.*, whether or not it included passing upon the defenses of the person to be extradited.[14]

In its decision promulgated on August 30, 2012,[15] the CA opined that although the People's Republic of China resumed the exercise of jurisdiction over the HKSAR, Article 96[16] of the latter's Basic Law still empowered it to enter into international agreements in its own name, including extradition treaties;[17] that despite the exception made in the *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong* to the effect that the HKSAR would enjoy a high degree of autonomy, except in foreign and defense affairs that were the responsibilities of the Central People's Government, there was a *status quo* as regards the laws currently in force in Hong Kong; that Article 153 of the Basic Law explicitly provided that international agreements to which the People's Republic of China was not a party but which were implemented in Hong Kong could continue to be implemented in the HKSAR; that an Exchange of Notes between the Governments of China and the Philippines confirmed the continuous enforceability of the RP-HK Agreement;[18] that the DOJ had the authority to receive the request for extradition by the HKSAR because the RP-Hong Kong Agreement referred to the "appropriate authority" as would be identified from time

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[14] *Id*. at 234.

[15] *Id*. at 223-253.

[16] Basic Law, Article 96 - With the assistance or authorization of the Central People's Government, the Government of the Hong Kong Special Administrative Region may make appropriate arrangements with foreign states for reciprocal juridical assistance.

[17] CA *rollo*, p. 238.

[18] *Id*. at 238-239.

to time by one party to the other;[19] and that, as such, the reliance by Muñoz on the provision of Presidential Decree No. 1069 that only the Secretary of Foreign Affairs had the authority to receive requests for extradition should be rejected.

The CA affirmed the RTC's conclusion that the crimes of *conspiracy to defraud* and *accepting an advantage as an agent* were extraditable offenses; that not only was *conspiracy to defraud* explicitly included in the offenses covered by the RP-HK Agreement, but also that both crimes satisfied the double criminality rule, or the principle to the effect that extradition was available only when the act was an offense in the jurisdictions of both parties; and that it was not for the Philippine court to determine the extent of the criminal jurisdiction of the foreign court because entering into questions that were the prerogative of that other jurisdiction was the function of the assisting authorities.[20]

On September 14, 2012,[21] Muñoz sought the reconsideration of the August 30, 2012 decision.

On March 1, 2013,[22] the CA promulgated its assailed amended decision by partially granting Muñoz's motion for reconsideration. Although affirming its previous ruling, it concluded that the crime of *accepting an advantage as an agent* should be excluded from the charges under which Muñoz would be tried due to non-compliance with the double criminality rule.

After the HKSAR's motion for reconsideration was denied on May 29, 2013,[23] it has appealed by petition for review on *certiorari*.

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[19] Article 8. THE REQUEST AND SUPPORTING DOCUMENTS. (1) Requests for surrender and related documents shall be conveyed through the appropriate authority as may be notified from time to time by one Party to the other.

[20] CA *rollo*, pp. 252-253.

[21] *Rollo*, p. 11.

[22] *Supra* note 4.

[23] *Supra* note 5.

Issue

The sole issue raised by the HKSAR relates to the propriety of the CA's conclusion that the crime of *accepting an advantage as an agent* did not comply with the double criminality rule.[24]

Ruling of the Court

Upon thorough consideration, we **DENY** the petition for review.

Extradition is "the surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to punish him, demands the surrender."[25] It is not part of customary international law, although the duty to extradite exists only for some international crimes.[26] Thus, a state must extradite only when obliged by treaty to do so.[27] The right of a state to successfully request the extradition of a criminal offender arises from a treaty with the requested state.[28] Absent the treaty, the duty to surrender a person

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[24] *Id.* at 11.

[25] *Terlinden v. Ames*, 184 U.S. 270, 289 (1902).

[26] Bassiouni, *International Extradition: United States Law and Practice*, 2d Rev. Ed. (1987), p. 319.

[27] *Factor v. Laubenheimer*, 290 U.S. 276, 287 (1933).

[28] See *United States v. Rauscher*, 119 U.S. 407, 411-412 (1886), where the Supreme Court of the United States of America, per *J.* Miller, observed:

x x x **It is only in modern times that the nations of the earth have imposed upon themselves the obligation of delivering up these fugitives from justice to the states where their crimes were committed for trial and punishment. This has been done generally by treaties made by one independent government with another.** Prior to these treaties and apart from them, it may be stated as the general result of the writers upon international law that there was no well defined obligation on one country to deliver up such fugitives to another, and within the discretion of the government whose action was invoked, and it has never been recognized as among those obligations of one government toward another which rest upon established principles of international law. (bold underscoring supplied for emphasis)

who has sought asylum within its boundaries does not inhere in the state, which, if it so wishes, can extend to him a refuge and protection even from the state that he has fled. Indeed, in granting him asylum, the state commits no breach of international law. But by concluding the treaty, the asylum state imposes limitations on itself, because it thereby agrees to do something it was free not to do.[29] The extradition treaty creates the reciprocal obligation to surrender persons from the requested state's jurisdiction charged or convicted of certain crimes committed within the requesting state's territory, and is of the same level as a law passed by the Legislatures of the respective parties.

Presidential Decree No. 1069 defines the general procedure for the extradition of persons who have committed crimes in a foreign country, and lays down the rules to guide the Executive Department and the courts of the Philippines on the proper implementation of the extradition treaties to which the country is a signatory. Nevertheless, the particular treaties entered into by the Philippine Government with other countries primarily govern the relationship between the parties.

The RP-HK Agreement is still in full force and effect as an extradition treaty. The procedures therein delineated regulate the rights and obligations of the Republic of the Philippines and the HKSAR under the treaty in the handling of extradition requests.

For purposes of the extradition of Muñoz, the HKSAR as the requesting state must establish the following six elements,[30] namely: (1) there must be an extradition treaty in force between the HKSAR and the Philippines; (2) the criminal charges that are pending in the HKSAR against the person to be extradited;[31]

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[29] *United States v. Mulligan*, 74 F. 2d 220 (2d Cir. 1934).

[30] *See* Offending Officials: Former Government Actors and the Political Offense Exception to Extradition, 94 Calif. L. Rev. 423 (March 2006).

[31] Article 1. OBLIGATION TO SURRENDER. The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement, any person who is found in the jurisdiction of the requested Party and who is wanted by the requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence described in Article 2 of this Agreement.

(3) the crimes for which the person to be extradited is charged are extraditable within the terms of the treaty;[32] 4) the individual before the court is the same person charged in the HKSAR;[33] (5) the evidence submitted establishes probable cause to believe that the person to be extradited committed the offenses charged;[34] and (6) the offenses are criminal in both the HKSAR and the Philippines (double criminality rule).

The first five of the elements inarguably obtain herein, as both the RTC and the CA found. To start with, the RP-Hong

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[32] Article 2. OFFENCES. (1) Surrender shall be granted for an offence coming within any of the following descriptions of *offences insofar as it is according to the laws of both Parties* punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty;

xxx xxx xxx

(xiii) offences against the laws relating to fraudulent activities; obtaining property, money, valuable securities or pecuniary advantage by false pretenses or deception; embezzlement; ***conspiracy to defraud***; false accounting;

xxx xxx xxx

(3) For the purpose of this Article, in determining whether an offence is an offence punishable under the laws of both Parties, the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account, without reference to the elements of the offence prescribed by the law of the requesting Party.

(4) For the purpose of paragraph (1) of this Article, *an offence shall be an offence according to the laws of both Parties if the conduct constituting the offence was an offence against the law of the requesting Party at the time it was committed and an offence against the law of the requested Party at the time the request for surrender is received.* (italics supplied for emphasis)

[33] Article 8. THE REQUEST AND SUPPORTING DOCUMENTS. xxx

(2) The request shall be accompanied by:

(a) as accurate a description as possible of the person sought, together with any other information which would help to establish that person's identity, nationality and location;

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[34] Article 4. BASIS FOR SURRENDER. A person shall be surrendered only if the evidence be found sufficient according to the law of the requested Party either to justify the committal for trial of the person sought if the offence of which that person is accused had been committed in the territory of the requested Party or to prove that the person sought is the person convicted by the courts of the requesting Party.

Kong Agreement subsists and has not been revoked or terminated by either parties. Secondly, there have been 10 criminal cases filed against Muñoz in Hong Kong, specifically: three counts of *accepting an advantage as an agent* and seven counts of *conspiracy to defraud*.[35] Thirdly, the crimes of *accepting an advantage as an agent* and of *conspiracy to defraud* were extraditable under the terms of the RP-Hong Kong Agreement. Fourthly, Muñoz was the very same person charged with such offenses based on the documents relied upon by the DOJ, and the examination and determination of probable cause by the RTC that led to the issuance of the order for the arrest of Muñoz. And, lastly, there is probable cause to believe that Muñoz committed the offenses charged.

However, it was as to the sixth element that the CA took exception as not having been established. Although the crime of *conspiracy to defraud* was included among the offenses covered by the RP-Hong Kong Agreement, and the RTC and the CA have agreed that the crime was analogous to the felony of *estafa through false pretense* as defined and penalized under Article 315(2)[36] of the *Revised Penal Code*, it was disputed whether or not the other crime of *accepting an advantage as an agent* was also punished as a crime in the Philippines. As such, the applicability of the double criminality rule became the issue.

Under the double criminality rule, the extraditable offense must be criminal under the laws of both the requesting and the requested states.[37] This simply means that the requested state comes under no obligation to surrender the person if its laws

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[35] *Rollo,* p. 10.

[36] Art. 315. Swindling (estafa). x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or *falsely pretending* to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or *by means of other similar deceits*. (emphasis ours)

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[37] Bassiouni, note 26, at 324.

do not regard the conduct covered by the request for extradition as criminal.[38]

The HKSAR defines the crime of *accepting an advantage as an agent* under Section 9(1)(a) of the Prevention of Bribery Ordinance (POBO), Cap. 201,[39] to wit:

Section 9. Corrupt transactions with agents.

(1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –

(a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

xxx xxx xxx

A perusal of the decision of the RTC and the original decision of the CA show that said courts determined that the crime of *accepting an advantage as an agent* was analogous to the crime of *corrupt practices of public officers* as defined under Section 3[40] of Republic Act No. 3019 (*Anti-Graft and Corrupt Practices Act*). In its assailed amended

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[38] *Id*. at 325-326.

[39] http://www.legislation.gov.hk/09/eng/pdf.htm. Last accessed on August 16, 2016, 3:50 p.m.

[40] Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: (emphasis ours)

xxx xxx xxx

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

xxx xxx xxx

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

xxx xxx xxx

decision, however, the CA reversed itself, and agreed with Muñoz to the effect that Section 9(1)(a) of the POBO referred only to *private individuals*, not to persons belonging to the public sector. It revised its determination by taking into consideration the expert opinions on the nature and attributes of the crime of *accepting an advantage as an agent* tendered by Clive Stephen Grossman, Senior Counsel of the Hong Kong Bar Association, in behalf of Muñoz, and Ian Charles McWalters, Senior Assistant Director of Public Prosecutions in the Department of Justice of the HKSAR, testifying on behalf of the HKSAR. Said experts shared the opinion that the POBO was a two-part statute concerned with corruption by public officials and corruption in the private sector.[41] However, McWalters gave the following explanation regarding the nature of the offenses enumerated in Section 9 of the POBO, to wit:

> 8. A person can be guilty of a POBO bribery offense if he offers an advantage to an agent, or being an agent, he solicits or accepts an advantage. However, there is no mention of the word corruption, or variants of it, in these offences. Proof of corruption comes from establishing that the advantage was offered, solicited or accepted "as an inducement to, reward for or otherwise on account of" the agent doing inter alia "an act in his capacity as a public servant" (public sector bribery) or "an act in relation to his principal's affairs or business" (private sector bribery). **The private sector bribery offence is section 9 of the POBO and its language is derived from section 1 of the United Kingdom's Prevention of Corruption Act of 1906**.[42]

Based on the foregoing, the CA ultimately concluded that the crime of *accepting an advantage as an agent* did not have an equivalent in this jurisdiction considering that when the unauthorized giving and receiving of benefits happened in the private sector, the same was not a crime because there was no law that defined and punished such act as criminal in this jurisdiction.[43]

We uphold the conclusion and observation by the CA.

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[41] *Rollo,* p. 24.

[42] *Id*.

[43] *Id*. at 25.

A careful reading shows that the foreign law subject-matter of this controversy deals with bribery in both public and private sectors. However, it is also quite evident that the particular provision of the POBO allegedly violated by Muñoz, *i.e.*, Section 9(1)(a), deals with private sector bribery – this, despite the interpretation under Section 2 of the POBO that an "agent includes a public servant and any person employed by or acting for another." The POBO clearly states that the interpretation shall apply unless the *context* otherwise requires.

It cannot be argued that Section 9(1)(a) of the POBO encompasses both private individuals and public servants. A Section 9(1)(a) offense has a parallel POBO provision applicable to public servants, to wit:[44]

Private Sector Bribery	**Public Sector Bribery**
Section 9. Corrupt transactions with agents. (1) Any *agent* who, without lawful authority or reasonable excuse, *solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his* – (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or	**Section 4. BRIBERY**. x x x (2) Any *public servant* who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, *solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his*- (Amended 28 of 1980 s. 3) a. performing or abstaining from performing, or having performed or abstained from performing, any act *in his capacity as a public servant*; x x x shall be guilty of an offence.

Considering that the transactions were entered into by and in behalf of the Central Bank of the Philippines, an

[44] *Supra* note 39.

instrumentality of the Philippine Government, Muñoz should be charged for the offenses not as a regular agent or one representing a private entity but as a public servant or employee of the Philippine Government. Yet, because the offense of *accepting an advantage as an agent* charged against him in the HKSAR is one that deals with private sector bribery, the conditions for the application of the double criminality rule are obviously not met. Accordingly, the crime of *accepting an advantage as an agent* must be dropped from the request for extradition. Conformably with the principle of specialty embodied in Article 17 of the RP-HK Agreement, Muñoz should be proceeded against only for the seven counts of *conspiracy to defraud*. As such, the HKSAR shall hereafter arrange for Muñoz's surrender within the period provided under Article 15 of the RP-HK Agreement.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; and **AFFIRMS** the amended decision promulgated on March 1, 2013 in CA-G.R. SP No. 88610.

No pronouncement on costs of suit.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Jardeleza, and *Caguioa, JJ.,* concur.

Sereno, C.J. and *Carpio, J.*, join the dissent of *J.* Leonen.

Leonen, J., dissents, see separate opinion.

Brion, J., on leave.

DISSENTING OPINION

LEONEN, *J.*:

Respectfully, I dissent.

Under Presidential Decree No. 1069,[1] otherwise known as the Philippine Extradition Law, extradition may be granted only under a treaty or convention.[2] In this case, the relevant treaty is the Agreement Between the Government of the Republic of the Philippines and the Government of Hong Kong for the Surrender of Accused and Convicted Persons (RP-HK Agreement), which provides:

ARTICLE 2
OFFENCES

(1) Surrender shall be granted for an offence coming within any of the following descriptions of offences insofar as it is according to the laws of both Parties punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty;

. . . . . .

(3) For the purpose of this Article, in determining whether an offence is an offence punishable under the laws of both Parties, ***the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account, without reference to the elements of the offence prescribed by the law of the requesting Party***.

(4) For the purpose of paragraph (1) of this Article, an offence shall be an offence according to the laws of both Parties if the conduct constituting the offence was an offence against the law of the requesting Party at the time it was committed and an offence against the law of the requested Party at the time the request for surrender is received. (Emphasis supplied)

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[1] Prescribing the Procedure for the Extradition of Persons Who Have Committed Crimes in a Foreign Country (1977).

[2] Pres. Decree No. 1069 (1977), Sec. 3.

Thus, a request for extradition shall be granted for certain offenses, provided that according to the laws of both the Philippines and Hong Kong, the offense is punishable by imprisonment or other form of detention for the duration of more than one (1) year, or by a more severe penalty. Further, to determine whether the offense is punishable under the laws of the Philippines and Hong Kong, the RP-HK Agreement states that "the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account without reference to the elements of the offence prescribed by the law of the requesting Party."[3]

In this case, respondent is wanted for three (3) counts of the offense of "accepting an advantage as an agent"[4] (punished by Section 9(1)(a) of the Prevention of Bribery Ordinance, Cap. 201) and for seven (7) counts of the offense of "conspiracy to defraud"[5] (contrary to the Common Law of Hong Kong).[6] The three (3) charges read substantially the same. The first charge reads:

Statement of Offence

Accepting advantage as an agent, contrary to section 9(1)(a) of the Prevention of Bribery Ordinance, Cap. 201.

Particulars of Offence

Juan Antonio E. MUÑOZ, being an agent, namely an employee of the Bangko Sentral ng Pilipinas, on or about the 12th day of October 1993, in Hong Kong, without lawful authority or reasonable excuse, accepted from Ho CHI, also known as CHI Ho, an advantage, namely a gift, loan, fee, reward or commission consisting of a deposit of $1,020,000 United States currency into the Citiplus Account Number 89409787 with Citibank, N.A. held in the name of the said Juan Antonio E. MUÑOZ, as an inducement to or reward for or otherwise on account of the said Juan Antonio E. MUÑOZ doing or having

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[3] Pres. Decree No. 1069 (1977), Art. 2.

[4] *Rollo*, p. 11, Petition.

[5] *Id.*

[6] *Id.*

done an act in relation to his principal's affairs or business, namely concealing the payments relating to gold or silver dealings which were otherwise payable to or on account of the said Bangko Sentral ng Pilipinas by Mocatta Hong Kong Limited.[7]

The RP-HK Agreement specifically mandates the consideration of the totality of the ***acts or omissions alleged against the person***, and further mandates not referring to the elements of the offense prescribed by the law of the requesting party. This is to create the greatest comity between the Philippines and Hong Kong, which, in turn, would allow for the RP-HK Agreement to be more effective.

The first charge against respondent alleges the following: *first*, that Juan Antonio Muñoz was an employee of the Bangko Sentral ng Pilipinas; *second*, that he accepted the amount of US$1,020,000.00 as a gift, loan, fee, reward, or commission; *third*, that the gift was an inducement or reward for doing or having done an act in relation to the Bangko Sentral ng Pilipinas' affairs or business; and *fourth*, that the act consisted of concealing payments relating to gold or silver dealings payable to or on account of the Bangko Sentral ng Pilipinas, by Mocatta Hong Kong Limited.[8]

The RP-HK Agreement requires us to ask, ***without reference to the elements of the offense prescribed by the law of the requesting party***, whether the totality of the acts or omissions alleged against respondent constitutes an offense against the laws of Hong Kong. It likewise requires us to ask whether the totality of the acts or omissions alleged against respondent constitutes an offense against the laws of the Philippines.

Respondent's acts are corrupt practices under Section 3(b) of Republic Act No. 3019:[9]

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing

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[7] *Id*. at 15.

[8] *Id*. at 11.

[9] Anti-Graft and Corrupt Practices Act (1960).

law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . . . .

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

They also appear to be an offense under Section 3(h):

Section 3. Corrupt practices of public officers.

. . . . . .

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

Thus, the totality of the acts or omissions alleged against respondent constitutes an offense against Philippine laws.

Respondent's acts likewise constitute an offense under Section 9(1)(a) of the Prevention of Bribery Ordinance, Cap. 201, which punishes:

(1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –

(a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business[.]

The intent of both statutes is the same. Corruption is accepted as a bane to good governance. Its eradication is not merely desirable; it is a necessity. Corruption undermines the totality of government. The fair but decisive prosecution of those responsible for the acts contributes to its effective deterrence.

Every act of corruption involves both a public officer and a private individual or entity. The private individual may have

actively participated in conspiracy or as the principal by inducement. It may likewise be the beneficiary of decisions made by public officers, and may be done primarily or solely for motives that do not redound to the public's welfare.

The treaty clearly commands both jurisdictions not to frustrate the ends of justice by unnecessarily truncating the acts being punished through resort to conjectural technical possibilities. The letter and intent of both the treaty and our criminal laws should be respected.

Thus, as the totality of the acts alleged against respondent is punishable under the laws of both the Philippines and Hong Kong and is punishable by imprisonment of more than one (1) year, surrender should be granted under Article 2 of the RP-HK Agreement.

When the Court of Appeals dropped the charge of *accepting an advantage as an agent* instead of looking at the totality of the acts alleged, it delved into the provisions of Hong Kong law, as well as the intent behind it:

Clive Stephen Grossman, Senior Counsel of the Hong Kong Bar Association, in behalf of respondent-appellant, explains the legislative intent behind the enactment of the Prevention of Bribery (POB) Ordinance, which defines the aforesaid offense, to wit:

1. The POB (Prevention of Bribery Ordinance) was promulgated in 1971 in Hong Kong to combat corruption which was then rife in the territory. Unlike many other statutes at the time, this was not borrowed or copied from an English statute but was created specifically to deal with problems that then existed locally.

2. It is essentially a two-part statute, concerned not only with corruption by public officials but also with corruption in the private sector. Both forms of corruption attract severe penalties which were intended to eliminate, or at least reduce, endemic corruption in Hong Kong. For that reason, many new offences were created, including Section 9(1)(a) but, I emphasize, that this was a peculiarly home-grown statute designed for Hong Kong conditions.

. . . . . .

6. The essential elements of the offence can be gleaned from the above. In short they are that an advantage (as defined) must have been accepted, without lawful authority or reasonable excuse, and it must have been solicited or accepted as an inducement or reward for doing any of the matters in sub-section (a) of 9(1). The offence hits both the asker of the bribe and the giver of the bribe. . .

. . . . . .

8. I believe some countries have enacted statutes based on our POB but apart from those, I am unaware of any countries which have statutory provisions which mirror Section 9(1)(a).

Speaking for petitioner-appellee, on the other hand, Ian Charles McWalters, Senior Assistant Director of Public Prosecutions in the Department of Justice of the HKSAR, explains the nature of the offenses enumerated in Section 9 of the POB, viz:

8. A person can be guilty of a POBO bribery offence if he offers an advantage to an agent, or being an agent, he solicits or accepts an advantage. However there is no mention[ ]of the word corruption, or variants of it, in these offences. Proof of corruption comes from establishing that the advantage was offered, solicited or accepted "as an inducement to, reward for or otherwise on account of" the agent doing inter alia "an act in his capacity as a public servant" (public sector bribery) or "an act in relation to his principal's affairs or business" (private sector bribery). The private sector bribery offence is Section 9 of the POBO and its language is derived from Section 1 of the United Kingdom's Prevention of Corruption Act of 1906.

Clearly then, both parties are in congruence that the crime of *accepting an advantage as an agent* in Section 9 of HKSAR's POB penalizes the unauthorized giving and receiving of bribes or other benefits as a result of acting in behalf of one's principal. In our jurisdiction, when such happens in the private sector as is alleged in the instant case, the same is not a crime as no law defines and punishes such act. *Nullum crimen nulla poena sine lege*. There is no crime where there is no law punishing it. Hence, this crime does not satisfy

the double criminality requirement in extradition proceedings.[10] (Emphasis in the original)

However, there is no question that Hong Kong law punishes the acts alleged against respondent. Consequently, under the RP-HK Agreement, the legislative intent behind the enactment of the Prevention of Bribery Ordinance is irrelevant in determining whether the offense is extraditable.

Further, although the Court of Appeals maintained that the unauthorized giving and receiving of bribes was "alleged" to have happened in the private sector, a close reading of the acts alleged in the first charge reveals no mention of the private sector. Thus, the Court of Appeals went inappropriately beyond the allegations in the charges and proceeded to go into the merits of the case filed in Hong Kong. In essence, it predicted the evidence, weighed it as a conjecture, and rendered a judgment of fact for Hong Kong.

This violates the basic principles of international comity and due process. Therefore, the Court of Appeals gravely abused its discretion.

However, the ponencia, in light of the testimony of the Senior Assistant Director of Public Prosecutions of the Hong Kong Department of Justice, ruled that the law used to charge respondent only applies to private sector bribery. It expressly declared that Section 9 of the Prevention of Bribery Ordinance of Hong Kong applies solely to private sector bribery, thus:

> It cannot be argued that Section 9(1)(a) of the [Prevention of Bribery Ordinance] encompasses both private individuals and public servants. A Section 9(1)(a) offense has a parallel [Prevention of Bribery Ordinance] provision applicable to public servants, to wit:
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> . . . . . .
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> Considering that the transactions were entered into by and in behalf of the Central Bank of the Philippines, an instrumentality of the Philippine Government, Muñoz should be charged for the offenses

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[10] *Rollo,* pp. 23-25, Court of Appeals Decision.

not as a regular agent or one representing a private entity but as a public servant or employee of the Philippine Government. Yet, because the offense of accepting an advantage as an agent charged against him in HKSAR is one that deals with private sector bribery, the conditions for the application of the double criminality rule are obviously not met[.][11]

To repeat, under treaty, this Court should not analyze the elements of the offense prescribed by Hong Kong law. It is enough that the acts alleged against respondent constitute an offense against the laws of the Philippines and the laws of Hong Kong. Nonetheless, in light of the ponencia, we point out that the Hong Kong Court of Final Appeal has already settled that the term "agent" in Section 9 of the Prevention of Bribery Ordinance also covers public servants in another jurisdiction. In *B v. The Commissioner of the Independent Commission Against Corruption*,[12] the Hong Kong court explains:

2. This appeal is concerned with what the legal position would be if a bribe is offered in Hong Kong to a public official of a place outside Hong Kong. Before turning to the questions of law which arise, it is necessary to note the terms of the relevant statutory provisions, mainly of the Prevention of Bribery Ordinance, Cap. 201 ("the POBO").

. . . . . .

5. Then one turns to what it is provided that the expressions "public body" and "public servant" mean. And it will be seen that they are confined to Hong Kong public bodies and Hong Kong public servants. It is to be noted, however, that s.2(1) does not say what the words "agent" and "principal" mean. Rather does it say what they include. So their definitions are inclusive and not exhaustive.

. . . . . .

8. Three questions of law arise. They may be stated thus:

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[11] *Ponencia*, p. 14.

[12] *B v. Comm. Of the Independent Commission Against Corruption*, [2010] 13H.K.C.F.A.R. 1<http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=69505&QS=%2B&TP=JU> (visited April 1, 2016).

> (1) Where an advantage is offered in Hong Kong, does s.9(2) of the POBO apply even if the offeree is a public official of a place outside Hong Kong and the act or forbearance concerned is in relation to his public duties in that place outside Hong Kong?
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> . . . . . .
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> *First question answered in the affirmative*
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> . . . . . .
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> 19. On an ordinary reading, a public official of a place outside Hong Kong comes within the phrase "any person employed by or acting for another" in the definition of "agent" provided by s.2(1) of the POBO. Also on an ordinary reading, his public duties in that place come within the phrase "in relation to his principal's affairs" to be found in s.9(2) of the POBO. So on an ordinary reading of the relevant statutory provisions, the answer to the first question of law is "Yes". In other words, where an advantage is offered in Hong Kong, s.9(2) of the POBO does apply even if the offeree is a public official of a place outside Hong Kong and the act or forbearance concerned is in relation to his public duties in that place outside Hong Kong.
>
> . . . . . .
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> 22. So I answer the first question in the affirmative. In other words, I hold where an advantage is offered in Hong Kong, s.9(2) of the POBO applies even if the offeree is a public official of a place outside Hong Kong and the act or forbearance concerned is in relation to his public duties in that place outside Hong Kong.[13]

Another reason why an extradition treaty requires that courts take into consideration the totality of circumstances, and not the elements of the offense, is that courts cannot be expected to be experts in the other jurisdiction's jurisprudence. A misinterpretation of Hong Kong's laws by a Philippine court will, indeed, be fraught with danger that could have been avoided.

ACCORDINGLY, I vote to **GRANT** the Petition.

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[13] *Id*.

FIRST DIVISION

[A.C. No. 2404. August 17, 2016]

NILO B. DIONGZON, *petitioner*, *vs.* **ATTY. WILLIAM MIRANO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; THE LAWYER-CLIENT RELATIONSHIP BEGINS FROM THE MOMENT A CLIENT SEEKS THE LAWYER'S ADVICE UPON A LEGAL CONCERN, AND FROM THAT MOMENT ON, THE LAWYER IS BOUND TO RESPECT THE RELATIONSHIP AND TO MAINTAIN THE TRUST AND CONFIDENCE OF HIS CLIENT.— The lawyer-client relationship begins from the moment a client seeks the lawyer's advice upon a legal concern. The seeking may be for consultation on transactions or other legal concerns, or for representation of the client in an actual case in the courts or other fora. From that moment on, the lawyer is bound to respect the relationship and to maintain the trust and confidence of his client. No written agreement is necessary to generate a lawyer-client relationship, but in formalizing it, the lawyer may present a retainer agreement to be considered and agreed to by the client. As with all contracts, the agreement must contain all the terms and conditions agreed upon by the parties.

2. ID.; ID.; ID.; THE RETURN OF THE RETAINER FEE WILL NOT ALTER THE JURIDICAL EXISTENCE OF THE LAWYER-CLIENT RELATIONSHIP.— The lawyer-client relationship between the parties was duly established beginning in 1979 and lasted until 1982. The respondent's claim that he returned the retainer fee did not alter the juridical existence of their lawyer-client relationship. When the complainant consulted him on the sale of the boats to the Gonzaleses, the respondent reviewed the contracts of sale in the capacity of the complainant's lawyer, and even notarized the same. He became aware of the details of the sale by virtue of the confidentiality generated by his lawyer-client relationship with the complainant.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 15.03 THEREOF; CONFLICT OF INTEREST WHEN IT EXISTS; A LAWYER HAS A DUTY TO PRESERVE HIS CLIENT'S CONFIDENCE IN HIM, EVEN IF THEIR RELATIONSHIP ENDS, AND TO USE AGAINST THE CLIENT ANY INFORMATION THE LAWYER GAINS DURING THE RELATIONSHIP IS DEPLORABLE AND UNETHICAL.— Canon 15 of the *Code of Professional Responsibility* enjoins lawyers to observe candor, fairness and loyalty in all their dealings and transactions with their clients. Specifically, Canon 15.03 demands that: "*A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts*." A conflict of interest exists when a lawyer represents inconsistent interests of two opposing parties, like when the lawyer performs an act that will injuriously affect his first client in any matter in which he represented him, or when the lawyer uses any knowledge he previously acquired from his first client against the latter. The prohibition against conflict of interest is founded on principles of public policy and good taste, inasmuch as the lawyer-client relationship is based on trust and confidence. A lawyer has a duty to preserve his client's confidence in him, even if their relationship ends. The purpose is to assure freedom of communication between the lawyer and the client in order to enable the former to properly represent and serve the latter's interests. To use against the latter any information the former gains during the relationship is deplorable and unethical.

4. ID.; ID.; ID.; ID.; RESPONDENT-LAWYER IS GUILTY OF REPRESENTING CONFLICTING INTERESTS.—When he appeared in court for the benefit of the Gonzaleses to try the case against the complainant, the respondent unquestionably incurred a conflict of interest. Having become privy to the terms of the sale subject of the civil case, the conflict of interest became unmitigated because the complainant had not expressly consented in writing to his appearing in behalf of the Gonzaleses. It would have been more prudent for him to have excused himself from representing either party in the civil case.

5. ID.; ID.; ID.; ID.; THE PRAISEWORTHINESS OF ONE'S ACCOMPLISHMENTS AND PROFESSIONAL REPUTATION NEVER FURNISHES THE LICENSE FOR ANY ETHICAL LAWYER TO FLAGRANTLY AND KNOWINGLY VIOLATE THE CODE OF PROFESSIONAL RESPONSIBILITY.— In cavalier fashion, the respondent has cited his accomplishments as a member and officer of the IBP in his region to buttress his claim of being more credible than the complainant, supposedly a convicted felon. But such a defense is unworthy of consideration in this instance because the praiseworthiness of one's accomplishments and professional reputation never furnishes the license for any ethical lawyer to flagrantly and knowingly violate the *Code of Professional Responsibility*.

6. ID.; ID.; ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW IMPOSED ON THE LAWYER FOUND GUILTY OF REPRESENTING CONFLICTING INTERESTS.— On the penalty, we note that suspension from the practice of law for one year was imposed on the lawyer who had appeared as defense counsel for the accused in an *estafa* case despite having written and sent the demand letter for the complainant in the same case. In another case, the same penalty was imposed on the lawyer who had initially drafted a deed of sale for the client, and who eventually filed a case against said client to annul the same contract. Such penalty is appropriate and commensurate for this case.

APPEARANCES OF COUNSEL

Campanilla Ponce Law Offices for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

A lawyer who agrees to represent a client's interests in the latter's business dealings is duty-bound to keep the confidence of such client, even after their lawyer-client relationship had ended. If he represents any other party in a case against his

former client over a business deal he oversaw during the time of their professional relationship, he is guilty of representing conflicting interests, and should be properly sanctioned for ethical misconduct.

The Case

Before the Court is the petition for review of the Resolution No.XX-2013-160 adopted by the Board of Governors of the Integrated Bar of the Philippines (IBP) on the complaint for disbarment filed by the complainant against respondent Atty. William Mirano,[1] whereby the IBP Board of Governors found the respondent guilty of representing conflicting interest, and recommended the penalty of suspension from the practice of law for one year. The respondent assails the recommendation of the IBP Board of Governors.

Antecedents

On the dates material to this case, the complainant was a businessman engaged in the fishing industry in Bacolod City, Negros Occidental. In 1979, he retained the respondent as his legal counsel to represent him as the plaintiff in Civil Case No. 10679 then pending in the City Court of Bacolod City (Branch 1). In November 1981, the complainant again retained the respondent as his lawyer in relation to the execution of two deeds of sale covering the boats the former was selling to Spouses Almanzur and Milagros Gonzales (Gonzaleses).[2] In January 1982, the parties herein signed a retainer contract for legal services that covered legal representation in cases and transactions involving, the fishing business of the complainant.[3]

In February 1982, the Gonzaleses sued the complainant for replevin and damages, and sought the annulment of the

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[1] *Rollo*, p. 1590.

[2] *Id*. at 11-17, (Annexes D and E of the Complaint).

[3] *Id*. at 3.

aforementioned deeds of sale.[4] They were represented by Atty. Romeo Flora, the associate of the respondent in his law office. It appears that the bond they filed to justify the manual delivery of the boats subject of the suit had been notarially acknowledged before the respondent without the knowledge and prior consent of the complainant;[5] and that the respondent eventually entered his appearance as the counsel for the Gonzaleses against the respondent.[6]

On May 24, 1982, therefore, the complainant initiated this administrative complaint for disbarment against the respondent by verified letter-complaint.[7]

The respondent thereafter sought several times the extension of the time for him to file his comment.

In the meantime, Atty. Flora, in an attempt to explain why the respondent had appeared as counsel for the Gonzaleses, filed a manifestation claiming that the Gonzaleses had been his own personal clients, and that he had only requested the respondent's appearance because he had been indisposed at the time.[8]

The complainant belied the explanation of Atty. Flora, however, and pointed out that Atty. Flora was actually a new lawyer then working in the law office of the respondent.[9] As proof, the complainant submitted the stationery showing the letterhead of the law office of the respondent that included Atty. Flora's name as an associate.[10]

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[4] *Id*. at 1592.

[5] *Id*. at 19, (Annex G, Complaint).

[6] *Id*. at 20, (Annex H of the Complaint).

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

[8] *Id*. at 32-34.

[9] *Id*. at 46-51.

[10] *Id*. at 52.

In his answer dated September 9, 1982,[11] the respondent stated that the complainant had been his client in a different civil case; that the complainant had never consulted him upon any other legal matter; that the complainant had only presented the deeds of sale prepared by another lawyer because he had not been contented with the terms thereof; that he had not been the complainant's retained counsel because the retainer agreement did not take effect; that he had returned the amount paid to him by the complainant; that he had appeared for the Gonzaleses only after their evidence against the complainant had been presented; that the complainant had approached him when he needed a lawyer to defend him from an *estafa* charge; and that the complainant had even wanted him to falsify documents in relation to that *estafa* case, but because he had refused his bidding, the complainant had then filed this administrative case against him.[12]

Proceedings before the IBP

The complaint was referred to the IBP for investigation. The case was heard over a long period of time spanning 1985 to 2003,[13] and the IBP Board of Governors finally recommended on February 13, 2013 that the respondent be held guilty of conflict of interest for appearing as the counsel for the opponents of the complainant with whom he had an existing lawyer-client relationship, a gross violation of his ethical duties as an attorney; and that he should be punished with suspension from the practice of law for one year.

The Court noted the resolution of the IBP Board of Governors on April 1, 2014.

The respondent filed in this Court a *Manifestation with Motion* and a *Supplement to Manifestation with Motion*, wherein he proceeded to argue against the findings although he initially

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[11] *Id*. at 65-78.

[12] *Id*.

[13] *Id*. at 347-1587.

claimed not to have been furnished with the IBP Board of Governors' recommendation. He posited that he still had a pending *Motion for Reconsideration* in the IBP, and requested that this case be remanded to the IBP for disposition.

Ruling of the Court

We uphold the findings and recommendations of the IBP Board of Governors because they were substantiated by the records.

On the preliminary matter of procedure being raised by the respondent, it is unnecessary to remand this case to the IBP for further investigation and disposition by the IBP. Remanding the case to the IBP would be superfluous and unnecessary. The complaint was filed in 1982, and since then the case underwent three decades of hearings before different investigating commissioners of the IBP. The matters subject of the complaint were extensively covered and sifted. In our view, the records are already adequate for resolution of the charge against the respondent, which, after all, is something that only the Court can ultimately do.

Was the respondent guilty of representing conflict of interest?

The lawyer-client relationship begins from the moment a client seeks the lawyer's advice upon a legal concern. The seeking may be for consultation on transactions or other legal concerns, or for representation of the client in an actual case in the courts or other fora. From that moment on, the lawyer is bound to respect the relationship and to maintain the trust and confidence of his client. No written agreement is necessary to generate a lawyer-client relationship, but in formalizing it, the lawyer may present a retainer agreement to be considered and agreed to by the client. As with all contracts, the agreement must contain all the terms and conditions agreed upon by the parties.

In this case, the respondent presented such a retainer contract to the complainant, the terms of which are stated below:

The CLIENT retains and employs the ATTORNEY to take charge of the legal matters of the former in connection with his fishing business, and the attorney accepts such retainer and employment subject to the following terms and conditions, to wit:

1. That the term of this contract shall be for two "2" years beginning February, 1982 but is deemed automatically renewed for the same period if not terminated by both parties by virtue of an agreement to that effect and signed by them;

2. That the compensation to be paid by the client for the services of the attorney, shall be three hundred pesos (₱300.00) a month;

3. That the attorney may be consulted at all times by CLIENT on all business requiring his professional advice and opinion and when the ATTORNEY gives a written opinion, a copy shall be sent to the CLIENT;

4. That the duties of the attorney in this retainer contract shall include consultations, opinions, legal advices, preparations and drafting of contracts and other legal papers, and other legal works, in connection with the business of the CLIENT, except those cases involving trials in court, which if they are entrusted to the ATTORNEY, shall be subject to a new agreement;[14]

Both parties signed their retainer contract on January 20, 1982. Contrary to the assertion of the respondent, the retainer agreement did not contain a suspensive condition that affected its effectivity as of the date of its execution. It simply stipulated that the respondent would represent the interests of the complainant in all matters pertaining to his fishing business, thereby formalizing their lawyer-client relationship. The respondent's insistence that the complainant should return all the checks to the Gonzaleses relative to the sale of the fishing boats was clearly not part of the contract.

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[14] *Id*. at 9-10, (Annex B of complaint).

The lawyer-client relationship between the parties was duly established beginning in 1979 and lasted until 1982. The respondent's claim that he returned the retainer fee did not alter the juridical existence of their lawyer-client relationship. When the complainant consulted him on the sale of the boats to the Gonzaleses, the respondent reviewed the contracts of sale in the capacity of the complainant's lawyer, and even notarized the same. He became aware of the details of the sale by virtue of the confidentiality generated by his lawyer-client relationship with the complainant.

Canon 15 of the *Code of Professional Responsibility* enjoins lawyers to observe candor, fairness and loyalty in all their dealings and transactions with their clients. Specifically, Canon 15.03 demands that: "*A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts*." A conflict of interest exists when a lawyer represents inconsistent interests of two opposing parties, like when the lawyer performs an act that will injuriously affect his first client in any matter in which he represented him, or when the lawyer uses any knowledge he previously acquired from his first client against the latter.[15] The prohibition against conflict of interest is founded on principles of public policy and good taste, inasmuch as the lawyer-client relationship is based on trust and confidence.[16] A lawyer has a duty to preserve his client's confidence in him, even if their relationship ends. The purpose is to assure freedom of communication between the lawyer and the client in order to enable the former to properly represent and serve the latter's interests. To use against the latter any information the former gains during the relationship is deplorable and unethical.

When he appeared in court for the benefit of the Gonzaleses to try the case against the complainant, the respondent unquestionably incurred a conflict of interest. Having become

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[15] *Hornilla v. Salunat*, A.C. 5804, July 1, 2003, 405 SCRA 220, 223.

[16] *Hilado v. David*, 84 Phil. 569, 578 (1949).

privy to the terms of the sale subject of the civil case, the conflict of interest became unmitigated because the complainant had not expressly consented in writing to his appearing in behalf of the Gonzaleses. It would have been more prudent for him to have excused himself from representing either party in the civil case.

In cavalier fashion, the respondent has cited his accomplishments as a member and officer of the IBP in his region to buttress his claim of being more credible than the complainant, supposedly a convicted felon. But such a defense is unworthy of consideration in this instance because the praiseworthiness of one's accomplishments and professional reputation never furnishes the license for any ethical lawyer to flagrantly and knowingly violate the *Code of Professional Responsibility*.

On the penalty, we note that suspension from the practice of law for one year was imposed on the lawyer who had appeared as defense counsel for the accused in an *estafa* case despite having written and sent the demand letter for the complainant in the same case.[17] In another case, the same penalty was imposed on the lawyer who had initially drafted a deed of sale for the client, and who eventually filed a case against said client to annul the same contract.[18] Such penalty is appropriate and commensurate for this case.

ACCORDINGLY, the Court **AFFIRMS** the Resolution adopted on February 13, 2013 by the Board of Governors of the Integrated Bar of the Philippines; **FINDS** and **DECLARES** Atty. William N. Mirano guilty of ethical misconduct due to conflict of interest, and, **ACCORDINGLY**, **SUSPENDS** him from the practice of law for **ONE YEAR**, effective immediately upon receipt of this decision.

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[17] *Castro-Justo v. Galing*, A.C. 6174, November 16, 2011, 660 SCRA 140, 147.

[18] *Aniñon v. Sabitsana, Jr.*, A.C. 5098, April 11, 2012, 669 SCRA 76, 82-83, 86.

Let copies of this decision be entered in the personal records of Atty. Mirano in the Office of the Bar Confidant and the Integrated Bar of the Philippines; and a copy of this decision be furnished to the Office of the Court Administrator for dissemination to all courts in the country.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 7437. August 17, 2016]

AVIDA LAND CORPORATION (FORMERLY LAGUNA PROPERTIES HOLDINGS, INC.), *complainant, vs.* **ATTY. AL C. ARGOSINO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS ARE REQUIRED TO EXERT EVERY EFFORT AND CONSIDER IT THEIR DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE, BUT THEY MUST EMPLOY ONLY FAIR AND HONEST MEANS TO ATTAIN THE LAWFUL OBJECTIVES OF THEIR CLIENT. — As a lawyer, respondent indeed owes fidelity to the cause of his client and is expected to serve the latter with competence and diligence. As such, respondent is entitled to employ every honorable means to defend the cause of his client and secure what is due the latter. Professional rules, however, impose limits on a lawyer's zeal and hedge it with necessary restrictions and qualifications. Under the Code of Professional Responsibility,

lawyers are required to exert every effort and consider it their duty to assist in the speedy and efficient administration of justice. The Code also obliges lawyers to employ only fair and honest means to attain the lawful objectives of their client.

2. ID.; ID.; RULES 10.3 AND 12.04 OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE LAWYER'S OATH; A LAWYER WHO MADE A MOCKERY OF JUDICIAL PROCESSES, DISOBEYED JUDICIAL ORDERS, AND ULTIMATELY CAUSED UNJUST DELAYS IN THE ADMINISTRATION OF JUSTICE VIOLATES THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE LAWYER'S OATH.— Respondent cannot hide behind the pretense of advocating his client's cause to escape liability for his actions that delayed and frustrated the administration of justice. x x x. Respondent argues that he could not have possibly delayed the execution of the judgment, as no Motion for Execution of Judgment had been filed when the instant administrative case was instituted. This argument can no longer be considered viable, as he continued to employ dilatory tactics even after the Writ of Execution had already been issued, and complainant later filed Supplemental Complaints against him. What is patent from the acts of respondent - as herein narrated and evident from the records - is that he has made a mockery of judicial processes, disobeyed judicial orders, and ultimately caused unjust delays in the administration of justice. These acts are in direct contravention of Rules 10.3 and 12.04 of the Code of Professional Responsibility x x x. Further, respondent violated the Lawyer's Oath by disobeying the legal orders of a duly constituted authority, and disregarding his sworn duty to "delay no man for money or malice."

3. ID.; ID.; ID.; ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW IMPOSED FOR VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE LAWYER'S OATH.— While the IBP similarly found respondent guilty of professional misconduct, we find that its recommended penalty of reprimand is not commensurate with respondent's transgression. Under the IBP Commission on Bar Discipline's Guidelines for Imposing Lawyer Sanctions (IBP Guidelines), reprimand is generally appropriate as a penalty when a lawyer's negligence causes injury or potential injury

> to a client or a party. ln this case, respondent's injurious acts were clearly not caused by his negligence in following procedures or court orders. He knowingly abused the legal process and violated orders of the HLURB Board and Regional Office with the intent of delaying the execution of a judgment that had long been final and executory. That he continued to do so even if a Complaint was already filed against him proved that his acts were deliberate. x x x . We have meted out the penalty of one to two years' suspension in cases involving multiple violations of professional conduct that have caused unjust delays in the administration of justice. The IBP Guidelines similarly provide that "suspension is appropriate when a lawyer knows that he is violating a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding." Respondent, therefore, should not receive a mere reprimand; he should be suspended from the practice of law for a period of one (1) year.

APPEARANCES OF COUNSEL

Nicholas F. Bontoc for complainant.

D E C I S I O N

SERENO,[*] *C.J.*:

The only issue before Us is whether respondent's act of filing numerous pleadings, that caused delay in the execution of a final judgment, constitutes professional misconduct in violation of the Code of Professional Responsibility and the Lawyer's Oath.

In its questioned Resolution[1], the Board of Governors (Board) of the Integrated Bar of the Philippines (IBP) adopted and approved the Report and Recommendation[2] of the Investigating Commissioner,[3] who found respondent guilty of violating

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[*] Chairperson.

[1] Dated 22 June 2013; *Rollo*, p. 890.

[2] *Id*. at 891-902.

[3] Atty. Manuel T. Chan.

Canon 12, Rule 12.04[4] of the Code of Professional Responsibility for delaying the enforcement of a writ of execution, and recommended that the latter be reprimanded or censured with a stern warning that a repetition of the same behavior in the future shall merit a harsher penalty.[5]

ANTECEDENT FACTS

Complainant is a Philippine corporation engaged in the development and sale of subdivision houses and lots.[6] Respondent was counsel for Rodman Construction & Development Corporation (Rodman).[7]

Complainant entered into a Contract to Sell with Rodman,[8] under which the latter was to acquire from the former a subdivision house and lot in Santa Rosa, Laguna through bank financing. In the event that such financing would be disapproved, Rodman was supposed to pay the full contract price of ₱4,412,254.00, less the downpayment of ₱1,323,676.20, within 15 days from its receipt of the loan disapproval.[9]

After settling the downpayment, Rodman took possession of the property.[10]

In three separate letters[11], complainant demanded that Rodman pay the outstanding balance of ₱3,088,577.80.[12] Both parties

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[4] Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of judgment or misuse Court processes.

[5] *Rollo*, p. 902.

[6] *Id*. at 2.

[7] *Id*. at 4.

[8] *Id*. at 3.

[9] *Id*.

[10] *Id*. at 893.

[11] Dated 24 September 1998, 13 January 1999, and 1 February 1999.

[12] *Id*. at 841.

agreed that the amount would be paid on a deferred basis within 18 months.[13]

Rodman made a partial payment of ₱404,782.56 on 22 March 1999. It also claimed to have made other payments amounting to ₱1,458,765.06 from March 1999 to July 1999, which complainant disputed.[14]

Consequently, complainant rescinded the Contract to Sell by notarial act, and demanded that Rodman vacate the subject property.[15]

As Rodman remained in possession of the property,[16] complainant filed an unlawful detainer case against the former before the Municipal Trial Court (MTC) of Makati City.[17]

Soon after, Rodman filed a Complaint before the Housing and Land Use Regulatory Board (HLURB) seeking the nullification of the rescission of the Contract to Sell. It also prayed for the accounting of payments and the fixing of the period upon which the balance of the purchase price should be paid.[18]

The MTC took cognizance of Rodman's HLURB Complaint, and dismissed the unlawful detainer case on the ground of lack of jurisdiction.[19]

HLURB Regional Office No. IV (HLURB Regional Office), through its arbiter Atty. Ma. Perpetua Y. Aquino, similarly dismissed Rodman's Complaint and ordered it to pay damages

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[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 299-317.

[18] *Id*. at 319-328.

[19] *Id*. at 337-338.

and attorney's fees.[20] Rodman appealed the ruling to the HLURB Board of Commissioners (HLURB Board).[21]

In its subsequent Decision,[22] the HLURB Board modified the arbiter's ruling, directing Rodman "to immediately pay its outstanding balance failing in which respondent shall have the right to rescind the contract subject to a refund of all the sums paid by complainant less deductions as may be stipulated in the contract and less monthly compensation for the use of the premises at the rate of 1% of the contract price per month."[23]

Complainant filed a Motion for Reconsideration[24] of the HLURB Board's Decision, questioning the order to refund the sums paid by Rodman less deductions in case of a rescission of the contract. Rodman filed a Comment/Opposition[25] to complainant's motion and sought a clarification of certain aspects of the Decision,[26] but did not move for reconsideration.

The HLURB Board thereafter issued a Resolution[27] modifying its earlier Decision. Thus:

> x x x [T]he complainant (Rodman) is directed to immediately pay to the respondent (herein complainant) its outstanding balance of ₱1,814,513.27, including interests and penalties which may have accrued in the meantime, failing in which, the respondent shall have the right to rescind the contract subject to a refund of all the sums paid by the complainant less deductions as may be stipulated in the contract and less monthly compensation for the use of the premises at the rate of 1% of the contract price per month.

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[20] *Id*. at 47-55.

[21] *Id*. at 57-89.

[22] *Id*. at 41-45.

[23] *Id*. at 45.

[24] *Id*. at 117-127.

[25] *Id*. at 128-140.

[26] *Id*.

[27] *Id*. at 152-153.

As neither of the parties appealed the judgment within the period allowed, it became final and executory.

The parties thereafter attempted to arrive at a settlement on the judgment, but their efforts were in vain.[28] With the judgment award still not satisfied after the lapse of six months, complainant filed a motion for writs of execution and possession[29] before the HLURB Board.

Respondent filed an Opposition/Comment on the motion and subsequently a Rejoinder[30] to complainant's Reply.[31]

In an Order[32] dated 10 August 2006, the HLURB Board granted complainant's motion and remanded the case records to the HLURB Regional Office for proceedings on the execution of the judgment and/or other appropriate disposition.

Respondent moved for reconsideration of the Order dated 10 August 2006,[33] raising issues on the computation of interests. Complainant filed an Opposition[34] and Rejoinder,[35] to which respondent filed a Reply[36] and Sur-rejoinder.[37]

On 17 January 2007, the HLURB Board issued an Order[38] denying Rodman's Motion for Reconsideration. It said that the computation of interests and penalties, as well as other matters concerning the implementation of the final and executory

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[28] *Id*. at 154-169.

[29] *Id*. at 170-174.

[30] *Id*. at 442-445.

[31] *Id*. at 432-441.

[32] *Id*. at 175-176.

[33] *Id*. at 181-185.

[34] *Id*. at 186-193.

[35] *Id*. at 469-476.

[36] *Id*. at 461-468.

[37] *Id*. at 477-486.

[38] *Id*. at 195-196.

Decision, shall be dealt with in the execution proceedings before the Regional Office. It furthermore enjoined the parties from filing any pleading in the guise of an appeal on collateral issues or questions already passed upon.[39]

On 5 March 2007, respondent filed a Motion for Computation of Interest[40] before the HLURB Regional Office, citing the disagreement between the parties as to the reckoning date of the accrual of interest. Complainant filed its Opposition with Motion for Issuance of Writ of Execution and Possession.[41]

In its Order[42] dated 31 July 2007, the HLURB Regional Office accordingly computed the interest due, arriving at the total amount of ₱2,685,479.64 as payment due to complainant. It also directed the issuance of a Writ of Execution implementing the HLURB Board's earlier Resolution.[43]

Instead however of complying with the Order and the Writ of Execution,[44] respondent, on behalf of Rodman, filed a Motion (1) to Quash the Writ of Execution; (2) for Clarification; and (3) to Set the Case for Conference.[45] The said motion injected new issues and claims and demanded the inclusion in the Order of a "provision that upon actual receipt of the amount of ₱2,685,479.64, [complainant] should simultaneously turn-over the duplicate original title to Rodman." (Emphasis omitted)

Respondent also filed a Petition[46] to Cite Complainant in Contempt for issuing a demand letter to Rodman despite the pendency of the latter's Motion to Quash the Writ of Execution.

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[39] *Id*.

[40] *Id*. at 487-490.

[41] *Id*. at 273-285.

[42] *Id*. at 750-752.

[43] *Id*. at 752.

[44] *Id*. at 746-749, issued on 16 August 2007.

[45] *Id*. at 693-698.

[46] *Id*. at 736-744.

On 7 November 2007, the HLURB Regional Office summoned the parties to a conference to thresh out the problems with the execution of the writ. The conference, however, failed to serve its purpose.

Respondent thereafter moved for the inhibition of Atty. Aquino as arbiter of the case and for the setting of a hearing on the Petition to Cite Complainant in Contempt.[47] The motion alleged that Arbiter Aquino had shown bias in favor of complainant, and that she had failed to set the Petition for hearing.[48]

In an Order dated 23 April 2008,[49] the HLURB Regional Office (1) denied the motion for inhibition; (2) granted complainant's Motion for Issuance of Alias Writ of Execution and Writ of Possession; and (3) directed complainant to comment on the Petition citing the latter for contempt.

Respondent moved for reconsideration of the aforementioned Order, reiterating that Arbiter Aquino should inhibit herself from the case because of her bias. Arbiter Aquino eventually yielded and ordered the re-raffle of the case, which went to Arbiter Raymundo A. Foronda.

When complainant filed an Urgent *Ex-Parte* Motion to Resolve Pending Motion for the Issuance of an Alias Writ of Execution, respondent submitted his vehement Opposition. He insisted that his Motion to be Furnished with Notice of Re-raffle should be acted upon first and argued that "the merits of the instant case as well as the motions filed in relation thereto must be re-evaluated by the new handling arbiter after the re-raffling x x x."

On 5 January 2009, respondent filed a Manifestation on the Notice of Conference issued by Arbiter Foronda. The Manifestation stated that Rodman would be attending the conference, not to submit itself to the jurisdiction of Arbiter Foronda, but to facilitate the re-raffling of the case.

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[47] *Id*. at 776-785.

[48] *Id*.

[49] *Id*. at 786-789.

On 16 January 2009, respondent filed a Motion for Inhibition against Arbiter Foronda, claiming that his designation violated due process. He said the re-raffle was questionable because he was not notified of its conduct despite his earlier Motion to be Furnished with Notice of Re-raffle.

Thereafter, the parties submitted various pleadings on the issue of whether or not Arbiter Foronda could rule on the pending motions.

In a Resolution dated 22 September 2009, Arbiter Foronda held that (1) the notice of re-raffle was not an indispensable prerequisite for a substitute arbiter to have jurisdiction over a case at the execution stage; (2) the claim of Rodman that its Motion for Reconsideration of the 23 April 2008 Order had remained unresolved was rendered moot by Arbiter Aquino's eventual inhibition from the case; and (3) Rodman's prayer for the summary dismissal of complainant's motions to resolve the Motion for the Issuance of an Alias Writ of Execution was denied.

The 22 September 2009 Resolution put an end to the long-drawn-out dispute, as respondent did not file any more pleadings.

ADMINISTRATIVE COMPLAINT AGAINST RESPONDENT

On 21 February 2007, in the midst of the squabble over the HLURB case, complainant — through its vice president for project development Steven J. Dy — filed a Complaint-Affidavit[50] against respondent for alleged professional misconduct and violation of the Lawyer's Oath. The Complaint alleged that respondent's conduct in relation to the HLURB case manifested a disregard of the following tenets:[51]

1. Rule 1.03 - A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

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[50] *Id.* at 1-15.

[51] *Id*. at 1-2.

2. Canon 10 - A lawyer owes candor, fairness, and good faith to the court.

3. Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

4. Canon 12 - A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

5. Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

In his Comment,[52] respondent claimed that what primarily caused the delays in the HLURB case were the legal blunders of complainant's counsel, to wit:

1. It took complainant's counsel a period of six months to file a Motion for Writ of Execution of the HLURB Board's Decision dated 22 June 2005.[53]

2. The Motion for Writ of Execution was filed before the HLURB Board, which as an appellate body had no jurisdiction to issue the writ.[54]

Respondent also raised the issue of complainant's counsel's erroneous acts of notarial rescission and filing of an ejectment suit before the trial court. These acts allegedly contributed to the delay in the resolution of the dispute.[55]

Further, respondent argued that he could not have possibly caused delays in the execution of the Decision dated 22 June 2005 at the time the instant Complaint was filed on 21 February 2007, as complainant filed its Motion for Writ of Execution before the HLURB Regional Office only in April 2007.[56]

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[52] *Id*. at 203-242.

[53] *Id*. at 204.

[54] *Id*. at 207.

[55] *Id*. at 217.

[56] *Id*. at 211.

Lastly, respondent asserted that he merely followed his legal oath by defending the cause of his client with utmost dedication, diligence, and good faith.[57]

As respondent allegedly continued performing dilatory and frivolous tactics, complainant filed Supplemental Complaints[58] against him.

The Court referred this case to the IBP for investigation, report, and recommendation.[59]

On 22 June 2013, the IBP issued a Resolution adopting and approving the Investigating Commissioner's Report and Recommendation on the Complaint.[60] Neither party filed a motion for reconsideration or a petition within the period allowed.[61]

THE RULING OF THE COURT

Respondent is guilty of professional misconduct.

Despite the simplicity of the issue involved in the HLURB case, the path towards its resolution became long, tedious, and frustrating because of the deliberate attempts of respondent to delay the actual execution of the judgment therein. He continued to file pleadings over issues already passed upon even after being enjoined not to do so, and made unfounded accusations of bias or procedural defects. These acts manifest his propensity to disregard the authority of a tribunal and abuse court processes, to the detriment of the administration of justice.

The defense that respondent is merely defending the cause of his client is untenable.

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[57] *Id*. at 230.

[58] *Id*. at 502-508; 583-594; 625-632.

[59] *Id*. at 500.

[60] *Supra* note 1.

[61] *Id*. at 887.

As a lawyer, respondent indeed owes fidelity to the cause of his client and is expected to serve the latter with competence and diligence. As such, respondent is entitled to employ every honorable means to defend the cause of his client and secure what is due the latter.[62]

Professional rules, however, impose limits on a lawyer's zeal and hedge it with necessary restrictions and qualifications.[63] Under the Code of Professional Responsibility, lawyers are required to exert every effort and consider it their duty to assist in the speedy and efficient administration of justice.[64] The Code also obliges lawyers to employ only fair and honest means to attain the lawful objectives of their client.[65]

In *Millare v. Montero*,[66] the Court ruled that it is unethical for a lawyer to abuse or wrongfully use the judicial process — such as the filing of dilatory motions, repetitious litigation, and frivolous appeals — for the sole purpose of frustrating and delaying the execution of a judgment.

In *Garcia v. Francisco*,[67] a lawyer willfully and knowingly abused his rights of recourse — all of which were rebuffed — to get a favorable judgment. He was found to have violated his duty as a member of the bar to pursue only those acts or proceedings that appear to be just, and only those lines of defense he believed to be honestly debatable under the law.

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[62] *Pariñas v. Paguinto*, 478 Phil. 239-247 (2004), citing *Gamalinda v. Alcantara*, A.C. No. 3695, 24 February 1992, 206 SCRA 468.

[63] *Millare v. Montero*, 316 Phil. 29-37 (1995), citing Wolfram, *Modern Legal Ethics* 579-582 (1986).

[64] Code of Professional Responsibility, Canon 12.

[65] *Id*. Canon 19, Rule 19.01.

[66] *Millare v. Montero, supra* note 63, citing Edelstein, *The Ethics of Dilatory Motions Practice: Time for Change*, 44 Fordham L. Rev. 1069 (1976); *Overmeyer v. Fidelista and Deposit Co.*, 554 F.2d 539, 543 (2d Cir. 1971).

[67] *Garcia v. Francisco*, A.C. No. 3923, 30 March 1993, 220 SCRA 512.

Respondent cannot hide behind the pretense of advocating his client's cause to escape liability for his actions that delayed and frustrated the administration of justice.

He even attempted to turn the tables on complainant by pointing out that the "legal blunders" of the latter's counsel contributed to the delay in the execution of the judgment. Whether or not the actions or omissions of complainant's counsel brought dire consequences to its client's cause is not a factor in the instant case. Even assuming for argument's sake that complainant's counsel committed procedural errors that prolonged some of the case incidents, these errors did not prejudice the delivery of justice, as they were later cured. More important, the so-called "blunders" were independent of respondent's actions, which were the direct cause of the delay.

Respondent argues that he could not have possibly delayed the execution of the judgment, as no Motion for Execution of Judgment had been filed when the instant administrative case was instituted. This argument can no longer be considered viable, as he continued to employ dilatory tactics even after the Writ of Execution had already been issued, and complainant later filed Supplemental Complaints against him.

What is patent from the acts of respondent — as herein narrated and evident from the records — is that he has made a mockery of judicial processes, disobeyed judicial orders, and ultimately caused unjust delays in the administration of justice. These acts are in direct contravention of Rules 10.3 and 12.04 of the Code of Professional Responsibility, which provide:

Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of judgment or misuse court processes.

Further, respondent violated the Lawyer's Oath[68] by disobeying the legal orders of a duly constituted authority, and

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[68] I, ___ of ____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines, I will support the Constitution and obey

disregarding his sworn duty to "delay no man for money or malice."

While the IBP similarly found respondent guilty of professional misconduct, we find that its recommended penalty of reprimand is not commensurate with respondent's transgression.

Under the IBP Commission on Bar Discipline's Guidelines for Imposing Lawyer Sanctions (IBP Guidelines), reprimand is generally appropriate as a penalty when a lawyer's negligence causes injury or potential injury to a client or a party.[69] In this case, respondent's injurious acts were clearly not caused by his negligence in following procedures or court orders. He knowingly abused the legal process and violated orders of the HLURB Board and Regional Office with the intent of delaying the execution of a judgment that had long been final and executory. That he continued to do so even if a Complaint was already filed against him proved that his acts were deliberate.

Further, ethical violations analogous to respondent's infractions have not been treated as lightly by the Court.

In *Foronda v. Guerrero*, the respondent therein was suspended for two years from the practice of law for filing multiple petitions

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the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God.

[69] C. Factors to be Considered in Imposing Sanctions

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6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

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before various courts concerning the same subject matter in violation of Canon 12[70] and Rule 12.04[71] of the Code of Professional Responsibility.

In *Saladaga v. Astorga*,[72] the respondent was found guilty of (1) breach of the Lawyer's Oath; (2) unlawful, dishonest, and deceitful conduct; and (3) disrespect for the Court and causing the undue delay of cases. For these offenses, a penalty of suspension from the practice of law for two years, as recommended by the IBP, was imposed.

The respondents in *Millare*[73] and *Garcia*,[74] meanwhile, were suspended for one year from the practice of law.

In *Saa v. IBP*,[75] the petitioner was found to have violated Canon 12,[76] Rule 12.04,[77] and Rule 1.03[78] of the Code of Professional Responsibility for delaying the resolution of a case. He was also suspended from practice of law for one year.

Thus, We have meted out the penalty of one to two years' suspension in cases involving multiple violations of professional conduct that have caused unjust delays in the administration of justice. The IBP Guidelines similarly provide that "suspension is appropriate when a lawyer knows that he is violating a court order or rule, and there is injury or potential injury to a client

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[70] Canon 12 - A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

[71] *Supra* note 4.

[72] *Saladaga v. Astorga*, A.C. No. 4697, 25 November 2014.

[73] *Millare v. Montero, supra* note 63.

[74] *Supra* note 67.

[75] *Saa v. Integrated Bar of the Phils.*, 614 Phil. 203-209 (2009).

[76] *Supra* note 69.

[77] *Supra* note 4.

[78] Rule 1.03 — A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

or a party, or interference or potential interference with a legal proceeding."[79]

Respondent, therefore, should not receive a mere reprimand; he should be suspended from the practice of law for a period of one (1) year.

WHEREFORE, in view of the foregoing, Atty. Al C. Argosino is found **GUILTY** of violating Rules 10.03 and 12.04 of the Code of Professional Responsibility and the Lawyer's Oath, for which he is **SUSPENDED** from the practice of law for one (1) year effective upon the finality of this Resolution. He is **STERNLY WARNED** that a repetition of a similar offense shall be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, the Public Information Office, and the Office of the Court Administrator for circulation to all courts. Likewise, a Notice of Suspension shall be appropriately posted on the Supreme Court website as a notice to the general public.

Upon his receipt of this Decision, respondent shall forthwith be suspended from the practice of law and shall formally manifest to this Court that his suspension has started. He shall furnish all courts and quasi-judicial bodies where he has entered his appearance a copy of this Decision.

SO ORDERED.

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

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[79] Guidelines for Imposing Lawyer Sanctions, C(6.22).

SECOND DIVISION

[G.R. No. 170060. August 17, 2016]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **CLARGES REALTY CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; THIRD-PARTY COMPLAINT; PETITIONER, AS MORTGAGEE OF PROPERTY, NEED NOT AWAIT FOR CONTRIBUTION FROM THE ASSET PRIVATIZATION TRUST FOR THE PAYMENT OF THE UNPAID TAX AND THE TAX LIEN'S CONSEQUENT CANCELLATION BEFORE IT CAN FULFILL ITS OBLIGATION TO DELIVER A CLEAN TITLE TO THE PROPERTY TO RESPONDENT, AS TAX LIEN MAY BE ENFORCED AGAINST ANY MORTGAGEE.— Rule 6, Section 11 of the Rules of Court governs the filing of third-party complaints x x x. Based on this provision, the Asset Privatization Trust would have been a valid third-party defendant. As the trustee of the National Government to whom petitioner's assets were transferred under Proclamation No. 50, the Asset Privatization Trust acquired the liabilities attached to those assets. The tax lien over the property here is one such liability, and petitioner may ask, as it did the Asset Privatization Trust, for contribution for the payment of the unpaid tax and the tax lien's consequent cancellation. However, petitioner need not await for contribution from the Asset Privatization Trust before it can fulfill its obligation to deliver a clean title to the property to respondent. Petitioner, as mortgagee of the property, can very well pay the tax liability and cause the cancellation of the tax lien. There was no legal impossibility to speak of, as the proviso in Section 219 of the National Internal Revenue Code states that "any mortgagee, purchaser or judgment creditor" to whom no tax lien shall be valid until notice of the lien is filed before the Register of Deeds. This suggests that the tax lien may be enforced against *any* mortgagee.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; ARTICLES

1266 AND 1267 OF THE CIVIL CODE WHICH RELEASE THE DEBTORS FROM THEIR OBLIGATIONS IF THEY BECOME LEGALLY OR PHYSICALLY IMPOSSIBLE OR SO DIFFICULT TO BE MANIFESTLY BEYOND THE CONTEMPLATION OF THE PARTIES APPLY ONLY TO OBLIGATIONS TO DO, NOT TO OBLIGATIONS TO GIVE, AS WHEN A PARTY IS OBLIGED TO DELIVER A THING.— Petitioner cannot invoke Articles 1266 and 1267 of the Civil Code. These provisions—which release debtors from their obligations if they become legally or physical impossible or so difficult to be manifestly beyond the contemplation of the parties—only apply to obligations to do. They do not apply to obligations to give as when a party is obliged to deliver a thing which, in this case, is a certificate of title to a real property free from liens and encumbrances.

3. TAXATION; NATIONAL INTERNAL REVENUE TAX CODE; TAX LIEN; PETITIONER'S PAYMENT OF TAX LIABILITY TO CANCEL TAX LIEN ON THE PROPERTY IS NOT A VIOLATION OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT AS IT WOULD NOT BE PAYING THE TAXES OF A PRIVATE CORPORATION, BUT THE LIABILITY ATTACHED TO ITS OWN PROPERTY.— [P]etitioner contends that it would have been liable for violating the Anti-Graft and Corrupt Practices Act if it paid the tax liability of Marinduque Industrial and Mining Corporation to cancel the tax lien on the property. x x x. This argument is wrong. A lien is a "legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation." A lien, until discharged, follows the property. Hence, when petitioner acquired the property, the bank also acquired the liabilities attached to it, among them being the tax liability to the Bureau of Internal Revenue. That the unpaid taxes were incurred by the defunct Marinduque Industrial and Mining Corporation is immaterial. In acquiring the property, petitioner assumed the obligation to pay for the unpaid taxes. Thus, should petitioner pay the remaining ₱24,311,997.41 to the Bureau of Internal Revenue, it would not be paying the taxes of a private corporation. It would be paying the liability attached to its own property, and there would be no violation of the Anti-Graft and Corrupt Practices Act.

4. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; THIRD-PARTY COMPLAINT; THE TRIAL COURT HAS DISCRETION TO GRANT LEAVE OF COURT TO ADMIT A THIRD–PARTY COMPLAINT; IF LEAVE IS DENIED, THE PROPER REMEDY IS TO FILE A COMPLAINT TO BE DOCKETED AS A SEPARATE CASE; DENIAL OF LEAVE TO ADMIT THE THIRD-PARTY COMPLAINT PROPER, WHERE THE ORIGINAL PLAINTIFF HAD ALREADY RESTED ITS CASE WHEN THE MOTION FOR LEAVE WAS FILED.— With petitioner capable of having the tax lien cancelled, it cannot insist on the admission of its third-party complaint against the Asset Privatization Trust. The admission of a third-party complaint requires leave of court; the discretion is with the trial court. If leave is denied, the proper remedy is to file a complaint to be docketed as a separate case. x x x. There was no grave abuse of discretion in denying leave to admit the third-party complaint against the Asset Privatization Trust. As the Court of Appeals observed, the trial court would have wasted time and effort had it admitted the third-party complaint. Respondent, the original plaintiff, had already rested its case when the Motion for Leave was filed. The original case would have dragged on with the addition of a new party at a late stage of the trial.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; AWARD OF ACTUAL DAMAGES, ATTORNEY'S FEES AND COSTS OF SUIT, AFFIRMED.— Actual damages were correctly awarded to respondent. The ₱163,929.00 that respondent incurred in having the mortgage lien cancelled was duly evidenced by an Official Receipt that was "a faithful reproduction of the original." To reiterate, these expenses should not have been incurred had petitioner delivered a clean title to respondent, as it obliged itself in Clause 6 of the Deed of Absolute Sale. The Court of Appeals correctly removed the Regional Trial Court's award of ₱632.90 representing miscellaneous expenses and transportation expenses. The official receipts supporting these expenses were not presented during trial; hence, it cannot be considered as incidental expenses in respondent's acquisition of a clean title. Finally, the award of attorney's fees and cost of suit is proper. Respondent was compelled to bring the action for specific performance and incurred expenses in doing so. This ground is covered by Article 2208(2) of the

Civil Code, which allows for the recovery of attorney's fees and expenses of litigation "[w]hen the defendant's act or omission has compelled . . . to incur expenses to protect his interest."

APPEARANCES OF COUNSEL

Office of the DBP Legal Counsel for petitioner.
Castillo Laman Tan Pantaleon & San Jose for respondent.

D E C I S I O N

LEONEN, *J.*:

The admission of a third-party complaint lies within the sound discretion of the trial court. If leave to file a third-party complaint is denied, then the proper remedy is to file a separate case, not to insist on the admission of the third-party complaint all the way up to this Court.

This resolves a Petition for Review on Certiorari[1] assailing the Court of Appeals Decision[2] dated June 22, 2005 in CA-G.R. CV No. 56570. The Court of Appeals affirmed the Regional Trial Court Decision[3] ordering the Development Bank of the Philippines to deliver to Clarges Realty Corporation a clean title of the property subject of the Deed of Absolute Sale dated November 23, 1987.[4]

The property is a 12,355-square-meter parcel of land located along Pasong Tamo Extension, Makati City.[5] It was covered by Transfer Certificate of Title (TCT) No. S-16279 and was

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[1] *Rollo*, pp. 33-70.

[2] *Id*. at 9-24. The Decision was penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Renato C. Dacudao (Chair) and Edgardo F. Sundiam of the Thirteenth Division, Court of Appeals, Manila.

[3] *Id*. at 92-99. The Decision was penned by Judge Delia H. Panganiban of Branch 64 of the Regional Trial Court, Makati City.

[4] *Id*. at 23.

[5] *Id*. at 10.

registered under the name of Marinduque Mining and Industrial Corporation.[6]

To secure a loan, Marinduque Mining and Industrial Corporation first mortgaged the property to Caltex Philippines, Inc. A second mortgage was constituted over the property, this time in favor of the Development Bank of the Philippines and the Philippine National Bank.[7]

When Marinduque Mining and Industrial Corporation failed to pay its loan obligations, the Development Bank of the Philippines and the Philippine National Bank jointly instituted extrajudicial foreclosure proceedings over the property sometime in July and August 1984.[8] The mortgagee banks emerged as the highest bidders during the public sale but were unable to redeem the property because of Caltex Philippines, Inc.'s first mortgage.

On January 20, 1986, first mortgagee Caltex Philippines, Inc. foreclosed its mortgage on the property.[9] As second mortgagee, the Development Bank of the Philippines redeemed the property from Caltex Philippines, Inc.[10] and the property formed part of the Development Bank of the Philippines' physical assets.

The Development Bank of the Philippines then offered the property for public sale, where Clarges Realty Corporation emerged as the highest bidder.[11] Clarges Realty Corporation offered ₱24,070,000.00 as payment for the property.[12]

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[6] *Id*.

[7] *Id.* See *Asset Privatization Trust v. Court of Appeals*, 360 Phil. 768 (1998) [Per J. Kapunan, Third Division]; and *Uniland Resources v. Development Bank of the Philippines*, 277 Phil. 839 (1991) [Per J. Gancayco, First Division].

[8] See *Development Bank of the Philippines v. The Honorable Court of Appeals*, 415 Phil. 538, 541 (2001) [Per J. Kapunan, First Division].

[9] *Rollo*, p. 10.

[10] *Id*.

[11] *Id*.

[12] *Id.* at 204.

On November 23, 1987, the Development Bank of the Philippines (as vendor) and Clarges Realty Corporation (as vendee) executed a Deed of Absolute Sale[13] for the property. The parties agreed that all expenses to be incurred in connection with the transfer of title to Clarges Realty Corporation would be borne by the Development Bank of the Philippines.[14] Moreover, the Development Bank of the Philippines bound itself under Clause 6 of the Deed of Absolute Sale to deliver a title to the property "*free from any and all liens and encumbrances on or before December 15, 1987*."[15]

The Development Bank of the Philippines succeeded in having the property registered under its name. Marinduque Mining and Industrial Corporation's TCT No. S-16279 was cancelled and, in its place, TCT No. 151178 was issued.[16]

However, TCT No. 151178 contained annotations from the former TCT No. S-16279, specifically, the mortgage lien of the Philippine National Bank and a tax lien for unpaid taxes incurred by Marinduque Mining and Industrial Corporation. The annotations state:

Entry No. 761 – MORTGAGE in favor of PHILIPPINE NATIONAL BANK in the initial amount of PHILIPPINE PESOS: FOUR BILLION (₱4,000,000,000.00) and to secure any and all obligations with PNB, whether contracted before, during or after the date of this instrument, acknowledged before Notary Public Manila, Norma C. _____ [illegible in *rollo*] Doc No. 284, Page No. 58, Book No. III, series of 1981.

Date of instrument – July 13, 1981
Date of inscription – June 10, 1982

[sgd.]
VICENTE N. COLOYAN, Register of Deeds

x-x-x-x-x-x-x-x-x

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[13] *Id*. at 216-217.

[14] *Id*. at 11.

[15] *Id*.

[16] *Id*. at 213.

Entry No. 24513/S-16279 – NOTICE OF TAX LIEN –

The registered owner of this title is under obligation to pay the government of the Republic of the Philippines in the amount of SIXTY EIGHT MILLION SEVEN HUNDRED FIFTY EIGHT THOUSAND EIGHT HUNDRED FIFTY TWO & 51/100 (₱68,758,852.51) PESOS in accordance with the letter of Romulo M. Villa, deputy commissioner, BIR, QC.

Date of instrument – Aug. 28, 1986
Date of inscription – Oct. 10, 1986

[sgd.]
MILA G. FLORES, Register of Deeds[17]

December 15, 1987 passed, and the Development Bank of the Philippines delivered to Clarges Realty Corporation the owner's duplicate copy of TCT No. 151178 with the mortgage and tax liens still annotated on it.[18] Clarges Realty Corporation demanded a clean title from the Development Bank of the Philippines, but the bank failed to deliver a clean title.[19]

Thus, Clarges Realty Corporation filed before the Regional Trial Court of Makati City a Complaint[20] for Specific Performance and Damages praying that the Development Bank of the Philippines be ordered to deliver a title to the property free of liens and encumbrances as provided in Clause 6 of the Deed of Absolute Sale.

The Development Bank of the Philippines answered[21] the Complaint, contending that Clarges Realty Corporation had no cause of action against it. Clarges Realty Corporation allegedly knew that the payment of the tax liability and the corresponding cancellation of the tax lien had devolved to the Asset Privatization

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[17] *Id*. at 215.

[18] *Id*. at 12.

[19] *Id*.

[20] *Id*. at 207-212.

[21] *Id*. at 218-225.

Trust after the latter acquired the assets of the Development Bank of the Philippines[22] under Proclamation No. 50.[23]

Trial on the merits ensued. During the trial, Clarges Realty Corporation had the mortgage lien cancelled, thus incurring ₱163,929.00 in expenses.[24] For their part, the Development Bank of the Philippines and the Asset Privatization Trust had the tax lien partially cancelled, with the tax liability reduced from ₱68,758,852.51 to ₱24,311,997.41.[25] TCT No. 151178 (under the name of the Development Bank of the Philippines) was cancelled, and a new one was issued—TCT No. 162836—under the name of Clarges Realty Corporation.[26] Left annotated on TCT No. 162836 was the partially cancelled tax lien:

> Entry No. 91584/S-16279 – PARTIAL CANCELLATION –
> By virtue of a Request of the Bureau of Internal Revenue, the Notice of Tax Lien inscribed under Entry No. 24513 is hereby PARTIALLY CANCELLED as to the amount of TWENTY FOUR MILLION THREE HUNDRED ELEVEN THOUSAND NINE HUNDRED NINETY SEVEN PESOS AND FORTY ONE CENTAVOS (₱24,311,997.41) signed JOSE U. ONG, Commissioner of Internal Revenue.
>
> Date of Instrument – Oct. 16, 1989
> Date of inscription – Jan. 19, 1990
>
> [sgd.]
> ANTONIO L. LEACHON III
> DEPUTY REGISTER OF DEEDS II[27]

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[22] *Rollo,* p. 221.

[23] Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust (1986).

[24] *Rollo,* p. 13.

[25] *Id*.

[26] *Id*.

[27] RTC records, p. 318, Photocopy of TCT No. 162836, registered in the name of Clarges Realty Corporation.

Clarges Realty Corporation had already rested its case when the Development Bank of the Philippines moved for leave of court to file a third-party complaint.[28] The Development Bank of the Philippines sought to implead the Asset Privatization Trust as a third-party defendant and maintained that the Asset Privatization Trust had assumed the "direct and personal"[29] obligation to pay for Marinduque Mining and Industrial Corporation's tax liability and to have the partially reduced tax lien cancelled.

Clarges Realty Corporation opposed the Motion for Leave.[30] It argued that admitting the third-party complaint would cause unreasonable delay and entail unnecessary costs.[31]

Conceding that the Development Bank of the Philippines' claim against the Asset Privatization Trust was connected to the claim of Clarges Realty Corporation, the trial court nevertheless denied the Motion for Leave in the Order[32] dated January 11, 1994. According to the trial court, the Development Bank of the Philippines "should have impleaded the Asset Privatization Trust during the preparation of its answer if indeed a third party is liable to it for subrogation or other relief."[33] The trial court added that "[t]he filing of a third party complaint [when the plaintiff had already rested its case] would [have unjustly delayed the case] considering that summons must be served on the third-party defendant and the latter should still present its evidence to negate [the defendant's] claim against it."[34]

The Development Bank of the Philippines moved to reconsider the Order denying the Motion for Leave. However, the Motion

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[28] *Rollo,* pp. 471-473.

[29] *Id*. at 477.

[30] RTC records, pp. 369-372.

[31] *Id*.

[32] *Rollo,* pp. 496-498.

[33] *Id*. at 497.

[34] *Id*. at 497-498.

for Reconsideration was denied in the Order[35] dated March 21, 1994.

Development Bank of the Philippines then proceeded to present its evidence.[36]

The trial court ruled in favor of Clarges Realty Corporation, and in the Decision[37] dated May 30, 1997, it granted the Complaint for Specific Performance and Damages. The trial court found that the Development Bank of the Philippines breached Clause 6 of the Deed of Absolute Sale when it failed to deliver to Clarges Realty Corporation a title to the property free from liens and encumbrances on or before December 15, 1987.[38]

Regardless of whether the Asset Privatization Trust undertook to have the tax lien cancelled, the trial court held that Clarges Realty Corporation could only demand the delivery of a clean title from the Development Bank of the Philippines under the principle of relativity of contracts.[39]

The trial court declared the Development Bank of the Philippines liable for damages for breaching Clause 6 of the Deed of Absolute Sale.[40] It likewise ordered the bank to reimburse Clarges Realty Corporation the amount of ₱163,929.00, representing the expenses incurred to have the mortgage lien cancelled.[41]

The dispositive portion of the May 30, 1997 Decision reads:

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[35] *Id.* at 505.

[36] *Id.* at 14.

[37] *Id.* at 92-99. The Decision was penned by Presiding Judge Delia H. Panganiban.

[38] *Id.* at 95-96.

[39] *Id.* at 96.

[40] *Id.* at 97.

[41] *Id.* at 99.

WHEREFORE, in view of the foregoing defendant Development Bank of the Philippines is ordered:

1. To remove or cause the removal of Entry No. 94584[sic]/ S-16279 from TCT No. 162836 within thirty (30) days from finality of this Decision;

2. To pay plaintiff Clarges Realty Corporation the amount of ₱163,929 representing the fees incurred by the latter for the cancellation of Entry No. 761, and the amount of ₱632.90 representing miscellaneous and transportation expenses incurred by plaintiff's representative in connection with this case;

3. To pay ₱50,000.00 as attorney's fees; and

4. To pay the costs of litigation.

SO ORDERED.[42]

The Development Bank of the Philippines filed an appeal before the Court of Appeals.

However, the Court of Appeals affirmed with modification the trial court's Decision.[43] Like the trial court, the Court of Appeals held that the Development Bank of the Philippines breached its obligation to deliver a clean title to the property to Clarges Realty Corporation.[44] According to the Court of Appeals, Clause 6 of the Deed of Absolute Sale is clear, leaving no doubt as to the intention of the parties to the contract.[45] The Court of Appeals added that compliance with Clause 6 cannot be made to depend on the willingness—or lack thereof—of the Asset Privatization Trust to assume the obligation of having the tax lien cancelled, the Asset Privatization Trust being a non-party to the contract of sale.[46]

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[42] *Id*. at 99.

[43] *Id*. at 23.

[44] *Id*. at 17-19.

[45] *Id*.

[46] *Id*.

Touching on the trial court's denial of leave to admit the third-party complaint, the Court of Appeals held that the trial court did not gravely abuse its discretion. It found that granting leave would have further delayed the case since Clarges Realty Corporation had already rested its case when the Motion for Leave was filed.[47]

As to the amount of damages, the Court of Appeals deleted the award of ₱632.90, representing miscellaneous and transportation expenses to Clarges Realty Corporation. The Court of Appeals found that the reimbursement receipts presented in evidence were not the best evidence of the miscellaneous and transportation expenses.[48]

The dispositive portion of the Court of Appeals' June 22, 2005 Decision reads:

> **WHEREFORE**, the Decision of the RTC of Makati City, Branch 64 in Civil Case No. 89-2895 is **MODIFIED** in that the award of damages in the amount of ₱632.90 representing miscellaneous expenses and transportation expenses is hereby **DELETED**. In all other respects, the said judgment is **AFFIRMED**.
>
> **SO ORDERED**.[49] (Emphasis in the original)

The Development Bank of the Philippines moved for partial reconsideration, but the Motion was denied in the Resolution[50] dated October 10, 2005.

Petitioner Development Bank of the Philippines then filed before this Court its Petition for Review on Certiorari.[51] Respondent Clarges Realty Corporation filed a Comment,[52] to which petitioner filed a Reply.[53]

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[47] *Id*. at 21.

[48] *Id*. at 22.

[49] *Id*. at 23.

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

[51] *Id*. at 33-70.

[52] *Id*. at 107-124.

[53] *Id*. at 137-151.

Upon the directive of this Court,[54] petitioner[55] and respondent[56] filed their respective Memoranda.

Petitioner insists that the Asset Privatization Trust should be impleaded as a third-party defendant.[57] Under Proclamation No. 50, the Asset Privatization Trust acquired the assets of the now defunct Marinduque Mining and Industrial Corporation, which had been mortgaged to petitioner.[58] By operation of law, the Asset Privatization Trust assumed the obligations and liabilities attached to these assets, including the obligation to pay the unpaid taxes corresponding to the tax lien.[59] Thus, it became legally and physically impossible for petitioner to deliver a clean title to respondent since the obligation had devolved to the Asset Privatization Trust.[60] Consequently, the third-party complaint against the Asset Privatization Trust should have been admitted for an exhaustive disposition of this case.[61]

With respect to the actual damages, petitioner argues that they were erroneously awarded to respondent. It was petitioner that secured a trial court order utilized by respondent to have the mortgage lien cancelled.[62]

Lastly, petitioner claims that respondent is not entitled to attorney's fees and costs of litigation for lack of factual and legal basis.[63]

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[54] *Id*. at 153-154, Resolution dated November 15, 2006.

[55] *Id*. at 298-342.

[56] *Id*. at 383-417.

[57] *Id*. at 318.

[58] *Id*. at 332.

[59] *Id*. at 333.

[60] *Id*.

[61] *Id*.

[62] *Id*. at 334-336.

[63] *Id*. at 336-338.

Respondent counters that the issues raised by petitioner involve factual questions that are not proper in a petition for review on certiorari.[64]

Relying on the principle of relativity of contracts—that contracts bind only the parties to it—respondent maintains that the Asset Privatization Trust is not a proper party to the suit because the Deed of Absolute Sale was executed exclusively between petitioner and respondent.[65] The obligation to deliver a clean title remained with petitioner and cannot prejudice the Asset Privatization Trust.[66] The Motion for Leave was correctly denied, especially because it had been more than four (4) years since the filing of the Answer on March 17, 1989 when the Motion for Leave was filed on October 29, 1993.[67]

There is neither legal nor physical impossibility to pay the tax liability, according to respondent. Article 1266[68] of the Civil Code, which releases the obligor from the prestation, only applies to obligations to do, not obligations to give. In this case, the obligation involved is an obligation to give, specifically, to deliver a clean title to the property in the Deed of Absolute Sale. Petitioner cannot avoid its obligation.[69]

As for the ₱163,929.00 in actual damages awarded to respondent, respondent argues that there would have been no need to file a petition for cancellation of lien had petitioner delivered a clean title in the first place.[70] When respondent

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[64] *Id*. at 394-396.

[65] *Id*. at 397-398.

[66] *Id*.

[67] *Id*. at 403.

[68] CIVIL CODE, Art. 1266 provides:

Art. 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.

[69] *Rollo,* pp. 406-407.

[70] *Id*. at 408-410.

utilized the trial court order secured by petitioner, the corporation incurred expenses for the actual cancellation—registration fees, entry fee, legal research fees, and other related fees—for which it must be reimbursed.[71]

Finally, respondent claims that it was correctly awarded attorney's fees and costs of suit under Article 2208(2)[72] of the Civil Code because it was compelled to litigate.[73]

The issues for this Court's resolution are:

First, whether the trial court erred in denying the Motion for Leave to File Third-Party Complaint;

Second, whether the award to respondent of ₱163,929.00 in actual damages was proper; and

Lastly, whether respondent is entitled to attorney's fees and costs of suit.

This Petition must be denied.

I

Rule 6, Section 11 of the Rules of Court governs the filing of third-party complaints:

SEC. 11. *Third, (fourth, etc.)-party complaint.* – A third (fourth, etc.)-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.)-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.

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[71] *Id*.

[72] CIVIL CODE, Art. 2208(2) provides:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other judicial costs, cannot be recovered, except:

. . . . . .

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest[.]

[73] *Rollo,* pp. 196-199.

Based on this provision, the Asset Privatization Trust would have been a valid third-party defendant. As the trustee of the National Government to whom petitioner's assets were transferred under Proclamation No. 50,[74] the Asset Privatization Trust acquired the liabilities attached to those assets. The tax

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[74] Proc. No. 50 (1986), Sec. 24 provides:

SECTION 24. *DEED OF ASSIGNMENT*. Each government institution from which assets are to be transferred pursuant to this Proclamation shall and is hereby directed to execute, promptly and in no event later than thirty days after the issuance by the President of the relevant instrument referred to in Section 23 hereof, a deed of assignment in favor of the National Government, which shall, in annexes thereto, describe, account by account, the nature and extent of such assets and to deliver to the Committee such agreements, instruments, records and other papers in respect of such assets as may be deemed by the Committee to be reasonably necessary or appropriate. Each such deed of assignment shall constitute the Minister of Finance in representation of the National Government as attorney-in-fact of the government institution empowered to take such action and do such things as may be necessary on desirable to consolidate and perfect the title of the National Government to such assets, exercising for the purpose, any and all rights and privileges appertaining to the transferor-government institution, pursuant to the provisions of applicable law or contract.

A copy of such deed of assignment, together with excerpts from its annexes describing particular property to be transferred, duly certified to be true by the appropriate official before a notary public or other official authorized by law to administer oaths, shall provide sufficient basis to registers of deeds, transfer agents of corporations and other persons authorized to issue certificates of titles, shares of stock and other evidence of title to issue new certificates, shares of stock or other instruments evidencing title to the assets so described to and in the name of the National Government or its duly authorized agent.

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

lien over the property here is one such liability, and petitioner may ask, as it did the Asset Privatization Trust, for contribution for the payment of the unpaid tax and the tax lien's consequent cancellation.

However, petitioner need not await for contribution from the Asset Privatization Trust before it can fulfill its obligation to deliver a clean title to the property to respondent. Petitioner, as mortgagee of the property, can very well pay the tax liability and cause the cancellation of the tax lien. There was no legal impossibility to speak of, as the proviso in Section 219[75] of the National Internal Revenue Code states that "any mortgagee, purchaser or judgment creditor" to whom no tax lien shall be valid until notice of the lien is filed before the Register of Deeds. This suggests that the tax lien may be enforced against *any* mortgagee.

Petitioner cannot invoke Articles 1266[76] and 1267[77] of the Civil Code. These provisions—which release debtors from their

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[75] TAX CODE, Sec. 219 provides:

Sec. 219. Nature and Extent of Tax Lien. - If any person, corporation, partnership, joint-account (cuentas en participacion), association or insurance company liable to pay an internal revenue tax, neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the Government of the Philippines from the time when the assessment was made by the Commissioner until paid, with interests, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to the taxpayer: Provided, That this lien shall not be valid against any mortgagee, purchaser or judgment creditor until notice of such lien shall be filed by the Commissioner in the office of the Register of Deeds of the province or city where the property of the taxpayer is situated or located.

[76] CIVIL CODE, Art. 1266 provides:

Art. 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.

[77] CIVIL CODE, Art. 1267 provides:

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

obligations if they become legally or physical impossible or so difficult to be manifestly beyond the contemplation of the parties—only apply to obligations to do.[78] They do not apply to obligations to give as when a party is obliged to deliver a thing[79] which, in this case, is a certificate of title to a real property free from liens and encumbrances.

Interestingly, petitioner contends that it would have been liable for violating the Anti-Graft and Corrupt Practices Act if it paid the tax liability of Marinduque Industrial and Mining Corporation to cancel the tax lien on the property. According to petitioner:

> [The Development Bank of the Philippines] is a government bank. To pay the taxes of a private corporation out of its coffers, and when such account was already transferred to a Government Liquidator, such as [the Asset Privatization Trust], would be a crime punishable under the Anti-Graft and Corrupt Practices Law, at the very least, not to mention the enormous amount of not less than ₱44 Mililion Pesos involved.[80] (Underscoring in the original)

This argument is wrong. A lien is a "legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation."[81] A lien, until discharged, follows the property. Hence, when petitioner acquired the property, the bank also acquired the liabilities attached to it, among them being the tax liability to the Bureau of Internal Revenue. That the unpaid taxes were incurred by the defunct Marinduque Industrial and Mining Corporation is immaterial. In acquiring the property, petitioner assumed the obligation to pay for the unpaid taxes.

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[78] See *Philippine National Construction Corporation v. Court of Appeals*, 338 Phil. 691, 700 (1997) [Per J. Davide, Jr., Third Division].

[79] *Id*.

[80] *Rollo,* p. 331.

[81] *People v. The Regional Trial Court of Manila*, 258-A Phil. 68, 76 (1989) [Per J. Sarmiento, Second Division].

Thus, should petitioner pay the remaining ₱24,311,997.41 to the Bureau of Internal Revenue, it would not be paying the taxes of a private corporation. It would be paying the liability attached to its own property, and there would be no violation of the Anti-Graft and Corrupt Practices Act.

II

With petitioner capable of having the tax lien cancelled, it cannot insist on the admission of its third-party complaint against the Asset Privatization Trust. The admission of a third-party complaint requires leave of court; the discretion is with the trial court. If leave is denied, the proper remedy is to file a complaint to be docketed as a separate case. As explained in *Firestone Tire and Rubber Company of the Philippines v. Tempongko*:[82]

> The third-party complaint, is therefore, a procedural device whereby a "third party" who is neither a party nor privy to the act or deed complained of by the plaintiff, may be brought into the case with leave of court, by the defendant, who acts as third party plaintiff to enforce against such third party defendant a right for contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim. The third party complaint is actually independent of and separate and distinct from the plaintiff's complaint. Were it not for this provision of the Rules of Court, it would have to be filed independently and separately from the original complaint by the defendant against the third party. But the Rules permit defendant to bring in a third party defendant or so to speak, to litigate his separate cause of action in respect of plaintiff's claim against a third party in the original and principal case with the object of avoiding circuitry of action and unnecessary proliferation of lawsuits and of disposing expeditiously in one litigation the entire subject matter arising from one particular set of facts. Prior leave of Court is necessary, so that where the allowance of a third party complaint would delay the resolution of the original case, such as when the third-party defendant cannot be located or where matters extraneous to the issue of possession would unnecessarily clutter a case of forcible entry, or the effect would be to introduce a new and separate controversy into the action, the salutary

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[82] 137 Phil. 239 (1969) [Per *J.* Teehankee, *En Banc*].

object of the rule would not be defeated, and the court should in such cases require the defendant to institute a separate action. When leave to file the third party complaint is properly granted, the Court renders in effect two judgments in the same case, one on the plaintiff's complaint and the other on the third party complaint. When he finds favorably on both complaints, as in this case, he renders judgment on the principal complaint in favor of plaintiff against defendant and renders another judgment on the third party complaint in favor of defendant as third party plaintiff, ordering the third party defendant to reimburse the defendant whatever amount said defendant is ordered to pay plaintiff in the case. Failure of any of said parties in such a case to appeal the judgment as against him makes such judgment final and executory. By the same token, an appeal by one party from such judgment does not inure to the benefit of the other party who has not appealed nor can it be deemed to be an appeal of such other party from the judgment against him.[83] (Citations omitted)

There was no grave abuse of discretion in denying leave to admit the third-party complaint against the Asset Privatization Trust. As the Court of Appeals observed, the trial court would have wasted time and effort had it admitted the third-party complaint. Respondent, the original plaintiff, had already rested its case when the Motion for Leave was filed. The original case would have dragged on with the addition of a new party at a late stage of the trial. We agree with the following discussion of the Court of Appeals:

While the Rules of Court does not provide a definite period in which a third-party complaint may be filed, Section 12, Rule 6 thereof requires leave of court before filing the same. Whether to grant such leave is entrusted to the discretion of the court.

We do not find any abuse of discretion on the part of the court *a quo* in denying the leave. It bears to emphasize that the rationale for permissive joinder of a third-party defendant who may be liable to the original defendant is judicial economy. This practice avoids multiplicity of actions and saves time and reduplication of effort by trying all issues together in one action. However, there is little economy in waiting to join the third-party defendant after the original plaintiff

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[83] *Id*. at 243-244.

rested its case, as [the Development Bank of the Philippines] did in this case, especially when it tried to pass on its liability to [the Asset Privatization Trust] at the very first instance. Not only will the probable delay prejudice Clarges [Realty Corporation], there is also great possibility of prejudice to [the Asset Privatization Trust]. This is because the latter will be unable to defend against [Clarges Realty Corporation's] claim upon which its liability may depend.[84]

III

Actual damages were correctly awarded to respondent.[85] The ₱163,929.00 that respondent incurred in having the mortgage lien cancelled was duly evidenced by an Official Receipt that was "a faithful reproduction of the original."[86] To reiterate, these expenses should not have been incurred had petitioner delivered a clean title to respondent, as it obliged itself in Clause 6 of the Deed of Absolute Sale.

The Court of Appeals correctly removed the Regional Trial Court's award of ₱632.90 representing miscellaneous expenses and transportation expenses.[87] The official receipts supporting these expenses were not presented during trial; hence, it cannot be considered as incidental expenses in respondent's acquisition of a clean title.

Finally, the award of attorney's fees and cost of suit is proper. Respondent was compelled to bring the action for specific performance and incurred expenses in doing so. This ground is covered by Article 2208(2)[88] of the Civil Code, which allows

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[84] *Rollo,* p. 21.

[85] CIVIL CODE, Art. 2199 provides:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[86] TSN, April 28, 1993, p. 19.

[87] *Rollo,* p. 23.

[88] CIVIL CODE, Art. 2208(2) provides:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other judicial costs, cannot be recovered, except:

for the recovery of attorney's fees and expenses of litigation "[w]hen the defendant's act or omission has compelled . . . to incur expenses to protect his interest."

WHEREFORE, the Petition for Review on Certiorari is **DENIED.** The Decision dated June 22, 2005 of the Court of Appeals in CA-G.R. CV No. 56570 is **AFFIRMED**.

SO ORDERED.

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

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 185473. August 17, 2016]

BERNADETTE IDA ANG HIGA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; THE BOUNCING CHECKS LAW (BATAS PAMBANSA BILANG 22); IMPOSABLE PENALTY, CLARIFIED; IT IS NOT THE INTENTION OF ADMINISTRATIVE CIRCULAR (AC) NO. 12-2000 TO DECRIMINALIZE VIOLATION OF B.P. BLG. 22 OR TO DELETE THE ALTERNATIVE PENALTY OF IMPRISONMENT FOR VIOLATORS THEREOF, BUT IT MERELY ESTABLISHES A RULE OF PREFERENCE IN

. . . . . .

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest[.]

THE APPLICATION OF THE PENAL PROVISIONS OF B.P. BLG. 22.— While the Court sustains the conviction of the petitioner, it is appropriate to modify the penalty of imprisonment that was imposed since it is out of the range of the penalty prescribed in Section 1 of B.P. Blg. 22 and in view of Administrative Circular (A.C.) No. 12-2000 x x x. The underlying principle behind A.C. No. 12-2000 was established by the Court in its ruling in *Vaca v. CA* and *Lim v. People of the Philippines*. In these cases, the Court held that "it would best serve the ends of criminal justice if, in fixing the penalty to be imposed for violation of B.P. [Blg.] 22, the same philosophy underlying the Indeterminate Sentence Law is observed, *i.e.* that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order." In A.C. No. 13-2001, clarifications have been made as to queries regarding the authority of Judges to impose the penalty of imprisonment for violations of B.P. Blg. 22. The Court explained that the clear tenor and intention of A.C. No. 12-2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in B.P. Blg. 22. The Court was emphatic in clarifying that it is not the Court's intention to decriminalize violation of B.P. Blg. 22 or to delete the alternative penalty of imprisonment. The rule of preference provided in A.C. No. 12-2000 does not foreclose the possibility of imprisonment for violators of B.P. Blg. 22, neither does it defeat the legislative intent behind the law. To reiterate, A.C. No. 12-2000 merely establishes a rule of preference in the application of the penal provisions of B.P. Blg. 22, and Section 1 thereof imposes the following alternative penalties for its violation, to wit: (a) imprisonment of not less than 30 days but not more than one year; or (b) a fine of not less than but not more than double the amount of the check which fine shall in no case exceed ₱200,000[.00]; or (c) both such fine and imprisonment at the discretion of the court.

2. ID.; ID.; PENALTY OF FINE IMPOSED FOR VIOLATION THEREOF RATHER THAN BOTH FINE AND IMPRISONMENT WHERE IT WAS NOT SHOWN THAT THE ACCUSED IS A HABITUAL DELINQUENT OR A RECIDIVIST; THE PENALTY OF IMPRISONMENT

FOR VIOLATION OF BP BLG. 22 MUST BE GRADUATED OR PROPORTIONATE TO THE AMOUNT OF THE CHECK, AS PENALTY IMPOSED MUST BE COMMENSURATE WITH THE OFFENSE COMMITTED.— There is an array of cases where this Court merely imposes fine rather than both fine and imprisonment. In *Lee v. CA*, the Court ruled that the policy laid down in the cases of *Vaca* and *Lim* with regard to redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness, should be considered in favor of the accused who is not shown to be a habitual delinquent or a recidivist. Said doctrines squarely apply in the instant case there being no proof or allegation that the petitioner is not a first time offender. Moreover, the lower courts should have considered that the penalty of imprisonment must be graduated or proportionate to the amount of the check rather than imposing the same penalty of one year of *prision correccional* for the check that bounced amounting to ₱7,600.00 and the one for ₱200,000.00. Thus, a guilty person who issued a worthless check of lesser amount could be imprisoned for the same term as that of a guilty person who issued one worth millions. "Justice demands that crime be punished and that the penalty imposed to be commensurate with the offense committed."

3. ID.; ID.; PENALTY IMPOSED FOR VIOLATION THEREOF, MODIFIED.— [T]he imposition by the RTC, as affirmed by the CA, of imprisonment of one year of *prision correccional* for each count of violation of B.P. Blg. 22 resulting in a total of 51 years is too harsh taking into consideration the fact that the petitioner is not a recidivist, and that past transactions show that the petitioner had made good in her payment. It cannot be gainsaid that what is involved here is the life and liberty of the petitioner. If her penalty of imprisonment remains uncorrected, it would not be conformable with law and she would be made to suffer the penalty of imprisonment of 51 years, which is outside the range of the penalty prescribed by law; thus, the penalty imposed upon the petitioner should be duly corrected. "An appeal in a criminal case throws the entire case for review and it becomes our duty to correct any error, as may be found in the appealed judgment, whether assigned as an error or not." Accordingly, the Court finds that the penalty

of imprisonment imposed by the lower courts should be modified to six (6) months for each count of violations of B.P. Blg. 22. Furthermore, the total amount of the subject checks which corresponds to the pieces of jewelry that was given and guaranteed to be sold by the petitioner should also be returned to Carullo. Lastly, considering that the lower courts failed to award interest on the amount due to Carullo, it is but proper to grant interest at the rate of six percent (6%) *per annum* reckoned from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Epifanio C. Buen for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated July 30, 2008 and the Resolution[3] dated November 5, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 30242, which affirmed the Decision[4] dated December 22, 2005 of the Regional Trial Court (RTC) of Las Piñas City, Branch 202, in Criminal Case No. 05-1001-51, finding Bernadette Ida Ang Higa (petitioner) guilty beyond reasonable doubt of fifty-one (51) counts of violation of Batas Pambansa Bilang 22 (B.P. Blg. 22), otherwise known as the Bouncing Checks Law.

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[1] *Rollo*, pp. 9-17.

[2] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Edgardo F. Sundiam and Arturo G. Tayag concurring; CA *rollo*, pp. 132-143.

[3] *Id*. at 154-155.

[4] Rendered by Judge Elizabeth Yu Guray; *id*. at 43-52.

The Facts

The records of the case showed that the private complainant, Ma. Vicia Carullo (Carullo), is a manufacturer and seller of jewelry while the petitioner was her former customer who later became her dealer.[5]

For the period of April to November 1996, Carullo delivered numerous pieces of jewelry to the petitioner for the latter to sell. The petitioner returned those items that were not sold, and as security for the payments of those items that were eventually sold, the petitioner gave Carullo a total of fifty-one (51) post-dated checks. However, when the subject checks were deposited on their respective due dates, they were dishonored on the ground that they were drawn against a closed account.[6]

Thereafter, Carullo notified and sent demand letters to the petitioner who then asked for time to settle her account by replacing the subject checks with cash. However, the petitioner did not make good of her promise so Carullo filed the cases against her.[7]

During the trial, the delivery receipts were submitted to prove that the subject checks were issued with valuable consideration in favor of Carullo. The representatives of Metrobank in Las Piñas City Branch and B.F. Homes, Paranaque City, Aguirre Branch were also presented and they testified that, based on the record of their banks, the subject checks were dishonored for the reason that they were drawn against a closed account. They said that the accounts of the petitioner in their respective branches were closed because she mishandled them.[8]

For her part, the petitioner alleged that there was lack of consideration and that she already paid the subject checks.

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[5] *Id.* at 133.

[6] *Id*.

[7] *Id*. at 133-134.

[8] *Id*. at 134.

However, she failed to prove her claim since she was not able to finish her testimony and did not present any piece of evidence to disprove the evidence against her.[9]

In the Joint Decision[10] dated May 23, 2005 of the Metropolitan Trial Court (MeTC) of Las Piñas City, Branch 79, the petitioner was found guilty beyond reasonable doubt of 51 counts of violation of B.P. Blg. 22. The dispositive portion of the decision reads:

> WHEREFORE PREMISES CONSIDERED, the prosecution having sufficiently proved the offense charged against the [petitioner] in the instant cases, the Court finds [the petitioner] guilty beyond reasonable doubt of 51 counts of Violation of [B.P.] Blg. 22 alleged in the Informations of the above-entitled cases, and pursuant to Section 1 of the aforesaid law, there being no mitigating nor aggravating circumstances, hereby sentences [the petitioner] to pay the fine, as follows:
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> xxx xxx xxx
>
> or in the total amount of SIX MILLION NINETY-THREE THOUSAND FIVE HUNDRED FIFTY PESOS (₱6,093,550.00), with subsidiary imprisonment in case of insolvency, to suffer an imprisonment of one (1) year of *prision correccional*, to pay [Carullo] the amount of SIX MILLION FOUR HUNDRED FIFTY THOUSAND TWO HUNDRED SIXTY (₱6,450,260.00) PESOS representing the amount of the fifty-one (51) bounced checks, subjects of the instant cases, and to pay the costs.
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> Since there is no agreement in writing as to the payment of interest, the court cannot grant the same.
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> SO ORDERED.[11]

On appeal, the RTC Decision[12] dated December 22, 2005 modified the MeTC decision, by sentencing the petitioner to

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[9] *Id*.

[10] Rendered by Judge Ester Tuazon-Villarin; *id*. at 19-29.

[11] *Id*. at 27-29.

[12] *Id*. at 43-52.

suffer imprisonment of one (1) year of *prision correccional* for each count of violation of B.P. Blg. 22 and to pay a fine in the total amount of ₱6,093,550.00 with subsidiary imprisonment in case of insolvency or non-payment, to wit:

> WHEREFORE, in view of the foregoing premises, the appeal filed by [the petitioner] is hereby DENIED for lack of merit, however, the Joint Decision, dated May 23, 2005, of the [MeTC], Branch 79, Las Piñas City is hereby **MODIFIED** in so far as the penalty imposed is concerned, to wit: [the petitioner] is sentenced to suffer imprisonment of one (1) year of prision correccional for **each** count of Violation of B.P. [Blg.] 22 and to pay a fine in the aggregate sum of SIX MILLION NINETY-THREE THOUSAND FIVE HUNDRED FIFTY PESOS (₱6,093,550.00) with subsidiary imprisonment in case of insolvency or non-payment pursuant to Article 39 of the Revised Penal Code.
>
> SO ORDERED.[13]

Aggrieved, the petitioner filed a motion for reconsideration[14] on February 7, 2006 with the RTC, but it was denied in its Order[15] dated June 15, 2006 for lack of merit. Thereafter, the petitioner filed a Petition for Review[16] under Rule 42 of the Rules of Court with the CA.

All the same, on July 30, 2008, the CA Decision[17] denied the petition and affirmed the RTC decision.

Undeterred, the petitioner filed a motion for reconsideration[18] on August 19, 2008, but it was denied in the CA Resolution[19] dated November 5, 2008. Hence, this petition.

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[13] *Id*. at 52.

[14] *Id*. at 58-61.

[15] *Id*. at 62.

[16] *Id*. at 10-17.

[17] *Id*. at 132-143.

[18] *Id*. at 144-146.

[19] *Id*. at 154-155.

The Issue Presented

The main issue to be resolved is whether the penalty imposed by the RTC and affirmed by the CA, sentencing the petitioner with imprisonment of one (1) year of *prision correccional* for each count of violation of B.P. Blg. 22, is proper.

Ruling of the Court

The petition is meritorious.

To begin with, there is no doubt that the petitioner committed violations of B.P. Blg. 22 and the petitioner does not dispute the judgment of the lower courts finding her guilty as charged. However, she assails the penalty of imprisonment of one (1) year of *prision correccional* for each count of violation of B.P. Blg. 22 or a total of 51 years imposed upon her.

While the Court sustains the conviction of the petitioner, it is appropriate to modify the penalty of imprisonment that was imposed since it is out of the range of the penalty prescribed in Section 1[20] of B.P. Blg. 22 and in view of Administrative Circular (A.C.) No. 12-2000,[21] which provides:

Section 1 of B.P. Blg. 22 (*An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds for Credit and for Other Purposes*) imposes the penalty of imprisonment of not less

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[20] Sec. 1. *Checks without sufficient funds*. - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

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[21] RE: PENALTY FOR VIOLATION OF B.P. BLG. 22. Issued on November 21, 2000.

than thirty (30) days but not more than one (1) year or a fine of not less than but not more than double the amount of the check, which fine shall in no case exceed ₱200,000[.00], or both such fine and imprisonment at the discretion of the court.

The underlying principle behind A.C. No. 12-2000 was established by the Court in its ruling in *Vaca v. CA*[22] and *Lim v. People of the Philippines*.[23] In these cases, the Court held that "it would best serve the ends of criminal justice if, in fixing the penalty to be imposed for violation of B.P. [Blg.] 22, the same philosophy underlying the Indeterminate Sentence Law is observed, *i.e.* that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order."[24]

In A.C. No. 13-2001,[25] clarifications have been made as to queries regarding the authority of Judges to impose the penalty of imprisonment for violations of B.P. Blg. 22. The Court explained that the clear tenor and intention of A.C. No. 12-2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in B.P. Blg. 22.[26] The Court was emphatic in clarifying that it is not the Court's intention to decriminalize violation of B.P. Blg. 22 or to delete the alternative penalty of imprisonment. The rule of preference provided in A.C. No. 12-2000 does not foreclose the possibility of imprisonment for

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[22] 359 Phil. 187 (1998).

[23] 394 Phil. 844 (2000).

[24] *Tan v. Mendez, Jr.*, 432 Phil. 760, 772-773 (2002).

[25] SUBJECT: CLARIFICATION OF ADMINISTRATIVE CIRCULAR NO. 12-2000 ON THE PENALTY FOR VIOLATION OF BATAS PAMBANSA BLG. 22, OTHERWISE KNOWN AS THE BOUNCING CHECK LAW. Issued on February 14, 2001.

[26] *Julie S. Sumbilla v. Matrix Finance Corporation*, G.R. No. 197582, June 29, 2015.

violators of B.P. Blg. 22, neither does it defeat the legislative intent behind the law.[27]

To reiterate, A.C. No. 12-2000 merely establishes a rule of preference in the application of the penal provisions of B.P. Blg. 22, and Section 1 thereof imposes the following alternative penalties for its violation, to wit: (a) imprisonment of not less than 30 days but not more than one year; or (b) a fine of not less than but not more than double the amount of the check which fine shall in no case exceed ₱200,000[.00]; or (c) both such fine and imprisonment at the discretion of the court.[28]

There is an array of cases where this Court merely imposes fine rather than both fine and imprisonment. In *Lee v. CA*,[29] the Court ruled that the policy laid down in the cases of *Vaca* and *Lim* with regard to redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness, should be considered in favor of the accused who is not shown to be a habitual delinquent or a recidivist.[30] Said doctrines squarely apply in the instant case there being no proof or allegation that the petitioner is not a first time offender.

Moreover, the lower courts should have considered that the penalty of imprisonment must be graduated or proportionate to the amount of the check rather than imposing the same penalty of one year of *prision correccional* for the check that bounced amounting to ₱7,600.00 and the one for ₱200,000.00. Thus, a guilty person who issued a worthless check of lesser amount could be imprisoned for the same term as that of a guilty person who issued one worth millions. "Justice demands that crime

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[27] A.C. No. 13-2001, paragraph (3).

[28] *Tan v. Mendez, Jr.*, *supra* note 24, at 772.

[29] 489 Phil. 420 (2005).

[30] *Id*. at 443.

be punished and that the penalty imposed to be commensurate with the offense committed."[31]

Indeed, the imposition by the RTC, as affirmed by the CA, of imprisonment of one year of *prision correccional* for each count of violation of B.P. Blg. 22 resulting in a total of 51 years is too harsh taking into consideration the fact that the petitioner is not a recidivist, and that past transactions show that the petitioner had made good in her payment. It cannot be gainsaid that what is involved here is the life and liberty of the petitioner. If her penalty of imprisonment remains uncorrected, it would not be conformable with law and she would be made to suffer the penalty of imprisonment of 51 years, which is outside the range of the penalty prescribed by law; thus, the penalty imposed upon the petitioner should be duly corrected.

"An appeal in a criminal case throws the entire case for review and it becomes our duty to correct any error, as may be found in the appealed judgment, whether assigned as an error or not."[32] Accordingly, the Court finds that the penalty of imprisonment imposed by the lower courts should be modified to six (6) months for each count of violations of B.P. Blg. 22. Furthermore, the total amount of the subject checks which corresponds to the pieces of jewelry that was given and guaranteed to be sold by the petitioner should also be returned to Carullo. Lastly, considering that the lower courts failed to award interest on the amount due to Carullo, it is but proper to grant interest at the rate of six percent (6%) *per annum* reckoned from the date of finality of this Decision until fully paid.[33]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated July 30, 2008 and the Resolution dated November 5, 2008 of the Court of Appeals in CA-G.R. CR No. 30242,

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[31] *See* Associate Justice Presbitero J. Velasco, Jr.'s Dissenting Opinion in *People v. Temporada*, 594 Phil. 680, 762 (2008).

[32] *Lee v. CA, supra* note 29, at 443.

[33] *People v. Cabungan*, 702 Phil. 177, 190 (2013).

finding petitioner Bernadette Ida Ang Higa **GUILTY** beyond reasonable doubt of fifty-one (51) counts of violation of Batas Pambansa Bilang 22, are **AFFIRMED** with the following **MODIFICATIONS**:

(a) Bernadette Ida Ang Higa is hereby sentenced to a penalty of six (6) months imprisonment for each count, to be served in accordance with the limitation prescribed in paragraph (4),[34] Article 70 of the Revised Penal Code;

(b) Bernadette Ida Ang Higa is ORDERED to indemnify Ma. Vicia Carullo the amount of the checks in their totality, or in the amount of Six Million Ninety-Three Thousand Five Hundred Fifty Pesos (₱6,093,550.00); and

(c) All the monetary award shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[34] Art. 70. *Successive service of sentences; exception.* - x x x.

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Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the same maximum period.

Such maximum period shall in no case exceed forty years.

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THIRD DIVISION

[G.R. No. 187349. August 17, 2016]

BARANGAY MAYAMOT, ANTIPOLO CITY, *petitioner, vs.* **ANTIPOLO CITY, *SANGGUNIANG PANGLUNGSOD* OF ANTIPOLO, BARANGAYS STA. CRUZ, BAGONG NAYON and MAMBUGAN, and CITY ASSESSOR and TREASURER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; COURTS; JURISDICTION; THE NATURE OF AN ACTION AND ITS SUBJECT MATTER, AS WELL AS WHICH COURT OR AGENCY OF THE GOVERNMENT HAS JURISDICTION OVER THE SAME, ARE DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT IN RELATION TO THE LAW INVOLVED AND THE CHARACTER OF THE RELIEFS PRAYED FOR, WHETHER OR NOT THE COMPLAINANT/ PLAINTIFF IS ENTITLED TO ANY OR ALL OF SUCH RELIEFS, AND THE STATUTE IN FORCE AT THE TIME OF THE COMMENCEMENT OF THE ACTION DETERMINES THE JURISDICTION OF THE COURT.— Jurisdiction is defined as the power and authority of the courts to hear, try and decide cases. The nature of an action and its subject matter, as well as which court or agency of the government has jurisdiction over the same, are determined by the material allegations of the complaint in relation to the law involved and the character of the reliefs prayed for, whether or not the complainant/plaintiff is entitled to any or all of such reliefs. The designation or caption is not controlling more than the allegations in the complaint. It is not even an indispensable part of the complaint. Also, jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.

2. ID.; ID.; ID.; ID.; ID.; THE REGIONAL TRIAL COURT (RTC) IS WITHOUT JURISDICTION TO SETTLE A

BOUNDARY DISPUTE INVOLVING BARANGAYS IN THE SAME CITY OR MUNICIPALITY, AS THE DISPUTE SHALL BE REFERRED FOR SETTLEMENT TO THE *SANGGUNIANG PANGLUNGSOD* OR *SANGGUNIANG BAYAN* CONCERNED, AND THE DECISION OF THE *SANGGUNIAN* MAY BE APPEALED TO THE RTC.— There is a boundary dispute when a portion or the whole of the territorial area of a Local Government Unit (LGU) is claimed by two (2) or more LGUs. Here, Barangay Mayamot is claiming a portion of the territory of Barangays Bagong Nayon, Sta. Cruz, Cupang and Mambugan. Unfortunately for petitioner, the resolution of a boundary dispute is outside the jurisdiction of the RTC. At the time Barangay Mayamot filed its petition before the RTC of Antipolo City, RA No. 7160 was already in effect. x x x Based on [Sections 118 and 119 of R.A. No. 7160], it is clear that the RTC is without jurisdiction to settle a boundary dispute involving barangays in the same city or municipality. Said dispute shall be referred for settlement to the *sangguniang panglungsod* or *sangguniang bayan* concerned. If there is failure of amicable settlement, the dispute shall be formally tried by the *sanggunian* concerned and shall decide the same within sixty (60) days from the date of the certification referred to. Further, the decision of the *sanggunian* may be appealed to the RTC having jurisdiction over the area in dispute, within the time and manner prescribed by the Rules of Court.

3. ID.; ID.; ID.; ID.; WHENEVER IT APPEARS THAT THE COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER, THE ACTION SHALL BE DISMISSED, AND THE DEFENSE OF LACK OF JURISDICTION MAY BE INTERPOSED AT ANY TIME, DURING APPEAL OR EVEN AFTER FINAL JUDGMENT.— As we have ruled in the cases of *Municipality of Sta. Fe v. Municipality of Aritao*, and *Municipality of Pateros v. Court of Appeals*, by virtue of the Local Government Code of 1991, the RTC lost its power to try, at the first instance, cases of boundary disputes, and it is only when the intermediary steps have failed that resort to the RTC will follow as provided in the laws. Thus, the Court of Appeals correctly held that the RTC was correct in dismissing the petition due to lack of jurisdiction. Indeed, whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed

at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside.

APPEARANCES OF COUNSEL

Romeo R. Derez for petitioner.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court assailing the Court of Appeals' Decision[2] dated January 30, 2009, which affirmed the Decision[3] dated August 1, 2006 of the Regional Trial Court (RTC), Branch 73, Antipolo City in Civil Case No. 99-5478 for Declaration of Nullity and/or Annulment of Resolution No. 97-89 and Injunction, and Court of Appeals' Resolution[4] dated March 31, 2009 denying the Motion for Reconsideration[5] filed on February 17, 2009.

The Facts

In 1984, *Batas Pambansa Bilang* (BP Blg.) 787 to 794 were passed creating eight (8) new barangays in the then Municipality of Antipolo. Each law creating the new barangay contained provisions regarding the *sitios* comprising it, its boundaries, and mechanism for ratification of the law.[6]

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[1] *Rollo,* pp. 19-36.

[2] CA-G.R. CV No. 87854, penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr., of the Eleventh Division, *id.* at 39-48.

[3] Records, pp. 287-289.

[4] *Rollo,* pp. 37-38.

[5] CA *rollo,* pp. 71-75.

[6] *Rollo,* p. 40.

With the addition of Barangays Beverly Hills, Dalig, Bagong Nayon, San Juan, Sta. Cruz, Munting Dilaw, San Luis, and Inarawan to the original eight (8) (Calawis, Cupang, Mambugan, Dela Paz, San Jose, San Roque, San Isidro, and Mayamot), Antipolo became composed of sixteen (16) barangays.[7]

In order to integrate the territorial jurisdiction of the sixteen (16) barangays into the map of Antipolo, the *Sangguniang Bayan* of Antipolo passed Resolution No. 97-80, commissioning the City Assessor to plot and delineate the territorial boundaries of the sixteen (16) barangays pursuant to the Bureau of Lands Cadastral Survey No. 29-047 and the provisions of BP Blg. 787 to794.[8]

On October 25, 1989, the *Sangguniang Bayan* of Antipolo passed Resolution No. 97-89, "Defining the Territorial Boundaries of the Eight (8) Newly Created Barangays and the Eight (8) Former Existing Barangays of the Municipality of Antipolo, Rizal."[9] Resolution No. 97-89 approved the barangay boundaries specified and delineated in the plans/maps prepared by the City Assessor. Resolution No. 97-89 partly reads:

> WHEREAS, this body has unanimously agreed and requested the Assessor's Office which is competent enough in the determination of Barangay territorial boundaries in accordance with existing survey plans and assessment records;
>
> WHEREAS, **the Bureau of Lands Cadastral Survey No. 29-047 has defined the boundaries of the eight (8) formerly existing and has continued to exist [barangays],** namely: San Roque, San Jose, San Isidro, Dela Paz, Calawis, Cupang, Mambugan and Mayamot;
>
> **WHEREAS, Pursuant to Section 2 of Batas Pambansa Nos. 787, 788, 789, 790, 791, 792, 793 and 794, the territorial boundaries of barangays: Beverly Hills, Dalig, Bagong Nayon, San Juan, Sta. Cruz, Munting Dilaw, San Luis and Inarawan respectively has been clearly defined**;

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[7] *Id.*

[8] *Id.*; Records, p. 8.

[9] Records, pp. 8-10.

WHEREAS, to avoid administrative conflicts and territorial encroachments among barangay governments, **it is just and proper to identify and delineate barangay territorial boundaries in [accordance] with the Cadastral Survey for Old Barangays and the laws creating the new barangays as prepared and plotted by the Assessor's Office;**

WHEREAS, development projects envisioned by the government [will] be adversely affected if boundary disputes of barangays will not be resolved in due time;

WHEREAS, the Association of Barangay Captains (ABC) has unanimously acknowledged and endorsed the Scheme and means of [delineating] Barangay territorial boundaries hereinabove presented;

WHEREAS, pursuant to Section 80 of Batas Pambansa 337 or the Local Government Code provides that:

> "Boundary disputes between barangays within the same Municipality shall be heard and decided by the Sangguniang Bayan concerned for the purpose of affording the parties an opportunity to reach an amicable settlement. xxx";

AFTER DUE DELIBERATION and on motion made by Councilor Josme M. Macabuhay seconded by majority of the members present, it was…

RESOLVED, as it is hereby resolved to **approve the barangay boundaries specified and delineated in the plans/maps prepared by the Assessor's Office, Antipolo, Rizal based on Cadastral Survey No. 29-047 and Batas Pambansa Nos. 787 to 794;**

RESOLVED FINALLY, to furnish copies of this resolution all Councilors and Barangay [Councils] of this jurisdiction for their information and guidance.[10] (Emphasis supplied.)

On September 21, 1999, Barangay Mayamot filed a Petition for Declaration of Nullity and/or Annulment of Resolution No. 97-89 and Injunction[11] against Antipolo City, *Sangguniang Panglungsod* of Antipolo, Barangays Sta. Cruz, Bagong Nayon,

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

[11] *Id.* at 1-7.

Cupang, and Mambugan, the City Assessor and the City Treasurer before the RTC of Antipolo City.

In its petition, Barangay Mayamot claimed that while BP Blg. 787 to 794 did not require Barangay Mayamot to part with any of its territory, the adoption of Resolution No. 97-89 reduced its territory to one-half of its original area and was apportioned to Barangays Sta. Cruz, Bagong Nayon, Cupang, and Mambugan. It also claimed that the City Assessor's preparation of the plan and the *Sangguniang Panglungsod's* adoption of Resolution No. 97-89 were not preceded by any consultation nor any public hearing.[12]

Barangay Mayamot further alleged that Resolution No. 97-89 violated Section 82 of BP Blg. 337 or the Local Government Code of 1983, the law in force at the time, which provided that alteration, modification and definition of barangay boundaries shall be by ordinance and confirmed by a majority of the votes cast in a plebiscite called for the purpose.[13]

The RTC's Ruling

On August 1, 2006, the RTC rendered its Decision[14] dismissing the petition.

The RTC held that Resolution No. 97-89 was passed pursuant to the Cadastral Survey Plan duly approved by the Bureau of Lands and BP Blg. 787 to 794 and was not intended to alter the territorial boundary of Barangay Mayamot. It concluded that as the case involves a boundary dispute, the provisions of the Local Government Code of 1983 apply. The RTC explained:

> x x x [T]he Court opines that Resolution No. 97-89 did not intend to alter the territorial boundary of Barangay Mayamot or any existing or newly created barangay at the time of its passing. Said Resolution was in fact passed in consequence of and pursuant to Batas Pambansa

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

[13] *Id.* at 3-4.

[14] *Supra* note 3.

Nos. 787 to 794 creating the eight new barangays of then Municipality of Antipolo. x x x

A perusal of the Minutes reveals that it was never the intention of the Sangguniang Bayan of Antipolo to alter or modify the territorial boundaries of Barangay Mayamot. Under the presumption of regularity, it relied on the Cadastral Survey Plan duly approved by the Bureau of Lands as indeed correctly defining the existing territorial boundary of Barangay Mayamot. Not intending to alter any territorial boundary, Resolution No. 97-89 is not an ordinance contemplated under Section 82 of Batas Pambansa Blg. 337 as required to hold a plebiscite.

Any issue of discrepancy resulting in the adoption of Resolution [No.] 97-89 between the boundary defined in the Cadastral Survey Plan and the actual physical boundary itself of Barangay Mayamot is a boundary dispute which should have been properly ventilated in accordance with the remedies available under the Local Government Code of 1983, the prevailing law at the time of the passing of the subject resolution. x x x[15]

Barangay Mayamot filed its Notice of Appeal[16] on August 29, 2006.

The Court of Appeals' Ruling

Through its assailed Decision dated January 30, 2009, the Court of Appeals denied Barangay Mayamot's appeal.

The Court of Appeals ruled that contrary to the contention of Barangay Mayamot, there is no issue as to the manner of creation of the eight (8) new barangays. The additional barangays were created by BP Blg. 787 to794 and were approved by the majority of the votes cast in a plebiscite held on February 5, 1986, as evidenced by Commission on Elections Resolution No. 96-2551.[17] It agreed with the finding of the RTC that Resolution No. 97-89 was passed only in consequence of BP Blg. 787 to 794 and did not alter the territorial boundary of

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[15] Records, p. 288.

[16] *Id.* at 290.

[17] *Rollo*, p. 45.

Barangay Mayamot.[18] As such, the case was merely a boundary dispute.

The Court of Appeals ruled that Sections 118-119 of Republic Act No. 7160 (RA No. 7160)[19] or the Local Government Code of 1991, the statute in force at the time of commencement of Barangay Mayamot's action, provide the mechanism for settlement of boundary disputes. Thus, the RTC correctly dismissed the case because it has no original jurisdiction to try and decide a barangay boundary dispute, to wit:

> Notably, the *LGC of 1991* grants an expanded role on the Sangguniang Panlungsod or Sangguniang Bayan in resolving cases of barangay boundary disputes. Aside from having the function of bringing the contending parties together and intervening or assisting in the amicable settlement of the case, the Sangguniang Panlungsod or Sangguniang Bayan is now specifically vested with original jurisdiction to actually hear and decide the dispute in accordance with the procedures laid down in the law and its implementing rules and regulations. The trial court loses its power to try, at the first instance, cases of barangay boundary disputes and only in the exercise of its appellate jurisdiction can the RTC decide the case.[20]

On February 17, 2009, Barangay Mayamot filed a Motion for Reconsideration,[21] which the Court of Appeals denied in a Resolution[22] dated March 31, 2009.

In this petition, Barangay Mayamot reiterates its contention that because of Resolution No. 97-89, its territory was altered and drastically reduced. Barangay Mayamot argues that the changes and alterations did not have any legal basis and did not conform to its actual and existing territorial jurisdiction. Since there was alteration of its territory, Resolution No. 97-89

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[18] *Id.*

[19] An Act Providing for A Local Government Code of 1991 (1991).

[20] *Rollo*, p. 47.

[21] *Supra* note 5.

[22] *Supra* note 4.

violated Section 82 of the Local Government Code of 1983, which requires an ordinance and a plebiscite to create, alter, or modify barangay boundaries.[23]

The respondents filed their Comment[24] on September 24, 2009 and claim that as the case is a boundary dispute, the RTC and Court of Appeals were correct in dismissing the case for lack of jurisdiction.

Our Ruling

The petition has no merit.

Jurisdiction is defined as the power and authority of the courts to hear, try and decide cases.[25] The nature of an action and its subject matter, as well as which court or agency of the government has jurisdiction over the same, are determined by the material allegations of the complaint in relation to the law involved and the character of the reliefs prayed for, whether or not the complainant/plaintiff is entitled to any or all of such reliefs.[26] The designation or caption is not controlling more than the allegations in the complaint. It is not even an indispensable part of the complaint.[27] Also, jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.[28]

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[23] *Rollo*, pp. 29-30, 33-34.

[24] *Id.* at 69-73.

[25] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 759 SCRA 306, 312.

[26] *Del Valle, Jr. v. Dy*, G.R. No. 170977, April 16, 2009, 585 SCRA 355, 364, citing *Villamaria, Jr. v. Court of Appeals*, G.R. No. 165881, April 19, 2006, 487 SCRA 571, 589.

[27] *Munsalud v. National Housing Authority*, G.R. No. 167181, December 23, 2008, 575 SCRA 144, 157.

[28] *Bank of the Philippine Islands v. Hong*, G.R. No. 161771, February 15, 2012, 666 SCRA 71, 77, citing *Llamas v. Court of Appeals*, G.R. No. 149588, September 29, 2009, 601 SCRA 228, 233.

In this case, it is of no moment that Barangay Mayamot's petition before the RTC was captioned as one for nullity of Resolution No. 97-89. To recall, Barangay Mayamot claimed that as a result of the consolidation and integration of the boundaries of the old barangays and newly-created barangays and issuance of Resolution No. 97-89 approving the consolidation and integration, a portion of its territory was apportioned to Barangays Bagong Nayon, Sta. Cruz, Cupang, and Mambugan.[29] In other words, the allegations and issues raised by Barangay Mayamot are centered on the alleged inconsistency between its perceived actual and physical territory and its territory and boundaries, as defined and identified after the Bureau of Lands Cadastral Survey No. 29-047 and the provisions of BP Blg. 787 to 794 were consolidated and integrated by respondent City Assessor into the map of Antipolo. Thus, contrary to Barangay Mayamot's argument that the issue is the validity of Resolution No. 97-89, the issue to be resolved is the boundary dispute between Barangay Mayamot on the one hand, and Barangays Bagong Nayon, Sta. Cruz, Cupang, and Mambugan, on the other hand.

There is a boundary dispute when a portion or the whole of the territorial area of a Local Government Unit (LGU) is claimed by two (2) or more LGUs.[30] Here, Barangay Mayamot is claiming a portion of the territory of Barangays Bagong Nayon, Sta. Cruz, Cupang and Mambugan. Unfortunately for petitioner, the resolution of a boundary dispute is outside the jurisdiction of the RTC.

At the time Barangay Mayamot filed its petition before the RTC of Antipolo City, RA No. 7160 was already in effect. Sections 118 and 119 of RA No. 7160 provide:

Section 118. *Jurisdictional Responsibility for Settlement of Boundary Dispute.* – Boundary disputes between and among local

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[29] Records, pp. 2-3.

[30] Rule III, Art. 15, Rules and Regulations Implementing the Local Government Code of 1991, Administrative Order No. 270 (1992).

government units shall, as much as possible, be settled amicably. To this end:

(a) Boundary disputes involving two (2) or more *barangays* in the same city or municipality shall be referred for settlement to the *sangguniang panlungsod* or *sangguniang bayan* concerned.

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(e) In the event the *sanggunian* fails to effect an amicable settlement within sixty (60) days from the date the dispute was referred thereto, it shall issue a certification to that effect. Thereafter, the dispute shall be formally tried by the *sanggunian* concerned which shall decide the issue within sixty (60) days from the date of the certification referred to above.

Section 119. *Appeal*. — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. x x x

Based on the foregoing, it is clear that the RTC is without jurisdiction to settle a boundary dispute involving barangays in the same city or municipality. Said dispute shall be referred for settlement to the *sangguniang panglungsod* or *sangguniang bayan* concerned. If there is failure of amicable settlement, the dispute shall be formally tried by the *sanggunian* concerned and shall decide the same within sixty (60) days from the date of the certification referred to. Further, the decision of the *sanggunian* may be appealed to the RTC having jurisdiction over the area in dispute, within the time and manner prescribed by the Rules of Court.

As we have ruled in the cases of *Municipality of Sta. Fe v. Municipality of Aritao*,[31] and *Municipality of Pateros v. Court of Appeals*,[32] by virtue of the Local Government Code of 1991,

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[31] G.R. No. 140474, September 21, 2007, 533 SCRA 586, 595-596.

[32] G.R. No. 157714, June 16, 2009, 589 SCRA 130, 142-145.

the RTC lost its power to try, at the first instance, cases of boundary disputes, and it is only when the intermediary steps have failed that resort to the RTC will follow as provided in the laws.

Thus, the Court of Appeals correctly held that the RTC was correct in dismissing the petition due to lack of jurisdiction. Indeed, whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside.[33]

WHEREFORE, in view of the foregoing, this petition is **DENIED** for lack of merit. The Decision dated January 30, 2009 and Resolution dated March 31, 2009 of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187850. August 17, 2016]

ANITA U. LORENZANA, *petitioner, vs.* **RODOLFO LELINA,** *respondent.*

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[33] *Machado v. Gatdula,* G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559-560, citing *Lozon v. National Labor Relations Commission,* G.R. No. 107660, January 2, 1995, 240 SCRA 1, 11.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BEST EVIDENCE RULE; COURTS ARE NOT PRECLUDED TO ACCEPT IN EVIDENCE A MERE PHOTOCOPY OF A DOCUMENT WHEN NO OBJECTION WAS RAISED WHEN IT WAS FORMALLY OFFERED.— The best evidence rule requires that when the subject of inquiry is the contents of a document, no evidence is admissible other than the original document itself except in the instances mentioned in Section 3, Rule 130 of the Revised Rules of Court. As such, mere photocopies of documents are inadmissible pursuant to the best evidence rule. Nevertheless, evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment. Courts are not precluded to accept in evidence a mere photocopy of a document when no objection was raised when it was formally offered. In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds specified. Objection to evidence must be made at the time it is formally offered. In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made. And when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. Moreover, grounds for objection must be specified in any case. Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. Thus, even on appeal, the appellate court may not consider any other ground of objection, except those that were raised at the proper time.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; SALE OF REAL ESTATE; WHERE LAND IS SOLD FOR A LUMP SUM AND NOT SO MUCH PER UNIT OF MEASURE OR NUMBER, THE BOUNDARIES OF THE LAND STATED IN THE CONTRACT DETERMINE THE EFFECTS AND SCOPE OF THE SALE, AND NOT ITS AREA.— [W]e have

consistently ruled that what really defines a piece of land is not the area, calculated with more or less certainty mentioned in the description, but its boundaries laid down, as enclosing the land and indicating its limits. Where land is sold for a lump sum and not so much per unit of measure or number, the boundaries of the land stated in the contract determine the effects and scope of the sale, and not its area. This is consistent with Article 1542 of the Civil Code.

3. REMEDIAL LAW; CIVIL ACTIONS; EXECUTION OF JUDGMENT; MONEY JUDGMENTS ARE ENFORCEABLE ONLY AGAINST PROPERTY UNQUESTIONABLY BELONGING TO THE JUDGMENT DEBTOR ALONE.— Money judgments are enforceable only against property unquestionably belonging to the judgment debtor alone. If property belonging to any third person is mistakenly levied upon to answer for another man's indebtedness, the Rules of Court gives such person all the right to challenge the levy through any of the remedies provided for under the rules, including an independent "separate action" to vindicate his or her claim of ownership and/or possession over the foreclosed property.

4. ID.; ID.; ID.; AS A RULE, IF AT THE TIME OF LEVY AND SALE BY THE SHERIFF, THE PROPERTY DID NOT BELONG TO THE CONJUGAL PARTNERSHIP BUT WAS PARAPHERNAL PROPERTY, SUCH PROPERTY MAY NOT BE ANSWERABLE FOR THE OBLIGATION OF THE HUSBAND WHICH RESULTED IN THE JUDGMENT AGAINST HIM IN FAVOR OF ANOTHER PERSON; CASE AT BAR.— As a rule, if at the time of the levy and sale by the sheriff, the property did not belong to the conjugal partnership, but was paraphernal property, such property may not be answerable for the obligations of the husband which resulted in the judgment against him in favor of another person. The levied property being exclusive property of Ambrosia, and Ambrosia not being a party to the collection case, the levied property may not answer for Aquilino's obligations. Even assuming that the levied property belonged to the conjugal partnership of Ambrosia and Aquilino, it may still not be levied upon because petitioner did not present proof that the obligation redounded to the benefit of the family. More importantly, Aquilino's interest over a portion of the levied property as conjugal property is merely inchoate prior to the liquidation

of the conjugal partnership. Thus, we find that the levied property may not answer for the obligations of Aquilino because the latter does not own it at the time of the levy.

APPEARANCES OF COUNSEL

Andres Marcelo Padernal Guerrero & Paras for petitioner.
Artuz Bello Borja Law Office for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court filed by Anita U. Lorenzana (petitioner) from the Court of Appeals' (CA) Decision[2] dated April 30, 2008 (CA Decision) and the Resolution[3] dated April 27, 2009 in CA-G.R. CV No. 86187. The CA affirmed the Regional Trial Court (RTC) Decision[4] dated March 7, 2005 (RTC Decision) upholding Rodolfo Lelina's (respondent) ownership over the half of the 16,047 square meters (sq. m.) of land claimed by petitioner, and cancelling the Deed of Final Conveyance and Tax Declaration in petitioner's name.[5]

Facts

On April 1, 1975, Ambrosia Lelina (Ambrosia), married to Aquilino Lelina (Aquilino), executed a Deed of Absolute Sale[6] over one-half (½) of an undivided parcel of land covered by

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[1] *Rollo,* pp. 11-44.

[2] *Id.* at 46-61, penned by Associate Justice Marlene Gonzales-Sison, with Justices Lucenito N. Tagle and Amelita G. Tolentino, concurring.

[3] *Id.* at 63-64, penned by Associate Justice Marlene Gonzales-Sison, with Justices Amelita G. Tolentino and Estela M. Perlas-Bernabe, concurring.

[4] *Id.* at 125-162.

[5] *Id.* at 161.

[6] *Id.* at 71-72.

Tax Declaration (TD) No. 14324-C (property) in favor of her son, the respondent. The Deed of Absolute Sale, however, specified only an area of 810 sq. m. as the one-half (½) of the property covered by the tax declaration.[7] Nevertheless, the Deed of Absolute Sale contained the description of the land covered by TD No. 14324-C, as follows: "[b]ounded on the: North by Constancio Batac-& National highway[,] East by Cecilio Lorenzana, South by Cr[ee]k, and West by Andres Cuaresma."[8]

Immediately after the execution of the Deed of Absolute Sale, respondent took possession of the property. Since then, the tenants of the property, Fidel Labiano, Venancio Lagria, and Magdalena Lopez, continued to deliver his share of the produce of the property as well as produce of the remaining half of the land covered by TD No. 14324-C until December 1995.[9]

Around August 1996,[10] respondent and his three tenants were invited at the Municipal Agrarian Office of Tagudin, Ilocos Sur for a conference where they were informed that the property is already owned by petitioner by virtue of a Deed of Final Conveyance and TD No. 11-21367-A both in the name of petitioner.[11] Alerted by the turn of events, respondent filed a complaint for quieting of title and cancellation of documents[12] on September 24, 1996, with the RTC Branch 25, Tagudin, Ilocos Sur, claiming that there appears to be a cloud over his ownership and possession of the property.

In her Answer,[13] petitioner alleged that she acquired a land with an area of 16,047 sq. m. through a foreclosure sale. Petitioner

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[7] *Id.* at 71.

[8] *Id.*

[9] *Rollo*, p. 48.

[10] *Id.* at 66, 69.

[11] *Id.* at 49.

[12] *Id.* at 65-70. An Amended Complaint dated December 12, 1996 was filed by respondent, *id.* at 77-82.

[13] *Id.* at 83-87.

claims that she became the judgment creditor in a case for collection of sum of money[14] (collection case) she filed against Aquilino, and the decision in her favor became final on March 20, 1975, with an Entry of Judgment issued on April 10, 1975.[15] Thereafter, by virtue of a writ of execution to enforce the decision in the collection case, the sheriff levied on a land with an area of 16,047 sq. m. covered by the TD No. 11-05370-A[16] (levied property) under the name of Ambrosia. Petitioner claimed that she emerged as the sole and highest bidder when the levied property was auctioned. An auction sale was conducted on September 29, 1977 and a Certificate of Sale was issued in favor of petitioner. The same Certificate of Sale was registered with the Register of Deeds on October 18, 1977.[17] No redemption having been made despite the lapse of the one year period for redemption, a Deed of Final Conveyance[18] was issued in her favor on October 9, 1978. The same was registered with the Register of Deeds of Ilocos Sur on October 16, 1978.[19]

During trial, it was undisputed that the property is found within the levied property.[20] The levied property has the following boundaries: North by Constancio Batac; East by National Road and heirs of Pedro Mina & Cecilio Lorenzana; South by Creek; and West by Andres Cuaresma, Eladio Ma and Creek.[21] It was further shown that the Deed of Final Conveyance expressly describes the levied property as registered and owned by Ambrosia.[22]

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[14] *Id.* at 84. Docketed as Civil Case No. 622-R, titled *Anita U. Lorenzana, assisted by her husband Solomon L. Lorenzana, plaintiff, v. Aquilino Lelina, defendant*.

[15] Records, p. 346.

[16] *Rollo*, pp. 73-74.

[17] *Id*. at 88.

[18] *Id*. at 88-90.

[19] *Id.* at 89.

[20] TSN, October 5, 2004, pp. 15 & 20.

[21] *Rollo*, p. 88.

[22] *Id.*; See also TSN, August 21, 2001, p. 19 and TSN, October 7, 2003, pp. 4-5.

Petitioner testified that she did not immediately possess the levied property, but only did so in 1995.[23] On the other hand, respondent testified that sometime in 1975 and prior to the sale of the property to him, the other half of the levied property was owned by Godofredo Lorenzana (Godofredo).[24] He also claimed that he and Godofredo have agreed that he will hold in trust the latter's share of produce from the other half of the land.[25]

After trial, respondent submitted his Memorandum[26] dated December 16, 2004 where he explained that the land he was claiming was the one-half (½) of the 16,047 sq. m. formerly covered by TD No. 14324-C described in the Deed of Absolute Sale. Thus, he prayed that his title to the property, *i.e.* the one-half (½) of the levied property, be upheld.

The RTC upheld respondent's ownership over the half of the levied property.[27] It ruled that the levied property is exclusively owned by Ambrosia, and could not be held to answer

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[23] TSN, October 5, 2004, pp. 20-21.

[24] TSN, September 14, 2000, p. 7.

[25] TSN, September 14, 2000, p. 7.

[26] *Rollo*, pp. 117-124.

[27] *Id.* at 161-162; records, pp. 420-421. The dispositive portion of the RTC Decision reads:

> [IN LIGHT] OF THE FOREGOING FACTS, judgment is hereby rendered declaring plaintiff Rodolfo Lelina as the rightful owner of one-half (½) of the land described in Tax Declaration [N]o. 11-05730-A/11-21367-A, the entire area of the land of which is 16,047 square meters/1.6047 hectares. Defendant Anita Lorenzana is hereby ordered to desist from claiming ownership of that undivided one-half portion of the property situated at Bimmanga, Tagudin, Ilocos Sur covered by Tax Declaration [N]o. 11-05730-A in the name of Ambrosia L. Lelina.
>
> The Provincial Assessor of Ilocos Sur is hereby ordered to cancel Tax Declaration [N]o. 11-21367-A and to issue another tax declaration in the name of the new owner Rodolfo Lelina of Tagudin, Ilocos Sur, by virtue of the Deed of Sale executed by Ambrosia Lelina former owner of the land in suit. The other half of the property to be held in trust by plaintiff Rodolfo Lelina in favor of Godofredo Lorenzana.

for the obligations of her husband in the collection case.[28] As a result, it declared the Deed of Final Conveyance dated October 9, 1978, as well as the proceedings taken during the alleged auction sale of levied property, invalid and without force and effect on Ambrosia's paraphernal property.[29] It also cancelled the TD No. 11-21367-A in the name of petitioner.[30]

Petitioner filed a notice of appeal from the RTC Decision. In her Appellant's Brief,[31] petitioner argued that the trial court erred: (1) in awarding one-half (½) of the levied property, which is more than the 810 sq. m. prayed for in the complaint; (2) in ruling that the Deed of Final Conveyance in favor of petitioner is invalid; and (3) in awarding litigation expenses and attorney's fees in favor of respondent.

The CA affirmed the findings of the RTC and upheld respondent's ownership over the property.[32] It ruled that the

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The three (3) tenants, namely: Fidel Labiano, Venancio Lagria and Magdalena Lopez, are hereby ordered to deliver to plaintiff Rodolfo Lelina or his heirs the share of the harvest of the land;

Further, the defendant is hereby ordered to reimburse the value of the produce of one-half portion of the land in suit from December 1995 up to year 2000, and to pay the plaintiff FIVE THOUSAND PESOS (₱5,000.00) by way of litigation expenses, and TEN THOUSAND PESOS (₱10,000.00) as reasonable attorney's fees.

Finally, the Clerk of Court is hereby ordered to deliver to Rodolfo Lelina the amount presently deposited by the tenants as the owner's share in the produce of the land since 2001 up to the present, receipt of which should be attached to the records.

No pronouncement as to the costs of the suit.

Let copy of this decision furnish each counsel and parties.

SO ORDERED.

[28] *Rollo*, pp. 158-159.

[29] *Id*. at 160-161.

[30] *Id*. at 161.

[31] CA *rollo*, pp. 75-122.

[32] *Rollo*, p. 60. The dispositive portion of which reads:

WHEREFORE, premises considered, the present appeal is hereby **DISMISSED** and the challenged Decision of the Regional Trial Court of

power of the court in the execution of its judgment extends only to properties unquestionably belonging to the judgment debtor. Since Ambrosia exclusively owned the levied property, the sheriff in the collection case, on behalf of the court, acted beyond its power and authority when it levied on the property. Consequently, petitioner cannot rely on the execution sale in proving that she has better right over the property because such execution sale is void.[33] Finding petitioner's claim over the property as invalid, the CA upheld respondent's right to the removal of the cloud on his title.[34] The CA deleted the award of litigation expenses and attorney's fees, there being no finding of facts in the RTC Decision that warrants the same.[35]

Hence, this petition.

Arguments

Petitioner argues that respondent's sole basis for his claim of ownership over the property is the Deed of Absolute Sale, the original of which was not presented in court. Since only the photocopy of the Deed of Absolute Sale was presented, its contents are inadmissible for violating the best evidence rule. Thus, respondent's claim of ownership should be denied.[36]

Petitioner next claims that even if the Deed of Absolute Sale be considered in evidence, it only proves respondent's ownership over the 810 sq. m., and not the half of the 16,047 sq. m. levied property. Accordingly, the area of the lot awarded should be limited to what was prayed for in the complaint.[37]

Tagudin, Ilocos Sur, Branch 25, in Civil Case No. 0783-T is **AFFIRMED** with **MODIFICATION** as regards to the award of litigation expenses and attorney's fees which are deleted.

[33] *Id.* at 54-56.

[34] *Id.* at 59.

[35] *Id.* at 60.

[36] *Id.* at 24-29.

[37] *Id.* at 32-35, 39-40.

Lastly, petitioner assails the finding that Ambrosia is the exclusive owner of the levied property. She asserts that at the very least, the levied property is jointly owned by the spouses Ambrosia and Aquilino and therefore, it may be validly held answerable for the obligations incurred by Aquilino. Accordingly, she asserts that the Deed of Final Conveyance should not have been totally invalidated but should have been upheld as to the other half of the levied property.[38] In this connection, she maintains that the lower courts should not have ordered the remaining half of the levied property be held in trust by respondent because the alleged landholding of Godofredo was not proven to be the same or even part of the levied property.[39]

Issues

I. Whether respondent is the owner of one-half (½) of the levied property comprising of 16,047 sq. m.

II. Whether the Deed of Final Conveyance and TD No. 11-21367-A, both in the name of petitioner, were correctly cancelled.

Ruling

We deny the petition.

Discussion

The issues raised invite a re-determination of questions of fact which is not within the province of a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court. Factual findings of the trial court affirmed by the CA are final and conclusive and may not be reviewed on appeal.[40] In certain cases, we held that as an exception, a review of such factual findings may be made when the judgment of the CA is premised

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[38] *Id.* at 35-40.

[39] *Id.* at 34.

[40] *Catindig v. Vda. de Meneses*, G.R. Nos. 165851 & 168875, February 2, 2011, 641 SCRA 350, 357.

on a misapprehension of facts or a failure to consider certain relevant facts, which, if properly considered, would justify a different conclusion.[41] Petitioner invokes this exception urging us to pass upon anew the RTC and CA's findings, regarding the ownership of the property and levied property which led the lower courts to cancel the Deed of Final Conveyance and TD No. 11-21367-A under petitioner's name.

We find no reversible error committed by the RTC and CA in ruling that the Deed of Absolute Sale proves respondent's ownership over the property, and that petitioner failed to establish a registrable title on the property and levied property.

I. Respondent is the owner of half of the levied property.

We affirm the finding that respondent is the owner of the property equivalent to half of the levied property.

A. Waiver of objection to the Best Evidence Rule.

Petitioner claims that the photocopy of the Deed of Absolute Sale should not have been admitted in evidence to prove respondent's ownership over the property. We disagree.

The best evidence rule requires that when the subject of inquiry is the contents of a document, no evidence is admissible other than the original document itself except in the instances mentioned in Section 3, Rule 130 of the Revised Rules of Court. As such, mere photocopies of documents are inadmissible pursuant to the best evidence rule.[42] Nevertheless, evidence not

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[41] See *Megaworld Properties and Holdings, Inc. v. Cobarde*, G.R. No. 156200, March 31, 2004, 426 SCRA 689, 694, and *Superlines Transportation Company, Inc. v. Philippine National Construction Company*, G.R. No. 169596, March 28, 2007, 519 SCRA, 432, 441.

[42] *Caraan v. Court of Appeals*, G.R. No. 140752, November 11, 2005, 474 SCRA 543; *Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America*, G.R. No. 171209 & UDK-13672, June 27, 2012, 675 SCRA 145, 165-167.

objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[43] Courts are not precluded to accept in evidence a mere photocopy of a document when no objection was raised when it was formally offered.[44]

In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds specified.[45] Objection to evidence must be made at the time it is formally offered.[46] In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered.[47] It is only at this time, and not at any other, that objection to the documentary evidence may be made. And when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived.[48] This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[49] Moreover, grounds for objection must be specified in any case.[50] Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground.[51] Thus, even on appeal, the appellate court may not

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[43] *Id*.

[44] *Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America*, *supra* at 164-167.

[45] RULES OF COURT, Rule 132, Sec. 36.

[46] *Id*.

[47] RULES OF COURT, Rule 132, Secs. 34 & 35.

[48] *Blas v. Angeles-Hutalla*, G.R. No. 155594, September 27, 2004, 439 SCRA 273, 286.

[49] *Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America*, *supra* note 42 at 165-166.

[50] RULES OF COURT, Rule 132, Sec. 36.

[51] *People v. Martin*, G.R. No. 172069, January 30, 2008, 543 SCRA 143, 152.

consider any other ground of objection, except those that were raised at the proper time.[52]

In this case, the objection to the Deed of Absolute Sale was belatedly raised. Respondent submitted his Formal Offer of Evidence[53] on February 12, 2003 which included the Deed of Absolute Sale as Exhibit A. While petitioner filed a Comment and Objection[54] on February 21, 2003, she only objected to the Deed of Absolute Sale for being self-serving. In the Order[55] dated February 27, 2003, the RTC admitted the Deed of Absolute Sale, rejecting the objection of petitioner. Having failed to object on the ground of inadmissibility under the best evidence rule, petitioner is now deemed to have waived her objection on this ground and cannot raise it for the first time on appeal.[56]

B. The Deed of Absolute Sale sufficiently proves respondent's ownership over the property.

We stress that petitioner does not question the validity of the sale, but merely the admissibility of the deed. Having been admitted in evidence as to its contents, the Deed of Absolute Sale sufficiently proves respondent's ownership over the property. The deed, coupled with respondent's possession over the property since its sale in 1975 until 1995, proves his ownership.

Petitioner maintains that without conceding the correctness of the CA Decision, respondent's ownership of the land should only be limited to 810 sq. m. in accordance with his complaint and evidence presented. Thus, the CA went over and beyond the allegations in the complaint making its finding devoid of factual basis.[57]

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[52] *Id*., citing *Cabugao v. People*, G.R. No. 158033, July 30, 2004, 435 SCRA 624, 633-634.

[53] Records, p. 283.

[54] *Id.* at 285-286.

[55] *Id.* at 288-289.

[56] *People v. Martin, supra.*

[57] *Rollo*, pp. 34-35.

We note that petitioner actively participated in the proceedings below. During the course of trial she was confronted with the issue of ownership of the levied property, and she admitted that the property is found within the former.[58] From the beginning, petitioner was apprised of respondent's claim over the half of the land described in the Deed of Absolute Sale, which has the same boundaries as the land described in TD No. 11-05730-A. While respondent in his complaint stated a claim for an area of only 810 sq. m., he adequately clarified his claim for the one-half (½) of the levied property in his Memorandum[59] dated December 16, 2004 before the RTC. Hence, it could not be said that petitioner was deprived of due process by not being notified or given the opportunity to oppose the claim over half of the levied property.

At any rate, we have consistently ruled that what really defines a piece of land is not the area, calculated with more or less certainty mentioned in the description, but its boundaries laid down, as enclosing the land and indicating its limits.[60] Where land is sold for a lump sum and not so much per unit of measure or number, the boundaries of the land stated in the contract determine the effects and scope of the sale, and not its area.[61] This is consistent with Article 1542 of the Civil Code which provides:

> Art. 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser areas or number than that stated in the contract.
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> The same rule shall be applied when two or more immovables are sold for a single price; but **if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area**

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[58] TSN, October 5, 2004, pp. 15 & 20.

[59] *Rollo*, pp. 117-124.

[60] *Balantakbo v. Court of Appeals*, G.R. No. 108515, October 16, 1995, 249 SCRA 323, 326.

[61] *Id.* at 327.

or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (Emphasis supplied.)

In this case, the land covered by TD No. 14324-C in the Deed of Absolute Sale, from where the one-half (½) portion belonging to respondent is taken, has the following boundaries: North by Constancio Batac & National Highway; East by Cecilio Lorenzana; South by Creek; and West by Andres Cuaresma.[62] This is the same extent and location of the lot covered in the Deed of Final Conveyance, TD No. 11-05730-A in Ambrosia's name, and petitioner's TD No. 11-21367-A. This description should prevail over the area specified in the Deed of Absolute Sale. Thus, we agree with the courts below that respondent owns half of the levied property.

Respondent having been able to make a *prima facie* case as to his ownership over the property, it was incumbent upon petitioner to prove her claim of ownership over the levied property by preponderance of evidence. In *Dantis v. Maghinang, Jr.*,[63] citing *Jison v. Court of Appeals*,[64] we held:

Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of

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[62] *Rollo,* p. 71.

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

[64] G.R. No. 124853, February 24, 1998, 286 SCRA 495, 532.

evidence" refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.[65]

As correctly found by both the RTC and CA, petitioner failed to establish her claim over the levied property. Petitioner has been inconsistent in her versions as to how she acquired ownership over the levied property. In her Answer, she claims that she is the owner of the levied property by virtue of having been the highest bidder in the public auction to execute the decision in the collection case.[66] During her testimony, however, she contradicts herself by claiming that the levied property was awarded to her husband by her father-in-law or the brother of Ambrosia, and the latter's husband Aquilino was merely appointed as administrator of the land.[67] The inconsistencies between these claims are glaring because if the levied property was truly awarded to her by her father-in-law, she could have just vindicated her claim in an independent action, and not participate in the public auction. Moreover, this is inconsistent with her claim that Aquilino was the owner of the levied property which is answerable for Aquilino's debt.[68] Thus, the RTC and CA correctly did not give credence to these versions but instead considered that her claim of ownership is anchored only on the Deed of Final Conveyance.

Petitioner's ownership anchored on this Deed of Final Conveyance, however, likewise fails.

II. The Deed of Final Conveyance and TD No. 11-21367-A were correctly cancelled.

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[65] *Dantis v. Maghinang, Jr., supra* at 609-610.

[66] *Rollo*, p. 84.

[67] TSN, April 13, 2004, pp. 11-12.

[68] *Rollo*, pp. 21-23.

Money judgments are enforceable only against property unquestionably belonging to the judgment debtor alone.[69] If property belonging to any third person is mistakenly levied upon to answer for another man's indebtedness, the Rules of Court gives such person all the right to challenge the levy through any of the remedies provided for under the rules, including an independent "separate action" to vindicate his or her claim of ownership and/or possession over the foreclosed property.[70]

The determinative question here is to whom the property belongs at the time of the levy and execution sale. To recall, respondent acquired the property through the Deed of Absolute Sale dated April 1, 1975, while petitioner bought the levied property at the public auction held on September 29, 1977. Obviously, respondent already owned the property at the time petitioner bought the levied property, and thus cannot be levied and attached for the obligations of Aquilino in the collection case.

As to the other half of the levied property, we uphold the CA and the RTC's finding that prior to its transfer to respondent and one Godofredo Lorenzana, the levied property was paraphernal property of Ambrosia. The records show that Ambrosia owned the levied property as evidenced by: (1) TD No. 11-05370-A in her name; (2) a provision in the Deed of Final Conveyance that it is Ambrosia who exclusively owns the land;[71] and (3) an admission from petitioner herself in her appellant's brief that Ambrosia is the declared owner of the levied property.[72] These pieces of evidence *vis-a-vis* petitioner's inconsistent theories of ownership, undoubtedly have more weight, and in fact had been given more weight by the courts below.

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[69] *Gagoomal v. Villacorta*, G.R. No. 192813, January 18, 2012, 663 SCRA 444, 454-455.

[70] *Id*. See also RULES OF COURT, Rule 39, Sec. 16.

[71] *Rollo*, p. 110; TSN, August 21, 2001, p. 19.

[72] CA *rollo*, p. 92.

As a rule, if at the time of the levy and sale by the sheriff, the property did not belong to the conjugal partnership, but was paraphernal property, such property may not be answerable for the obligations of the husband which resulted in the judgment against him in favor of another person.[73] The levied property being exclusive property of Ambrosia, and Ambrosia not being a party to the collection case, the levied property may not answer for Aquilino's obligations. Even assuming that the levied property belonged to the conjugal partnership of Ambrosia and Aquilino, it may still not be levied upon because petitioner did not present proof that the obligation redounded to the benefit of the family. More importantly, Aquilino's interest over a portion of the levied property as conjugal property is merely inchoate prior to the liquidation of the conjugal partnership.[74]

Thus, we find that the levied property may not answer for the obligations of Aquilino because the latter does not own it at the time of the levy. Hence, the Deed of Final Conveyance and TD No. 11-21367-A were correctly cancelled for being the outcome of an invalid levy.

A final note.

Petitioner does not have a legal claim of ownership over the property because her alleged title results from an invalid levy and execution. Thus, it is of no moment that respondent never registered the Deed of Absolute Sale, or that he never declared it for taxation purposes—petitioner does not have a valid claim over the property that would benefit from respondent's lapses.

This likewise holds true as to the other half of the levied property determined to be the property of Godofredo. Petitioner's claim that there is no basis in ordering respondent to hold in trust the other half of the levied property in favor of Godofredo fails. Records show that the CA gave credence to respondent's testimony that the other half of the levied property was sold to Godofredo, and that the latter agreed that respondent shall receive

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[73] See *Go v. Yamane*, G.R. No. 160762, May 3, 2006, 489 SCRA 107.

[74] *Id.* at 123-124.

the proceeds of the produce on behalf of Godofredo.[75] Upon such findings, it became incumbent upon petitioner to show otherwise by proving her ownership. This, however, she failed to do. Thus, petitioner cannot claim that the courts below erred in not awarding Godofredo's portion to her.

From the foregoing, we uphold respondent's ownership over the subject property, as well as the cancellation of Deed of Final Conveyance and TD No. 11-21367-A under the name of petitioner.

WHEREFORE, the petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 189852, August 17, 2016.]

THOMAS BEGNAEN, *petitioner, vs.* **SPOUSES LEO CALIGTAN and ELMA CALIGTAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; INDIGENOUS PEOPLES' RIGHTS ACT OF 1997 (IPRA) (REPUBLIC ACT NO. 8371); THE IPRA DOES NOT CONFER ORIGINAL AND EXCLUSIVE JURISDICTION TO THE NCIP (NATIONAL

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[75] *Rollo,* p. 55.

COMMISSION ON INDIGENOUS PEOPLE) OVER ALL CLAIMS AND DISPUTES INVOLVING RIGHTS OF THE INDIGENOUS CULTURAL COMMUNITY (ICC)/ INDIGENOUS PEOPLE (IP).— After a comprehensive analysis of the classes of jurisdiction, We held that **"the NCIP cannot be said to have even primary jurisdiction over all the ICC/IP cases** x x x. We do not find such specificity in the grant of jurisdiction to the NCIP in Section 66 of the IPRA. **Neither does the IPRA confer original and exclusive jurisdiction to the NCIP over all claims and disputes involving rights of ICCs/IPs."** Thus, We struck down as void the latest iteration of the NCIP rule purporting to confer original and exclusive jurisdiction upon the RHO, contrary to the provisions of the IPRA.

2. ID.; ID.; IPRA SPECIFICALLY GOVERNS THE RIGHTS OF INDIGENOUS PEOPLE TO THEIR ANCESTRAL LANDS AND DOMAINS; CASE AT BAR.— Republic Act No. 8371 (R.A. 8371), otherwise known as the Indigenous Peoples' Rights Act of 1997, specifically governs the rights of indigenous peoples to their ancestral lands and domains. Section 3(a) and (b) and Section 56 of R.A. 8371 provide for a more comprehensive definition of ancestral domains and ancestral lands: x x x Indeed, "ancestral lands are lands occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by ***themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership,*** continuously, to the present xxx." Thus, the claim of petitioner that when land is purchased, it is no longer within the ambit of ancestral land/domain, is devoid of merit. It is significant to note that in their Answer, respondents claimed that they owned the area in question as part of the land they ***purchased*** in 1959 "pursuant to ***age-old customs and traditions*** from their relative Leona Vicente." This purchase was well within the rights protected under the IPRA Law or its Rules and Regulations. When the NCIP-RHO assumed jurisdiction over the case, heard it, and eventually dismissed it without prejudice to its settlement under customary practice, the RHO (Regional Hearing Officer) in effect determined that the property was ancestral land, and that the parties to the dispute must conform to the customary practice of dispute settlement.

3. REMEDIAL LAW; ACTIONS; DOCTRINE OF CONCURRENT JURISDICTION; AS A RULE, THE BODY OR AGENCY THAT FIRST TAKES COGNIZANCE OF THE COMPLAINT SHALL EXERCISE JURISDICTION TO THE EXCLUSION OF THE OTHERS.— While the doctrine of concurrent jurisdiction means equal jurisdiction to deal with the same subject matter, We have consistently upheld the settled rule that **the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others.** Thus, assuming there is concurrent jurisdiction, **"this concurrence is not to be taken as an unrestrained freedom to file the same case before both bodies** or be viewed as a contest between these bodies as to which will first complete the investigation."

4. ID.; ID.; FORUM SHOPPING; THE NON-DISCLOSURE IN THE COMPLAINT FILED BEFORE THE MCTC (MUNICIPAL CIRCUIT TRIAL COURT) OF THE COMMENCEMENT OF THE CASE FOR "LAND DISPUTE AND ENFORCEMENT OF RIGHTS PREVIOUSLY FILED BEFORE THE NCIP-RHO (NATIONAL COMMISSION ON INDIGENOUS PEOPLE-REGIONAL HEARING OFFICER) CONSTITUTES FORUM SHOPPING; CASE AT BAR.— On numerous occasions, this Court has held that "a circumstance of forum shopping occurs when, **as a result or in anticipation of an adverse decision in one forum, a party seeks a favorable opinion in another forum through means other than appeal or certiorari by raising Identical causes of action, subject matter and issues.** Stated a bit differently, forum shopping is the institution of two or more actions involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would come out with a favorable disposition." A perusal of the Complaint filed by petitioner-appellant before the MCTC, four months after the NCIP-RHO had dismissed his case without prejudice, reveals no mention whatsoever of the initial NCIP-RHO proceedings. x x x Clearly, the non-disclosure of the commencement of the case for "Land Dispute and Enforcement of Rights" previously filed before the NCIP-RHO, constitutes a violation of Section 5, Rule 7 of the Revised Rules of Court against forum shopping: x x x As We held in *Brown-Araneta*

> *v. Araneta*, "(t)he evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, the Court adheres to the rules against forum shopping, and a breach of these rules results in the dismissal of the case."

APPEARANCES OF COUNSEL

Celino Celino & Celino Law Offices for petitioner.

Domogan Orate Dao-ayan Padaco and Bawayan Law Offices for respondents.

D E C I S I O N

SERENO,[*] *C.J.*:

The case at Bench is an opportunity for Us to reaffirm and reemphasize Our ruling in *Lim v. Gamosa*,[1] where We struck down as void an administrative rule that expanded the jurisdiction of the National Commission on Indigenous People (NCIP) beyond the boundaries of the Indigenous Peoples' Rights Act (IPRA). In the process, it likewise behooves Us to resolve a question of concurrent jurisdiction and determine the proper tribunal/body to take cognizance of the instant dispute.

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP

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[*] Chairperson.

[1] G.R. No. 393964, 2 December 2015.

[2] CA Decision dated 27 February 2009, *rollo*, pp. 23-31. Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), with Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison concurring.

[3] CA Resolution dated 28 September 2009, *id*. at 17-18.

No. 104150. The CA reversed and set aside the Decision[4] and Order[5] rendered by the Regional Trial Court (RTC) of Bontoc, Mountain (Mt.) Province, and reinstated the Resolution[6] of the Municipal Circuit Trial Court (MCTC) of Bauko, Mt. Province. The case concerns an ancestral land dispute between members of an Indigenous Cultural Community (ICC), particularly the Kankanaey Tribe of Mt. Province.

The basic issue is whether or not the CA, in upholding the jurisdiction of the National Commission on Indigenous Peoples (NCIP) over the aforementioned dispute, to the exclusion of regular courts, committed reversible error.

PROCEEDINGS BEFORE THE NCIP-RHO & MCTC

On 3 August 2006, petitioner Thomas Begnaen (Begnaen) filed a Complaint with Prayer for Preliminary Injunction against respondents Spouses Leo and Elma Caligtan (Sps. Caligtan) for "Land Dispute and Enforcement of Rights" before the Regional Hearing Office (RHO) of the NCIP at La Trinidad, Benguet.[7] The RHO thereafter issued an Order[8] dismissing the complaint based on respondents' argument that the case should have gone to the council of elders and not through the Barangay Lupon, as mandated by the Indigenous Peoples' Rights Act (IPRA).[9]

However, instead of abiding by the Order of the RHO, Begnaen filed against the Sps. Caligtan a Complaint for Forcible Entry with a Prayer for a Writ of Preliminary Mandatory Injunction[10]

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[4] RTC Decision dated 11 March 2008, *id*. at 32-43. Penned by Presiding Judge Joseph A. Patnaan.

[5] RTC Resolution dated 29 May 2008, *id*. at 44.

[6] MCTC Resolution dated 6 August 2007, *id*. at 45-50. Penned by Presiding Judge James P. Kibiten.

[7] CA *Rollo*, pp. 43-48.

[8] Dated 23 November; *id*. at 56-57.

[9] *Id*. at 56.

[10] Dated 18 June 2007, docketed as Civil Case No. 336; *id*. at 58-62.

before the Municipal Circuit Trial Court (MCTC) of Bauko-Sabangan, Mt. Province.

Begnaen alleged that he was the owner of a 125 square meter parcel of land situated in Supang, Sabangan, Mt. Province. He claimed that on two occasions,[11] respondents — by using force, intimidation, stealth, and threat — entered a portion of the subject property, hurriedly put up a chicken-wire fence, and started building a shack thereon without Begnaen's knowledge and consent.[12]

Meanwhile, respondents averred that they owned the area in question as part of the land they had purchased from a certain Leona Vicente in 1959 pursuant to age-old customs and traditions. They introduced improvements evidencing their prior physical possession.[13] Respondents further contended that when petitioner's father Alfonso Begnaen (Alfonso) was still alive, he had always respected their boundary wherein a "GIKAD" or old pine tree lumber was buried and recovered. The "GIKAD" established their boundary pursuant to age-old Igorot customs and traditions. To further mark their boundary, respondents also planted bushes and a mango tree, all of which Alfonso had likewise respected.[14]

MCTC RULING

In its Resolution,[15] the MCTC dismissed the ejectment complaint in favor of respondents. However, this was without prejudice to the filing of a case before the RHO of the NCIP, which the MCTC recognized had primary, original, and exclusive jurisdiction over the matter pursuant to the IPRA. The MCTC further reasoned that the fact that petitioner initially filed a complaint with the NCIP-RHO shows that he recognized the primary

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[11] *Id*. at 59; 26 April 2006 and 9 June 2007.

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

[13] *Id*. at 65.

[14] *Id*. at 66.

[15] *Rollo*, pp. 45-50; penned by Judge James P. Kibiten.

jurisdiction of the NCIP.[16] Aggrieved, petitioner-appellant filed an appeal before Regional Trial Court Branch 35 of Bontoc, Mt. Province (RTC).

RTC RULING

In a Decision[17] dated 11 March 2008, the RTC reversed and set aside the Resolution and Order of the MCTC, saying that it was the latter court that had jurisdiction over the case for forcible entry. The RTC reasoned that the provisions of the IPRA pertaining to jurisdiction do not espouse exclusivity and thus cannot divest the MCTC of its jurisdiction over forcible entry and unlawful detainer cases as provided by B.P. Blg. 129. According to the RTC, IPRA must be read to harmonize with B.P. Blg. 129.[18]

Respondent-appellees then moved for a reconsideration of the above Decision, but their motion was denied by the RTC in its Order[19] dated 29 May 2008. Undaunted, respondents appealed to the CA.

CA RULING

In its Decision,[20] the CA reversed and set aside the RTC rulings, and reinstated the Resolution of the MCTC. In upholding the jurisdiction of the NCIP over the present case, the CA ruled that the passage of the IPRA has divested regular courts of their jurisdiction when the parties involved are members of ICCs/IPs and the disputed property forms part of their ancestral land/domain.[21] Petitioner filed a Motion for Reconsideration, but it was denied by the CA in its questioned Resolution.[22]

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[16] *Id*. at 50.

[17] *Supra* note 3.

[18] *Rollo,* p. 41.

[19] *Id*. at 44.

[20] *Supra* note 1.

[21] *Rollo,* p. 29.

[22] *Supra* note 2.

Hence, this Petition.

RULING OF THE COURT

The NCIP Rule purporting to establish the jurisdiction of the NCIP-Regional Hearing Officer as original and exclusive has been declared VOID for expanding the law.

In its assailed Decision, the CA reversed the RTC and held that jurisdiction properly lies with the NCIP, to the exclusion of the regular courts. Thus:

> While admittedly forcible entry cases are cognizable by the regular courts pursuant to Section 1, rule 70 of the 1997 Rules of Court and B.P. Blg. 129; nonetheless, with the passage of the IPRA Law (R.A. 8371), it is our considered view that the**regular courts are divested of their jurisdiction when the parties involved therein are the ICCs/IPs and the property in question is an ancestral land.**[23]

R.A. 8371 or the Indigenous Peoples' Rights Act of 1997, particularly Sections 65 and 66 thereof, provide:

> SECTION 65. *Primacy of Customary Laws and Practices,* — **When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.**
>
> SECTION 66. *Jurisdiction of the NCIP*. — The NCIP, through its regional offices, shall have jurisdiction over **all claims and disputes involving rights of ICCs/IPs**: *Provided, however,* That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP. (Emphasis supplied)

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[23] *Rollo,* p. 29; emphasis supplied.

The IPRA confers jurisdiction on the NCIP over "all claims and disputes involving rights of ICCs/IPs," without qualification as to whether such jurisdiction is original and/or exclusive. However, Section 5, Rule III of NCIP Administrative Circular No. 1-03 dated 9 April 2003, known as "The Rules on Pleadings, Practice, and Procedure Before the NCIP" (NCIP Rules), went beyond the provisions of the IPRA to provide:[24]

> Sec. 5. *Jurisdiction of the NCIP*. — The NCIP through its Regional Hearing Offices shall exercise jurisdiction over all claims and disputes involving rights of ICCs/IPs and all cases pertaining to the implementation, enforcement, and interpretation of R.A. 8371, including but not limited to the following:
>
> **(1) *Original and Exclusive Jurisdiction of the Regional Heaving Office (RHO):***
>
> a. **Cases involving disputes and controversies over ancestral lands/domains of ICCs/IPs:**
>
> xxx xxx xxx
>
> (2) ***Original Jurisdiction*** *of the Regional Hearing Officer:*
>
> a. **Cases affecting property rights, claims of ownership,** hereditary succession, **and settlement of land disputes, between and among ICCs/IPs that have not been settled under customary laws;** xxx. (Emphases supplied)

During the pendency of these proceedings, the NCIP promulgated Administrative Circular No. 1, Series of 2014, known as "The 2014 Revised Rules of Procedure before the National Commission on Indigenous Peoples"[25] (NCIP Revised Rules). Section 1, Rule III of the NCIP Revised Rules continues to articulate the "original and exclusive" jurisdiction of the NCIP-RHO, thus:

> Section 1. *Jurisdiction of the NCIP*. — The NCIP through its Regional Hearing Offices shall exercise jurisdiction over all claims and disputes involving rights of ICCs/IPs and all cases pertaining to the

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[24] *Id.*

[25] Approved 9 October 2014.

implementation, enforcement, and interpretation of R.A. 8371, including but not limited to the following:

> (1) ***Original and Exclusive Jurisdiction of the Regional Hearing Office (RHO):***
>
> a. Cases involving disputes and controversies over ancestral lands/domains of ICCs/IPs;
>
> xxx xxx xxx. (Emphasis supplied)

We recently had occasion to scrutinize and categorically rule upon the validity of the foregoing provisions in *Lim*,[26] specifically "whether the NCIP's jurisdiction is limited to cases where both parties are ICCs/IPs or **primary and concurrent with regular courts, and/or original and exclusive, to the exclusion of the regular courts**, on all matters involving rights of ICCs/IPs." At the outset, We said:

> (I)n *Unduran, et al. v. Aberasturi, et al.*, we ruled that Section 66 of the IPRA does not endow the NCIP with primary and/or exclusive and original jurisdiction over all claims and disputes involving rights of ICCs/IPs. Based on the qualifying proviso, we held that the NCIP's jurisdiction over such claims and disputes occur only when they arise between or among parties belonging to the same ICC/IP. Since two of the defendants therein were not IPs/ICCs, the regular courts had jurisdiction over the complaint in that case.
>
> In his concurring opinion in *Unduran*, Justice Jose P. Perez submits that the jurisdiction of the NCIP ought to be definitively drawn to settle doubts that still linger due to the implicit affirmation done in The City Government of Baguio City, et al. v. Atty. Masweng, et al. of the NCIP's jurisdiction over cases where one of the parties are not ICCs/IPs.
>
> In *Unduran* and as in this case, we are hard pressed to declare a primary and/or exclusive and original grant of jurisdiction to the NCIP over all claims and disputes involving rights of ICCs/IPs where there is no clear intendment by the legislature.

After a comprehensive analysis of the classes of jurisdiction, We held that **"the NCIP cannot be said to have even primary**

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[26] *Supra* note 1.

jurisdiction over all the ICC/IP cases x x x. We do not find such specificity in the grant of jurisdiction to the NCIP in Section 66 of the IPRA. **Neither does the IPRA confer original and exclusive jurisdiction to the NCIP over all claims and disputes involving rights of ICCs/IPs."** Furthermore,

> That NCIP Administrative Circular 44 expands the jurisdiction of the NCIP as original and exclusive in Sections 5 and 1, respectively of Rule III x x x is of no moment. The power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment.
>
> It ought to be stressed that the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of the law into effect. The administrative regulation must be within the scope and purview of the law. **The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature. Indeed, administrative issuances must not override, but must remain consistent with the law they seek to apply and implement. They are intended to carry out, not to supplant or to modify, the law.**
>
> xxx xxx xxx
>
> **Perforce, in this case, the NCIP's Administrative Circulars' classification of its RHO's jurisdiction as original and exclusive, supplants the general jurisdiction granted by Batas Pambansa Bilang 129 to the trial courts and ultimately, modifies and broadens the scope of the jurisdiction conferred by the IPRA on the NCIP. We cannot sustain such a classification.**
>
> xxx xxx xxx
>
> **At best, the limited jurisdiction of the NCIP is concurrent with that of the regular trial courts in the exercise of the latter's general jurisdiction extending to all controversies brought before them within the legal bounds of rights and remedies.** (Emphases supplied)

Thus, We struck down as void the latest iteration of the NCIP rule purporting to confer original and exclusive jurisdiction upon the RHO, contrary to the provisions of the IPRA:

> WHEREFORE, the appeal is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 98268 dated 26 April 2010 and the Resolution of the National Commission on Indigenous Peoples in RHO 4-01-2006 dated 30 November 2006 are REVERSED AND SET ASIDE. The petition in RHO 4-01-2006 is DISMISSED for lack of jurisdiction of the National Commission on Indigenous Peoples. **Section 1 of NCIP Administrative Circular No. 1, Series of 2014, promulgated on 9 October 2014 declaring the jurisdiction of the Regional Hearing Officer as original and exclusive is declared VOID for expanding the law.** x x x. (Emphasis supplied)

In view of the foregoing, We find the CA to have erred in reversing the RTC's findings on the jurisdiction of regular courts and declaring that the NCIP "has **original and exclusive** jurisdiction over the instant case to the exclusion of the regular courts." The appellate court was likewise in error in upholding the NCIP's **primary** jurisdiction over all claims and disputes involving rights of ICCs/IPs and all cases pertaining to the implementation, enforcement, and interpretation of R.A. 8371. To reiterate *Lim*, the limited jurisdiction of the NCIP is **concurrent** with that of the regular trial courts in the exercise of the latter's general jurisdiction extending to all controversies brought before them within the legal bounds of rights and remedies.

Be that as it may, We nevertheless find the MCTC's dismissal; of petitioner-appellant's case for forcible entry against respondents-appellees to be warranted.

The NCIP is vested with jurisdiction over (1) the parties, who are all members of the same ICC, and (2) the subject property, which is ancestral land.

Before proceeding to the pivotal issue of which tribunal shall properly take cognizance of the dispute between the parties,

We first address the NCIP's jurisdiction over the parties and the subject property.

It is undisputed that the parties are members of ICCs/ Indigenous Peoples (IPs).

In point is the Resolution of the MCTC, which states in part:

> On the date set, the parties and their respective lawyers appeared. Instead of immediately hearing the aforesaid prayer, the court, considering that the ***parties are natives of this place (Mountain Province) who belong to the so called groups of Indigenous Peoples/ Indigenous Cultural Communities of our country,*** and that the land subject of this case is also located within this same province, asked the following questions to the parties, to wit:
>
> 1. ***Do they admit that they belong to and are members of the Indigenous Peoples/Indigenous Cultural Communities?***
>
> xxx xxx xxx
>
> To these questions, ***both parties replied in the affirmative: that indeed, they belong to and are members of the so called group of Indigenous Peoples/Indigenous Cultural Communities*** xxx.[27]

In affirming the MCTC, the CA likewise declared:

> Undeniably, ***both parties herein admitted that they are members of the Indigenous Cultural Communities, particularly the Kankanaey Tribe of Mt. Province*** xxx.[28] (Emphasis supplied)

Since the courts below (the CA and the MCTC) concur that the parties to this case are members of ICCs, particularly the Kankanaey Tribe of Mt. Province, the Court defers to these undisputed factual findings.

On the matter of the subject property, petitioner claims that land that had been purchased by respondents from another cannot become ancestral land, which should have been owned since time immemorial.[29]

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

[28] *Id.* at 27.

[29] *Rollo,* p. 11.

We do not agree.

Republic Act No. 8371 (R.A. 8371), otherwise known as the Indigenous Peoples' Rights Act of 1997, specifically governs the rights of indigenous peoples to their ancestral lands and domains.[30]

Section 3(a) and (b) and Section 56 of R.A. 8371 provide for a more comprehensive definition of ancestral domains and ancestral lands:

SECTION 3. *Definition of Terms.* — For purposes of this Act, the following terms shall mean:

a) *Ancestral Domains* — Subject to Section 56 hereof, refers to ***all areas generally belonging to ICCs/IPs comprising lands,*** inland waters, coastal areas, and natural resources therein, ***held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present*** except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

b) *Ancestral Lands* — Subject to Section 56 hereof, refers to ***lands occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership,***

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[30] *Tanenglian v. Lorenzo*, 573 Phil. 472-502 (2008).

> ***continuously, to the present*** except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/ corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.

SECTION 56. *Existing Property Rights Regimes*. — Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

Indeed, "ancestral lands are lands occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by ***themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership,*** continuously, to the present xxx." Thus, the claim of petitioner that when land is purchased, it is no longer within the ambit of ancestral land/domain, is devoid of merit.

It is significant to note that in their Answer, respondents claimed that they owned the area in question as part of the land they ***purchased*** in 1959 "pursuant to ***age-old customs and traditions*** from their relative Leona Vicente."[31] This purchase was well within the rights protected under the IPRA Law or its Rules and Regulations, to wit:

SECTION 8. Rights to Ancestral Lands. — The right of ownership and possession of the ICCs/IPs to their ancestral lands shall be recognized and protected.

a) *Right to transfer land/property*. — Such right shall include the ***right to transfer land or property rights to/among members of the same ICCs/IPs, subject to*** **customary laws and traditions of the community concerned.**[32] " (Emphases supplied)

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[31] *Rollo,* p. 57.

[32] R.A. 8371 (Indigenous People's Rights Act of l997).

PART III

Rights of the ICCs/IPs to Their Ancestral Lands

SECTION 1. *Right to Transfer Land or Property.* — The various indigenous modes of ***acquisition and transfer of property between and among members of the ICCs/IPs*** shall be recognized as **legal, valid and enforceable.**[33] (Emphases supplied)

Furthermore, when questioned, both parties admitted that the land subject of their dispute and of the case, was ancestral land.[34] This admission was also attested to in respondents' Comment/Opposition to the Petition, which stated that "the petitioner again cannot refute or contradict the fact that as per stipulations/admissions entered into by the parties before the MCTC of Sabangan-Bauko, Mt. Province on 29 June 2007 the parties herein are members of the Indigenous Peoples/ Indigenous Cultural Communities and the land subject of this case is an ancestral land."[35]

Finally, it must be noted this case stemmed from the "Land Dispute and Enforcement of Rights" complaint filed by petitioner-appellant before the NCIP-RHO. When the NCIP-RHO assumed jurisdiction over the case, heard it, and eventually dismissed it without prejudice to its settlement under customary practice, the RHO in effect determined that the property was ancestral land, and that the parties to the dispute must conform to the customary practice of dispute settlement.

The NCIP-RHO, being the agency that first took cognizance of petitioner-appellant's complaint, has jurisdiction over the same to the exclusion of the MCTC.

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[33] NCIP ADMINISTRATIVE ORDER NO. 01-98 (RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 8371, OTHERWISE KNOWN AS "THE INDIGENOUS PEOPLES' RIGHTS ACT OF 1997").

[34] *Rollo,* p. 45.

[35] *Id.* at 87.

Even as We squarely ruled on the concurrent jurisdiction of the NCIP and the regular courts in *Lim,* this Court likewise said: "We are quick to clarify herein that even as we declare that in some instances the regular courts may exercise jurisdiction over cases which involve rights of ICCs/IPs, the governing law for these kinds of disputes necessarily include the IPRA and the rights the law bestows on ICCs/IPs."[36]

While the doctrine of concurrent jurisdiction means equal jurisdiction to deal with the same subject matter, We have consistently upheld the settled rule that **the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others.**[37]

Thus, assuming there is concurrent jurisdiction, "**this concurrence is not to be taken as an unrestrained freedom to file the same case before both bodies** or be viewed as a contest between these bodies as to which will first complete the investigation."[38]

In *Department of Justice v. Liwag,*[39] Mary Ong initially filed a complaint-affidavit before the Ombudsman, which was acted upon forthwith. Two weeks later, she executed sworn statements before the National Bureau of Investigation and the Department of Jutsice, alleging the same facts and circumstances. We held that it was the Ombudsman, before whom the complaint was initially filed, that had the authority to proceed with the preliminary investigation to the exclusion of the DOJ. Thus:

> The **subsequent assumption of jurisdiction by the DOJ** in the conduct of preliminary investigation over the cases filed against the respondents **would not promote an orderly administration of justice.**

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[36] *Supra* note 1.

[37] *Puse v. Delos Santos-Puse,* G.R. No. 183678 (15 March 2010); *Department of Justice v. Liwag,* G.R. No. 149311 (11 February 2005); *Carlos v. Angeles,* G.R. No. 142907 (29 November 2000).

[38] *Id*.

[39] *Id*.

xxx xxx xxx

To allow the same complaint to be filed successively before two or more investigative bodies would promote multiplicity of proceedings. It would also cause undue difficulties to the respondent who would have to appear and defend his position before every agency or body where the same complaint was filed. This would leave hapless litigants at a loss as to where to appear and plead their cause or defense.

There is yet another undesirable consequence. **There is the distinct I possibility that the two bodies exercising jurisdiction at the same time would come up with conflicting resolutions** regarding the guilt of the respondents.

Finally, the **second investigation** would entail an **unnecessary expenditure of public funds**, and the use of valuable and limited resources of Government, **in a duplication of proceedings already started with the Ombudsman**." (Emphases supplied)

Similarly, in *Office of the Ombudsman v. Rodriguez*[40], We declared:

In administrative cases involving the concurrent jurisdiction of two or more disciplining authorities, the body in which the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising concurrent jurisdiction. In this case, since the complaint was filed first in the Ombudsman, and the Ombudsman opted to assume jurisdiction over the complaint, the Ombudsman's exercise of jurisdiction is to the exclusion of the *sangguniang bayan* exercising concurrent jurisdiction.

It is a hornbook rule that jurisdiction is a matter of law. Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated. When herein complainants first filed the complaint in the Ombudsman, jurisdiction was already vested on the latter. Jurisdiction could no longer be transferred to the *sangguniang bayan* by virtue of a subsequent complaint filed by the same complainants. (Emphasis supplied)

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[40] G.R. No. 172700 (23 July 2010).

It does not escape Our attention that petitioner-appellant first invoked the NCIP's jurisdiction by filing with the RHO his complaint against respondents for "Land Dispute and Enforcement of Rights." The initial filing of the instant case by petitioner-appellant before the NCIP-RHO only showed that he fully recognized the NCIP's jurisdiction over this case.[41] However, when the Complaint was dismissed ***without prejudice*** for failure of petitioner-appellant to first bring the matter for settlement before the Council of Elders as mandated by the IPRA,[42] petitioner-appellant took an altogether different route via the MCTC.

The dismissal was pursuant to Section 9, Rule IV of NCIP Administrative Circular No. 1-03, which dictates that "No case shall be brought before the RHO or the Commission unless the parties have exhausted all remedies provided for under customary laws,"[43] By doing so, the NCIP-RHO did not divest itself of its jurisdiction over the case; it merely required compliance with the mandatory settlement proceedings. As aptly observed by the MCTC, the case was dismissed "not on the issue of jurisdiction as (the NCIP-RHO) has rightful jurisdiction over it, but on the ground of non-compliance with a condition sine qua non."[44] However, instead of simply complying with the RHO Order, petitioner-appellant filed a forcible entry case, a complete deviation from customary practice.

Finally, the IPRA's declaration of the primacy of customary laws and practices in resolving disputes between ICCs/IPs is no less significant:

SECTION 65. *Primacy of Customary Laws and Practices.* — ***When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.***

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[41] *Id.* at 30.

[42] *Supra* note 2, at 28-29.

[43] *Id.* at 29.

[44] *Id.* at 49.

Under the foregoing discussions, We find that jurisdiction remains vested in the NCIP-RHO as the first agency to take cognizance over the case, to the exclusion of the MCTC. We likewise declare petitioner-appellant estopped from belatedly impugning the jurisdiction of the NCIP-RHO after initiating a Complaint before it and receiving an adverse ruling.

Petitioner-appellant is guilty of forum shopping.

Corollarily, and as already recognized by the MCTC in the proceedings below[45], We find petitioner-appellant to have engaged in the deplorable and docket-clogging practice of forum shopping.[46]

On numerous occasions, this Court has held that "a circumstance of forum shopping occurs when, **as a result or in anticipation of an adverse decision in one forum, a party seeks a favorable opinion in another forum through means other than appeal or certiorari by raising identical causes of action, subject matter and issues.** Stated a bit differently, forum shopping is the institution of two or more actions involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would come out with a favorable disposition."[47]

A perusal of the Complaint[48] filed by petitioner-appellant before the MCTC, four months after the NCIP-RHO had dismissed his case without prejudice, reveals no mention whatsoever of the initial NCIP-RHO proceedings. Indeed, the pertinent Verification and Certification[49] of the said pleading reads:

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[45] *Id*. at 50.

[46] *Brown-Araneta v. Araneta*, G.R. No. 190814 (9 October 2013).

[47] *Id*., *Stronghold Insurance Co., Inc. v. Sps. Stroem*, G.R. No. 204689 (21 January 2015). Emphasis supplied.

[48] *Supra* note 10.

[49] *Id*. at 55.

4. That I hereby certify that I have not commenced any other action or proceeding involving the same issues in the Supreme Court, Court of Appeals, or any other tribunal or agency and that no other action is pending before the Supreme Court, Court of Appeals, or any other tribunal or agency, and should I learn thereafter that a similar action or proceeding had been filed or is pending before the Supreme Court, Court of Appeals, or any other tribunal or agency, I undertake to report the same within 5 days to the Honorable Court;

Clearly, the non-disclosure of the commencement of the case for "Land Dispute and Enforcement of Rights" previously filed before the NCIP-RHO, constitutes a violation of Section 5, Rule 7 of the Revised Rules of Court against forum shopping:

Section 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) **that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency** and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. **The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.** (Emphases supplied)

As We held in *Brown-Araneta v. Araneta*[50], "(t)he evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, the Court adheres to the rules against forum shopping, and a breach of these rules results in the dismissal of the case."

The question as to whether such non-disclosure was willful, deliberate, and ultimately contumacious, is yet to be addressed in a proper proceeding. But for purposes of the matter before Us, the falsity of such Verification and Certification is further ground to uphold the MCTC's dismissal of the Complaint, and ultimately, the dismissal of the instant Petition.

WHEREFORE, the instant Petition for Review is **DENIED**. The Decision of the CA in CA-G.R. SP No. 104150 is hereby **AFFIRMED**. The Decision dated 11 March 2008 and the Order dated 29 May 2008, both rendered by the RTC of Bontoc, Mt. Province, are hereby**REVERSED AND SET ASIDE;** and the Resolution of the MCTC of Bauko, Sabangan, dated 6 August 2007 is **REINSTATED.**

SO ORDERED.

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

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[50] *Supra*, note 44.

THIRD DIVISION

[G.R. No. 191088. August 17, 2016]

FRILOU CONSTRUCTION, INC., *petitioner, vs.* **AEGIS INTEGRATED STRUCTURE CORPORATION,** *respondent.*

SYLLABUS

REMEDIAL LAW; PLEADINGS; SPECIFIC DENIAL; THE PURPOSE OF REQUIRING THE DEFENDANT TO MAKE SPECIFIC DENIAL IS TO MAKE HIM DISCLOSE THE MATTERS ALLEGED IN THE COMPLAINT WHICH HE SUCCINCTLY INTENDS TO DISPROVE AT TRIAL, TOGETHER WITH THE MATTER WHICH HE RELIED UPON TO SUPPORT THE DENIAL; THREE (3) MODES OF SPECIFIC DENIAL.— Section 10, Rule 8 of the Rules of Court on Manner of Making Allegations in Pleading contemplates three (3) modes of specific denial: 1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial. The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, together with the matter which he relied upon to support the denial. The parties are compelled to lay their cards on the table.

APPEARANCES OF COUNSEL

Sales Sta. Ana & Rodrigo Law Office for petitioner.
Mañacop Law Office for respondent.

D E C I S I O N

PEREZ, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] of the Court of Appeals in CA-G.R. CV No. 92108 which reversed and set aside the Decision[2] of the Regional Trial Court, Branch 58, Makati City in Civil Case No. 05-711, a suit for a Sum of Money filed by respondent Aegis Integrated Structure Corporation against petitioner Frilou Construction, Inc.

Respondent's Complaint alleged, in pertinent part:

xxx xxx xxx

2. On October 5, 2004, [petitioner] engaged the services of [respondent] to supply, fabricate, deliver and erect the structural steel requirements of [petitioner] for the proposed Exhibit Building for and in consideration of ₱5,000,000.00 under Purchase Order No. 0461, x x x.

3. On November 19, 2004, [petitioner], again, engaged the services of [respondent] to supply, fabricate, deliver and erect the structural requirements of [petitioner] for the proposed Residential Bldg. for and in consideration of ₱1,024,306.00 under Purchase Order No. 0500, x x x;

4. Payment of the sum of ₱6,024,306.00 has long been overdue in that [respondent] had long supplied, fabricated, delivered and erected the structural steel requirements of [petitioners] but the latter has paid [respondent] the sum of ₱4,490,014.32 only thereby leaving an unpaid balance of ₱1,534,291.68;

5. [Respondent] made repeated demands for the sum of ₱1,534,291.68 but [petitioner] failed/refused to pay, hence, it was necessary for [respondent] to institute the instant suit for which it incurred attorney's fee of ₱150,000.00;

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[1] *Rollo*, pp. 47-57; Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Isaias P. Dicdican and Romeo F. Barza concurring.

[2] *Id*. at 101-103; Penned by Judge Eugene C. Paras.

WHEREFORE, it is respectfully prayed that judgment be rendered ordering [petitioner] to pay [respondent] the following:

1. ₱1,534,291.68 plus interest thereon at the legal rate from May 25, 2005 until fully paid;

2. ₱150,000.00 as attorney's fee;

3. Cost of suit;

[Respondent] prays for such other relief as may be deemed just and equitable under the foregoing premises.[3]

Petitioner filed its Answer and countered that:

xxx xxx xxx

2. [Petitioner] likewise ADMITS paragraphs 2 and 3 of the Complaint, the truth of the matter being those stated in the Special and Affirmative Defenses;

3. Similarly, [petitioner] also DENIES paragraphs 4 and 5 for being contrary to the facts and circumstances surrounding the case;

4. As and by way of Special and Affirmative Defenses, [petitioner] respectfully states:

SPECIAL AND AFFIRMATIVE DEFENSES

5. While [petitioner] does not deny having engaged [the] services of [respondent] for the supply and delivery of steel requirements, such delivery had already been paid in the amount of Php4,490,014.32 as of March 2005;

6. [Respondent] failed to show evidence that indeed [petitioner] still owes the balance of ₱1,534,291.68 as alleged in the Complaint;

7. No demand whatsoever was made against herein [petitioner] for the alleged balance complained of.

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court to DISMISS and DENY the aforementioned Complaint for lack of merit in fact and in law.

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

[Petitioner] further prays for such other reliefs and remedies just and equitable under the premises.[4]

During trial, respondent presented its Sales Engineer, Geronimo S. Mangubat, whose testimony was summarized by the Court of Appeals, thus:

[Respondent] supplies and fabricates building materials for its clients. [Mangubat's] duties include offering the services of [respondent] to clients and negotiating with the latter. He knows [petitioner] which contracted their services for the supply and delivery of construction materials. The first transaction worth ₱5,000,000.00 took place on October 5, 2004, covered by Purchase Order No. 0461, while the second under Purchase Order No. [0]500 with a consideration of ₱1,024,306.00 happened on November 19, 2004. The purchase orders were signed for and in behalf of [petitioner] by Architect George Matunog, the Vice-President for Operations. After receipt of the purchase orders, [respondent] supplied the materials and erected the same at the construction site. They submitted billings and [petitioner] issued checks in payment thereof. All in all, [petitioner] paid a total of ₱4,490,014.32 out of the total contract price of ₱6,024,306.00. With respect to the balance in the amount of ₱1,534,291.68, the same remains unpaid, thus they sent two (2) demand letters, both signed by Filomeno H. Castillo, Jr., [respondent's] Vice-President, informing [petitioner] of the deficiency and inviting its representative to a meeting. When [petitioner's] representative failed to show up in the meeting, [respondent] referred the matter to its lawyer, Atty. Jose F. Manacop, who sent a demand letter to [petitioner] and filed this case in court against the latter. For the filing of this case, [respondent] Aegis incurred expenses in the amount of ₱150,000.00.

On cross-examination, Engr. Mangubat testified that [petitioner] Frilou signed a Certificate of Completion, but he did not present it as evidence. He also stated that he personally delivered one of the letters to [petitioner] through a staff of Architect Matunog.[5]

For its part, petitioner only had one witness, its employee, Jess de Guia, Jr. (De Guia), who, since 2003, has been in charge of petitioner's warehouse and responsible for receiving deliveries

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[4] *Id*. at 67-68.

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

of materials at the construction site. De Guia testified that he received the deliveries of respondent and signed receipt thereof. De Guia further testified that he does not know the value of the materials delivered by respondent; only that petitioner had already paid for these deliveries.

The trial court dismissed the complaint for insufficiency of evidence sustaining petitioner's contention that respondent failed to show evidence of petitioner's supposed remaining liability for the balance amount of ₱1,534,291.68. The trial court rejected respondent's stance that petitioner already admitted its liability for the total amount of the two (2) Purchase Orders when petitioner stated in paragraph 2 of its Answer that: "[it] ADMITS paragraphs 2 and 3 of the Complaint, the truth of the matter being those stated in the Special and Affirmative Defenses." For the trial court, the admission was qualified in that petitioner had already paid the amount of ₱4,490,014.32 and respondent did not show further evidence of petitioner's liability for the remaining balance. The trial court sustained petitioner's argument that the existence of the Purchase Orders in the amount of ₱6,024,306.00 was not equivalent to respondent's delivery of the materials to petitioner in the same amount. In all, the trial court ruled that respondent did not discharge the requisite burden of proof in civil case, *i.e.* preponderance of evidence.

On appeal by respondent, the appellate court reversed and set aside the trial court's ruling on the sole issue of whether [respondent] established its claim of the balance amount of ₱1,534,219.68 even absent presentation of delivery receipts. The appellate court ruled that:

(1) Petitioner's judicial admission of the existence of the Purchase Orders worked to establish respondent's claim of the balance amount of ₱1,534,291.68 by a preponderance of evidence;

(2) In failing to specifically deny respondent's allegation that respondent supplied, delivered and erected the structural steel requirements of petitioner in the amount of ₱6,024,306.00, the latter is deemed to have admitted the same;

(3) Consequently of paragraphs 1 and 2, respondent's material allegations thereon need not be proven;

(4) The Purchase Orders numbered 0461 and 0500 evidence a meeting of the minds such that a valid contract existed and became the law between the parties;

(5) Petitioner's contention that the contract price was actually only ₱4,490,014.32, the amount petitioner has already paid, is inconsistent with its confirmation of the Purchase Orders in the amount of ₱6,024,306.00 as the original contract price;

(6) Petitioner is thus estopped from claiming a reduced amount of the contract price; and

(7) Petitioner itself failed to present evidence that respondent only partially complied with its obligation under the Purchase Orders for just the amount of ₱4,490,014.32.

Hence, this appeal by *certiorari* of petitioner insisting on the appellate court's error in granting respondent's complaint and holding petitioner liable to respondent for the balance amount of ₱1,534,291.68.

Petitioner quibbles that it did not admit liability for the entire amount of the Purchase Orders, but only for the value of the actual deliveries by respondent hereunder in the amount of ₱4,490,014.32. Petitioner asseverates that such constituted a specific denial when it further set forth the substance of the matters upon which it relied to support its denial, *i.e.* respondent had no evidence that it owed the balance of ₱1,534,291.68.

We disagree with petitioner and completely subscribe to the appellate court's ruling.

Indeed, petitioner admitted and failed to specifically deny the material averments in respondent's complaint that respondent complied with its obligation under the Purchase Orders for the complete amount of ₱6,024,306.00.

Section 10, Rule 8 of the Rules of Court on Manner of Making Allegations in Pleading contemplates three (3) modes of specific denial: 1) by specifying each material allegation of the fact in

the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.

The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, together with the matter which he relied upon to support the denial. The parties are compelled to lay their cards on the table.[6]

Thus, the disingenuousness of petitioner becomes apparent to this Court.

First. Petitioner did not make a specific denial, but a general one to the effect that it no longer has any remaining liability to respondent.

Respondent's averment in paragraph 4 of its complaint reads:

4. Payment of the sum of ₱6,024,306.00 has long been overdue in that [respondent] had long supplied, fabricated, delivered and erected the structural steel requirements of [petitioners] but the latter has paid [respondent] the sum of ₱4,490,014.32 only thereby leaving an unpaid balance of ₱1,534,291.68;[7]

Petitioner denied this by stating, thus:

3. Similarly, [petitioner] also DENIES paragraphs 4 and 5 for being contrary to the facts and circumstances surrounding the case;[8]

However, petitioner did not state "the facts and circumstances surrounding the case," the matters which it relies on to support

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[6] *Philippine Bank of Communications v. Spouses Go*, 658 Phil. 43, 58 (2011).

[7] *Rollo*, pp. 61-62.

[8] *Id*. at 67.

its denial of its liability in the amount of ₱1,534,291.68. Petitioner only asserted that respondent failed to show evidence of its supposed remaining liability. This is not an assertion of the truth and substance of the matter. It is merely a statement that as far as petitioner is concerned, respondent does not have evidence to prove its claim.

Notably, there were four (4) material averments in paragraph 4 of respondent's complaint: (1) petitioner contracted with respondent to fabricate and deliver the former's structural steel requirements in the amount of ₱6,024,306.00; (2) respondent completely performed the agreement under the Purchase Orders; (3) petitioner has only paid the amount of ₱4,490,014.32; and (4) thus, petitioner had an unpaid balance to respondent in the amount of ₱1,534,291.68.

Petitioner should have, **and could have easily,** specifically denied each and every averment under the foregoing paragraph as required by Section 10 of Rule 8 and then asserted the substance of the matter which it relies on to support its denial. Petitioner's last clause about respondent's allegations being "contrary to the facts and circumstances surrounding the case" is hardly anything which petitioner can rely on to support its case. The statement is not evidence for petitioner as defendant.[9] Petitioner's assertion of contrariety of the facts to respondent's position is a conclusion that is made by the court after trial.

Petitioner is plainly splitting hairs. As a result of its failure to make a specific denial, it was deemed to have admitted all the material averments in paragraph 4.[10] Consequently, the

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[9] Evidence is defined under Section 1 of Rule 128 as the means, sanctioned by [the] rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact.

[10] Section 11, Rule 8: *Allegations not specifically denied deemed admitted*.— Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. x x x

judicial admission of petitioner's remaining liability need not be proved.[11]

Second. The generality of the denial betrays the absence of specific facts that can prove payment.[12] If untrue, the falsity of the alleged remaining balance in the amount of ₱1,534,291.68 is wholly within petitioner's knowledge which it should have delineated in its Answer. Petitioner could have given specifics on why the original contract price of ₱6,024,306.00 as evidenced by the Purchase Orders was performed only partially, thus prompting petitioner to pay only the amount of ₱4,490,014.32.

Since respondent alleged its complete performance of its obligation under the Purchase Orders, petitioner should have asserted respondent's partial and incomplete performance, specifying the deliveries that were not made. In particular, petitioner ought to have alleged in the Answer itself the structural steel requirements that were not erected such that it rightfully only paid for the lesser amount of ₱4,490,014.32. Yet, petitioner did not do so and only insisted that respondent did not have evidence of completion and delivery.

We further note that petitioner did not even attempt to allege, *via* the third mode of specific denial, that it had no knowledge or information sufficient to form a belief as to the truth or falsity of respondent's averments because the knowledge or information on the issue at hand was clearly known to it. Petitioner simply avoided a direct answer to the allegations of respondent.

We fail to read or see an Affirmative Defense in the following:

> 5. While [petitioner] does not deny having engaged services of [respondent] for the supply and delivery of steel requirements, such delivery had already been paid in the amount of Php4,490,014.32 as of March 2005;

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[11] Section 4, Rule 129: *Judicial admissions*.—An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. x x x

[12] *Venzon v. Rural Bank of Buenavista*, 716 Phil. 607, 615 (2013).

6. [Respondent] failed to show evidence that indeed [petitioner] still owes the balance of ₱1,534,291.68 as alleged in the Complaint;

7. No demand whatsoever was made against herein [petitioner] for the alleged balance complained of.[13]

Section 5(b), Rule 5 of the Rules of Court reads:

(b) An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.

As previously discussed, petitioner did not set forth a new matter in its Answer because respondent's Complaint already categorically stated in Paragraphs 2, 3 and 4 of the Complaint that petitioner had only paid for the amount of ₱4,490,014.32 of a total indebtedness of ₱6,024,306.00. Simply petitioner did not dispute the allegations as regards the balance.

Lastly, we agree with the appellate court's imposition of legal interest of twelve percent (12%) from the date of extra-judicial demand, 11 April 2005, the unpaid deliveries being a forbearance of money and there being no stipulation between the parties on the payment of interest. However, we divide the applicable legal interest into two periods: (1) where the prevailing rate of interest on 11 April 2005 to 30 June 2013 is twelve percent (12%) *per annum* before the advent of Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013 and (2) the reduced rate of interest of six percent (6%) *per annum* from 1 July 2013 to date when this Decision becomes final and executory. [14]

We also agree that respondent failed to present adequate proof of its entitlement to attorney's fees in the amount of ₱150,000.00. While it is a sound policy not to set a premium on the right to

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[13] *Rollo*, p. 68.

[14] See Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013.

litigate,[15] we, however, find that respondent is entitled to reasonable attorney's fees for having been compelled to go to court in order to assert his right. Thus, we affirm the Court of Appeal's grant of ₱25,000.00 as attorney's fees.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CV No. 92108 is **AFFIRMED** with **MODIFICATION**. Petitioner Frilou Construction, Inc. is ordered to pay respondent Aegis Integrated Structure Corporation the following amounts: (1) ₱1,534,291.00 plus legal interest of (a) twelve percent (12%) *per annum* from 11 April 2005 to 30 June 2013 and (b) six percent (6%) *per annum* from 1 July 2013 to date when this Decision becomes final and executory; and (2) ₱25,000.00 as attorney's fees. The foregoing shall likewise earn legal interest of six percent (6%) *per annum* from the finality of this Decision until full satisfaction thereof.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 192491. August 17, 2016]

MARY JANE G. DY CHIAO, *petitioner, vs.* **SEBASTIAN BOLIVAR, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 19, IN NAGA CITY,** *respondent.*

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[15] *BPI Family Bank v. Franco*, 563 Phil. 495, 515 (2007).

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AN APPEAL RAISING ONLY QUESTIONS OF LAW SHOULD BE BROUGHT BEFORE THE SUPREME COURT. OTHERWISE IT SHALL BE DISMISSED.— [T]he CA properly denied the petitioner's *Motion for Extension of Time to File Verified Petition for Review on Certiorari* and justifiably considered the case closed and terminated. The petitioner was patently guilty of taking an erroneous appeal in view of her *manifest* intention to limit her appeal to questions of law. Such an appeal would only be by petition for review on *certiorari*, to be filed in this Court pursuant to Section 1, Rule 45 of the *Rules of Court* x x x. Pursuant to Section 2, Rule 50 of the *Rules of Court*, an appeal raising only questions of law brought to the CA instead of to this Court shall be dismissed. The same rule expressly forbids the erroneous appeal to be transferred to the Court.

2. ID.; ID.; ID.; ID.; THE FAILURE OF THE PARTY TO PERFECT HER APPEAL FROM THE DISMISSAL OF THE CASE BY THE REGIONAL TRIAL COURT RENDERED THE DISMISSAL FINAL AND IMMUTABLE, THAT NO COURT, INCLUDING THE SUPREME COURT, COULD THEREAFTER ALTER, MODIFY OR REVERSE THE RESULT.— The petitioner, as the party appealing, had only a limited period of 15 days from notice of the judgment or final order appealed from within which to perfect her appeal to the Court pursuant to Section 2, Rule 45 of the *Rules of Court* x x x. The petitioner obviously failed to perfect her appeal from the dismissal by the RTC (Branch 23) of the case commenced through her so-called *Petition with Application for a Temporary Restraining Order and Preliminary Injunction.* The consequence of such failure to perfect the appeal was to render the dismissal final and immutable. This meant that no court, including this Court, could thereafter alter, modify or reverse the result. As such, her present appeal to this Court cannot but be viewed and condemned as a futile attempt to resurrect the lost appeal.

3. ID.; ID.; COURTS; DOCTRINE OF JUDICIAL STABILITY OR NON-INTERFERENCE; COURTS AND TRIBUNALS WITH THE SAME OR EQUAL AUTHORITY — EVEN THOSE EXERCISING CONCURRENT AND COORDINATE JURISDICTION — ARE NOT PERMITTED TO INTERFERE WITH EACH OTHER'S RESPECTIVE CASES, MUCH LESS THEIR ORDERS OR JUDGMENTS THEREIN.— [T]he present appeal, even assuming that it was timely taken, would still fail for its lack of merit. We would still uphold the dismissal of the case by RTC (Branch 23) considering that the assailed actions and processes undertaken by the respondent to levy the properties of the petitioner were deemed proceedings in the same civil action assigned to the RTC (Branch 19) as the court that had issued the writ of execution. Such proceedings, being incidents of the execution of the final and executory decision of the RTC (Branch 19), remained within its exclusive control. On the other hand, to allow the petitioner's action in the RTC (Branch 23) would disregard the doctrine of judicial stability or non-interference, under which no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction. Courts and tribunals with the same or equal authority – even those exercising concurrent and coordinate jurisdiction – are not permitted to interfere with each other's respective cases, much less their orders or judgments therein. This is an elementary principle of the highest importance essential to the orderly administration of justice. Its observance is not required on the grounds of judicial comity and courtesy alone; it is enforced to prevent unseemly, expensive, and dangerous conflicts of jurisdiction and of processes. A contrary rule would dangerously lead to confusion and seriously hamper the administration of justice.

4. ID.; ID.; ID.; A PARTY WHO HAS DOUBTS AS TO THE AUTHORITY OF THE SHERIFF TO ISSUE THE NOTICE OF LEVY SHOULD SEEK CLARIFICATION OF THE MATTER FROM THE COURT THAT ISSUED THE WRIT OF EXECUTION, AND, IN CASE OF ADVERSE OUTCOME, TO SEEK REDRESS FROM SUPERIOR COURT, INSTEAD OF RESORTING TO AN ACTION BEFORE ANOTHER COURT OF CONCURRENT OR COORDINATE JURISDICTION.— [T]he respondent was

under the direct control and supervision of the RTC (Branch 19) as the court that had issued the writ of execution enforcing the final decision of the CA against the petitioner. The determination of whether or not the notice of levy was valid and proper rightfully fell within the exclusive prerogative of the RTC (Branch 19) to ascertain and pronounce. If she doubted the authority of the respondent to issue the notice of levy, she should have sought clarification of the matter from the RTC (Branch 19), and should the outcome be adverse to her, she could then have sought fitting redress from a superior court vested with authority to review and reverse the action of the respondent instead of resorting to her action before the RTC (Branch 23).

APPEARANCES OF COUNSEL

Jeaneth C. Gaminde San Joaquin for petitioner.
P.M. Gerardo R. Borja for respondent.

D E C I S I O N

BERSAMIN, *J.*:

A losing party cannot seek relief from the execution of a final judgment by bringing a separate action to prevent the execution of the judgment against her by the enforcing sheriff. Such action contravenes the policy on judicial stability. She should seek the relief in the same court that issued the writ of execution.

The Case

The petitioner – a subsidiary judgment debtor – appeals the resolution promulgated on November 12, 2009,[1] whereby the Court of Appeals (CA) denied her *Motion for Extension of Time to File Verified Petition for Review on Certiorari* filed in CA-

[1] *Rollo*, pp. 32-34; Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justice Noel G. Tijam and Associate Justice Sixto C. Marella, Jr. concurring.

G.R. SP No. 111113 entitled *Mary Jane G. Dy Chiao v. Sebastian Bolivar, Regional Trial Court of Naga City*, and declared the case closed and terminated, on the ground that her appeal by petition for review on *certiorari* could only be brought to the Supreme Court.

Antecedents

The antecedents are not disputed. On March 31, 1999, the CA promulgated its decision in CA-G.R. SP No. 44261 declaring the petitioner subsidiarily liable to pay the exact amount of ₱5,711,164.00, to wit:

> WHEREFORE, judgment is hereby rendered declaring the assailed decision dated December 13, 1993 of the respondent court as *NULL and VOID and without legal force and effect*. Co[r]ollarily, the execution and the public auction sale held thereunder are likewise VOID.
>
> The Clerk of Court of the Regional Trial Court of Naga City is directed to deliver within ten (10) days from finality of this judgment the amount of ₱15,482,200.00 together with all interests earned thereby, to the respondent court, which court is hereby directed to distribute the aggregate amount to the buyers of the properties of Benito Dy Chiao, Sr., in proportion to the amounts they paid therefor.
>
> Benedick Arevalo, through his mother, Shirley Arevalo, is directed to turn over to the respondent court within ten (10) days from finality of this judgment the amount of ₱5,711,164.00 which she received from Sheriffs Rubio and Cledera, together with all other amounts she might have been paid on the Compromise Agreement, without prejudice to the buyer's right of recourse against Mary Jane, who is hereby declared to be subsidiarily liable therefor. Upon receipt thereof, the respondent court shall likewise return to the buyers the aggregate amount in the same proportion as above stated.
>
> Thereafter the properties shall be delivered to the intestate estate of Benito Dy Chiao, Jr. for proper disposition by the intestate court.
>
> Let a copy of this judgment be furnished the Office of the Court Administrator for whatever action it might deem proper to take on the premises.

SO ORDERED.[2]

The decision in CA-G.R. SP No. 44261 was ultimately affirmed by the Court, and thus attained finality. Execution proceedings followed in due course upon issuance of the writ of execution by the RTC (Branch 19) as the court of origin, but respondent Branch Sheriff of the RTC (Branch 19) filed a sheriff's report to the effect that, one, the amount of ₱5,711,164.00 could not be satisfied by principal obligor Benedick Arevalo because he had no assets that could be levied on execution; and that, two, the liability could be paid out of the assets of the petitioner under her subsidiary liability as decreed in the final judgment. Accordingly, the respondent recommended that an alias writ of execution be issued against the properties of the latter.

On June 12, 2008, the RTC (Branch 19) issued the writ of execution and directed the respondent to levy as much properties of the petitioner as would be sufficient to satisfy the amount of ₱5,711,164.00, and to sell the properties at public auction.[3]

On November 21, 2008, the respondent proceeded with the public auction of the petitioner's levied properties, and sold two parcels of her realty with areas of 69 square meters and 85 square meters, both located in Naga City, to the highest bidders for ₱8,000,000.00, namely: Jose R. Rivero, Jessie Rivero, Jr. and Amalia Rivero Rañosa.[4] In due course, the respondent issued a provisional certificate of sale dated November 24, 2008.

The respondent, allegedly without any order from the Presiding Judge of the RTC (Branch 19), or without an alias writ of execution being issued by the court, and without notice to the petitioner, pursued further execution proceedings against the petitioner. She learned of such proceedings only from Atty. Greta Paraiso, the Registrar of Deeds of Naga City.[5]

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[2] *Id*. at 339-340; penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Cancio C. Garcia and Artemio G. Tuquero concurring.

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

[4] *Id*. at 59.

[5] *Id*. at 60.

The notice of levy dated March 10, 2009 issued by the respondent, addressed to the petitioner, identified the two parcels of land located in Naga City registered in her name under Transfer Certificate of Title (TCT) No. 8933 of the Register of Deeds of Camarines Sur. The first property had an area of 386 square meters, while the second an area of 387 square meters.[6] Although the notice stated that it was being issued by virtue of a writ of execution, it did not bear the date of its issuance.

On May 8, 2009, the petitioner received a notice of sale of real property on execution dated April 15, 2009 stating that the two real properties of the petitioner were being levied to satisfy the sum of ₱5,711,164.00; and that the public auction was set from 9:00 a.m. to 3:00 p.m. on May 15, 2009.

To fend off the public auction, the petitioner filed on May 13, 2009 a so-called *Petition for Prohibition with Application for Temporary Restraining Order and Preliminary Injunction*. On the same date, the Executive Judge of the RTC in Naga City issued at 72-hour temporary restraining order (TRO) enjoining the respondent from conducting the scheduled public auction.[7] The case was raffled to the RTC (Branch 23) in Naga City.

After receiving the respondent's comment and opposition, the petitioner's reply, and the respondent's rejoinder, the RTC (Branch 23) dismissed the case for lack of jurisdiction,[8] opining that the processes being undertaken by the respondent were deemed proceedings in the same civil case assigned to and still pending before the RTC (Branch 19); and that the RTC (Branch 19) continued to exercise general supervision and control over such proceedings.[9]

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[6] *Id*.

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

[8] *Id*. at 61.

[9] *Id*. at 105.

After the RTC (Branch 23) denied the petitioner's *Motion for Reconsideration*, she filed in the CA her *Motion for Extension of Time to File Verified Petition for Review on Certiorari* indicating therein that she would be raising a question of law. The case was docketed as CA-G.R. SP No. 111113.

As stated, the CA promulgated the assailed resolution on November 12, 2009,[10] pertinently holding:

> The motion must fail.
>
> A motion praying for an extension of time to file a petition for review on certiorari filed before this Court pursuant to Section 2 of Rule 45 of the Rules of Court raising only questions of law is improper.
>
> A petition for review on certiorari is governed by Section 1 of Rule 45, *viz*:
>
> > "Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth."
>
> Clearly therefore, the proper remedy under the afore-quoted rule where only questions of law are raised or involved, is a petition for review on certiorari which shall be filed with the Supreme Court and not with this Court.
>
> Thus, the instant motion praying for an extension of time to file a petition for review on certiorari must be denied outright pursuant to Supreme Court Circular No. 2-90 dated March 9, 1990 which mandates the dismissal of appeals involving pure questions of law erroneously brought to the Court of Appeals, to wit:
>
> > "4. Erroneous appeals. - An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

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[10] *Supra* note 1.

> (c) Raising issues purely of law in the Court of Appeals, or appeal by wrong mode. - If an appeal under Rule 41 is taken from the Regional Trial Court to the Court of Appeals and therein the appellant raises only questions of law, the appeal shall be dismissed, issues purely of law not being reviewable by said court...
>
> xxx xxx xxx"

WHEREFORE, the instant motion praying for an extension of thirty (30) days to file a petition for review on certiorari is hereby ***DENIED*** and the above-entitled case is considered ***CLOSED*** and ***TERMINATED***.

Let this case be excluded from the Court's docket.

SO ORDERED.[11]

The petitioner filed a *Motion for Reconsideration*, but the CA denied the motion on May 12, 2010.[12]

Hence, this appeal by the petitioner.

Issues

The petitioner hereby urges the Court to consider:

WHETHER IT WAS PROPER FOR THE APPELLATE COURT TO DENY PETITIONER'S MOTION FOR EXTENSION, WHICH INDICATED THAT IT WOULD BE RAISING A QUESTION OF LAW, ON THE GROUND THAT IT SHOULD HAVE BEEN FILED BEFORE THE SUPREME COURT DESPITE THE RECOGNIZED PRINCIPLE OF HIERARCHY OF COURTS.

WHETHER OR NOT IT WAS PROPER FOR THE ORIGINAL PETITION FOR PROHIBITION BEFORE THE REGIONAL TRIAL COURT TO BE DENIED ON THE GROUND OF LACK OF JURISDICTION.[13]

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

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

[13] *Id*. at 23.

Ruling of the Court

We deny the petition for review on *certiorari* for its lack of merit.

First of all, the CA properly denied the petitioner's *Motion for Extension of Time to File Verified Petition for Review on Certiorari* and justifiably considered the case closed and terminated. The petitioner was patently guilty of taking an erroneous appeal in view of her *manifest* intention to limit her appeal to questions of law. Such an appeal would only be by petition for review on *certiorari*, to be filed in this Court pursuant to Section 1, Rule 45 of the *Rules of Court*, as follows:

> Section 1. *Filing of petition with Supreme Court*.—A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth.** The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

Pursuant to Section 2,[14] Rule 50 of the *Rules of Court*, an appeal raising only questions of law brought to the CA instead of to this Court shall be dismissed. The same rule expressly forbids the erroneous appeal to be transferred to the Court.

Secondly, the petitioner, as the party appealing, had only a limited period of 15 days from notice of the judgment or final

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[14] Section 2. *Dismissal of improper appeal to the Court of Appeals*. — An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed. (n)

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. (3a)

order appealed from within which to perfect her appeal to the Court pursuant to Section 2, Rule 45 of the *Rules of Court*, which states:

> Section 2. *Time for filing; extension*. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (1a, 5a)

The petitioner obviously failed to perfect her appeal from the dismissal by the RTC (Branch 23) of the case commenced through her so-called *Petition with Application for a Temporary Restraining Order and Preliminary Injunction*. The consequence of such failure to perfect the appeal was to render the dismissal final and immutable. This meant that no court, including this Court, could thereafter alter, modify or reverse the result. As such, her present appeal to this Court cannot but be viewed and condemned as a futile attempt to resurrect the lost appeal.

And, lastly, the present appeal, even assuming that it was timely taken, would still fail for its lack of merit. We would still uphold the dismissal of the case by RTC (Branch 23) considering that the assailed actions and processes undertaken by the respondent to levy the properties of the petitioner were deemed proceedings in the same civil action assigned to the RTC (Branch 19) as the court that had issued the writ of execution. Such proceedings, being incidents of the execution of the final and executory decision of the RTC (Branch 19), remained within its exclusive control.

On the other hand, to allow the petitioner's action in the RTC (Branch 23) would disregard the doctrine of judicial stability or non-interference, under which no court has the power to interfere by injunction with the judgments or decrees of a court

of concurrent or coordinate jurisdiction.[15] Courts and tribunals with the same or equal authority — even those exercising concurrent and coordinate jurisdiction — are not permitted to interfere with each other's respective cases, much less their orders or judgments therein.[16] This is an elementary principle of the highest importance essential to the orderly administration of justice.[17] Its observance is not required on the grounds of judicial comity and courtesy alone; it is enforced to prevent unseemly, expensive, and dangerous conflicts of jurisdiction and of processes.[18] A contrary rule would dangerously lead to confusion and seriously hamper the administration of justice.[19]

That the respondent was the sole party sought to be prevented from further acting in the execution proceedings, or that the RTC (Branch 23) was not impleaded by the petitioner did not matter. The effect is still an undue interference that disregarded the doctrine of judicial stability or non-interference. The Court has made this unsettling situation quite clear when it explicitly observed in *Cabili v. Balindong*:[20]

> It is not a viable legal position to claim that a TRO against a writ of execution is issued against an erring sheriff, not against the issuing Judge. A TRO enjoining the enforceability of a writ addresses the writ itself, not merely the executing sheriff. The duty of a sheriff in enforcing writs is ministerial and not discretionary. As already mentioned above, the appropriate action is to assail the implementation

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[15] *Heirs of the late Spouses Laura Yadno and Pugsong Mat-an v. Heirs of the late Spouses Mauro and Elisa Anchales*, G.R. No. 174582, October 11, 2012, 684 SCRA 106, 115.

[16] *Pacific Ace Finance Ltd. (PAFIN) v. Yanagisawa*, G.R. No. 175303, April 11, 2012, 669 SCRA 270, 281.

[17] *Republic v. Reyes*, Nos. L-30263-5, October 30, 1987, 155 SCRA 313, 324.

[18] *Lee v. Presiding Judge, MTC of Legaspi City, Br. 1*, No. 68789, November 10, 1986, 145 SCRA 408, 416.

[19] *Ching v. Court of Appeals*, G.R. No. 118830, February 24, 2003, 398 SCRA 88, 93.

[20] A.M. No. RTJ-10-2225, September 6, 2011, 656 SCRA 747, 758.

of the writ before the issuing court in whose behalf the sheriff acts, and, upon failure, to seek redress through a higher judicial body.

Indeed, the respondent was under the direct control and supervision of the RTC (Branch 19) as the court that had issued the writ of execution enforcing the final decision of the CA against the petitioner. The determination of whether or not the notice of levy was valid and proper rightfully fell within the exclusive prerogative of the RTC (Branch 19) to ascertain and pronounce. If she doubted the authority of the respondent to issue the notice of levy, she should have sought clarification of the matter from the RTC (Branch 19), and should the outcome be adverse to her, she could then have sought fitting redress from a superior court vested with authority to review and reverse the action of the respondent instead of resorting to her action before the RTC (Branch 23).

WHEREFORE, the Court **AFFIRMS** the decision promulgated on November 12, 2009 in CA-G.R. SP No. 111113; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 200299. August 17, 2016]

SPOUSES JUAN CHUY TAN and MARY TAN (deceased) substituted by the surviving heirs, JOEL TAN and ERIC TAN, *petitioners, vs.* **CHINA BANKING CORPORATION,** *respondent.*

SYLLABUS

CIVIL LAW; OBLIGATIONS; PAYMENT OR PERFORMANCE, AS A MODE OF EXTINGUISHING OBLIGATIONS; APPLICATION OF PAYMENTS; THE RIGHT OF THE DEBTOR TO APPLY PAYMENT IS MERELY DIRECTORY IN NATURE AND MUST BE PROMPTLY EXERCISED, LEST, SUCH RIGHT PASSES TO THE CREDITOR; CASE AT BAR.— Obligations are extinguished, among others, by payment or performance, the mode most relevant to the factual situation in the present case. Under Article 1232 of the Civil Code, payment means not only the delivery of money but also the performance, in any other manner, of an obligation. Article 1233 of the Civil Code states that a debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be. In contracts of loan, the debtor is expected to deliver the sum of money due the creditor. These provisions must be read in relation with the other rules on payment under the Civil Code, such as the application of payment, to wit: Art. 1252. x x x. In interpreting the foregoing provision of the statute, the Court in *Premiere Development Bank v. Central Surety & Insurance Company Inc.* held that the right of the debtor to apply payment is merely directory in nature and must be promptly exercised, lest, such right passes to the creditor, x x x In the event that the debtor failed to exercise the right to elect, the creditor may choose to which among the debts the payment is applied as in the case at bar. It is noteworthy that after the sale of the foreclosed properties at the public auction, Lorenze Realty failed to manifest its preference as to which among the obligations that were all due the proceeds of the sale should be applied. Its silence can be construed as acquiescence to China Bank's application of the payment first to the interest and penalties and the remainder to the principal which is sanctioned by Article 1253 of the New Civil Code.

APPEARANCES OF COUNSEL

Eduardo V. Bringas for petitioners.

Lim Vigilia Lacala Dumlao & Orencia Law Offices for respondent.

D E C I S I O N

PEREZ, *J.*:

For resolution of the Court is the instant Petition for Review on *Certiorari*[1] filed by petitioner Spouses Juan Chuy Tan and Mary Tan (deceased) substituted by the surviving heirs, Joel Tan and Eric Tan, seeking to reverse and set aside the Decision[2] dated 14 October 2011 and Resolution[3] dated 24 January 2012 of the Court of Appeals (CA) in CA-G.R. CV. No. 87450. The assailed decision and resolution affirmed with modification the 29 December 2003 Decision[4] of the Regional Trial Court (RTC) of Makati City, Branch 142 by ordering that the penalty surcharge of 24% per annum as stipulated in the contract of loan is reduced to 12% per annum.

The Facts

Petitioner Lorenze Realty and Development Corporation (Lorenze Realty) is a domestic corporation duly authorized by Philippine laws to engage in real estate business. It is represented in this action by petitioners Joel Tan and Eric Tan as substitutes for their deceased parents, Spouses Juan Chuy Tan and Mary Tan (Spouses Tan).

Respondent China Banking Corporation (China Bank), on the other hand, is a universal banking corporation duly authorized by *Bangko Sentral ng Pilipinas (BSP)* to engage in banking business.

On several occasions in 1997, Lorenze Realty obtained from China Bank various amounts of loans and credit accommodations in the following amounts:

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[1] *Rollo*, pp. 57-78.

[2] *Id*. at 87-106; penned by Associate Justice Antonio L. Villamor, concurred by Associate Justices Jane Aurora C. Lantion and Ramon A. Cruz.

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

[4] *Id*. at 166-171; penned by Judge Estela M. Perlas-Bernabe (now a member of this Court).

DATE	PROMISSORY NOTE NOS.	PRINCIPAL AMOUNT
27 June 1997	BDC-0345	₱1,600,000.00
30 July 1997	BDC-0408	1,000,000.00
13 August 1997	BDC-0422	1,100,000.00
18 August 1997	BDC-0432	1,960.000.00
21 August 1997	BDC-0438	1,490.000.00
2 September 1997	BDC-0455	2,200,000.00
1 October 1997	BDC-0506	1,700,000.00
20 November 1997	DLS-0316	2,800,000.00
18 June 1997	DLS-0324	5,500,000.00
18 June 1997	DLS-0325	2,675,000.00
04 July 1997	DLS-0360	7,000,000.00
24 July 1997	DLS-0403	4,000,000.00
28 August 1997	BDC-0449	1,550,000.00
20 November 1997	BDC-0340	1,550,000.00
8 September 1997	BDC-0466	1,262,500.00
31 September 1997	BDC-0479	662,500.00
10 July 1997	DLS 0379	33,000,000.00
TOTAL		**₱71,050,000.00**

It is expressly stipulated in the Promissory Notes that Lorenze Realty agreed to pay the additional amount of ***1/10 of 1% per day of the total amount of obligation due as penalty*** to be computed from the day that the default was incurred up to the time that the loan obligations are fully paid. The debtor also undertook pay ***an additional 10% of the total amount due including interests, surcharges and penalties as attorney's fees.***

As a security for the said obligations, Lorenze Realty executed Real Estate Mortgages (REM) over 11 parcels of land covered by Transfer Certificates of Title (TCT) Nos. B-44428, B-44451, B-44452, V-44275, V-44276, V-44277, V-44278, V-44280, V-44281, V-44283 and V-44284 registered by the Registry of Deeds of Valenzuela City.

Subsequently, Lorenze Realty incurred in default in the payment of its amortization prompting China Bank to cause the extra-judicial foreclosure of the REM constituted on the securities after the latter failed to heed to its demand to settle the entire obligation.

After the notice and publication requirements were complied with, the mortgaged properties were sold at a public auction wherein China Bank emerged as the highest bidder for the amount of ₱85,000,000.00 as evidenced by a certificate of sale.

As shown by the Statement of Account dated 10 August 1998, the indebtedness of Lorenze Realty already reached the amount ₱114,258,179.81, broken down as follows:

Principal Amount	₱71,050,000.00
Interest	13,521,939.31
Penalties	19,763,257.50
Registration Expenses	9,542,013.00
Filing Fee	351,300.00
Publication Fee	25,970.00
Sheriff's Fee	2,000.00
Posting Fee	700.00

After deducting from the total amount of loan obligation the ₱85,000,000.00 proceeds of the public sale, there remains a balance in the amount of ₱29,258,179.81. In its effort to collect the deficiency obligation, China Bank demanded from Lorenze Realty for the payment of the remaining loan but such demand just went to naught.

Consequently, China Bank initiated an action for the collection of sum of money against the Lorenze Realty and its officers, namely, Lawrence Ong, Victoria Ong, Juan Chuy Tan and Mary Tan before the RTC of Makati City, Branch 142. In its Complaint docketed as Civil Case No. 98-3069, China Bank alleged that it is entitled to deficiency judgment because the purchase price of the securities pledged by the debtor is not sufficient to settle the entire obligation incurred by the latter including the interest, penalties and surcharges that had accrued from the time of default. China Bank thus prayed that defendants be ordered to pay the amount of ₱29,258,179.81, representing the deficiency in its obligation in accordance with the express terms of the promissory notes.

While conceding that they have voluntarily signed the promissory notes, defendants, for their part, disclaim liability by alleging that the surety agreements did not express the true intention of the parties. The officers of the corporation who represented Lorenze Realty below claimed that they just signed the surety contracts without reading the fine terms stipulated therein because they were made to believe by the bank manager that the collaterals they offered to obtain the loans were already sufficient to cover the entire obligation should they incur in default. The collection suit for the deficiency obligation came as a surprise to them after China Bank managed to successfully foreclose the securities of the obligation and purchased for itself the mortgaged properties at the public sale. In addition, defendants averred that the penalty in the amount of 1/10 of 1% per day of the total amount due is usurious and shocking to the conscience and should be nullified by the court. Finally, they prayed that the RTC declare Lorenze Realty's obligation fully settled on account of the sale of the securities.

On 29 December 2003, the RTC found in favor of China Bank declaring the defendants jointly and severally liable for the amount of ₱29,258,179.81 representing the deficiency judgment. It was held by the trial court that Lorenze Realty, "[a]fter having voluntarily signed the surety agreements, cannot be discharged from the consequences of the undertaking because

the terms and conditions contained therein is considered to be the law between the parties as long as it is not contrary to law, morals, good customs and public policy. The mistake, misapprehension and ignorance of the defendants as to the legal effects of the obligations are no reason for relieving them of their liabilities." The RTC disposed in this wise:

> WHEREFORE, premises considered, judgment is rendered ordering the defendants to pay [China Bank], jointly and severally, the following:
>
> 1. [T]he amount of ₱29,258,179.81 representing the deficiency claim as of August 10, 1998 plus penalties accruing thereafter at the rate of 2% per month until fully paid;
> 2. 5% of the total amount due as Attorney's [F]ees;
> 3. Expenses of litigation and cost of suit.
>
> SO ORDERED.[5]

On appeal, the CA affirmed with modification the judgment of the RTC by reducing the rate of the penalty surcharge from 24% per annum to 12% per annum, and, likewise the award of attorney's fees was reduced from 5% to 2% of the total amount due. The appellate court deemed that the rate of penalty agreed by the parties is unconscionable under the circumstances considering that the obligation was already partially satisfied by the sale of the securities constituted for the loan and resolved to fairly and equitably reduce it to 12% per annum. The decretal portion of the appellate court's decision reads:

> **WHEREFORE**, premises considered, the assailed Decision dated December 29, 2003 of the Regional Trial Court of Makati City, Branch 142 is **AFFIRMED with MODIFICATION** in that the penalty surcharge of 2% per month or 24% per annum is reduced to 12% per annum and, likewise, the award of attorney's fees is reduced from 5% to 2% of the total amount due.
>
> No pronouncement as to costs.

[5] *Id*. at 171.

SO ORDERED.

In a Resolution dated 24 January 2012, the CA refused to reconsider its earlier decision by denying the Motion for Reconsideration interposed by Lorenze Realty.

The Issue

Dissatisfied with the disquisition of the Court of Appeals, Lorenze Realty elevated the matter before the Court by filing a Petition for Review on *Certiorari*. For the resolution of the Court is the sole issue of:

WHETHER LORENZE REALTY'S OBLIGATION IS FULLY SETTLED WHEN THE REAL PROPERTIES CONSTITUTED AS SECURITIES FOR THE LOAN WERE SOLD AT THE PUBLIC AUCTION FOR ₱85,000,000.00.

The Court's Ruling

In assailing the CA Decision, Lorenze Realty argues that it is no longer liable to pay the deficiency obligation because the proceeds of the sale of the foreclosed properties in the amount of ₱85,000,000.00 is more than enough to cover the principal amount of the loan which is just ₱71,050,000.00. In fact, it further asserted that after applying the proceeds of the public sale to the principal amount of loan, there remains a balance of ₱13,950,000.00 which should more than enough to cover the penalties, interests and surcharges.

For its part, China Bank maintains that the obligation of Lorenze Realty is not extinguished by the foreclosure and sale of real properties constituted as securities citing Article 1253 of the New Civil Code which explicitly states that "If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered." By first applying the proceeds of the sale to the interest, penalties and expenses of the sale, there yields a balance in the principal obligation in the amount of ₱29,258,179.81.

We resolve to deny the petition.

Obligations are extinguished, among others, by payment or performance, the mode most relevant to the factual situation in the present case.[6] Under Article 1232 of the Civil Code, payment means not only the delivery of money but also the performance, in any other manner, of an obligation.[7] Article 1233 of the Civil Code states that a debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be.[8] In contracts of loan, the debtor is expected to deliver the sum of money due the creditor.[9] These provisions must be read in relation with the other rules on payment under the Civil Code, such as the application of payment, to wit:

> Art. 1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.
>
> If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract.

In interpreting the foregoing provision of the statute, the Court in *Premiere Development Bank v. Central Surety & Insurance Company Inc.*[10] held that the right of the debtor to apply payment is merely directory in nature and must be promptly exercised, lest, such right passes to the creditor, *viz:*

> "The debtor[']s right to apply payment is not mandatory. This is clear from the use of the word [']may['] rather than the word [']shall['] in the provision which reads: [']He who has various debts of the

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[6] *Go Cinco, et al. v. Court of Appeals, et al.*, 618 Phil. 104, 112 (2009).

[7] *Id*.

[8] *Id*. at 112-113.

[9] *Id*.

[10] 598 Phil. 827, 844-845 (2009).

same kind in favor of one and the same creditor, ***may*** declare at the time of making the payment, to which of the same must be applied.[']

Indeed, the debtor[']s right to apply payment has been considered merely directory, and not mandatory, following this Court[']s earlier pronouncement that [']the ordinary acceptation of the terms ['']may[''] and ['']shall[''] may be resorted to as guides in ascertaining the mandatory or directory character of statutory provisions.[']

Article 1252 gives the right to the debtor to choose to which of several obligations to apply a particular payment that he tenders to the creditor. But likewise granted in the same provision is the right of the creditor to apply such payment in case the debtor fails to direct its application. This is obvious in Art. 1252, par. 2, *viz.:* ['']If the debtor accepts from the creditor a receipt in which an application of payment is made, the former cannot complain of the same.['] It is the directory nature of this right and the subsidiary right of the creditor to apply payments when the debtor does not elect to do so that make this right, like any other right, waivable.

Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

A debtor, in making a voluntary payment, may at the time of payment direct an application of it to whatever account he chooses, unless he has assigned or waived that right. **If the debtor does not do so, the right passes to the creditor, who may make such application as he chooses.** But if neither party has exercised its option, the court will apply the payment according to the justice and equity of the case, taking into consideration all its circumstances." [Emphasis supplied, citations omitted.]

In the event that the debtor failed to exercise the right to elect, the creditor may choose to which among the debts the payment is applied as in the case at bar. It is noteworthy that after the sale of the foreclosed properties at the public auction, Lorenze Realty failed to manifest its preference as to which among the obligations that were all due the proceeds of the sale should be applied. Its silence can be construed as acquiescence to China Bank's application of the payment first to the interest and penalties and the remainder to the principal

which is sanctioned by Article 1253 of the New Civil Code which provides that:

> Art. 1253. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered.

That they assume that the obligation is fully satisfied by the sale of the securities does not hold any water. Nowhere in our statutes and jurisprudence do they provide that the sale of the collaterals constituted as security of the obligation results in the extinguishment of the obligation. The rights and obligations of parties are governed by the terms and conditions of the contract and not by assumptions and presuppositions of the parties. The amount of their entire liability should be computed on the basis of the rate of interest as imposed by the CA minus the proceeds of the sale of the foreclosed properties in public auction.

It is worth mentioning that the appellate court aptly reduced the interest rate to 12% per annum which is in consonance to existing jurisprudence. In *Albos v. Embisan*,[11] *MCMP Construction Corp. v. Monark Equipment Corp.*,[12] *Bognot v. RRI Lending Corporation*,[13] and *Menchavez v. Bermudez*,[14] the Court struck down the stipulated rates of interest for being excessive, iniquitous, unconscionable and exorbitant and uniformly **reduced the rates to 12% per annum.**

Lorenze Realty's plea to further reduce the interest to 3% per annum has no leg to stand on and could not be adopted by this Court. On the other hand, the appellate court, consistent with the ruling of this Court in a number of cases, correctly pegged the rate of interest at 1% per month or 12% per annum. We need not unsettle the principle we had affirmed in a plethora of cases that 12% per annum is the legal rate of interest imposed

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[11] G.R. No. 210831, 26 November 2014, 743 SCRA 283, 295-296.

[12] G.R. No. 201001, 10 November 2014, 739 SCRA 432, 442-443.

[13] G.R. No. 180144, 24 September 2014, 736 SCRA 357, 379-380.

[14] 697 Phil. 447, 452 (2012).

by this Court on occasions that we nullified the rates stipulated by parties. While the Court has the power to nullify excessive interest rates and impose new rates for the parties, such reduction, however, must always be guided by reason and equity.

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

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 200577. August 17, 2016]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **CAROLINA P. JUEN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE CASES; AS A GENERAL RULE, THE DEATH OF THE RESPONDENT DOES NOT PRECLUDE A FINDING OF ADMINISTRATIVE LIABILITY; EXCEPTIONS.— While, as a general rule, the Court has held that the death of the respondent does not preclude a finding of administrative liability, it is not without exception. The Court stated in *Office of the Ombudsman v. Dechavez* that from a strictly legal point of view and as held in a long line of cases, jurisdiction, once it attaches, cannot be defeated by the acts of the respondent, save only where death intervenes and the action does not survive. In *Mercado, et al. v. Judge Salcedo (Ret.),* the Court reiterated its rule with respect to the death of

the respondent in an administrative case: x x x the death of the respondent in an administrative case precludes the finding of administrative liability when: a) due process may be subverted; b) on equitable and humanitarian reasons; and c) the penalty imposed would render the proceedings useless.

2. ID.; ID.; CARDINAL PRINCIPLES TO BE FOLLOWED IN ORDER TO COMPLY WITH THE REQUIRED DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS, ENUMERATED.— The Court has, in a long line of cases, stated that due process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) in arriving at a decision, the tribunal must have acted on its own consideration *of the law and the facts of the controversy and must not have simply accepted the views of a subordinate;* and (7) the decision must be rendered in such manner that the respondents would know the reasons for it and the various issues involved.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Nicolas D. Villanueva III for respondent.

D E C I S I O N

REYES, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated

[1] *Rollo*, pp. 26-54.

[2] Penned by Associate Justice Mario V. Lopez, with Associate Justices Magdangal M. De Leon and Socorro B. Inting concurring; *id.* at 11-19.

July 8, 2011 and Resolution[3] dated February 10, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 100240, setting aside the Resolution No. 061183[4] dated July 12, 2006 and Resolution No. 071209[5] dated June 22, 2007 of the Civil Service Commission (CSC). The Resolutions of the CSC affirmed the CSC Regional Office V's (CSCRO V) Order dated January 16, 2004, finding Carolina P. Juen (respondent), Budget Officer I, Municipality of Placer, Masbate, guilty of dishonesty, grave misconduct and conduct prejudicial to the best interest of the service.

Antecedent Facts

Based on a letter-complaint,[6] the respondent was investigated by the CSCRO V for allegedly having paid another person take the Civil Service Professional Examination (CSPE) given on December 20, 1996 on her behalf. The respondent denied the allegation.[7]

However, after preliminary investigation, the CSCRO V found that there existed a *prima facie* case for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service against the respondent.[8] It found that, after a comparison of the respondent's picture submitted in the Personal Data Sheet[9] and with the picture of the person who took the exam as found in the Picture Seat Plan,[10] the respondent was not the one who actually took the examination but caused somebody to take

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[3] *Id*. at 21-24.

[4] Penned by Commissioner Cesar D. Buenaflor, with Chairman Karina Constantino-David and Commissioner Mary Ann Z. Fernandez-Mendoza concurring; *id*. at 134-143.

[5] *Id*. at 148-151.

[6] *Id*. at 100. Received by the CSCRO V on December 16, 2002.

[7] *Id*. at 105.

[8] *Id*. at 106.

[9] *Id*. at 101-102.

[10] *Id*. at 103.

the exam on her behalf. The respondent was, thus, formally charged with dishonesty, grave misconduct and conduct prejudicial to the best interest of the service and directed to submit an answer within 72 hours from receipt of the formal charge.[11]

In her Answer,[12] the respondent reiterated that she personally took the CSPE on December 20, 1996 and denied that she paid someone else to take the examination for her. She stated that she was never given the chance to examine the documents which constituted the charge against her.

Initial hearing for the case was set on September 4, 2003 at the CSCRO V, Rawis, Legaspi City.[13]

When the case was called on September 5, 2003, only the prosecution appeared. It was allowed to present its evidence *ex-parte* and, thereafter, rested its case. At the same hearing, the respondent was directed to present their evidence on November 15, 2003 and was warned that failure to do so at the appointed day and time shall constitute as a waiver.[14] The respondent failed to present her evidence on November 15, 2003.[15]

Ruling of the CSCRO V

In its Order[16] dated January 16, 2004, the CSCRO V found the respondent guilty of dishonesty, grave misconduct and conduct prejudicial to the service. It stated:

A careful examination of the records clearly shows that the person whose picture was pasted on the [r]espondent's PDS and the person whose picture was pasted on the Picture Seat Plan for the [CSPE]

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

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

[13] *Id*. at 111.

[14] *Id*. at 112.

[15] *Id*. at 114.

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

given on February 13, 1997, using the name of [the respondent] are two different persons.

On the other hand, [r]espondent failed to explain her marked difference in physical appearance from the one who actually applied and took the December 20, 1996 [CSPE] under the name of [the respondent]. She even failed to appear before this Office when required to do so. Logically[, the r]espondent was not the person who actually applied and took the December 20, 1996 [CSPE] but caused someone to take it for and in her behalf.[17]

The CSCRO V, thus, imposed the penalty of dismissal with all the accessory penalties attached thereto.[18]

The respondent moved for reconsideration on the grounds that: 1) her constitutional right to due process and right to be informed of the causes against her had been denied; and 2) the CSCRO V had no jurisdiction over the case. She said she was not given sufficient notice to attend the scheduled hearings.

In its Order[19] dated October 12, 2004, the CSCRO V denied the motion. It stated that it had the jurisdiction to hear the complaint against the respondent by virtue of Section 6 of the Uniform Rules on Administrative Cases in the Civil Service (URACCS). It found that the respondent had been given an opportunity to present her case. It stated that while it was true that the notice for the September 4, 2003 hearing was received on the same day by the respondent, her counsel received the notice of hearing. for November 13, 2003 two days prior to the scheduled hearing or on November 11, 2003. It reasoned that under Section 84 of the URACCS, receipt by counsel is valid service. Despite due notice of CSCRO V, the respondent still failed to appear.

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[17] *Id*. at 115.

[18] *Id*.

[19] *Id*. at 121-124.

Ruling of the CSC

On appeal,[20] the CSC, in its Resolution No. 061183[21] dated July 12, 2006, affirmed the CSCRO V orders. *First*, it stated that the CSCRO V has jurisdiction over disciplinary cases as the CSC validly delegated to it such power pursuant to Section 12(16), Book V of Executive Order No. 292. It was under this delegation that the CSC implemented the URACCS, particularly Section 6.[22] *Second*, it found that the respondent's claim of denial of due process is without merit. Notices were sent to and received by the respondent who failed to appear on both scheduled hearings.[23] *Lastly*, it also found no merit in the respondent's claim that the complaint initiated against her was not under oath. The CSC cited Section 8, Rule II of the URACCS, which stated that in cases initiated by the proper disciplining authority a complaint need not be under oath.[24]

The CSC stated:

> The Commission carefully evaluated the evidence on record and is fully convinced that the person appearing in the pictures attached to the PSP during the [CSPE] held on December 20, 1996, and the PDS on one hand, are not one and the same. This is so, despite the fact that the two are different pictures taken at different times, with the person wearing different hairstyles and in the photo pasted on the PDS was groomed with cosmetics. Moreover, the loops and strokes of the handwriting and signatures on the two documents are starkly different. It is, thus, unmistakable that said signatures belong to different persons. These discrepancies are conclusive that impersonation was committed, an act which is inimical to the integrity and credibility of Civil Service Examinations.[25]

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[20] *Id*. at 125-133.

[21] *Id*. at 134-143.

[22] *Id*. at 139.

[23] *Id*. at 140.

[24] *Id*.

[25] *Id*. at 141.

The CSC, thus, affirmed the ruling of the CSCRO V finding substantial evidence to hold the respondent guilty of dishonesty, grave misconduct and conduct prejudicial to the best interest of the service.[26]

The respondent moved for reconsideration[27] on August 16, 2006, but the same was denied in CSC Resolution No. 071209[28] dated June 22, 2007. The dispositive portion reads:

> **WHEREFORE**, the motion for reconsideration of [the respondent] is hereby **DENIED**. Accordingly, [CSC] Resolution No. 06-1183 dated July 12, 2006, which affirmed the [CSCRO V] Order dated January 16, 2004 finding her guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service and imposing upon her the penalty of dismissal from the service with the accessory penalties of perpetual disqualification from entering the government service and from taking future Civil Service examinations, forfeiture of retirement benefits and cancellation of Civil Service eligibility, **STANDS**.[29]

The respondent, thus, filed an appeal[30] before the CA.

However, on April 1, 2009, the respondent's counsel informed the CA that the respondent died from ovarian cancer on December 23, 2008.[31] The respondent's counsel, however, manifested that the respondent's heirs are very much interested in the outcome of the petition because they will be benefited by whatever claims and benefits the respondent may be entitled to should a favorable judgment be rendered.[32] The Office of the Solicitor General, on behalf of the CSC, agreed that the case should continue on the ground that the "death of respondent

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[26] *Id*. at 143.

[27] *Id*. at 144-147.

[28] *Id*. at 148-151.

[29] *Id*. at 151.

[30] *Id*. at 152-162.

[31] *Id*. at 15.

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

in an administrative case does not preclude a finding of administrative liability."[33]

Ruling of the CA

In its Decision[34] dated July 8, 2011, the CA found that the CSC did not afford the respondent a hearing where she could present her case and submit evidence to support it. The CA stated:

> The [respondent] cannot be faulted for her being absence [sic] during the hearings set by the [CSCRO V]. It is of record that notice for the first hearing set on September 4, 2003 was received on the same day, while the notice for the second hearing was received by [the respondent] on November 11, 2003, or only two days before the hearing. [The respondent's] counsel was in Cebu City and the hearing was to be conducted in Legaspi City, it would be extremely unreasonable to expect [the respondent's] attendance. Evidently, [the respondent] was not given enough time to be present and her counsel before the [CSCRO V]. She was unlawfully deprived of her right to adduce evidence for her defense.[35] (Citations omitted)

The CA stated that, pursuant to the Court's ruling in *Ang Tibay and National Worker's Brotherhood v. The Court of Industrial Relations and National Labor Union, Inc.*[36] and *Abella, Jr. v. CSC*,[37] the CSCRO V should have given the respondent another opportunity to present her evidence. Since the CSCRO V hastily admitted the evidence against the respondent, the documentary evidence which it based its findings on cannot be relied upon.[38] It, thus, set aside Resolutions No. 061183 and 071209 of the CSC.

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[33] *Id.* at 16.

[34] *Id.* at 11-19.

[35] *Id.* at 18.

[36] 69 Phil. 635 (1940).

[37] 485 Phil. 182 (2004).

[38] *Rollo*, p. 19.

The CSC moved for reconsideration,[39] but the same was denied in Resolution[40] dated February 10, 2012 of the CA.

Hence, this petition by the CSC arguing that the CSCRO V complied with all the requirements of due process and praying that the resolutions of the CSC be reinstated. It stated that the respondent may be served summons through her counsel.[41]

The questions for the Court's consideration therefore are: 1) whether the death of the respondent rendered the appeal moot and academic; and 2) whether the CA erred in finding that the respondent was not afforded due process.

Ruling of the Court

While, as a general rule, the Court has held that the death of the respondent does not preclude a finding of administrative liability, it is not without exception. The Court stated in *Office of the Ombudsman v. Dechavez*[42] that from a strictly legal point of view and as held in a long line of cases, jurisdiction, once it attaches, cannot be defeated by the acts of the respondent, save only where death intervenes and the action does not survive.[43] In *Mercado, et al. v. Judge Salcedo (Ret.),*[44] the Court reiterated its rule with respect to the death of the respondent in an administrative case:

> The death of the respondent in an administrative case, as a rule, does not preclude a finding of administrative liability. The recognized exceptions to this rule are: *first*, when the respondent has not been heard and continuation of the proceedings would deny him of his right to due process; *second*, where exceptional circumstances exist in the case leading to equitable and humanitarian considerations;

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[39] *Id*. at 73-78.

[40] *Id*. at 21-24.

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

[42] 721 Phil. 124 (2013).

[43] *Id*. at 136.

[44] 619 Phil. 3 (2009).

and *third*, when the kind of penalty imposed or imposable would render the proceedings useless. x x x.[45] (Citation omitted and italics in the original)

Otherwise stated, the death of the respondent in an administrative case precludes the finding of administrative liability when: a) due process may be subverted; b) on equitable and humanitarian reasons; and c) the penalty imposed would render the proceedings useless. The Court finds that the first exception applies.

Here, the case was pending appeal with the CA when the respondent passed away. The CA was duty bound to render a ruling on the issue of whether or not the respondent was indeed administratively liable of the alleged infraction. However, in its decision, the CA found that the respondent was deprived of her right to due process.

The Court has, in a long line of cases, stated that due process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) in arriving at a decision, the tribunal must have acted on its own consideration *of the law and the facts of the controversy and must not have simply accepted the views of a subordinate*; and (7) the decision must be rendered in such manner that the respondents would know the reasons for it and the various issues involved.[46]

After a careful review, the Court agrees with the conclusion of the CA especially when it stated:

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[45] *Id.* at 32.

[46] *Department of Health v. Camposano*, 496 Phil. 886, 898-899 (2005).

The [respondent] cannot be faulted for her absence during the hearings set by the [CSCRO V]. It is of record that notice for the first hearing set on September 4, 2003 was received in the same day, while the notice for the second hearing was received by [the respondent] on November 11, 2003, or only two days before the hearing. [The respondent's] counsel was in Cebu City and the hearing was to be conducted in Legaspi City, it would be extremely unreasonable to expect [the respondent's] attendance. Evidently, [the respondent] was not given enough time to be present and her counsel before the [CSCRO V]. She was unlawfully deprived of her right to adduce evidence for her defense.

xxx xxx xxx

The filing of a motion for reconsideration and appeal is not a substitute to deprive the [respondent] of her right to due process. The opportunity to adduce evidence is essential in the administrative process, as decisions must be rendered on the evidence presented, either in the hearing, or at least contained in the record and disclosed to the parties affected. x x x.[47] (Citations omitted)

Since the case against the respondent was dismissed by the CA on the lack of due process, the Court finds it proper to dismiss the present administrative case against the deceased under the circumstances since she can no longer defend herself.

WHEREFORE, the petition is **DENIED**. The Decision dated July 8, 2011 and Resolution dated February 10, 2012 of the Court of Appeals in CA-G.R. SP No. 100240 are **AFFIRMED**.

SO ORDERED.

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

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

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[47] *Rollo,* p. 18.

[*] Additional Member per Raffle dated September 2, 2015 *vice* Associate Justice Francis H. Jardeleza.

THIRD DIVISION

[G.R. No. 202531. August 17, 2016]

GOMECO METAL CORPORATION, *petitioner, vs.* **THE COURT OF APPEALS, and PAMANA ISLAND RESORT HOTEL AND MARINA CLUB, INCORPORATED,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; JUDGMENTS; PRINCIPLE OF *RES JUDICATA*; BAR BY FORMER JUDGMENT RULE DISTINGUISHED FROM CONCLUSIVENESS OF JUDGMENT RULE.— *Res judicata* is a legal principle that regards a final judgment on the merits of a case as conclusive between the parties to such case and their privies. The principle, at least in our jurisdiction, has two (2) recognized applications. The first application pertains to a scenario where the parties to a case, whose merits had already been finally adjudicated by a court with jurisdiction, (or their privies) become parties to a subsequent case that involves the **same claim, demand or cause of action** as that of the previous case. In this scenario, the principle of *res judicata* applies in such a way that the **judgment in the previous case stands as an absolute and complete bar to the subsequent case itself**. This application of *res judicata* is also known as the "*bar by former judgment rule*" and is sanctioned under Section 47(b) of Rule 39 of the Rules of Court. For convenience and ease of understanding, we dissect hereunder the circumstances that must concur in order for the bar by former judgment rule to apply: 1. There is a judgment in a case that: a. disposed of such case on the merits, b. was issued by a court of competent jurisdiction, c. has attained final and executory status; 2. There is another case subsequently filed in court; 3. Between the previous case and the subsequent case, there is an identity of parties; and 4. The previous case and the subsequent case are based on the

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[*] Respondent's name is stated as Pamana Island Resort and Marine Club, Inc. in the other parts of the records.

same claim, demand or cause of action. The second application of the principle of *res judicata*, on the other hand, contemplates of a scenario that is almost similar to that of the first: the parties to a case, whose merits had already been finally adjudicated by a court with jurisdiction, (or their privies) also become parties to a subsequent case. However, unlike in the first application, the subsequent case herein **does not involve the same claim, demand or cause of action** as the previous case. In this scenario, the principle of *res judicata* applies, not to wholly bar the subsequent case, but only to **preclude the relitigation or redetermination therein of any matter actually or *deemed* settled by the judgment in the previous case**. This application of *res judicata* is known as the "*conclusiveness of judgment rule*" and is sanctioned under Section 47(c) of Rule 39 of the Rules of Court. The circumstances that must concur in order for the conclusiveness of judgment rule to apply are the same as those needed for the bar by judgment rule to set in, except for the last circumstance. In the application of the conclusiveness of judgment rule, the previous case and the subsequent case must *not* be based on the same claim, demand or cause of action but only pass upon the same matters or issues.

2. ID.; ID.; ID.; DOCTRINE OF IMMUTABILITY OF JUDGMENT; THE DOCTRINE MAINTAINS THAT ONCE A JUDGMENT HAS ATTAINED FINALITY, THE SAME CAN NO LONGER BE CHANGED OR MODIFIED IN ANY RESPECT, EITHER BY THE COURT THAT RENDERED IT OR BY ANY OTHER COURT; EXCEPTIONS.— The doctrine of immutability of judgment maintains that once a judgment has attained finality, the same can no longer be changed or modified **in any respect**, either by the court that rendered it or by any other court. In *FGU Insurance v. Regional Trial Court*, we explained the full breadth of such doctrine, including the few recognized exceptions thereto, as follows: x x x But like any other rule, it has exceptions, namely: (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

3. ID.; ID.; ID.; EXECUTION SALE; WHEN REAL PROPERTY IS LEVIED AND SOLD ON EXECUTION PURSUANT TO A FINAL JUDGMENT, OUR RULES OF PROCEDURE

ALLOWS JUDGMENT DEBTOR OR A REDEMPTIONER TO REDEEM SUCH PROPERTY WITHIN ONE (1) YEAR FROM THE DATE OF THE REGISTRATION OF THE CERTIFICATE OF SALE.— When real property is levied and sold on execution pursuant to a final judgment, our rules of procedure allows the judgment debtor or a "*redemptioner*" to redeem such property within one (1) year from the "*date of the registration of the certificate of sale*," x x x The commencement of the one-year redemption period is of critical importance, not only to the judgment debtor or a redemptioner, but even more so to the successful purchaser in the execution sale. This is because, under the rules, it is only **after the lapse of such one-year period** with **no valid redemption** having been effected, that a successful purchaser acquires absolute ownership over the real property he purchased in the execution sale and becomes entitled to a final deed of sale. As can be gleaned above, commencement of the one-year redemption period is reckoned from "*the date of registration of the certificate of sale*." The phrase "*registration of certificate of sale*" means registration of such certificate with the RD. The RD is the official public repository of records or instruments affecting lands. As presently constituted though, the RD maintains separate registries for real properties registered under the Torrens system and for "*unregistered*" real properties *i.e.*, real properties not registered under the Torrens system. Each registry has its own set of day book and registration book. Logically, and under normal circumstances, a certificate of sale ought to be registered with the RD at the particular registry corresponding to the status of the real property it covers. Thus, a certificate of sale covering property registered under the Torrens system ought to be registered with the RD under its registry for properties registered under the Torrens system. Likewise, a certificate of sale covering property *not* registered under the Torrens system ought to be registered with the RD under its registry for unregistered real properties. There is no doubt that, when a certificate of sale is so registered, the period of redemption would by then start to run.

4. ID.; ID.; ID.; ID.; BEFORE ANY PROPERTY IS SOLD IN EXECUTION, AND A CERTIFICATE OF SALE ISSUED THEREFOR, SUCH PROPERTY MUST FIRST BE THE SUBJECT OF A LEVY, WHICH IN OUR JURISDICTION IS EFFECTED BY THE SHERIFF OF THE COURT.— It is basic that before any property is sold in execution, and a

certificate of sale issued therefor, such property must first be the subject of a levy. A levy on execution refers to the essential act by which a property of the judgment debtor is taken into the custody of the law and set apart for the satisfaction of the judgment debt. In our jurisdiction, a levy on execution is effected by the sheriff of the court. When the property sought to be levied is realty, the sheriff must first prepare a *Notice of Levy* that contains, among others, **an adequate description of the real property sought to be levied**. Significantly, **the notice of levy is also required to ascertain whether the particular realty sought to be levied is registered under the Torrens system or not, such that if it is, the notice must contain *"a reference to the number of the certificate of title, the volume and page in the registration book where the certificate is registered, and the registered owner or owners thereof."*** To actually effect the levy upon a real property, however, the sheriff is required to do two (2) specific things: (1) file with the RD a copy of the Notice of Levy, and (2) leave with the occupant of the property a copy of the same notice.

APPEARANCES OF COUNSEL

Stephen O. Arceno for petitioner.
Melita S. Recto-Sambajon, co-counsel for petitioner.
Ma. Aleta L. Tolentino for respondents.

D E C I S I O N

PEREZ, *J.*:

This is a petition for *certiorari*,[1] assailing the Decision[2] dated 28 December 2011 and Resolution[3] dated 28 June 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 119053.

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[1] Under Rule 65 of the Rules of Court.

[2] *Rollo*, pp. 56-74. The decision was penned by Associate Justice Samuel H. Gaerlan for the Sixth (6th) Division of the Court of Appeals with Associate Justices Amelita G. Tolentino and Ramon R. Garcia, concurring.

[3] *Id*. at 102.

The facts:

Parties and Civil Case No. 4349-V-94

Petitioner Gomeco Metal Corporation (Gomeco) is a domestic corporation engaged in the business of selling steel and metal products. Respondent Pamana Island Resort Hotel and Marina Club, Inc. (Pamana), on the other hand, is a domestic corporation engaged in the business of operating leisure resorts.

In 1994, Gomeco filed a Complaint for Collection of Sum of Money (Complaint) against Pamana before the Regional Trial Court (RTC) of Valenzuela City. In the Complaint, Gomeco sought to collect payment for the stainless steel products[4] it sold to Pamana in 1991. The Complaint was raffled to Branch 75 and was docketed as Civil Case No. 4349-V-94.

In 1997, Gomeco and Pamana entered into a Compromise Agreement[5] to end litigation in Civil Case No. 4349-V-94. The compromise agreement, which required Pamana to pay Gomeco ₱1,800,000.00, was consequently approved by the RTC in an Order dated 16 January 1997.[6]

Writ of Execution and First Notice of Levy

Of the ₱1,800,000.00 that was due Gomeco under the compromise agreement, however, Pamana was actually able to pay only ₱450,000.00. This eventually led the RTC, on 2 March 1998, to issue an order directing Pamana, within twenty (20) days from its receipt thereof, to pay Gomeco ₱1,350,000.00 or the remaining balance under the compromise agreement. Such order, however, was unheeded by Pamana.

Thus, the RTC, upon application therefor by Gomeco, issued a Writ of Execution[7] on 7 May 1998 commanding the court's

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[4] Records, Vol. I, pp. 1-5; worth ₱995,190.00 plus 10% Value Added Tax and 36% interest per annum.

[5] *Id*. at 215-216; Compromise Agreement dated 9 January 1997.

[6] *Id*. at 217; Order dated 16 January 1997.

[7] CA *rollo*, pp. 52-54.

sheriff, then one Jaime T. Montes (Sheriff Montes), to enforce the court-approved compromise agreement against Pamana.

Pursuant to the writ of execution, Sheriff Montes first garnished Pamana's bank accounts by sending notices of garnishment with the Philippine National Bank, Metropolitan Bank and Trust Company, Westmont Bank, Union Bank and Prudential Bank. The garnishment of Pamana's accounts with the aforementioned banks yielded futile results, however, as the same failed to satisfy, whether fully or in part, Pamana's indebtedness.

Hence, on 22 May 1998, Sheriff Montes issued a *Notice of Levy*[8] placing under levy on execution one of Pamana's real estate properties—the 53,285 square meter Pequeña Island in Subic, Zambales. On the belief that the Pequeña Island is property not registered under the Torrens System, such island was identified in the notice of levy by Tax Declaration No. 007-0001 with Property Index No. 016-13-007-01-001.[9]

Notable, moreover, are the following entries in the notice of levy:

1. The amount of the levy on the Pequeña Island was fixed at "*₱2,065,500.00*."
2. The property being levied, *i.e.*, Pequeña Island, was referred to as "*personal properties*" of Pamana.

Notice of Sheriff's Sale, Execution Sale and CA-G.R. SP No. 62391

On 11 December 2000, with Pamana's indebtedness still unsatisfied, Sheriff Montes issued a *Notice of Sheriff Sale*[10] on the Pequeña Island. Like the notice of levy, the notice of sheriff's sale identified the Pequeña Island through Tax Declaration No. 007-0001 with Property Index No. 016-13-007-01-001. It set the public auction of the Pequeña Island on 10 January 2001.

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[8] *Id.* at 55.

[9] *Id.* at 98.

[10] *Id.* at 58.

The notice of sheriff's sale bears the following entries:

1. The amount of levy on the Pequeña Island was fixed at "*₱2,065,00[0].00*."
2. The property levied and the subject of public auction, *i.e.*, the Pequeña Island, was referred to as the "*personal/real properties*" of Pamana.

The notice of sheriff's sale was duly posted and published in a newspaper of general circulation in the manner required by Section 15(c) of Rule 39 of the Rules of Court.

On 28 December 2000, Pamana filed a Petition for Prohibition (with prayer for the issuance of a temporary restraining order) before the CA, seeking to nullify the notice of sheriff's sale and enjoin the public auction of the Pequeña Island scheduled thereunder. The Petition was docketed in the CA as CA-G.R. SP No. 62391 and impleaded Gomeco and Sheriff Montes as respondents. On 9 January 2001, *i.e.*, a day before the public auction of the Pequeña Island was scheduled to take place pursuant to the notice of sheriff's sale, the CA issued a temporary restraining order (TRO) against holding such public auction.

Despite the TRO issued by the CA, however, the public auction of the Pequeña Island still pushed through, as scheduled, on 10 January 2001. As it happened, the TRO was not served upon Gomeco and Sheriff Montes until moments after the public auction was already concluded.

At the 10 January 2001 public auction, Gomeco became the winning bidder for the Pequeña Island at the price of ₱2,065,000.00.

Aggrieved by the turn of events, Pamana filed a Supplementary Petition in CA-G.R. SP No. 62391 asking the CA to strike down as null and void the 10 January 2001 public auction of the Pequeña Island.

On 22 March 2001, a *Sheriff's Certificate of Sale* covering the Pequeña Island was issued in favor of Gomeco. On 28

March 2001, the said certificate was registered[11] with the Register of Deeds (RD) of Iba, Zambales, under the Registry of Unregistered Properties pursuant to Section 194 of Republic Act No. 2711 or the Revised Administrative Code of 1917, as amended by Republic Act No. 3344.[12]

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[11] Records, pp. 347-347-A; Entry No. 131726, page 99, Vol. XXXIII of the Books of Unregistered Lands, Register of Deeds of Iba, Zambales.

[12] REVISED ADMINISTRATIVE CODE, Sec. 194, as amended by Republic Act No. 3344, provides:

SEC. 194. *Recording of Instruments or Deeds Relating to Real Estate not Registered Under Act Numbered Four Hundred and Ninety-Six or Under the Spanish Mortgage Law*. — No instrument or deed establishing, transmitting, acknowledging, modifying or extinguishing rights with respect to real estate not registered under the provisions of Act Numbered Four hundred and ninety-six, entitled 'The Land Registration Act', and its amendments, or under the Spanish Mortgage Law, shall be valid, except as between the parties thereto, until such instrument or deed has been registered, in the manner hereinafter prescribed, in the office of the register of deeds for the province or city where the real estate lies.

It shall be the duty of the register of deeds for each province or city to keep a day book and a register book for unregistered real estate, in accordance with a form to be prepared by the Chief of the General Land Registration Office, with the approval of the Secretary of Justice. The day book shall contain the names of the parties, the nature of the instrument or deed for which registration is requested, the hour and minute, date and month of the year when the instrument was received. The register book shall contain, among other particulars, the names, age, civil status, and the residences of the parties interested in the act or contract registered and in case of marriage, the name of the wife, or husband, as the case may be, the character of the contract and its conditions, the nature of each piece of land and its own improvements only, and not any other kind of real estate or properties, its situation, boundaries, area in square meters, whether or not the boundaries of the property are visible on the land by means of monuments or otherwise, and in the affirmative case, in what they consist; the permanent improvements existing on the property; the page number of the assessment of each property in the year when the entry is made, and the assessed value of the property for that year; the notary or the officer who acknowledged, issued, or certified the instrument or deed; the name of the person or persons who, according to the instrument, are in present possession of each property; a note that the land has not been registered under Act Numbered Four hundred and ninety-six nor under the Spanish Mortgage Law; that the parties have agreed to register said instrument under the provisions of this Act, and that the original

Decision of the CA in CA-G.R. SP No. 62391

On 19 February 2002, the CA rendered a Decision[13] in CA-G.R. SP No. 62391 declaring as null and void the Notice of Sheriff's Sale and the 10 January 2001 public auction of the Pequeña Island. Underlying such declaration is the CA's finding that the Notice of Levy and the Notice of Sheriff's Sale were

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instrument has been filed in the office of the register of deeds, indicating the file number, and that the duplicate has been delivered to the person concerned; the exact year, month, day, hour, and minute when the original of the instrument was received for registration, as stated in the day book. It shall also be the duty of the register of deeds to keep an index-book of persons and an index-book of estates, respectively, in accordance with a form to be also prepared by the Chief of the General Land Registration Office, with the approval of the Secretary of Justice.

Upon presentation of any instrument or deed relating to real estate not registered under Act Numbered Four hundred and ninety-six and its amendments or under the Spanish Mortgage Law, which shall be accompanied by as many duplicates as there are parties interested, it shall be the duty of the register of deeds to ascertain whether said instrument has all the requirements for proper registration. If the instrument is sufficient and there is no legitimate objection thereto, or in case of there having been one, if the same has been dismissed by final judgment of the courts, and if there does not appear in the register any valid previous entry that may be affected wholly or in part by the registration of the instrument or deed presented, and if the case does not come under the prohibition of section fourteen hundred and fifty-two of Act Numbered Twenty-seven hundred and eleven, the register of deeds shall register the instrument in the proper book. In case the instrument or deed presented has defects preventing its registration, said register of deeds shall refuse to register it until the defects have been removed, stating in writing his reasons for refusing to record said instrument as requested. Any registration made under this section shall be understood to be without prejudice to a third party with a better right.

The register of deeds shall be entitled to collect in advance as fees for the services to be rendered by him in accordance with this Act, the same fees established for similar services relating to instruments or deeds in connection with real estate in section one hundred fourteen of Act Numbered Four hundred ninety-six, entitled "The Land Registration Act", as amended by Act Numbered Two thousand eight hundred and sixty-six.

[13] *Rollo*, pp. 343-348. The decision was penned by Associate Justice Eugenio S. Labitoria for the Sixth (6th) Division of the Court of Appeals with Associate Justices Teodoro P. Regino and Rebecca De Guia-Salvador, concurring.

fatally defective due to their erroneous indication that the levy thereunder was enforceable up to the amount of ₱2,065,000.00, instead of only up to the ₱1,350,000.00 remaining indebtedness of Pamana under the compromise agreement plus other lawful fees.[14]

Gomeco filed a Motion for Reconsideration.

Acting on Gomeco's Motion for Reconsideration, the CA issued a Resolution[15] dated 9 July 2002. In the said Resolution, the CA modified its earlier Decision and declared the levy and the ensuing 10 January 2001 public auction to be valid *but* only to the extent of the ₱1,350,000.00 remaining indebtedness of Pamana plus 12% legal interest thereon and other lawful fees in the implementation of such levy and auction.[16]

Pamana, in turn, filed a Motion for Reconsideration.

On 16 January 2003, the CA issued a Resolution[17] wherein it affirmed in all respects its 9 July 2002 Resolution except only to the inclusion of the "*12% legal interest*" as a component of the entire amount satisfiable by the levy and execution sale.

The 16 January 2003 Resolution of the CA became final and executory on 10 February 2003.[18]

Motion for Clarification in CA-G.R. SP No. 62391

After the finality of the 16 January 2003 Resolution, Pamana filed with the CA a *Motion for Clarification* in CA-G.R. SP No. 62391. In the said motion, Pamana asked the CA to require disclosure of the list of properties *in* the Pequeña Island that were levied upon and sold during the 10 January 2001 public auction, and their corresponding values.

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[14] *Id*.

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

[16] *Id*.

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

[18] CA *rollo*, pp. 95-96; Entry of Judgment.

Pamana's Motion for Clarification rests on the following key assumptions:

1. The object of the Notice of Levy is not actually the Pequeña Island itself but only the "*personal properties*" in the said island;
2. The 10 January 2001 public auction resulted in the sale not of the Pequeña Island but only of certain properties therein;
3. The notice of levy, the Minutes of Auction Sale and the Sheriff's Return, however, did not specify which personal properties in the Pequeña Island were actually levied and sold during the 10 January 2001 public auction; and
4. The Minutes of Auction Sale and the Sheriff's Return did not reveal for how much Pamana's properties in the Pequeña Island had been sold during the 10 January 2001 public auction.

The CA, at first, denied Pamana's Motion for Clarification. However, on 17 September 2004, the CA issued a Resolution[19] directing Deputy Sheriff Montes to "*point out which of petitioner's specific properties* [in the Pequeña Island] *had been levied and sold in public auction and to determine the exact value of said properties if sufficient to satisfy in full the judgment debt of [₱]1,350,000.00 and other lawful expenses*" and to "*return to [Pamana] such amount, if any, in excess of the judgment debt*."[20]

TCT No. T-38774

Meanwhile, on 29 January 2003, Gomeco was issued a *Sheriff's Final Deed of Sale*[21] over the Pequeña Island. The

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[19] *Rollo*, pp. 113-115.

[20] *Id*. at 114. (Italics supplied.)

[21] *Rollo*, pp. 127-128. Issued by Sheriff Romero L. Rivera of the Valenzuela City RTC, who was the successor in office of Sheriff Montes.

Sheriff's Final Deed of Sale attested that Pamana had failed to exercise his right of redemption on the Pequeña Island within the period allowed by law and that, as a consequence thereof, Gomeco was now absolute owner of the said island. Like the Sheriff's Certificate of Sale, the Sheriff's Final Deed of Sale was registered[22] with the RD of Iba, Zambales, under the Registry of Unregistered Properties pursuant to Section 194 of the Revised Administrative Code of 1917, as amended.

Sometime in March 2003, however, Gomeco discovered that the Pequeña Island was not, as it formerly believed, unregistered property but was in fact registered land under Transfer Certificate of Title (TCT) No. T-38774 in the name of Pamana. This discovery prompted Gomeco to file, before the RTC in Civil Case No. 4349-V-94, a Motion for the Cancellation of Pamana's Title and the issuance of a new title in its (Gomeco) name (Motion for Cancellation of Title).

On 5 January 2005, the RTC issued an Order[23] granting Gomeco's Motion for Cancellation of Title and directing the RD of Iba, Zambales, to cancel Pamana's title over Pequeña Island and to issue a new title in lieu thereof in the name of Gomeco. In the body, as well as the dispositive portion of the said Order, however, the RTC mistakenly identified Pamana's title as TCT No. T-387**4**4 instead of TCT No. T-387**7**4.

Against the foregoing Order of the RTC, Pamana filed an Urgent Motion for Reconsideration and a Motion for Correction of the Order dated 5 January 2005 (Motion for Correction).

In its Urgent Motion for Reconsideration, Pamana assails the 5 January 2005 Order of the RTC primarily for being contrary to the resolutions of the CA in CA-G.R. SP No. 62391. Pamana alleged that it was erroneous for the RTC to recognize Gomeco's absolute ownership over the Pequeña Island since the CA, in

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[22] *Id*. at 128; Entry No. 133218, page 32, Vol. XXXIV of the Books of Unregistered Lands, Register of Deeds of Iba, Zambales. The registration was made on 28 February 2003.

[23] CA *rollo*, p. 36.

CA-G.R. SP No. 62391, already substantially nullified the levy and public auction on the said island. Pamana also contended that the Sheriff's Final Deed of Sale was still premature in light of the 17 September 2004 Resolution of the CA that required an accounting of the properties sold and the proceeds realized from the 10 January 2001 public auction. For Pamana, no such final deed of sale can be issued in favor of Gomeco unless the 17 September 2004 Resolution is first complied with to the letter.

In its Motion for Correction, on the other hand, Pamana asked that its title over Pequeña Island, as stated in the 5 January 2005 Order, be changed from TCT No. T-3874**4** to TCT No. T-3877**4**.

On 20 April 2005, Gomeco, for its part, filed a Motion to Order the Appointed Sheriff to Annotate the Notice of Levy, Deed of Sale and Sheriff's Final Deed of Sale [in] TCT No. T-38774 (Motion to Order Annotation). In the said motion, Gomeco prayed that the RTC, pending the possible cancellation of TCT No. T-38774 and the issuance of a new title in its name, order the annotation of the Notice of Levy, Certificate of Sheriff's Sale and the Sheriff's Final Deed of Sale in TCT No. T-38774.

On 3 March 2011, the RTC issued an Order:[24]

1. Denying Pamana's Urgent Motion for Reconsideration;
2. Granting Pamana's Motion for Correction;
3. Granting Gomeco's Motion to Order Annotation; and
4. Directing its incumbent sheriff, for the purpose ascertaining the total amount of money for which the levy and sale of the Pequeña Island were meant to satisfy, to compute the actual amount of the lawful fees and expenses incurred in connection with the enforcement of the writ of execution.

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[24] CA *rollo*, pp. 37-51.

In compliance with the directive regarding the computation of the actual amount of lawful fees and expenses in the enforcement of the writ of execution, Sheriff Louie C. Dela Cruz (Sheriff Dela Cruz) submitted to the RTC its Report[25] dated 16 March 2011. In the said report, the lawful fees and expenses for the enforcement of the writ of execution were pegged at ₱111,767.75.

On 25 March 2011, the RD of Iba, Zambales cancelled TCT No. T-38774 in the name of Pamana and, in lieu thereof, issued TCT No. 044-2011000502 in favor of Gomeco.

CA-G.R. SP No. 119053

On 18 April 2011, Pamana filed with the CA a Petition for *Certiorari* assailing the 5 January 2005 and 3 March 2011 Orders of the RTC. This Petition was docketed as CA-G.R. SP No. 119053.

During the pendency of the CA-G.R. SP No. 119053, on 6 June 2011, Pamana filed with the CA an Urgent Motion to Approve Tender of Payment and Consignation accompanied with checks in the aggregate amount of ₱1,500,000.00. In the said motion, Pamana prayed that the CA approve the checks so submitted as a valid tender of payment and consignation as against all of its outstanding indebtedness (*i.e.*, the ₱1,350,000.00 remaining balance under the compromise agreement plus the ₱111,767.75 lawful fees and expenses in the enforcement of the writ of execution).

Decision of the CA in CA-G.R. SP No. 119053

On 28 December 2011, the CA rendered a Decision[26] in CA-G.R. SP No. 119053, setting aside the 5 January 2005 and 3 March 2011 Orders of the RTC in Civil Case No. 4349-V-94. The CA also directed therein the Registrar of Deeds of Iba, Zambales, to cancel TCT No. 044-2011000502 in the name of Gomeco and to reinstate TCT No. T-38774 in favor of Pamana.

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[25] *Rollo*, p. 394.

[26] *Supra* note 2.

Siding with Pamana, the CA held that it was grave abuse of discretion on the part of the RTC to have recognized Gomeco's absolute ownership over the Pequeña Island. In support, the CA gives the following ratiocinations:

1. There was no valid levy on the Pequeña Island.[27]
    a. The Resolutions in CA-G.R. SP No. 62391 already substantially nullified the levy and public auction on the Pequeña Island.
    b. The Notice of Levy and the Notice of Sheriff's Sale issued by Sheriff Montes cannot be considered as a valid levy on the Pequeña Island. The two notices confuse as to what properties are being subjected to levy; the Notice of Levy says "*personal properties*" but the Notice of Sheriff's Sale says "*personal/real properties*."
    c. Neither Notice of Levy nor the Notice of Sheriff's Sale was registered with the RD.
    d. Any levy on Pequeña Island must be preceded by a levy on Pamana's personal properties as is required by Rule 39 of the Rules of Court. In this case, Sheriff Montes did not bother to levy on Pamana's other personal properties but instead levied the entire Pequeña Island at the very first instance.
2. Even assuming that the Pequeña Island had been validly levied upon and sold in execution, the period of redemption in favor of Pamana was not yet fully exhausted by the time a Sheriff's Final Deed of Sale was issued in favor of Gomeco. Indeed, the period of redemption in favor of Pamana could not be considered to have even begun since the Sheriff's Certificate of Sale covering the Pequeña Island was not registered in the correct registry. It is to be pointed out that Sheriff's

[27] *Rollo*, pp. 63-67.

> Certificate of Sale had been erroneously registered in the Registry of Unregistered Properties, despite the fact that the Pequeña Island is property titled under the Torrens system. Hence, even though the levy and auction on the Pequeña may be valid, Gomeco still could not acquire absolute ownership of the disputed island.[28]

Moreover, in the same Decision, the CA granted and approved Pamana's Urgent Motion to Approve Tender of Payment and Consignation. The CA considered Pamana's submission of checks as a valid tender of payment and consignation and declared all of the latter's indebtedness thereby extinguished.

Gomeco moved for reconsideration but the CA, in its Resolution[29] dated 28 June 2012, remained steadfast.

This Petition

Aggrieved, Gomeco filed the instant Petition for *Certiorari* before this Court.

In this Petition, Gomeco claims that the CA gravely abused its discretion when it ruled: (a) to reinstate Pamana's title to the Pequeña Island and (b) to consider the Pamana's submission of checks as a valid tender of payment and consignation for all of its outstanding indebtedness. Gomeco argues that such rulings rest on findings that were patently erroneous.

Gomeco thus prays for the nullification of the Decision of the CA in CA-G.R. SP No. 119053, as well as for the restoration of the 5 January 2005 and 3 March 2011 Orders of the RTC in Civil Case No. 4349-V-94.

OUR RULING

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The Decision of the CA in CA-G.R. SP No. 119053 is underpinned, primarily, by two findings: *first*, that there was

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[28] *Id*. at 67-70.

[29] *Supra* note 3.

no valid levy upon the Pequeña Island and *second*, that—even assuming that there was such a valid levy—the redemption period in favor of Pamana was not yet fully exhausted by the time a Sheriff's Final Deed of Sale was issued in favor of Gomeco. We have examined both findings in light of the facts and the applicable law. And we found that Gomeco is right; both findings were patently erroneous.

The erroneous findings—most especially the first—were of such gross nature that they indicate that the CA, in making them, had at the least committed grave abuse of discretion, if not acted wholly beyond its jurisdiction.

We are therefore compelled to **GRANT** the instant Petition.

A. The First Finding: Levy on Pequeña Island

The finding by the CA that there was no valid levy on the Pequeña Island is erroneous for one essential reason—it directly contradicts what the appellate court itself already finally settled through its **16 January 2003 Resolution** in **CA-G.R. SP No. 62391**. Such finding, in other words, was a blatant violation of the principle of *res judicata*.

Principle of Res Judicata and its Applications

Res judicata[30] is a legal principle that regards a final judgment on the merits of a case as conclusive between the parties to such case and their privies.[31] The principle, at least in our jurisdiction, has two (2) recognized applications.

The first application pertains to a scenario where the parties to a case, whose merits had already been finally adjudicated by a court with jurisdiction, (or their privies) become parties to a subsequent case that involves the **same claim, demand or cause of action** as that of the previous case. In this scenario,

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[30] Latin for "matter already adjudged."

[31] *Antonio v. Vda. De Monje*, 646 Phil. 90, 98-99 (2010); citing *Agustin v. Sps. Delos Santos*, 596 Phil. 630, 641-642 (2009).

the principle of *res judicata* applies in such a way that the **judgment in the previous case stands as an absolute and complete bar to the subsequent case itself**.[32] This application of *res judicata* is also known as the "*bar by former judgment rule*"[33] and is sanctioned under Section 47(b) of Rule 39 of the Rules of Court. [34]

For convenience and ease of understanding, we dissect hereunder the circumstances that must concur in order for the bar by former judgment rule to apply:[35]

1. There is a judgment in a case that:
   a. disposed of such case on the merits,
   b. was issued by a court of competent jurisdiction,
   c. has attained final and executory status;
2. There is another case subsequently filed in court;

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[32] See *Philippine Farming Corporation, Ltd. v. Llanos, et al.*, G.R. No. L-21014, 14 August 1965, 14 SCRA 949.

[33] See *Facura v. Court of Appeals, et al.*, 658 Phil. 554, 586 (2011).

[34] RULES OF COURT, Rule 39, Sec. 47(b) provides:

RULE 39

Section 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

(a) 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 missed in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) xxx.

[35] See *Gadrinab v. Salamanca, et al.*, 736 Phil. 279, 291 (2014).

3. Between the previous case and the subsequent case, there is an identity of parties; and

4. The previous case and the subsequent case are based on the same claim, demand or cause of action.

The second application of the principle of *res judicata*, on the other hand, contemplates of a scenario that is almost similar to that of the first: the parties to a case, whose merits had already been finally adjudicated by a court with jurisdiction, (or their privies) also become parties to a subsequent case. However, unlike in the first application, the subsequent case herein **does not involve the same claim, demand or cause of action** as the previous case. In this scenario, the principle of *res judicata* applies, not to wholly bar the subsequent case, but only to **preclude the relitigation or redetermination therein of any matter actually or *deemed*[36] settled by the judgment in the previous case**.[37] This application of *res judicata* is known as

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[36] The preclusive effect of the conclusiveness of judgment rule applies not only as to matters explicitly treated or mentioned in the judgment of the former action but also to matters necessary included in or necessary to those explicitly treated or mentioned. As *Lopez v. Reyes*, 166 Phil. 641, 650 (1977) instructed:

The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions "necessarily involved in an issue, and necessarily adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented[**.**] Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself. Reasons for the rule are that a judgment is an adjudication on all the matters which are essential to support it, and that every proposition assumed or decided by the court leading up to the final conclusion and upon which such conclusion is based is as effectually passed upon as the ultimate question which is finally solved." (Emphasis supplied, citations omitted)

[37] *Supra* note 33.

the "*conclusiveness of judgment rule*" and is sanctioned under Section 47(c) of Rule 39 of the Rules of Court.[38]

The circumstances that must concur in order for the conclusiveness of judgment rule to apply are the same as those needed for the bar by judgment rule to set in, except for the last circumstance. In the application of the conclusiveness of judgment rule, the previous case and the subsequent case must *not* be based on the same claim, demand or cause of action but only pass upon the same matters or issues.

Guided by the foregoing precepts, we shall now address the issue at hand.

Conclusiveness of Judgment Rule Applies; Issue of the Validity of the Levy On and Auction Sale of Pequeña Island Precluded by the 16 January 2003 Resolution in CA-G.R. SP No. 62391

In this case, we find that the CA in CA-G.R. SP No. 119053 grossly erred when it made a finding concerning the validity of the levy on the Pequeña Island that is diametrically opposed to what was already finally settled in the earlier case of CA-G.R. SP No. 62391. By ignoring and contradicting the final settlement in CA-G.R. SP No. 62391, the CA evidently went beyond its jurisdiction and violated the principle of *res judicata*, particularly the conclusiveness of judgment rule.

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[38] RULES OF COURT, Rule 39, Sec. 47(c) provides:

RULE 39

Section 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

(a) xxx;
(b) xxx; and
(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

A review of the facts clearly reveal the existence of circumstances that should have warranted the application of the conclusiveness of judgment rule in CA-G.R. SP No. 119053, insofar as the matter of validity of the levy on the Pequeña Island is concerned:

1. The 16 January 2003 Resolution in CA-G.R. SP No. 62391 satisfies the first circumstance. Such resolution, in effect, brought the merits of CA-G.R. SP No. 62391 to a close.[39] It essentially held that there was a **valid**

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[39] CA-G.R. SP No. 62391, to recall, was a *certiorari* petition that was filed by Pamana before the Court of Appeals, precisely to impugn the levy on the Pequeña Island. That case ruled squarely upon on the issue of the validity of the levy—initially through a 19 February 2002 decision, then through a 9 July 2002 resolution and, finally, through the 16 January 2003 resolution:

1. 19 February 2002 decision – The decision held that **there was no valid levy** on the Pequeña Island because the notice of levy and the notice of sheriff's sale issued therefor misstated the amount of levy to up to ₱ 2,065,000.00 instead of only up to ₱ 1,350,000.00 plus lawful fees. Consequently, the decision found the ensuing public auction of the Pequeña Island to be null and void.
2. 9 July 2002 resolution – Issued upon motion for reconsideration by Gomeco, the 9 July 2002 resolution modified the 19 February 2002 decision. The resolution held that, despite the misstatement of the amount of levy in the notice of levy and the notice of sheriff's sale, **there was a valid levy** on the Pequeña Island *only that* such levy can only be enforced up to the correct amount *i.e.*, ₱1,350,000.00 plus 12% legal interest thereon and other lawful fees. Accordingly, the 9 July 2002 resolution declared the ensuing public auction of the Pequeña Island to be valid *but* only up to ₱1,350,000.00 plus 12% legal interest thereon and other lawful fees.
3. 16 January 2003 resolution – Issued upon motion for reconsideration by Pamana, the 16 January 2003 resolution affirmed in all respects the 9 July 2002 resolution except only to the inclusion of the 12% legal interest as a component of the entire amount satisfiable by the levy and execution sale. Hence, the ruling that **there was a valid levy** on the Pequeña Island was effectively sustained.

levy and auction on the Pequeña Island. The resolution, moreover, already became final and executory on 10 February 2003.[40]

2. CA-G.R. SP No. 119053 fits the second circumstance. It is a case filed subsequent to CA-G.R. SP No. 62391. In fact, CA-G.R. SP No. 119053 was only filed on 18 April 2011— or *more than eight years* after CA-G.R. SP No. 62391 was finally decided on the merits.

3. Both CA-G.R. SP No. 62391 and CA-G.R. SP No. 119053 featured Pamana and Gomeco as parties. Though technically based on distinct causes of action,[41] both CA-G.R. SP No. 62391 and CA-G.R. SP No. 119053 nonetheless passed upon the issue of the validity of the levy on and auction sale of Pequeña Island. Such facts satisfy the third circumstance.

Verily, the conclusiveness of judgment rule ought to have applied. The 16 January 2003 Resolution in CA-G.R. SP No. 62391 should have had a preclusive effect on the subsequent case, CA-G.R. SP No. 119053, as to all matters settled in the said resolution—including the validity of the levy on the Pequeña Island.

The CA, therefore, cannot pass upon, and should not have passed upon, the issue pertaining to the validity of the levy on the Pequeña Island. That issue was already settled in the final ruling of CA-G.R. SP No. 62391 and such settlement is conclusive upon both Pamana and Gomeco. It cannot be relitigated or be redetermined, much less be overturned, in any subsequent case between them. *Res judicata* has already set in.

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[40] *Supra* note 18.

[41] CA-G.R. SP No. 62391 was a *certiorari* petition that was filed by Pamana to impugn the levy on the Pequeña Island. CA-G.R. SP No. 119035, on the other hand, is a *certiorari* petition filed by Pamana to impugn the 5 January 2005 and 3 March 2011 Orders of the RTC in Civil Case No. 4349-V-94.

By disregarding the final ruling in CA-G.R. SP No. 62391, the CA evidently went beyond its jurisdiction and violated the principle of *res judicata*, particularly the conclusiveness of judgment rule. Accordingly, the finding that there was no valid levy on the Pequeña Island—the very fruit of such disregard—must be stricken down.

The 17 September 2004 Resolution in CA-G.R. SP No. 62391 is Void Under the Doctrine of Immutability of Judgment

In disregarding the 16 January 2003 Resolution in CA-G.R. SP No. 62391, the CA seems to have harbored the belief that the foregoing resolution had somehow been supplanted by a later resolution in the same case—the 17 September 2004 Resolution in CA-G.R. SP No. 62391.

To facilitate recollection of the 17 September 2004 Resolution in CA-G.R. SP No. 62391, as well as the circumstances surrounding its issuance, we reproduce hereunder the following portion in our narration of facts:

Motion for Clarification in CA-G.R. SP No. 62391

After the finality of the 16 January 2003 Resolution, Pamana filed with the CA a *Motion for Clarification* in CA-G.R. SP No. 62391. In the said motion, Pamana asked the CA to require disclosure of the list of properties *in* the Pequeña Island that were levied upon and sold during the 10 January 2001 public auction, and their corresponding values.

Pamana's Motion for Clarification rests on the following key assumptions:

1. The object of the Notice of Levy is not actually the Pequeña Island itself but only the "*personal properties*" in the said island;
2. The 10 January 2001 public auction resulted in the sale not of the Pequeña Island but only of certain properties therein;
3. The Notice of Levy, the Minutes of Auction Sale and the

Sheriff's Return, however, did not specify which personal properties in the Pequeña Island were actually levied and sold during the 10 January 2001 public auction; and

4. The Minutes of Auction Sale and the Sheriff's Return did not reveal for how much Pamana's properties in the Pequeña Island had been sold during the 10 January 2001 public auction.

The CA, at first, denied Pamana's Motion for Clarification. However, on 17 September 2004, the CA issued a *Resolution* directing Sheriff Montes to "*point out which of* [Pamana's] *specific properties* [in the Pequeña Island] *had been levied and sold in public auction and to determine the exact value of said properties if sufficient to satisfy in full the judgment debt of [₱]1,350,000.00 and other lawful expenses*" and to "*return to* [Pamana] *such amount, if any, in excess of the judgment debt*."

The 17 September 2004 Resolution in CA-G.R. SP No. 62391 was a virtual acceptance of Pamana's assumptions in its Motion for Clarification.[42] The resolution—with its distinct directive for the sheriff to "*point out which of* [Pamana's] *specific properties had been levied and sold in public auction*"[43]—indubitably proceeds from the same proposition that the object of the levy in the case was never the Pequeña Island itself but only the properties therein.

Though it fashioned itself as affirmative of the 16 January 2003 Resolution in CA-G.R. SP No. 62391,[44] the 17 September 2004 Resolution in actuality and in effect varied a very significant import of the former resolution and of all other resolutions in CA-G.R. SP No. 62391—that the levy, whose validity was sustained under the said case, had for its object no other property but the Pequeña Island itself.[45]

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[42] *Rollo*, pp. 113-115; *see* 17 September 2004 Resolution of the CA in CA-G.R. SP No. 62391.

[43] *Id.* at 114.

[44] *Id.*

[45] Indeed, except for the 17 September 2004 resolution, all resolutions in CA-G.R. No. 62391 operated on the underlying premise that the levy subject of the case had for its object the Pequeña Island itself. All resolutions in CA-G.R. SP No. 62391 prior to the 17 September 2004 resolution never

Thereupon lies the reason why the CA's apparent reliance on the 17 September 2004 Resolution in CA-G.R. SP No. 62391 is mistaken. The said Resolution could never have validly altered, amended or modified the import of the 16 January 2003 Resolution in CA-G.R. SP No. 62391 in light of the *doctrine of immutability of judgment*.

The doctrine of immutability of judgment maintains that once a judgment has attained finality, the same can no longer be changed or modified **in any respect**, either by the court that rendered it or by any other court.[46] In *FGU Insurance v. Regional Trial Court*,[47] we explained the full breadth of such doctrine, including the few recognized exceptions thereto, as follows:

> Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.
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> But like any other rule, it has exceptions, namely: (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

In this case, the doctrine of immutability of judgment applies to preserve the final ruling in CA-G.R. SP No. 62391, as embodied under 16 January 2003 Resolution, from any alteration or modification. Such resolution, as stated beforehand, had already become final and executory as of 10 February 2003.[48]

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mentioned any property other than the Pequeña Island as the object of the levy subject of the case.

[46] *Supra* note 35 at 283; citing *FGU Insurance Corp. v. RTC of Makati City, Br. 66, et al.*, 659 Phil. 117, 123 (2011).

[47] *FGU Insurance Corp. v. RTC of Makati City, Br. 66, et al., supra*.

[48] *See* Entry of Judgment, *supra* note 18.

As of that date, the 16 January 2003 Resolution—and its holding that there was a valid levy on the Pequeña Island itself—was vested the quality of immutability.

The 17 September 2004 Resolution, on the other hand, is neither a clerical correction nor a *nunc pro tunc* order. Neither does the said resolution aim to address any injustice or inequity that may result from the implementation of the 16 January 2003 Resolution. With none of the exceptions to the application of the doctrine of immutability of judgment existing in its favor, the 17 September 2004 Resolution in CA-G.R. SP No. 62391—with its confused attempt to alter a final and executory ruling in the same case—must then be stricken down as a nullity.

Having thus settled the folly of the first finding, we shall now proceed to an exposition of the second finding.

B. The Second Finding: Redemption Period of Pamana

To enable its Decision to stand in the event that the first finding fails, the CA made its second finding under the context that the levy and auction on the Pequeña Island were valid.

Under such context, the CA found that the period of redemption in favor of Pamana was not yet fully exhausted by the time a Sheriff's Final Deed of Sale was issued in favor of Gomeco. According to the CA, the said period could not be considered to have even begun in view of the registration of the Sheriff's Certificate of Sale of the Pequeña Island at a "*wrong*" registry.

We do not agree.

Despite the error in the registration of the Sheriff's Certificate of Sale, we hold that Pamana ought to be held bound, nonetheless, by such registration. As shall be discussed below, there are circumstances peculiar to this case that warrants us to adopt such a holding. Hence, we find that the period of redemption of Pamana would have been fully exhausted by the time a Sheriff's Final Deed of Sale was issued in favor of Gomeco.

Redemption in Execution Sales; Commencement of Redemption Period; Registration with the Register of Deeds

When real property is levied and sold on execution pursuant to a final judgment, our rules of procedure allows the judgment debtor[49] or a "*redemptioner*"[50] to redeem such property within one (1) year from the "*date of the registration of the certificate of sale*," *viz*:

RULE 39

Section 28. *Time and manner of, and amounts payable on, successive redemptions*; *notice to be given and filed*. — The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within **one (1) year from the date of the registration of the certificate of sale**, by paying the purchaser the amount of his purchase, with the *per centum* per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.

xxx. (Emphasis supplied)

The commencement of the one-year redemption period is of critical importance, not only to the judgment debtor or a redemptioner, but even more so to the successful purchaser in the execution sale. This is because, under the rules, it is only **after the lapse of such one-year period** with **no valid redemption** having been effected, that a successful purchaser acquires absolute ownership over the real property he purchased

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[49] Includes the judgment debtor's successor-in-interest in the whole or part of the property sold in execution. *See* RULES OF COURT, Rule 39, Sec. 27(a).

[50] Refers to any creditor having a lien on the property sold in execution by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, *subsequent* to the lien under which the property was sold. *See* RULES OF COURT, Rule 39, Sec. 27(b).

in the execution sale and becomes entitled to a final deed of sale.[51]

As can be gleaned above, commencement of the one-year redemption period is reckoned from "*the date of registration of the certificate of sale*."[52] The phrase "*registration of certificate of sale*" means registration of such certificate with the RD.

The RD is the official public repository of records or instruments affecting lands.[53] As presently constituted though, the RD maintains separate registries for real properties registered under the Torrens system and for "*unregistered*" real properties *i.e.*, real properties not registered under the Torrens system.[54] Each registry has its own set of day book and registration book.[55]

Logically, and under normal circumstances, a certificate of sale ought to be registered with the RD at the particular registry corresponding to the status of the real property it covers. Thus, a certificate of sale covering property registered under the Torrens system ought to be registered with the RD under its registry for properties registered under the Torrens system. Likewise, a certificate of sale covering property *not* registered under the Torrens system ought to be registered with the RD under its registry for unregistered real properties.

There is no doubt that, when a certificate of sale is so registered, the period of redemption would by then start to run.

The question, however, is what would be the effect of a "*wrong*" registration (*i.e.*, the registration of a certificate of sale with the RD albeit under a registry that does not correspond

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[51] *See* RULES OF COURT, Rule 39, Sec. 33.

[52] RULES OF COURT, Rule 39, Sec. 28.

[53] Presidential Decree (PD) No. 1529, Sec. 10.

[54] For lands covered by the Torrens system, *see* PD No. 1529, Secs. 42 and 56. For unregistered lands, *see* REVISED ADMINISTRATIVE CODE, Sec. 194, as amended by Republic Act No. 3344, in relation to PD No. 1529, Secs. 3 and 113.

[55] *Id*.

to the status of the real property it covers) upon the commencement of the period of redemption in execution sales?

Effect of Wrong Registration; The Two Situations

We must qualify our answer.

To answer the question before us, we must first familiarize ourselves with the process of levy prior to an execution sale. Our familiarization with such process will, in turn, enable us to identify the two (2) general situations that can ultimately lead to wrong registrations. It is between such situations that our qualification lies.

It is basic that before any property is sold in execution, and a certificate of sale issued therefor, such property must first be the subject of a levy.[56] A levy on execution refers to the essential act by which a property of the judgment debtor is taken into the custody of the law and set apart for the satisfaction of the judgment debt.[57] In our jurisdiction, a levy on execution is effected by the sheriff of the court.

When the property sought to be levied is realty, the sheriff must first prepare a *Notice of Levy* that contains, among others, **an adequate description of the real property sought to be levied**.[58] Significantly, **the notice of levy is also required to ascertain whether the particular realty sought to be levied is registered under the Torrens system or not, such that if it is, the notice must contain *"a reference to the number of the certificate of title, the volume and page in the registration book where the certificate is registered, and the registered owner or owners thereof."***[59]

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[56] *Delta Motors Corporation v. Court of Appeals (Tenth Division)*, 250 Phil. 214, 219 (1988).

[57] *Id*.; citing *Llenares v. Valdeavella and Zoreta*, 46 Phil. 358, 360 (1924).

[58] RULES OF COURT, Rule 39, Sec. 9(b) in relation to Rule 57, Sec. 7(a).

[59] *Id*.

To actually effect the levy upon a real property, however, the sheriff is required to do two (2) specific things: (1) file with the RD a copy of the Notice of Levy, and (2) leave with the occupant of the property a copy of the same notice.[60]

Verily, since it is the *duty* of the sheriff preparing the Notice of Levy to ascertain whether the particular realty sought to be levied is registered under Torrens system or not, then there can be two (2) possible situations that can lead to a wrong registration:

First. The sheriff who prepared the Notice of Levy *correctly* ascertained the status of the real property (i.e., whether the same is registered under the Torrens system or not) but the ensuing certificate of sale issued during the execution sale was still registered under the wrong registry of the RD.

Second. The sheriff who prepared the Notice of Levy *incorrectly* ascertained the status of the real property leading to the registration of the certificate of sale under the wrong registry of the RD.

As just said, it is between such situations that our qualification lies.

Under the first situation, the effect of the wrong registration must be to prevent the commencement of the redemption period altogether. In this case, the sheriff performs his duty correctly and the wrong registration is actually the fault of the successful purchaser. Such type of wrong registration is deemed non-compliant with the requirement of registration under Section 28 of Rule 39 of the Rules of Court.

A different treatment, however, is certainly warranted under the second situation. In this case, the sheriff failed to perform his duties correctly and such failure directly contributed to the fact of wrong registration. Under this situation, it is actually

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[60] *Supra* note 56 at 220; citing *Phil. Surety & Ins. Co., Inc. v. Zabal*, 128 Phil. 714, 718 (1967).

both unfair and inequitable to allow the judgment debtor to be benefited and for the successful purchaser to be prejudiced.

The judgment debtor, for one, ought not to be benefited since it is in the position to correct the mistake of the sheriff but it did not do so. Hence, in this situation, the judgment debtor could be considered to be in bad faith and a contributor to the wrong registration.

On the other hand, the successful purchaser ought not to be prejudiced since it only relied on the representations of the sheriff who, as a public officer, may be presumed to have performed his duties regularly.[61]

Thus, for the sake of fairness and equality, a wrong registration committed under the second situation should be considered substantially compliant with the requirement of registration under Section 28 of Rule 39 of the Rules of Court and is, therefore, sufficient to commence the redemption period.

Application

In the case at bench, the wrong registration was committed under the second situation. Hence, the wrong registration in this case is considered to be substantially compliant with the requirement of registration under Section 28 of Rule 39 of the Rules of Court and sufficient to commence the redemption period.

The facts are clear that the *Notice of Levy* and the *Notice of Sheriff's Sale* prepared by Sheriff Montes incorrectly depicted the Pequeña Island as unregistered property; both having only identified the said island via Tax Declaration No. 007-0001 with Property Index No. 016-13-007-01-001.[62] On the other hand, it is also crystal that Pamana—who admitted to owning the Pequeña Island and was furnished with the said notices—knowingly allowed the incorrect depiction of the status of the island to prevail by doing nothing to correct it. The incorrect depiction of Sheriff Montes, coupled by the bad faith of Pamana,

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[61] RULES OF COURT, Rule 131, Sec. 3(m).

[62] *See* CA *rollo*, pp. 55 and 58.

were thus joint contributors to the registration of the ensuing certificate sale covering the Pequeña Island under the wrong registry in the RD. Verily, all points of the second situation are present in this case.

Since the wrong registration in this case was committed under the second situation, the same is considered to be substantially compliant with the requirement of registration under Section 28 of Rule 39 of the Rules of Court and sufficient to commence the redemption period. These, in turn, produce the following specific effects:

1. The redemption period of Pamana is deemed to have begun on 28 March 2001, *i.e.*, the date when the *Sheriff's Certificate of Sale* covering the Pequeña Island was registered with the RD under the Registry of Unregistered Properties;

2. The redemption period of Pamana is slated to end exactly one year from 28 March 2001;

3. Since Pamana never exercised its right of redemption within one year from 28 March 2001, the issuance of a *Sheriff's Final Deed of Sale*[63] over the Pequeña Island in favor of Gomeco on 29 January 2003 is, therefore, valid.

All in all, Gomeco should now be considered the rightful absolute owner of the Pequeña Island. The Orders dated 5 January 2005 and 3 March 2011 of the RTC in Civil Case No. 4349-V-94 were just correct in recognizing such fact.

Having thus exposed the Decision in CA-G.R. SP No. 119053 as being supported by patently erroneous findings, we feel compelled to exercise our *certiorari* jurisdiction. For law and justice to prevail, we must set aside and nullify the Decision of the CA in CA-G.R. SP No. 119053.

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[63] *Rollo*, pp. 127-128.

II

The final point that we need to address is the procedural challenge posed against the instant Petition by Pamana.

In its Comment,[64] Pamana questioned the propriety of Gomeco's resort to a special civil action for *certiorari* in assailing the Decision of the CA in CA-G.R. SP No. 119053. For Pamana, the filing of the instant *certiorari* petition was not proper since another remedy—an appeal to this Court, in particular—was available and could have been filed by Gomeco under the circumstances. Pamana postulated that the availability of an appeal is fatal to the instant petition in light of the procedural norm that proscribes the use of *certiorari* as substitute for a lost appeal.[65]

We reject the procedural challenge.

The procedural norm referred to is not absolute. In *Sanchez v. Court of Appeals*,[66] we enumerated the instances when a Petition for *Certiorari* may be resorted to despite the existence of or prior availability of an appeal—one of which is when the court *a quo* had "*patently acted in excess of or outside its jurisdiction*":

> Doctrinally entrenched is the general rule that certiorari is not a substitute for a lost appeal. However, Justice Florenz D. Regalado lists several exceptions to this rule, *viz.*: (1) where the appeal does not constitute a speedy and adequate remedy (*Salvadades vs. Pajarillo, et al., 78 Phil. 77),* as where 33 appeals were involved from orders issued in a single proceeding which will inevitably result in a proliferation of more appeals (*PCIB vs. Escolin, et al.,* L-27860 and 27896, Mar. 29, 1974*);* (2) where the orders were also issued either in excess of or without jurisdiction (*Aguilar vs. Tan, L-23600, Jun 30, 1970, Cf. Bautista, et al. vs. Sarmiento, et al., L-45137, Sept. 231985);* (3) for certain special consideration, as public welfare or

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[64] *Id*. at 299-331.

[65] *Id*. at 318-319.

[66] 345 Phil. 155, 178-179 (1997).

public policy (See *Jose vs. Zulueta, et al. -16598, May 31, 1961* and the cases cited therein); (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy *(People vs. Abalos, L029039, Nov. 28, 1968);* (5) where the order is a patent nullity (*Marcelo vs. De Guzman, et al., L-29077, June 29, 1982);* and (6) where the decision in the certiorari case will avoid future litigations (*St. Peter Memorial Park, Inc. vs. Campos, et al., L-38280, Mar. 21, 1975).* **Even in a case where the remedy of appeal was lost, the Court has issued the writ of certiorari where the lower court patently acted in excess of or outside its jurisdiction**, as in the present case. (Emphasis supplied)

We believe that our discussion in the preceding section had amply demonstrated that the CA, through its grossly erroneous decision in CA-G.R SP No. 119053, had patently acted in excess of or outside its jurisdiction. The erroneous findings of the CA were of such gross nature and so contemptuous of basic legal doctrines that they indicate that the CA, in making them, had committed grave abuse of discretion, if not acted wholly beyond its jurisdiction. Under such scenario, jurisprudence allows a Petition for *Certiorari* to be resorted to by the aggrieved party.

Hence, we uphold the propriety of Gomeco's resort to the instant *certiorari* petition.

WHEREFORE, premises considered, the instant Petition is **GRANTED**. The Decision dated 28 December 2011 and Resolution dated 28 June 2012 of the Court of Appeals in CA-G.R. SP No. 119053 are hereby **ANNULLED** and **SET ASIDE**. The Orders dated 5 January 2005 and 3 March 2011 of the Regional Trial Court, Branch 75 of Valenzuela City in Civil Case No. 4349-V-94 are **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 205004. August 17, 2016]

SPOUSES ERNESTO IBIAS, SR. and GONIGONDA IBIAS, *petitioners, vs.* **BENITA PEREZ MACABEO,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PRESIDENTIAL DECREE NO. 1529, AS AMENDED BY REPUBLIC ACT NO. 6732); RECONSTITUTION OF TITLE; THE RECONSTITUTION OF A TITLE IS SIMPLY THE RE-ISSUANCE OF A LOST DUPLICATE CERTIFICATE OF TITLE IN ITS ORIGINAL FORM AND CONDITION.— *Alonso v. Cebu Country Club, Inc.* described reconstitution, thus: The reconstitution of a title is simply the re-issuance of a lost duplicate certificate of title in its original form and condition. It does not determine or resolve the ownership of the land covered by the lost or destroyed title. A reconstituted title, like the original certificate of title, by itself does not vest ownership of the land or estate covered thereby.

2. ID.; ID.; ID.; ID.; ID.; IF A CERTIFICATE OF TITLE HAS NOT BEEN LOST, BUT IS IN FACT IN THE POSSESSION OF ANOTHER, THEN THE RECONSTITUTED TITLE IS VOID AND THE COURT THAT RENDERED THE DECISION HAD NO JURISDICTION; CASE AT BAR.— Presidential Decree No. 1529 (PD 1529) provides for the procedure in case of loss of an owner's duplicate certificate of title: x x x Section 109 applies only if the owner's duplicate certificate is indeed lost or destroyed. If a certificate of title has not been lost, but is in fact in the possession of another person, then the reconstituted title is void and the court that rendered the decision had no jurisdiction. Consequently, the decision may be attacked any time. x x x Section 11 of RA No. 6732 further provides that "[a] reconstituted title obtained by means of fraud, deceit or other machination is void *ab initio* as against the party obtaining the same and all persons having knowledge thereof." In the present case, the allegedly lost

owner's duplicate copy of TCT No. 24605 was in the possession of Benita. The lost TCT was offered in evidence during the trial. The Spouses Ibias did not contest the genuineness and authenticity of said TCT. The Spouses Ibias only questioned the submission of a photocopy of the TCT, but the trial court, after hearing the arguments of both parties, admitted the photocopy as part of the evidence presented by Benita. There is no reason to justify the issuance of a reconstituted title in the name of Spouses Ibias; hence, there is no error in the cancellation of the same reconstituted title.

APPEARANCES OF COUNSEL

Edmund T. Espina for petitioners.
Romniel L. Macapagal for respondent.

D E C I S I ON

CARPIO, *J.*:

The Case

G.R. No. 205004 is a petition for review[1] assailing the Decision[2] promulgated on 30 May 2012 as well as the Resolution[3] promulgated on 11 December 2012 by the Court of Appeals (CA) in CA-G.R. CV No. 88552. The CA affirmed the Decision[4] dated 7 March 2006 of Branch 33 of the Regional Trial Court of Manila (RTC) in Civil Case No. 01-102236.

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

[2] *Rollo*, pp. 37-50. Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Franchito N. Diamante and Ramon A. Cruz concurring.

[3] *Id*. at 52-53. Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Franchito N. Diamante and Ramon A. Cruz concurring.

[4] CA *rollo*, pp. 19-22. Penned by Presiding Judge Reynaldo G. Ros.

The RTC ruled in favor of respondent Benita Perez Macabeo (Benita) and against petitioners Spouses Ernesto Ibias, Sr. (Ernesto) and Gonigonda Ibias (collectively, Spouses Ibias) and ordered the Register of Deeds of Manila to cancel Transfer Certificate of Title (TCT) No. 245124 under the name of the Spouses Ibias and reinstate TCT No. 24605.

The Facts

The CA recited the facts as follows:

> [Benita] filed a complaint for annulment of title against [Spouses Ibias] on 12 November 2001. She averred, among others, that she is one of the heirs of Albina Natividad Y. Perez and Marcelo Ibias, both deceased and registered owners of the parcel of land covered by [TCT] No. 24605 of the Register of Deeds of Manila. On 13 August 1999, [Ernesto] executed an Affidavit of Loss alleging that the Owner's Duplicate of TCT No. 24605 was missing among his files. In support of his petition for reconstitution, he testified that said owner's duplicate [of] title was lost while in his parents' possession. Such petition was granted and the title was reconstituted, now TCT No. 245124 under the names of [Spouses Ibias]. For this reason, [Benita] filed a perjury case against defendant-appellant Ernesto docketed as Criminal Case No. 348152 pending before the Metropolitan Trial Court (MeTC) of Manila.
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> [Benita] averred that defendant-appellant Ernesto made it appear that the title was lost or misplaced while in the possession of the registered owners when in truth and in fact, he knew fully well that said title was in the possession of [Benita]. Proof of such knowledge was shown by his letter dated 23 July 1999 where he asked [Benita] for TCT No. 24605, which was in the latter's possession. At the time defendant-appellant Ernesto executed the Affidavit of Loss and filed his petition for reconstitution, he knew that the title was intact and in the possession of [Benita]. The issuance of the reconstituted title in favor of [the Spouses Ibias] thus deprived [Benita] and her other siblings of their right over the subject property.
>
> Defendant-appellant Ernesto countered that he is the registered owner of the land described in TCT No. 245124. He claimed that he and his late brother Rodolfo are the only heirs of Marcelo and Albina Ibias. The subject property was acquired and titled sometime in 1950. He and his late parents have been living in the same house during

the lifetime of the latter. After the death of his parents, he diligently exerted efforts to locate TCT No. 24605 but [these] attempts proved futile. He inquired from his half-sister, plaintiff-appellee Benita Macabeo, about the whereabouts of said title. [Benita] claimed that she was in possession of the title but asked defendant-appellant Ernesto for the amount of ₱11,000.00 in exchange for the title and as her share in the property. Defendant-appellant Ernesto paid said amount, but when he asked for the turnover of the title, [Benita] failed to deliver the title nor show the document. Defendant-appellant Ernesto was thus convinced that [Benita] had neither possession nor knowledge of the whereabouts of the title. Believing in good faith that the title was indeed lost, he executed the Affidavit of Loss dated 13 August 1999. Thereafter, he instituted a petition for issuance of new owner's duplicate certificate of title. [Benita] did not oppose or object to the petition. Eventually, the new TCT No. 245124 was issued in favor of [Spouses Ibias] by the Register of Deeds.[5]

The RTC's Ruling

The RTC ruled in favor of Benita.

The RTC stated that Ernesto's assertions did not coincide with its findings. When Ernesto filed a petition for reconstitution on 19 August 1999, Ernesto claimed that the owner's duplicate of TCT No. 24605 was lost. However, Ernesto knew that the title was in Benita's possession. Ernesto himself wrote a letter dated 23 July 1999 to Benita to ask for the title. Prior to this, Ernesto borrowed the title from Benita in 1996 for the connection of his water system to NAWASA.

Ernesto also falsely declared in the Deed of Extrajudicial Settlement of Estate with Waiver of Rights that he and his brother Rodolfo Ibias are the only surviving heirs of Albina Natividad. Ernesto and Rodolfo actually have four older half-sisters with their mother Albina: Avelina, Abuendia, Seferiana, and Benita. To the RTC, it is clear that Ernesto was able to procure the new title in his name through fraudulent means.

The dispositive portion of the RTC's decision reads:

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[5] *Rollo*, pp. 38-40.

WHEREFORE, judgment is hereby rendered in favor of [Benita] and against the [Spouses Ibias]. The Register of Deeds of Manila is ordered to cause the cancellation of Transfer Certificate of Title No. 245124 under [the] name of [Spouses Ibias] and REINSTATE TCT No. 24605. The [Spouses Ibias are] ordered to pay the costs of the suit. The counter-claim is DISMISSED for lack of merit.

SO ORDERED.[6]

The Spouses Ibias filed a notice of appeal[7] on 19 July 2006. The RTC released an Order[8] elevating the complete records of the case on 26 July 2006.

The CA's Ruling

The CA dismissed the Spouses Ibias' appeal and affirmed the decision of the RTC.

The CA affirmed the RTC's findings of fact. Ernesto knew that TCT No. 24605 was with Benita for safekeeping. Ernesto's 23 July 1999 letter to Benita categorically stated that he asked for TCT No. 24605 and acknowledged that the TCT was in her possession. Ernesto wrote:

> Sa kadahilanang nabanggit sa itaas ako at ang aking kapatid na si RODOLFO IBIAS ay tuwiran hinihingi sa iyo **ang titulo ng lupa na may No. 24605 na nasa iyong pag-iingat.** x x x[9]

In her letter to Ernesto dated 16 August 1999, Benita explained that the money for the purchase of the land came from the GSIS death benefit of her sister Abuendia Natividad Perez (Abuendia). It was Abuendia's wish to put the title of the property in their mother's name. The name of Ernesto's father, Marcelo, was in TCT No. 24605 only because he was married to Albina. Marcelo had no capacity to buy the property. The ₱11,000 was for the purpose of including the names of their siblings Rodolfo Ibias

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[6] CA *rollo*, p. 22.

[7] *Id*. at 23-24.

[8] *Id*. at 25.

[9] *Rollo*, p. 44. Emphasis in the original.

and Avelina Perez. The title was in Benita's possession only because Albina entrusted it to her. Benita wrote:

> Para sa kaalam [sic] mo, totoong matagal nang nasa pag-iingat ko ang kopya ng titulo ng ating lupa. Hindi ko iyon tinatanggi. Ito'y nasa akin hindi dahil sa gusto ko itong kamkamin (katulad ng gusto mo ngayong palabasin) kundi dahil sa ito'y inihabilin sa akin ng ating namatay na inang si ALBINA NATIVIDAD y PEREZ at ito'y alam mo, aminin mo man o hindi.[10]

The Spouses Ibias did not dispute these letters. The correspondence shows that Ernesto knew that Benita had the owner's duplicate of TCT No. 24605 in her possession prior to the filing of the present case. The CA identified the strained relations between the parties as the reason why Ernesto could not compel Benita to turn over the owner's duplicate of TCT No. 24605 to him. The CA concluded that because the Spouses Ibias could not force Benita to give them the title, Ernesto executed an Affidavit of Loss so as to pull one over on Benita. The tenor of the correspondence belies the Spouses Ibias' claim of good faith when the Affidavit of Loss was executed.

Ernesto falsely stated in the Deed of Extrajudicial Settlement of Estate with Waiver of Rights that he and his brother Rodolfo are the only surviving heirs of Albina and Marcelo. However, in his 23 July 1999 letter, as well as in his pleadings, Ernesto asserted that he and Benita have the same mother. Ernesto also impliedly recognized Benita's right over the property when he claimed to have given her ₱11,000 as her supposed share in the property.

Both Benita's and Ernesto's witnesses testified that Marcelo had no resources to purchase the land. Flordeliza Natividad, Benita's witness, testified that Abuendia was the breadwinner of the family and purchased the land on installment. When Abuendia passed away, her family used her death benefits to make full payment for the land. Pedro Mercado, Ernesto's witness, testified that Marcelo had not been working since 1949.

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[10] *Id.* at 45.

Ernesto did not present any evidence to show that Marcelo had the resources to buy the land.

The CA summarized its findings as follows:

> In view of the above documentary and testimonial evidence, the court a *quo* was correct in canceling TCT No. 245124 and reinstating TCT No. 24605. There is preponderance of evidence to prove that [the Spouses Ibias] knew for a fact that TCT No. 24605 was not lost, but in the possession of [Benita]. There is also clear and convincing evidence that [the Spouses Ibias] committed fraud or fraudulent acts in order to obtain the reconstituted title. By omitting material facts and perpetrating untruths in the affidavit of loss, petition for reconstitution, and deed of extrajudicial settlement, [the Spouses Ibias] were issued TCT No. 245124 to the damage and prejudice of [Benita] and the other legal heirs of Albina Natividad.[11]

The Spouses Ibias filed their Motion for Reconsideration[12] on 19 June 2012, while Benita filed her Comment[13] on 14 August 2012.

The CA denied the Spouses Ibias' motion in a Resolution[14] dated 11 December 2012. The CA stated that the Spouses Ibias merely rehashed the same issues which were already passed upon by the CA in their decision, and there was no cogent reason or novel issue to warrant a modification or reversal of the decision.

The Spouses Ibias filed the present petition for review on 1 February 2013. Benita filed her comment on 2 May 2013. On 17 July 2013, this Court required the Spouses Ibias to file a reply to the comment within 10 days from notice. This period expired on 27 September 2013.[15] On 11 June 2014, this Court issued another Resolution denying the Spouses Ibias' petition

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[11] *Id.* at 49.

[12] CA *rollo*, pp. 104-111.

[13] *Id.* at 113-117.

[14] *Rollo*, pp. 52-53.

[15] *Id.* at 67.

for failure to comply with our lawful order without any valid cause. On 26 August 2014, the Spouses Ibias filed a motion for reconsideration of our 11 June 2014 Resolution. We granted the Spouses Ibias' motion in a Resolution dated 1 October 2014. The Spouses Ibias filed a manifestation stating that they reiterate the contents and allegations in their petition and adopt the same as their reply.

The Issue

The Spouses Ibias presented this sole assignment of error:

> With all due respect, the Honorable Court of Appeals committed a reversible error when it affirmed the order of the court *a quo* cancelling the Transfer Certificate of Title No. 24512[4] issued in the name of Spouses Ernesto Ibias Sr. and Gonigonda Ibias as well as the reinstatement of TCT No. 24605, as the assailed decision contravenes the established facts of the case; the evidence presented by the parties; and existing law and jurisprudence on the matter.[16]

In her Comment,[17] Benita contends that the CA did not commit any reversible error in cancelling TCT No. 245124 and reinstating TCT No. 24605.

The Court's Ruling

The petition has no merit. The RTC and CA were correct in cancelling TCT No. 245124 and reinstating TCT No. 24605.

Alonso v. Cebu Country Club, Inc.[18] described reconstitution, thus:

> The reconstitution of a title is simply the re-issuance of a lost duplicate certificate of title in its original form and condition. It does not determine or resolve the ownership of the land covered by the lost or destroyed title. A reconstituted title, like the original certificate of title, by itself does not vest ownership of the land or estate covered thereby.

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[16] *Id.* at 16.

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

[18] 426 Phil. 61, 83-84 (2002), citing *Strait Times, Inc. v. CA*, 356 Phil. 217 (1998).

Ernesto claimed loss of TCT No. 24605, and instituted reconstitution proceedings. Presidential Decree No. 1529 (PD 1529) provides for the procedure in case of loss of an owner's duplicate certificate of title:

> Section 109. *Notice and replacement of lost duplicate certificate.*— In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.
>
> Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

Section 109 applies only if the owner's duplicate certificate is indeed lost or destroyed. If a certificate of title has not been lost, but is in fact in the possession of another person, then the reconstituted title is void and the court that rendered the decision had no jurisdiction.[19] Consequently, the decision may be attacked any time.[20] Section 7 of Republic Act (RA) No. 6732, which amended Section 19 of RA No. 26,[21] provides:

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[19] *Strait Times, Inc. v. CA*, 356 Phil. 217, 227-228 (1998), citing *Serra Serra v. Court of Appeals*, 272-A Phil. 467 (1991). See also *Demetriou v. Court of Appeals*, G.R. No. 115595, 14 November 1994, 238 SCRA 158; *New Durawood Co., Inc. v. CA*, 324 Phil. 109 (1996).

[20] *Demetriou v. Court of Appeals*, G.R. No. 115595, 14 November 1994, 238 SCRA 158, 162.

[21] An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed. Approved on 25 September 1946. RA No. 6732, approved on 17 July 1989, amended RA No. 26.

SEC. 19. If the certificate of title considered lost or destroyed, and subsequently found or recovered, is not in the name of the same person in whose favor the reconstituted certificate of title has been issued, the Register of Deeds or the party concerned should bring the matter to the attention of the proper Regional Trial Court, which, after due notice and hearing, shall order the cancellation of the reconstituted certificate of title and render, with respect to the memoranda of new liens and encumbrances, if any, made in the reconstituted certificate of title, after its reconstitution, such judgment as justice and equity may require: *Provided, however*, That if the reconstituted certificate of title has been cancelled by virtue of any deed or instrument, whether voluntary or involuntary, or by an order of the court, and a new certificate of title has been issued, the procedure prescribed above, with respect to the memorandum of new liens and encumbrances made on the reconstituted certificate of title, after its reconstitution, shall be followed with respect to the new certificate of title, and to such new liens and encumbrances, if any, as may have been on the latter, after the issuance thereof.

Section 11 of RA No. 6732 further provides that "[a] reconstituted title obtained by means of fraud, deceit or other machination is void *ab initio* as against the party obtaining the same and all persons having knowledge thereof."

In the present case, the allegedly lost owner's duplicate copy of TCT No. 24605 was in the possession of Benita. The lost TCT was offered in evidence during the trial.[22] The Spouses Ibias did not contest the genuineness and authenticity of said TCT. The Spouses Ibias only questioned the submission of a photocopy of the TCT, but the trial court, after hearing the arguments of both parties, admitted the photocopy as part of the evidence presented by Benita. There is no reason to justify the issuance of a reconstituted title in the name of Spouses Ibias; hence, there is no error in the cancellation of the same reconstituted title.

Ernesto claimed that he believed that the original owner's duplicate copy of TCT No. 24605 was lost after he asked Benita for it then she failed to show it to him. Ernesto chose to

[22] Records, p. 122.

omit facts and to avail of Section 109 as remedy instead of Section 107. Section 107 of PD 1529 reads:

> Section 107. *Surrender of withhold duplicate certificates*. – Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

For the reasons stated above, we affirm the rulings of the trial and appellate courts which cancelled TCT No. 245124 and reinstated TCT No. 24605.

WHEREFORE, we **DENY** the petition. The Decision promulgated on 30 May 2012 and the Resolution promulgated on 11 December 2012 by the Court of Appeals in CA-G.R. CV No. 88552 are **AFFIRMED**.

SO ORDERED.

Del Castillo, Mendoza, and *Leonen, JJ.,* concur.

Brion, J., on leave.

SECOND DIVISION

[G.R. No. 205573. August 17, 2016]

HELEN LORENZO CUNANAN, *petitioner, vs.* **COURT OF APPEALS, Ninth Division, TEOFILO Q. INOCENCIO, Regional Director, Department of Agrarian Reform Regional Office No. III, and YOLANDA MERCADO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ONE OF THE ESSENTIAL REQUISITES OF A PETITION FOR *CERTIORARI* IS THAT THERE IS NEITHER APPEAL NOR ANY PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW FOR THE PURPOSE OF ANNULLING OR MODIFYING THE QUESTIONED PROCEEDING.— A petition for *certiorari* under Rule 65 is proper to correct errors of jurisdiction committed by the lower court, or grave abuse of discretion which is tantamount to lack of jurisdiction. This remedy can be availed of when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Appeal by *certiorari* under Rule 45, on the other hand, is a mode of appeal available to a party desiring to raise only questions of law from a judgment or final order or resolution of the CA, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law. As can be gleaned from above, one of the essential requisites of a petition for *certiorari* is that there is neither appeal nor any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the questioned proceeding. Thus, the respondents were correct in pointing out that it cannot co-exist with an appeal or any other particular remedy. Indeed, where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of. A petitioner must allege in his or her petition and establish facts to show that any other existing remedy is not speedy or adequate. Where the existence of a remedy by appeal or some other plain, speedy and adequate remedy precludes the granting of the writ, a petitioner must allege facts showing that any existing remedy

is impossible or unavailing. A petition for *certiorari* which does not comply with the requirements of the Rules may be dismissed.

2. ID.; ID.; ID.; IF THE APPLICATION OF THE RULES WOULD TEND TO FRUSTRATE RATHER THAN PROMOTE JUSTICE, IT IS ALWAYS WITHIN THE POWER OF THE COURT TO SUSPEND THE RULES, OR EXCEPT A PARTICULAR CASE FROM THEIR OPERATION.— In the present case, Cunanan had not shown that there was no other speedy and adequate remedy. She simply alleged that grave abuse of discretion was committed. Nonetheless, in the interest of substantial justice, the Court is inclined to suspend the rules considering the circumstances of the case. x x x If the application of the Rules would tend to frustrate rather than promote justice, it is always within the power of the Court to suspend the rules, or except a particular case from their operation. The Court has, time and again, reiterated the rationale behind the exercise of its power to relax, or even suspend, the application of the rules of procedure.

APPEARANCES OF COUNSEL

Arellano & Associates Law Office for petitioner.

R E S O L U T I O N

MENDOZA, *J.*:

This petition for *certiorari* and prohibition under Rule 65 of the Rules of Court, with an application for the issuance of a temporary restraining order and/or a writ of preliminary injunction, assails 1) the July 31, 2012 Resolution[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 125543, which dismissed the petition for *certiorari* filed by petitioner Helen Lorenzo Cunanan *(Cunanan)*; and 2) its November 26, 2012 Resolution[2] which denied her motion for reconsideration.

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[1] *Rollo,* pp. 34-35. Penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes and Mario V. Lopez.

[2] *Id*. at 37-37a.

The Antecedents

On January 27, 2009, private respondent Yolanda Mercado *(Mercado)* filed a petition[3] for reallocation of a home lot originally awarded to Alejandro Lorenzo *(Lorenzo)*, the father of Cunanan, with the Department of Agrarian Reform– Regional Office No. III *(DAR-R03)*.

On April 8, 2010, the DAR-R03 issued the Order[4] dismissing the petition of Mercado. The decretal portion of which reads:

> WHEREFORE, premises considered, an ORDER is hereby issued DISMISSING the Petition of Yolanda Mercado for the reallocation, in her favor, of that 800 square meters located at Barangay Maligaya, Tarlac City, previously embraced by TCT No. 150056 registered in the name of Alejandro Lorenzo, now in the name of Helen Lorenzo, under TCT No. 288509, for utter want of merit.
>
> SO ORDERED.[5]

On May 13, 2010, Mercado filed a motion for reconsideration,[6] praying that the April 8, 2010 Order be reconsidered and set aside.

On October 13, 2010, the DAR-R03 issued the Order[7] *granting* Mercado's motion for reconsideration. It explained that she was able to show that Lorenzo and his heirs were absentee landlords. The dispositive portion of the said order reads:

> WHEREFORE, premises considered, an ORDER is hereby issued, as follows:
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> 1. SETTING ASIDE the Order, dated April 8, 2010; and

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

[4] *Id*. at 45-46.

[5] *Id*. at 46.

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

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

2. RECOMMENDING the cancellation of TCT No. 288509 issued in the name of Helen Lorenzo, involving the subject property with an area of Eight Hundred (800) square meters, more or less, located at Barangay Maligaya, Tarlac City.

This Office reserves the right to cancel or revoke this Order in case of misrepresentation, or violation of pertinent existing DAR policies, rules and regulations.

SO ORDERED. [Emphasis Supplied]

On December 1, 2010, the DAR-R03 issued the Order of Finality[8] declaring the October 13, 2010 Order final and executory.

Sometime in April 2011, Cunanan inquired with the DAR Provincial Office in Tarlac City regarding the status of the home lot covered by Transfer Certificate of Title *(TCT)* No. 150056 (now TCT No. 288509). She was surprised to learn that an order of finality of the October 13, 2010 Order had already been issued.

On May 13, 2011, Cunanan filed with the DAR-R03 her Motion to Quash Order of Finality and Other Orders.[9] She averred that **she was neither informed of the proceedings** before the DAR **nor was furnished copies of any pleading or notice.** Thus, according to her, **the DAR never acquired jurisdiction over her person.** She further asserted that **such order deprived her of her property without due process of law in violation of her constitutional right** which made all proceedings and orders null and void.

On June 13, 2011, without waiting for the resolution on the said motion, Cunanan filed her Petition for Relief from Judgment[10] pertaining to the October 13, 2010 Order. She stated, among others, that she came to know of the decision, which was based solely on the evidence presented by Mercado, only

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[8] *Id.*at 52.

[9] *Id.* at 53-55.

[10] *Id.* at 56-70.

on April 14, 2011; that she could not have possibly answered the subject petition for reallocation and gone to trial because she was not served the summons and notices or furnished copies of orders; that she had a good and substantial defense, and the property should not be reallocated; that she inherited the subject property from her father and never abandoned the same; and, that if given the opportunity, she would present proof in support of her position.

On June 14, 2011, Cunanan filed her Petition[11] for Injunction and Prohibition with Preliminary Injunction before the CA which was docketed as CA-G.R. SP No. 120083. She again averred that she was the registered owner of the subject property; that she only came to know of the decision on April 14, 2011; and that she was not served summons or sent notices of hearing. To stress the importance of her petition, she claimed that the case was a matter of extreme urgency and she would suffer grave and irreparable injury or damage unless Mercado and the DAR were enjoined immediately from proceeding with the cancellation of TCT No. 288509 in her name and its transfer to Mercado.

On October 5, 2011, Cunanan received a copy of the September 26, 2011 Resolution,[12] which dismissed her petition for injunction and prohibition with preliminary injunction for failing to comply with the rules. Thus:

> It appearing from the JRD report dated August 31, 2011 that petitioner failed to comply with Our Resolution dated July 8, 2011 requiring petitioner: (1) to pay the deficient amount of ₱150.00 as payment for docket and other legal fees; (2) to indicate the date of issuance of counsel for petitioner's MCLE Certificate of Compliance; and (3) to submit an affidavit of service and registry receipts issued by the mailing office as proof that copies of the pleading were sent to the other parties as required under Sec. 13, Rule 13 of the 1997 Rules of Civil Procedure, despite the fact that counsel for petitioner received on July 20, 2011 the aforesaid resolution per Registry Return

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[11] *Id*. at 71-92.

[12] *Id*. at 96-98.

Receipt No. 594, for failure to comply therewith, the instant petition is hereby DISMISSED.

SO ORDERED.

On February 8, 2012, Cunanan received the January 17, 2012 Entry of Judgment[13] certifying that the September 26, 2011 Resolution in CA-G.R. SP No. 120083 had become final and executory, and was recorded in the Book of Entries of Judgments.

Meanwhile, the DAR-R03 was furnished a copy of the CA resolution stating that its September 26, 2011 Resolution had attained finality on October 21, 2011. The CA also sent to the said office a copy of the Entry of Judgment reciting the dispositive part of the September 26, 2011 Resolution. Thereafter, the DAR-R03 issued the Order,[14] dated March 9, 2012, dismissing the motion to quash order of finality and the petition for relief from judgment, filed by Cunanan, for being *moot and academic*.

Cunanan filed a motion for reconsideration[15] of the March 9, 2012 Order of the DAR-R03 but the said motion was denied in its April 9, 2012 Order[16] for lack of merit.

Aggrieved, Cunanan filed a petition for *certiorari*[17] with the CA and prayed that the March 9, 2012 Order of the DAR-R03, which dismissed her motion to quash order of finality and her petition for relief from judgment, and its April 19, 2012 Order, which denied her motion for reconsideration, be set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. She also prayed that a decision be issued to annul and set aside the proceedings conducted by the DAR-R03 on Mercado's petition for reallocation of home lot awarded to Lorenzo for being violative of her right to due process. She stated that the DAR-R03 committed grave abuse

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[13] *Id*. at 99-100.

[14] *Id*. at 101-104.

[15] *Id*. at 105-107.

[16] *Id*. at 108-109.

[17] *Id*. at 111-128.

of discretion amounting to lack or excess of jurisdiction in issuing its assailed March 9, 2012 and April 19, 2012 orders.

Cunanan disagreed with the position of the DAR-R03 that the issues she raised in her petition for injunction and prohibition before the CA, on one hand, and in her motion to quash and petition for relief of judgment before the DAR, on the other, were the same. Citing *Strong vs.Castro*,[18] she argued that the petition for injunction and prohibition with prayer for preliminary injunction was filed to prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice. Conversely, relying upon *Bueno v. Patanao*,[19] she contended that the provisional remedy of injunction, a judicial weapon to preserve the status quo until the merits of the case could be heard, and which preceded the pending controversy, must be executed promptly and expeditiously to avert trouble or its recurrence. In fine, she sought for the CA to enjoin the DAR from awarding her property to Mercado without due process, as it was against what was ordained by the Constitution.[20]

In contrast, she continued, the motion to quash order of finality and the petition for relief from judgment were initiated for the DAR-R03 to annul and set aside all the proceedings and the judgment it rendered in Mercado's petition for reallocation, the same being null and void for violating her constitutional right to due process.

On July 31, 2012, the abovementioned petition for *certiorari* was dismissed by the CA. The latter stated in its resolution that because the subject orders were rendered by the DAR-R03 in the exercise of its quasi-judicial functions and the petition involved questions of fact and law, the appropriate mode of appeal was a petition for review under Rule 43 of the Rules of Court. The period for the filing of a petition for review, however,

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[18] 221 Phil. 673, 679 (1985).

[19] 119 Phil. 106, 113 (1963).

[20] *Rollo,* p. 120.

had already lapsed. The assailed order was received on May 4, 2012, so the petition for review should have been filed on May 19, 2012. Moreover, the petition for *certiorari* was filed out of time on July 5, 2012 because it was due on July 3, 2012.

On August 31, 2012, Cunanan filed a motion for reconsideration[21] pointing out that her petition for *certiorari* sought to annul and set aside the subject orders of the DAR-R03 for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction as it denied her the right to due process when she was not given an opportunity to be heard in the proceedings pertaining to Mercado's petition for reallocation. Cunanan also provided proof that the petition for *certiorari* was filed on time, by attaching documentary exhibits that showed that it was filed on July 3, 2012, and not on July 5, 2012.

On November 26, 2012, the CA denied her motion for reconsideration.[22]

Hence, this petition.

ISSUE

XXX WHETHER OR NOT THE ASSAILED JULY 31, 2012 RESOLUTION AND NOVEMBER 26, 2012 RESOLUTION OF THE RESPONDENT COURT OF APPEALS IN CA-G.R. SP NO. 125543 DISMISSING THE PETITION FOR CERTIORARI ARE NULL AND VOID FOR HAVING BEEN RENDERED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND IN DENIAL OF DUE PROCESS.[23]

Petitioner Cunanan ascribes grave abuse of discretion on the part of the CA when it denied her due process by summarily dismissing her petition for *certiorari,* docketed as CA-G.R. SP No. 125543, and denying her consequent motion for reconsideration on procedural grounds.

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[21] *Id*. at 129-136.

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

[23] *Id*. at 15.

Cunanan avers that she filed this petition for *certiorari* under Rule 65 of the Rules of Court against the Regional Director of the DAR-R03 after the latter issued orders cancelling TCT No. 288509 issued in her name and denying the subsequent motion to quash order of finality and the petition for relief from judgment. She claims that she was never notified at any stage of the proceedings; and that she was not furnished a copy of the petition or sent notices of hearings and copies of orders. Thus, she stresses that she was denied due process.

She reiterates that contrary to the CA pronouncement, a petition for review on *certiorari* under Rule 65 was the proper and appropriate mode of appeal as this petition was filed on the ground of denial of due process and grave abuse of discretion. Such denial results in the loss or lack of jurisdiction of the tribunal so that any decision rendered therein would be void.

Public respondents, through the Office of the Solicitor General *(OSG)*, counter that a petition for *certiorari* filed under Rule 65 is a wrong remedy because it is limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Moreover, a petition for *certiorari* may only be resorted to in the absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law as the two remedies are mutually exclusive. A petition for *certiorari* cannot co-exist with an appeal or any other adequate remedy. Thus, they invoke the rule that "where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of."[24]

The OSG further avers that the assailed resolutions of the CA, which dismissed Cunanan's petition for *certiorari,* were final judgments as there was nothing more left to be done by the CA with respect to the said case. Thus, Cunanan should have filed an appeal by way of petition for review on *certiorari* under Rule 45 of the Rules.

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[24] *Id*. at 188-198.

Even assuming that a petition for *certiorari* under Rule 65 was the correct remedy in the present case, the OSG argues that petitioner Cunanan failed to establish grave abuse of discretion on the part of the CA. Aside from the sweeping allegation of grave abuse of discretion of the CA, nowhere in the petition was it shown that the abuse of discretion in the issuance of the assailed resolutions by the CA was so patent and gross that it would warrant the issuance of the extraordinary writ of *certiorari*.

The Court's Ruling

A petition for *certiorari* under Rule 65 is proper to correct errors of jurisdiction committed by the lower court, or grave abuse of discretion which is tantamount to lack of jurisdiction. This remedy can be availed of when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

Appeal by *certiorari* under Rule 45, on the other hand, is a mode of appeal available to a party desiring to raise only questions of law from a judgment or final order or resolution of the CA, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law.[25]

As can be gleaned from above, one of the essential requisites of a petition for *certiorari* is that there is neither appeal nor any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the questioned proceeding. Thus, the respondents were correct in pointing out that it cannot co-exist with an appeal or any other particular remedy. Indeed, where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of.[26]

A petitioner must allege in his or her petition and establish facts to show that any other existing remedy is not speedy or

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[25] *De Guzman v. Filinvest Development Corporation*, G.R. No. 191710, January 14, 2015, 746 SCRA 65, 80.

[26] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, 716 Phil. 500, 512 (2013).

adequate.[27] Where the existence of a remedy by appeal or some other plain, speedy and adequate remedy precludes the granting of the writ, a petitioner must allege facts showing that any existing remedy is impossible or unavailing. A petition for *certiorari* which does not comply with the requirements of the Rules may be dismissed.[28]

In the present case, Cunanan had not shown that there was no other speedy and adequate remedy. She simply alleged that grave abuse of discretion was committed.

Nonetheless, in the interest of substantial justice, the Court is inclined to suspend the rules considering the circumstances of the case.

A review of the case discloses that when Cunanan learned that the DAR- R03 had cancelled TCT No. 288509 in her name and that it had issued an order of finality, she lost no time in questioning the order. As earlier pointed out, she averred that she was never notified of the proceedings or furnished copies of any pleadings. For said reason, she argues that the DAR-R03 never acquired jurisdiction over her person and that its assailed order deprived her of her property in violation of her constitutional right to due process, rendering all proceedings and orders null and void.

As the decision could be implemented anytime, she also filed a petition for injunction and prohibition with prayer for preliminary injunction.

Thereafter, as recited heretofore, Cunanan's quest to secure justice was frustrated in every stage and in every forum, in the DAR-R03 and the CA. As in every instance, her petitions and prayers were denied on technical grounds.

A review of the orders of the DAR-R03 and the resolutions of the CA discloses that neither of the two tackled the lament

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[27] *Lee v. People*, 483 Phil. 684, 699 (2004).

[28] *Visca v. Secretary of Agriculture and Natural Resources*, 255 Phil. 213, 217 (1989).

of Cunanan that she was denied her constitutional right to due process because she was never notified of the proceedings and furnished copies of the pleadings. The DAR-R03 and the CA took the shortcut by denying her pleas for justice on the ground of technicalities. Neither of the two stated that she was notified or that she was furnished copies of the pleadings. She was not even furnished a copy of the order cancelling TCT No. 288509 in her name. Doubtless, she was deprived of her property without due process of law.

The Court cannot rest easy if such a travesty of justice would be perpetuated and made permanent. It is simply unconscionable.

To correct an injustice, all the orders of the DAR-R03 and the resolutions of the CA should be vacated and set aside for being issued with grave abuse of discretion. The DAR-R03 and the CA might have correctly cited pertinent technical rules to justify their actions due to the ignorance or negligence of the petitioner's counsel but the bottom line is that Cunanan was deprived of her property in violation of her constitutional right to due process.

Cunanan should, thus, be allowed to present her position on the reallocation ordered in favor of Mercado. Whether or not she has a meritorious defense is immaterial. After all, the October 13, 2010 Order of the DAR-R03 was qualified as follows:

This Office reserves the right to cancel or revoke this Order in case of misrepresentation, or violation of pertinent existing DAR policies, rules and regulations.

In rendering decisions, courts have always been conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within the power of the Court to suspend the rules, or except a particular case from their operation.[29]

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[29] *Nala v. Judge Barroso*, G.R. No. 153087, August 7, 2003, 408 SCRA 529, 534.

The Court has, time and again, reiterated the rationale behind the exercise of its power to relax, or even suspend, the application of the rules of procedure:

> Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. **The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final** x x x.
>
> The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.[30]

WHEREFORE, the petition is **GRANTED**. The July 31, 2012 and November 26, 2012 Resolutions of the Court of Appeals in CA-G.R. SP No. 125543 are **REVERSED** and **SET ASIDE**. Accordingly, all the proceedings and orders of the Department of Agrarian Reform, Regional Office No. III, in Docket No. A-00306-MR-0522-09 (A.R. Case No. LSD-0167-10) are vacated and set aside for being void.

The records of the case are hereby ordered **REMANDED** to the Department of Agrarian Reform, Regional Office No. III, for appropriate proceedings. At all times, due process must be accorded to petitioner Helen Lorenzo Cunanan.

SO ORDERED.

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

Brion, J., on leave.

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[30] *Dela Cruz v. CA,* 539 Phil. 158 (2006), citing *Barnes v. Padilla,* G.R. No. 160753, June 28, 2005, 461 SCRA 533, 541.

THIRD DIVISION

[G.R. No. 206451. August 17, 2016]

ELPIDIO MAGNO, HEIRS OF ISIDRO M. CABATIC, NAMELY: JOSE CABATIC, RODRIGO CABATIC, and MELBA CABATIC; and ODELITO M. BUGAYONG, AS HEIR OF THE LATE AURORA MAGNO, *petitioners, vs.* **LORENZO MAGNO, NICOLAS MAGNO, PETRA MAGNO, MARCIANO MAGNO, ISIDRO MAGNO, TEODISTA MAGNO, ESTRELLA MAGNO, BIENVENIDO M. DE GUZMAN, CONCHITA M. DE GUZMAN, SILARY M. DE GUZMAN, MANUEL M. DE GUZMAN and MANOLO M. DE GUZMAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; JUDGMENTS; REQUISITES IN ORDER FOR *RES JUDICATA* TO BAR THE INSTITUTION OF A SUBSEQUENT ACTION.— In order for *res judicata* to bar the institution of a subsequent action, the following requisites must concur: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be, as between the first and second actions, identity of parties, subject matter, causes of action as are present in the civil cases below.

2. ID.; ID.; ID.; WRIT OF EXECUTION; A WRIT OF EXECUTION MUST SUBSTANTIALLY CONFORM TO THE DISPOSITIVE PORTION OF THE PROMULGATED DECISION, AND CANNOT VARY OR GO BEYOND THE TERMS OF JUDGMENT; CASE AT BAR.— It is well settled that a writ of execution must substantially conform to the dispositive portion of the promulgated decision, and cannot vary or go beyond the terms of the judgment; otherwise, it becomes null and void. Here, it is undisputed that both the bodies of the CFI Decision in Civil Case No. A-413 and the CA Decision upholding the CFI, confirmed that the three (3) undivided

properties belong to the late Nicolas Magno, but they were not included in the dispositive portions of said decisions as part of the properties that were ordered to be partitioned among his heirs. Thus, it would be pointless to require Elpidio Magno, *et al*. to file a motion for execution, because the trial court will simply deny it for the reason that the only portion of its final decision that becomes the subject of execution, is that ordained in the dispositive portion.

3. **ID.; ID.; ID.; WHEN FINAL JUDGMENT BECOMES EXECUTORY, IT BECOMES IMMUTABLE AND UNALTERABLE, RATIONALE.—** Needless to state, when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

4. **ID.; ID.; ID.; ID.; EXCEPTIONS TO THE RULE ON IMMUTABILITY OF FINAL AND EXECUTORY JUDGMENTS, CITED.—** Be that as it may, there are three (3) recognized exceptions to the rule on the immutability of final and executory judgments, namely, (a) the correction of clerical error; (b) the making of so-called *nunc pro tunc* entries which cause no prejudice to any party; and (c) where the judgment is void.

APPEARANCES OF COUNSEL

Millora & Maningding Law Offices for petitioners.
Manuel F. Manuel for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*, assailing the Decision[1] dated July 23, 2012 of the Court of Appeals in CA-G.R. CV- No. 90846, which reversed and set aside the Decision[2] dated November 15, 2007 of the Regional Trial Court of Alaminos City, Pangasinan, Branch 54, in Civil Case No. A-1850, and dismissed the complaint for partition on the ground of *res judicata*.

The facts are as follows:

Petitioners Elpidio Magno, heirs of Isidro M. Cabatic, namely: Jose Cabatic, Rodrigo Cabatic, and Melba Cabatic, and Odelito M. Bugayong, as heir of the late Aurora Magno, (***Elpidio Magno, et al.***) are the successors-in-interest of Doroteo Magno, who is the legitimate child of Nicolas Magno by his first wife, Eugenia Recaido. On the other hand, respondents Lorenzo, Nicolas, Petra, Marciano, Isidro, Teodista, Estrella, all surnamed Magno, and Bienvenido M., Conchita M., Silary M., Manuel M. and Manolo, all surnamed De Guzman, are the successors-in-interest of Nicetas Magno, Gavino Magno and Nazaria Magno, (***Lorenzo Magno, et al.***), who are the legitimate children of Nicolas by her second wife, Camila Asinger.

For easy reference, the following are the successors-in-interest of the late Nicolas Magno:[3]

I. Children of the First Marriage with Eugenia Recaido (+)

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[1] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring; *rollo*, pp. 36-52.

[2] Penned by Judge Jules A. Mejia; *id.* at 101-122.

[3] CA *rollo*, pp. 88, 94-95, 100-102; See Decision dated November 15, 2007 of the RTC of Alaminos City, Pangasinan, Branch 54, pp. 2, 8, 9, 14, 15.

A. Doroteo Magno, survived by:
   1. Teofilo Magno, survived by Jacinta Magno (wife)
   2. Jose Magno, survived by Nicanor and Lolita Magno
   3. Angela Magno, survived by:
      a. **Isidro M. Cabatic**, survived by
         i. **Jose Cabatic**
         ii. **Rodrigo Cabatic**
         iii. **Melba Cabatic**
      b. Felicitas Cabatic
      c. Milagros Cabatic
      d. Herminio Cabatic.
   4. Espiridion Magno, survived by:
      a. Tomas Magno
      b. **Elpidio Magno**
      c. **Aurora Magno**, survived by:
         i. **Odelito M. Bugayong**

B. Eduardo Magno (died without issue)

II. Children of the Second Marriage with Camila Asinger (+)

A. Nicetas Magno, survived by **Lorenzo Magno**, who was in turn survived by:
   1. Antonia Magno (widow)
   2. Sheila Magno-Arandia (daughter)
   3. Lorelyn Magno-Benas (daughter)
   4. Arvin Ray M. delos Santos (grandson)

B. Gavino Magno, survived by:
   1. **Nicolas Magno**, survived by:
      a. Teresita M. Magno (widow)
      b. Joselito Magno (son)
   2. **Petra Magno**
   3. **Marciano Magno**, survived by:
      a. Rolando Magno (son)
      b. Rosita M. Fernandez (daughter)
      c. George Magno (son)
      d. Gloria M. Ocampo (daughter)
      e. Josefa M. Garcia (daughter)

f. Perlita M. Abarra (daughter)
g. Nenita Magno (daughter)

4. Leonido Magno
5. **Isidro Magno**
6. **Teodista Magno**
7. **Estrella Magno**

C. Nazaria Magno, survived by:

1. **Bienvenido M. de Guzman**
2. **Conchita M. de Guzman-Lopez**, survived by:
   a. Benjamin Lopez (widower)
   b. Leila Lopez Tamina (daughter)
   c. Edgar Lopez (son)
   d. Joshua Lopez (son)
   e. Daisy Lopez (daughter)
   f. Bernardino Lopez (son)
   g. Abes Lopez (son)
   h. Dejobe Lopez (son)
3. **Silary M. de Guzman**
4. **Manuel M. de Guzman**
5. **Manolo M. de Guzman**

Gavino Magno, Nicetas, and Nazaria,[4] all surnamed Magno, (***Gavino Magno, et al.***), who are the predecessors-in-interest of Lorenzo Magno, *et al.*, filed an Amended Complaint dated January 30, 1964 before the Court of First Instance (*CFI*) of Alaminos, Pangasinan, which was docketed as Civil Case No. A-413. In their complaint for partition with damages, Gavino Magno, *et al*. sought the partition of the following properties left by Nicolas Magno who died intestate in 1907:

(a) A parcel of land (unirrigated riceland) located at Lucap, Cayucay, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of Two Hundred Seventy-Seven Thousand Twenty-Six (277,026) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4236** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno**;

[4] Assisted by her husband Simeon de Guzman.

(b) A parcel of land (unirrigated riceland) located at Lucap, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of Four Thousand Four Hundred Seventeen (4,417) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4235** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno**;

(c) A parcel of land (residential lot) located at Poblacion, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of Two Thousand Seven Hundred Five (2,705) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4238**, in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno**;

(d) A parcel of land (unirrigated riceland) located at San Jose Dive, Poblacion, Pangasinan, bounded by the properties of the following: x x x; consisting of Five Thousand Four Hundred (5,400) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4237** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno;**

(e) A parcel of land (unirrigated rice, sugar, and forest lands), located at Lucap, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of One Hundred Fifty-Six Thousand Five Hundred Forty (156,540) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4233** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno;**

(f) A parcel of land (coconut land) located at Lucap, Cayucay, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of Three Thousand Two Hundred Forty-Five (3,245) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4234** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno**;

(g) A parcel of land (unirrigated Riceland) located at Balangobong, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of Eleven Thousand One Hundred Thirty-Two (11,132) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4241** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Espiridion Magno**;[5]

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[5] CA *rollo*, pp. 110-111. (Emphases added)

In their Amended Answer to the Amended Complaint with a Counter-claim[6] dated March 4, 1964, Teofilo Magno, Isidro, Herminio and Felicidad, all surnamed Cabatic, Aurora, Elpidio, Tomas, Nicanor and Lolita, all surnamed Magno (***Teofilo Magno, et al.***), who are the predecessors-in-interest of Elpidio Magno, *et al.*, denied the material allegations of the amended complaint. By way of counterclaim, Teofilo Magno, *et al*. also sought the partition of three (3) parcels of land originally owned by Nicolas Magno, as shown by Original Tax Declaration No. 2221 in his name, and described as follows:

Tax Declaration No. 4246 in the name of **GAVINO MAGNO** and is actually in the possession of Gavino Magno, plaintiff:

A parcel of land containing an area of 84,988 square meters in area situated in the Barrio Lucap, Municipality of Alaminos, Pangasinan, Philippines. x x x.

Tax Declaration No. 13385 assessed at ₱390.00 in the name of plaintiff, **Necitas Magno** described as follows:

A parcel of land situated in the Barrio of Lucap, Municipality of Alaminos, Pangasinan, containing an area of about 38,385 sq. m. x x x.

Tax Declaration No. 4249 in the name of plaintiff **NAZARIA MAGNO** and also under her actual possession, to wit:

A parcel of land situated in the Barrio of Lucap, Mun. of Alaminos, Pangasinan containing an area of 41,023 sq. m. more or less. x x x.[7]

On October 5, 1972, CFI of Pangasinan, Branch VII,[8] granted the amended complaint of Gavino Magno, *et al.*, but failed to include in the dispositive portion of its Decision[9] three (3) real properties covered by Tax Declaration Nos. 4246, 4249, and 13385 subject of the counterclaim of Teofilo Magno, *et al*. The *fallo* of the Decision reads:

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[6] Records, pp. 154-158.

[7] *Id*. at 156-157.

[8] Penned by Judge Gregorio A. Legaspi.

[9] *Rollo*, pp. 63-99.

WHEREFORE, in view of all the foregoing considerations, judgment is hereby declared as follows:

a) **Declaring the plaintiffs [Gavino Magno, *et al.*] and the defendants [Teofilo Magno, *et al.*] as legal heirs of the deceased Nicolas Magno and** consequently, **the absolute and exclusive owners of the properties described in the amended complaint**, **except** the parcel of **land described in paragraph (3), sub-paragraph (e) of said amended complaint**.

b) Ordering the partition of said properties in four (4) equal parts as follows: one share each of the plaintiffs, Gavino, Nicetas and Nazaria, all surnamed Magno, and the fourth share to the defendants who represent the deceased Doroteo Magno;

c) Declaring the property described in paragraph (3), sub-paragraph (e) as the exclusive property of the heirs of the deceased spouses, Doroteo Magno and Monica Romero;

d) Ordering the defendants to account for the annual income or produce of the above-mentioned properties with the exception of the property described in the preceding paragraph, and to divide the same into four (4) equal parts in the manner above-described, commencing from 1957 until the accounting is made and the shares corresponding to the plaintiffs delivered;

e) Ordering the defendants to pay, jointly and severally, the plaintiffs in the sum of ₱3,000.00 as attorney's fees. And the costs.

SO ORDERED.[10]

On June 30, 1981, the Court of Appeals (*CA*), 9th Division, rendered a Decision[11] affirming the decision of the CFI. The CA ruled, among other matters, that the lands covered by Tax Declaration Nos. 4246, 4249, and 13385 were owned by the

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[10] *Id.* at 98-99. (Emphasis added)

[11] CA *rollo*, pp. 154-166; penned by Associate Justice Porfirio V. Sison, with Associate Justices Elias B. Asuncion and Juan A. Sison, concurring.

late Nicolas Magno and must be brought into the mass of his estate. But, the CA also failed to order their partition in the dispositive portion of its decision which reads:

> WHEREFORE, the Decision appealed from, being in accord with evidence and law, is hereby affirmed in all parts. With costs against the defendants-appellants.
>
> SO ORDERED.[12]

In an Entry of Judgment[13] dated September 25, 1981, the Clerk of Court certified that the CA Decision has become final and executory on September 22, 1981.

Meanwhile, on October 14, 1981, Gavino Magno, *et al*. filed a Motion for Execution, which the CFI granted. Teofilo Magno, *et al.* filed a motion for reconsideration which the CFI denied on October 19, 1981.

Aggrieved, Teofilo Magno, *et al*. filed a petition for *certiorari* with preliminary injunction before the Supreme Court which issued a temporary restraining order against the CA and Gavino Magno, *et al.* on January 6, 1982. In a Decision[14] dated July 31, 1987, the Court dismissed the petition for lack of merit and lifted its restraining order. The Court ruled that the CA committed no error in ordering the issuance of the entry of judgment, and that the CA decision has become final and executory, there being no appeal taken therefrom. On November 2, 1987, it issued an Entry of Judgment in G.R. No. 58781 entitled *Teofilo Magno, et al. v. Court of Appeals, et al.*

On December 8, 1987, Gavino Magno, *et al*. filed a Motion for Issuance of Alias Writ of Execution. On December 15, 1987, the Regional Trial Court (*RTC*) of Pangasinan, Branch 54,[15] ordered the issuance of an alias writ of execution.

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[12] CA *rollo*, p. 166.

[13] *Id.* at 167.

[14] *Id*. at 168-173; *Magno v. Court of Appeals*, 236 Phil. 595, 599 (1987).

[15] Presided by Judge Artemio R. Corpuz.

On January 27, 1988, Gavino Magno, *et al.* filed an Urgent Motion for Partition and Accounting. On May 4, 1989, the RTC ordered the setting of the case for hearing on the urgent motion for partition and accounting, and for purposes of appointing commissioners which shall make the necessary partition of the lands.

On August 23, 1989, Teofilo Magno, *et al.* filed a Motion to Reopen, alleging that there are real properties of Nicolas Magno in the possession of Gavino Magno, *et al.* that have not been reported to the court, and should be collated so that the whole inheritance can be partitioned by the heirs. On February 8, 1990, Teofilo Magno, *et al.* filed an Urgent Motion for Reconsideration with respect to the true nature of the inventory of the properties left by Nicolas Magno, and for them to be allowed to submit an inventory thereof.

On June 8, 1990, the RTC issued an Order which, among other matters, ruled that the only portion of the decision that becomes the subject of execution, is that ordained in the dispositive portion of the decision; thus, he denied the motion for reconsideration filed by Teofilo Magno, *et al.* On June 11, 1990, the RTC also denied for lack of merit the motion to reopen filed by them.

Meanwhile, Elpidio Magno, *et al.*,[16] the successors-in-interest of Teofilo Magno, *et al.*, filed before the RTC of Alaminos, Pangasinan, a Complaint[17] dated May 24, 1990 for partition, accounting and damages. In their complaint docketed as Civil Case No. A-1850, Elpidio Magno, *et al.* alleged that aside from the real properties subject of Civil Case No. A-413, Nicolas Magno also left three (3) real properties covered by Tax Declaration Nos. 4246, 4249 and 13385, which were in the possession of Gavino, Nazaria and Necitas, all surnamed Magno, and now in possession of their respective successors-in-interest,

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[16] Elpidio, Aurora, Tomas, Lolita, Nicanor, and Jacinta, all surnamed Magno, and Isidro M. Cabatic, Heirs of Jose Cabatic, Milagros, Rodrigo, Melba, Felicitas M. and Herminio M., all surnamed Cabatic.

[17] Records, pp. 1-6.

Lorenzo Magno, *et al.*[18] Claiming to be among the co-heirs of Nicolas Magno, Elpidio Magno, *et al.* averred that Lorenzo Magno, *et al.* refused to partition the said three (3) properties, and to account for their fruits since 1957 up to present, despite repeated demands.

In their Motion to Dismiss[19] dated August 4, 1990, Lorenzo Magno, *et al.* contended that the cause of action of Elpidio Magno, *et al.* is barred by a prior final judgment in Civil Case No. A-413, prescription and laches. In an Order[20] dated April 3, 1991, the RTC denied the motion for lack of merit.

In their Answer with Counterclaim[21] dated September 3, 1991, Lorenzo Magno, *et al.* averred that their refusal to partition the properties is founded on the open, continuous, exclusive and adverse possession in the concept of owner by their predecessor-in-interest, Gavino, Nazaria and Necitas, all surnamed Magno. By way of special defense, Lorenzo Magno, *et al.* reiterated that the cause of action of Elpidio Magno, *et al.* is barred by *res judicata*, prescription and laches.

In the Amended Complaint[22] dated July 1, 1992, Elpidio Magno, *et al.* stressed that the three (3) real properties described in their complaint were all acquired during the first marriage of Nicolas with Eugenia Recaido.

In their Motion to Dismiss[23] dated December 7, 1995, Lorenzo Magno, *et al.* argued that the trial court has no jurisdiction to correct or amend the decision in Civil Case No. A-413 which had already become final and executory, pursuant to the doctrine of *res judicata*.

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[18] Lorenzo, Nicolas, Petra, Marciano, Isidro, Teodista, Estrella, all surnamed Magno, and Bienvenido M., Conchita M., Silary M. and Manolo M., all surnamed De Guzman.

[19] Records, pp. 14-21.

[20] *Id.* at 41-43.

[21] *Id.* at 95-99.

[22] *Id.* at 117-123.

[23] *Id.* at 141-153.

On November 15, 2007, the RTC of Alaminos City, Pangasinan, Branch 54, granted the amended complaint of Elpidio Magno, *et al.* The *fallo* of its Decision reads:

> WHEREFORE, in consideration of the foregoing premises, considering that these three parcels of land were acquired by the deceased Nicolas Magno and his first wife, Eugenia Recaido, the plaintiffs, therefore, are entitled to one-half of each of the three parcels of land as the share of his first wife, Eugenia Recaido, or her heirs while the other half owned by Nicolas Magno be divided into four shares, three shares to the defendants and one share to the plaintiffs.
>
> Further, the Court finally orders the accounting of all the total value of fruits and produce of the three described parcels of land from 1957 up to the present time and to deliver to the plaintiffs their respective shares pertaining to them.
>
> Finally, the court orders the defendants to pay severally and jointly the plaintiffs actual damages and attorney's fees in the total sum of ONE HUNDRED THOUSAND (Php100,000.00) PESOS.
>
> IT IS SO ORDERED.[24]

On July 23, 2012, the CA Sixth Division rendered a Decision in CA-G.R. CV No. 90846, the dispositive portion of which states:

> **WHEREFORE**, the instant appeal is **GRANTED** and the appealed Decision is **REVERSED** and **SET ASIDE**. A new one is entered **DISMISSING** the complaint.
>
> **SO ORDERED**.[25]

Aggrieved, Elpidio Magno, *et al.* filed this petition for review on *certiorari*.

Elpidio Magno, *et al.* submit that the CA committed grave and serious reversible errors, thus:

> a- in holding that the finality of the decision in Civil Case No. A-413 operates as *res judicata* in the second case (Civil

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[24] *Rollo,* pp. 121-122.

[25] *Id.* at 51. (Emphasis in the original)

Case No. A-1850), despite that there is no identity of the subject matter between the two cases.

b- in concluding that the decision in the first case, which has become final and executory, should have been executed to effect the partition of the subject properties, notwithstanding that only the dispositive portion, of the *fallo* is its decisive resolution, and is thus the subject of execution.

c- in dismissing Civil Case No. A-1850, without regard to the right to demand partition of the thing owned in common, as mandated in Art. 494 of the New Civil Code.[26]

Elpidio Magno, *et al*. admit that the subject three (3) properties covered by Tax Declaration Nos. 13385, 4246 and 4249 were among those stipulated as properties of Nicolas Magno, and lengthily discussed in the body of the CFI Decision in Civil Case No. A-413, but were not included in the dispositive portion of its decision. They stress that while the said decision was affirmed by the CA in G.R. CV No. 52655-R when it ruled *inter alia* that such properties ought to be brought into the mass of Nicolas Magno's estate, the CA likewise failed to include the said properties in the dispositive portion of its decision. Thus, Elpidio Magno, *et al*. submit that *res judicata* cannot be applied because there is no identity of subject matter between Civil Case No. A-413 where their predecessors-in-interest, Teofilo Magno, *et al*. had sought by way of counterclaim for partition of the said properties, and Civil Case No. 1850 where they prayed for partition of the same properties, which were omitted in the dispositive portion of the decisions of the CFI and the CA.

Elpidio Magno, *et al.* further argue that to deny their right to demand partition of properties which remain co-owned by them and Lorenzo Magno, *et al.* on the ground of *res judicata* would sacrifice justice to technicality. Citing Article 494[27] of the New Civil Code, they also claim to have the right to demand

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

[27] Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

partition of said properties at any time. They likewise invoke Article 1103[28] of the same Code in support of their claim that a decision or order of partition does not really become final in the sense that it leaves something more to be done for the complete disposition of the case. They insist that Lorenzo Magno, *et al.* should not be allowed to exclusively appropriate the properties owned in common for they hold the same in trust for the other co-owners; otherwise, there would be unjust enrichment at the expense of their co-owners. Finally, they submit that the finding of the CA to the effect that the subject properties were owned by the late Nicolas Magno and must be brought to the mass of his estate, becomes the law of the present case which must not be disturbed as a matter of judicial comity.

On the other hand, respondents argue that the filing of another complaint for partition [Civil Case No. A-1850] cannot be sanctioned without doing violence to the doctrine of *res judicata*, but also to the rule on immutability of judgments.

The petition lacks merit.

The Court has explained[29] the doctrine of *res judicata* and its two (2) concepts, thus:

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

[28] Art. 1103. The omission of one or more objects or securities of the inheritance shall not cause the rescission of the partition on the ground of lesion, but the partition shall be completed by the distribution of the objects or securities which have been omitted.

[29] *Samson v. Gabor, et al.*, G.R. No. 182970, July 23, 2014, 730 SCRA 490.

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.

It must be remembered that it is to the interest of the public that there should be an end to litigation by the parties over a subject fully and fairly adjudicated. The doctrine of *res judicata* is a rule that pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which dictates that it would be in the interest of the State that there should be an end to litigation — *republicae ut sit litium*; and (2) the hardship on the individual that he should be vexed twice for the same cause — *nemo debet bis vexari pro una et eadem causa*. A contrary doctrine would subject public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of public tranquility and happiness.

Res judicata has two concepts. The first is bar by prior judgment under Rule 39, Section 47(b), and the second is conclusiveness of judgment under Rule 39, Section 47(c). These concepts differ as to the extent of the effect of a judgment or final order as follows:

> SEC. 47. *Effect of judgments or final orders.* - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> xxx xxx xxx
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> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

> (c) In any other litigation between the same parties or their successors-in-interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Jurisprudence taught us well that *res judicata* under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions. The judgment in the first action is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. In contrast, *res judicata* under the second concept or estoppel by judgment exists when there is identity of parties and subject matter but the causes of action are completely distinct. The first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved herein.[30]

In order for *res judicata* to bar the institution of a subsequent action, the following requisites must concur: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be, as between the first and second actions, identity of parties, subject matter, causes of action as are present in the civil cases below.[31] All four requisites of *res judicata* under the concept of bar by prior judgment are present in this case.

As correctly noted by the CA, the presence of the first two requisites of *res judicata*, as well as the requisite identity of parties in the first action (Civil Case No. A-413) and the second action (Civil Case No. A-1850), are undisputed:

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[30] *Id.* at 504-506. (Citations omitted)

[31] *Id.* at 503.

x x x [R]ecords show that herein parties do not dispute the fact that the **trial court has jurisdiction over the first case** (Civil Case No. A-413) and that **such decision in the first case has long become final and executory** on September 22, 1981 by virtue of the Entry of Judgment dated September 25, 1981. There is also no question with respect to the identity of parties in both civil cases. Obviously **there is also a community of interest between the parties in both the first and the present case** [Civil Case No. A-1850], being the legitimate heirs of Nicolas Magno, although, the parties in the present case, by right of representation, merely substituted some of the original parties in the first case who already died. x x x.[32]

With respect to the third requisite of *res judicata*, there is no question that the Decision[33] of the CFI, dated October 5, 1972, granting the amended complaint for partition docketed as Civil Case No. A-413, is a judgment on the merits, because it was rendered based on the evidence and stipulations submitted by the parties and the witnesses they presented at the trial of the case.

Anent the fourth requisite of *res judicata*, there is also no doubt as to the identity of the subject matter and causes of action between the first action and the second action. Contrary to the contention of Elpidio Magno, *et al*., the subject matters of partition in both actions are the same three (3) real properties originally owned by the late Nicolas Magno, and later declared for taxation purposes under Tax Declaration Nos. 4246, 4249 and 13385. In their Amended Answer to the Amended Complaint with a Counterclaim in Civil Case No. A-413, Teofilo Magno, *et al*., the predecessors-in-interest of Elpidio Magno, *et al*., alleged by way of counterclaim as follows:

2. That the deceased NICOLAS MAGNO was the original owner of the following parcels of land as shown by Original Tax Declaration No. 2221 in his name, and which parcels of lands are hereby described as follows:

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[32] *Rollo*, p. 44. (Emphasis ours)

[33] Records, pp. 159-193.

Tax Declaration No. 4246 in the name of GAVINO MAGNO and is actually in the possession of Gavino Magno, plaintiff:

A parcel of land containing an area of 84,988 square meters in area situated in the Barrio of Lucap, Municipality of Alaminos, Pangasinan, Philippines. x x x.

Tax Declaration No. 13385 assessed at ₱390.00 in the name of plaintiff, Necitas Magno described as follows:

A parcel of land situated in the Barrio of Lucap, Municipality of Alaminos, Pangasinan, containing an area of about 38,385 sq. m. x x x.

Tax Declaration No. 4249 in the name of plaintiff NAZARIA MAGNO and also under her actual possession, to wit:

A parcel of land situated in the Barrio of Lucap, Mun. of Alaminos, Pangasinan containing an area of 41,023 sq. m. more or less. x x x.[34]

3. That the three parcels of land of about 16 hectares total area being the original property of the deceased NICOLAS MAGNO common ancestor of both parties in this case, under law, should be divided into four equal parts, and all the defendants, being descendants by the first wedlock, and therefore should be considered full blood and entitled to double that of the descendants of the second wedlock, it being now difficult to determine under which wedlock, the said properties were acquired, the partition therefrom which would equitative (sic) to the parties would be that ¾ pro-indiviso to the defendants; and ¼ pro-indiviso thereof to the plaintiffs.[35]

On the other hand, in their Amended Complaint in Civil Case No. A-1850, Elpidio Magno, *et al.*, as successors-in-interest of Teofilo Magno, *et al.*, prayed, among other matters, that judgment be rendered "[o]rdering the partition of the above-described parcels of land among the plaintiffs and the defendants, taking into consideration that these parcels of land were acquired

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[34] *Id.* at 156-157. (Emphasis added)

[35] Records, p. 157; Amended Answer to the Amended Complaint with A Counterclaim dated March 4, 1964 (Civil Case No. A-413), p. 4.

during the first marriage; x x x."[36] Indeed, the subject matters of the first and second actions for partition, accounting and damages, docketed as Civil Case Nos. A-413 and A-1850, respectively, are the three (3) real properties originally owned by the late Nicolas Magno, which were later declared for taxation purposes under Tax Declaration Nos. 4246, 4249 and 13385. Since all the requisites of *res judicata* under the concept of bar by prior judgment are present, the CA correctly dismissed the amended complaint for partition docketed as Civil Case No. A-1850.

However, while the CA correctly ruled that *res judicata* has already set in, it erred in stating that what Elpidio Magno, *et al.* should have done is to file a writ of execution in the trial court to enforce its final and executory decision in Civil Case No. A-413. It is well settled that a writ of execution must substantially conform to the dispositive portion of the promulgated decision, and cannot vary or go beyond the terms of the judgment; otherwise, it becomes null and void.[37] Here, it is undisputed that both the bodies of the CFI Decision in Civil Case No. A-413 and the CA Decision upholding the CFI, confirmed that the three (3) undivided properties belong to the late Nicolas Magno, but they were not included in the dispositive portions of said decisions as part of the properties that were ordered to be partitioned among his heirs. Thus, it would be pointless to require Elpidio Magno, *et al.* to file a motion for execution, because the trial court will simply deny it for the reason that the only portion of its final decision that becomes the subject of execution, is that ordained in the dispositive portion.

Needless to state, when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the

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[36] *Id.* at 121; Amended Complaint dated July 1, 1992 (Civil Case No. A-1850), p. 5.

[37] *Suyat v. Gonzales-Tesoro*, 513 Phil. 85, 95 (2005).

modification is attempted to be made by the court rendering it or by the highest Court of the land.[38] The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[39] Be that as it may, there are three (3) recognized exceptions to the rule on the immutability of final and executory judgments, namely, (a) the correction of clerical error; (b) the making of so-called *nunc pro tunc* entries which cause no prejudice to any party; and (c) where the judgment is void.[40]

The Court explained the concept of *nunc pro tunc* judgment in this wise:

> The office of a judgment *nunc pro tunc* is to record some act of the court done at a former time which was not then carried into the record, and the power of a court to make such entries is restricted to placing upon the record evidence of judicial action which has been actually taken. *It may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken. If the court has not rendered a judgment that it might or should have rendered, or if it has rendered an imperfect or improper judgment, it has no power to remedy these errors or omissions by ordering the entry nunc pro tunc of a proper judgment. Hence a court in entering a judgment nunc pro tunc has no power to construe what the judgment means, but only to enter of record such judgment as had been formerly rendered, but which had not been entered of record as rendered.* In all cases the exercise of the power to enter judgments *nunc pro tunc* presupposes the actual rendition of a judgment, and a mere right to a judgment will not furnish the basis for such an entry. (15 R. C. L., pp. 622-623.)

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[38] *Mocorro, Jr. v. Ramirez*, 582 Phil. 357, 366 (2008).

[39] *Navarro v. Metropolitan Bank & Trust Company*, 612 Phil. 462, 471 (2009).

[40] *Filipinas Palmoil Processing, Inc., et al. v. Dejapa*, 656 Phil. 589, 598 (2011).

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The object of a judgment nunc pro tunc is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been. (Wilmerding vs. Corbin Banking Co., 28 South., 640, 641; 126 Ala., 268.)

A *nunc pro tunc* entry in practice is an entry made now of something which was actually previously done, to have effect as of the former date. *Its office is not to supply omitted action by the court, but to supply an omission in the record of action really had, but omitted through inadvertence or mistake.* (Perkins vs. Haywood, 31 N. E., 670, 672.)

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It is competent for the court to make an entry *nunc pro tunc* after the term at which the transaction occurred, even though the rights of third persons may be affected. But entries *nunc pro tunc* will not be ordered except where this can be done without injustice to either party, *and as a nunc pro tunc order is to supply on the record something which has actually occurred, it cannot supply omitted action by the court* . . . (15 C. J., pp. 972-973.)[41]

Guided by the foregoing principles, the Court finds that the interest of justice would be best served if a *nunc pro tunc* judgment would be entered in Civil Case No. A-413 by ordering the partition and accounting of income and produce of the three (3) properties covered by Tax Declaration Nos. 4246, 4249 and 13385, under the same terms as those indicated in the dispositive portion the CFI Decision dated October 5, 1972. It is undisputed that the said properties are still undivided and considered as part of the estate of Nicolas Magno, pursuant to the final decision in Civil Case No. A-413. There is also no

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[41] *Briones-Vasquez v. Court of Appeals*, 491 Phil. 81, 92-93 (2005). (Italics in the original)

doubt that the CFI failed to include in the dispositive portion of its Decision dated October 5, 1972 in Civil Case No. A-413 its ruling that the said three (3) properties remain undivided and should be partitioned among the heirs of Nicolas Magno. Pertinent portions of the CFI Decision state:

The following facts are undisputed: that **Nicolas Magno, common ancestor of the parties died in 1907**; that he died **intestate, leaving properties one of which is described under Tax Declaration No. 2221**; that Nicolas Magno married twice; that during his first marriage with one Eugenia Recaido, he had two sons, Doroteo Magno and Eduardo Magno but the latter died without issue; that Doroteo Magno died in 1937; that he had four children, namely: Teofilo, Jose, Angela and Esperidion, all surnamed Magno; that of the four, only Teofilo is still living. While Jose was survived by one daughter Lolita and one son, Nicolas Magno. Angela was survived by three children, Isidro, Herminio, and Felicidad, all surnamed Cabatic; Espiridion Magno who is also deceased was survived by his three children Tomas, Elpidio and Aurora, all surnamed Magno. While in his second marriage with Camila Asinger, said Nicolas Magno had three children, Gavino, Nicetas and Nazaria, all surnamed Magno.

The principal issue in this case is whether the properties of the deceased Nicolas Magno have been partitioned.

From the evidence thus adduced, the Court is convinced that said properties of the deceased Nicolas Magno, common ancestor of the parties remain undivided up to present. This view is supported by the testimonies of the plaintiffs and their witnesses, as well as that of the defendants and their witnesses. Custodio Rabina, a witness for the plaintiffs testified that after the death of Nicolas Magno, his son, Doroteo Magno took possession of the twenty-seven hectare Lucap property on condition that he would give three "baars" to the plaintiffs in the form of rentals; that Rabina used to see Doroteo deliver the shares of the plaintiffs; that after the death of Doroteo Magno in 1937, his son Teofilo continued in the possession of the same under the same condition as his father until 1957; that on the said date, Teofilo failed to deliver the shares of the plaintiffs, hence, the latter demanded the return of the land. That in view, thereof, plaintiffs went to Atty. Tomas Rapatalo who advised them to divide the properties in question instead of fighting each other. However, no partition was effected.

Nicolas Magno, another witness for the plaintiffs declared that in 1957, he went to Atty. Rapatalo together with Teofilo Magno, purposely to effect the partition of the properties in question, but no partition was effected due to the refusal of Teofilo's nephews and nieces.

Isidro Cabatic, one of the defendants testified that the properties of Nicolas Magno have not been partitioned and that is the reason why the heirs have no titles in their respective names. He further declared that while they agreed to divide the properties in 1946, nevertheless, since some of them were in Mindanao and others in Quezon City, the partition was not effected, that instead an oral partition was made, but as the witness himself said, it was not approved. Cabatic also declared that subsequently, the heirs from Mindanao came but insisted on the partition according to the Certeza Survey. It is to be noted that in their proposed partition, the heirs hires the services of Surveyor de Asis.

The mere fact that the Lucap property is covered by four tax declarations (Exhibits G, F, E and D) is not evidence to show that it has been partitioned. Mere tax declarations are not evidence of ownership.

Likewise, the fact that the plaintiffs possessed certain portions of the Lucap property does not prove that said property had been partitioned because, as satisfactorily explained by Nicetas Magno, it was the practice of the heirs to occupy portions of the hereditary estate and harvest the corresponding produce thereof. This has not been contradicted or rebutted by the defendants.

The inequality of the areas possessed by the plaintiffs and Doroteo Magno involving the Lucap property which was not explained by the defendants is another irrefutable sign of non-partition. Defendants failed to explain satisfactorily why twenty-seven (27) hectares would belong to Doroteo Magno while the plaintiffs should have only sixteen (16) hectares among themselves from the Lucap property.

Another evidence to show that the properties of Nicolas Magno are still undivided is the testimony of the defendant Teofilo Magno that in 1957, he went to see Atty. Rapatalo for the purpose of asking him to register the properties in Lucap and Kiskis in the name of Doroteo Magno, however, Atty. Rapatalo was not able to file the supposed application for land registration because of the objections of the plaintiffs who were also present when he (Teofilo) approached Atty. Rapatalo. Teofilo also declared that the plaintiffs objected because

they claimed they are co-owners of the same; that due to the same objections of the plaintiffs, Teofilo was not able to get the tax declaration in his name covering the Lucap property.

Defendants claimed and they tried to prove that the properties in litigation are the exclusive properties of Doroteo Magno and therefore, they are entitled to inherit the same to the exclusion of the plaintiffs. This contention of the defendants is untenable. Defendants in the course of the trial, have failed to present any document or writing to show that Nicolas Magno conveyed the properties in question solely to Doroteo.

No partition having been effected among the heirs, it follows that the pro-indiviso character of the lands in question continue. It is a familiar doctrine that when an inheritance is undivided, possession by one of the co-heirs, and prescription, however long may be the lapse, do not run against the latter's right of action to demand the partition of the pro-indiviso property, for the simple reason that the possessor thereof is not a third person, nor does he hold it by such adverse possession as will become legalized by prescription. (Dimagiba vs, Dimagiba, 34 Phil. 357). Such possession is always understood to be exercised by the heir himself and in the name of his co-heirs (Lampitoc vs. Lampitoc, CA-G.R. No. 9200-R, April 30, 1953).

The only exception to the rule that prescription does not run against the co-heirs is when the co-heirs or co-owners, having possession of the hereditary community property, hold the same in his own name, that is, under claim of exclusive ownership. In such case, he may acquire the property by prescription if his possession meets the other requirements of the law (De los Santos vs. Sta. Teresa, 44 Phil. 811). However, this exception does not apply in this case. In the first place, neither the defendant Teofilo Magno nor his father Doroteo Magno could be considered to have possessed the lands in question in the concept of an owner to the exclusion of his co-heirs. The evidence to the effect is insufficient and inconclusive. As can be clearly gleaned from the evidence, the defendants were all the while aware of the plaintiffs' claim of ownership over said properties.

In view of the foregoing, **there is nothing more left for the Court to resolve than to order the partition of the properties in question except the parcel of land described in par. 3, sub-par. (e) of the amended complain**t, otherwise, denominated as Kiskis property, the same having been satisfactorily shown by the defendants to be

the paraphernal property of Monica Romero, wife of Doroteo Magno (Exhibit 6). Clearly therefore, plaintiffs have no right to inherit any portion thereof.

In effecting the partition among the heirs of the decedent, Article 2263 of the New Civil Code should be applied. Under the said provision, rights to an inheritance of a person who dies, with or without a will, before the effectivity of this code, shall be [governed] by the Civil Code of Spain of 1889, by other [previous] laws, and by the Rules of Court. In other words, Nicolas Magno, having died in 1907, the distribution of his estate shall be [governed] by the Civil Code of Spain of 1889.

To properly distribute his estate, the important consideration should be to determine the date of the acquisition of the properties subject of partition in order to be able to [pinpoint] which properties belong to his first marriage and which properties pertain to his second marriage. In this case, however, **evidence is clear that all the properties subject of partition belong to both marriages of the decedent, Nicolas Magno, with the exception of that parcel described in paragraph (3), sub-paragraph (e) of the amended complaint as previously stated.** Therefore, applying Article 931 of the Civil Code of Spain of 1889, the law [in force] at the time of the decedent's death, his children, Doroteo, Gavino, Nicetas and Nazaria should inherit in equal shares. Accordingly, the children of the late Doroteo Magno, namely: Teofilo, Angela, Jose and Espiridion should succeed to the estate of Nicolas Magno by right of representation and pursuant to law, they cannot inherit more than what their father would inherit if alive.

As regards the disposition made by Doroteo Magno during his lifetime, the same are valid to the extent of his share and insofar as the same are not inofficious.

In brief, the properties in question which by agreed preponderance of evidence **were shown to be owned by the decedent, Nicolas Magno, except parcel (e) under par. 3 of the amended complaint as previously mentioned, should be partitioned** as follows: one fourth (1/4) share each child shall be for the three-plaintiffs, and the fourth share shall pertain to the defendant to represent the deceased, Doroteo Magno.[42]

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[42] Records, pp. 185-192, CFI Decision dated October 5, 1972, pp. 28-35. (Emphases added)

In affirming *in toto* the CFI Decision, the CA likewise failed to indicate in the dispositive portion of its Decision dated June 30, 1981 in CA-G.R. No. 52655-R, its definitive ruling that the said three (3) real properties were owned by Nicolas Magno and must be brought into the mass of his estate for partition, thus:

> What are the lands inherited by the parties from the common ancestor, the late Nicolas Magno, and what are the lands, if any, not owned by Nicolas Magno but inherited by the defendants-appellants [Teofilo Magno, *et al.*] from their respective parents, as alleged in their answer? Were some of these lands including those described in the counterclaim, acquired by either party through acquisitive prescription or adverse possession after the required number of years? We decide.
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> Land subject-matter of defendants' [Teofilo Magno, *et al.*] counterclaim. – As admitted by the defendants in their answer, there existed a property used to be covered by Tax Declaration No. 2221 in the name of Nicolas Magno. In the pre-trial conference of October 8, 1964, the parties stipulated that the land covered by Tax Declaration No. 2221 was one of the properties left by Nicolas Magno (pp. 14-15, 20-21, R.A.). In the stipulation of the parties, dated November 16, 1965, the parties admitted that Tax No. 2221 was revised in 1917 and four tax declarations were issued in lieu of Tax No. 2221 to wit: Tax No. 7819, in the name of Doroteo Magno; Tax No. 7820 in the name of Nicetas Magno; Tax No. 7821 in the name of Gavino Magno, and Tax No. 7822 in the name of Nazaria Magno (see also Exh. A.) In their counterclaim, defendants disclosed that the same land originally declared under Tax No. 2221 are now covered by Tax No. 4246 in the name of Gavino Magno, No. 13385, in the name of Nicetas Magno, and No. 4249, in the name of Nazario Magno (pp. 15-16 Record on Appeal).
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> **The lands covered by Tax Declaration Nos. 4246, 4249 and 13385 were owned by the late Nicolas Magno and must be brought into the mass of his estate.**
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> xxx xxx xxx

After a careful analysis of the evidence, We uphold the lower court's findings. We repeat, in 1946, according to defendant Isidro Cabatic, all the heirs have demanded the division of their common

properties; and in 1957 another defendant, Teofilo Magno, disclosed that plaintiffs [Gavino Magno, *et al.*] have asked for partition of the lands in question. There is no evidence to show that between 1946 and 1957, defendants have categorically apprised the plaintiffs of their repudiation of the co-ownership because they have found out that the late Doroteo Magno was the exclusive owner of all the properties by valuable or other considerations from Nicolas Magno and/or they and their predecessors have acquired ownership over the lands in question through adverse possession to the exclusion of plaintiffs and their mother. The complaint for partition was filed on January 23, 1963 or before the lapse of ten (10) years from 1957 when a chance confrontation between Teofilo Magno and plaintiffs took place in the office of Atty. Tomas Rapatalo and when defendants refused to share with the plaintiffs the harvest of the properties.[43]

Concededly, Elpidio Magno, *et al.* failed to raise the issue of *nunc pro tunc* entry at any stage of the proceeding, in order to include the subject three (3) properties among the other real properties of Nicolas Magno subject to partition, pursuant to the CFI's final decision in Civil Case No. A-413. The interest of justice, however, impels the Court to consider and resolve an issue even though not particularly raised, because it is necessary for the complete adjudication of the rights and obligations of the parties and it falls within the issues already found by them.[44] Such omission on the part of Elpidio Magno, *et al.* does not preclude the Court from appreciating the said issue, because to ignore the same would result in a situation where the said three (3) properties would remain under co-ownership, despite the clear intention of the successors-in-interest of Nicolas Magno to partition them among themselves.

Elpidio Magno, *et al.* and Lorenzo Magno, *et al.*, as successors-in-interest of Teofilo Magno, *et al.* and Gavino Magno, *et al.*, respectively, cannot be compelled to remain in the co-ownership,

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[43] *Id.* at 198-201; Court of Appeals Decision dated June 30, 1981 in CA-G.R. No. 52655-R, pp. 5-8. (Emphasis added)

[44] *Trinidad v. Acapulco*, 526 Phil. 154, 163-164 (2006).

pursuant to Article 494[45] of the New Civil Code. There being neither an agreement or condition to keep the three (3) real properties undivided, nor a law prohibiting partition of the said properties, much less a showing that any of the co-owners has acquired them by prescription, each co-owner may demand at any time the partition of the things owned in common, insofar as her share is concerned. No prejudice to any party would be caused by a *nunc pro tunc* entry in this case inasmuch as Article 494 of the same Code explicitly states that no co-owner shall be obliged to remain in the co-ownership, and each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned. Having in mind the concept of a *nunc pro tunc* entry, it bears stressing that the said properties should be subject to partition and accounting of fruits and income, strictly under the same terms as those applied to the other real properties of Nicolas Magno, as stated in the dispositive portion of the CFI Decision in Civil Case No. A-413, namely:

b) Ordering the partition of said properties in four (4) equal parts as follows: one share each of the plaintiffs, Gavino, Nicetas and Nazaria, all surnamed Magno, and the fourth share to the defendants who represent the deceased Doroteo Magno;

xxx xxx xxx

d) Ordering the defendants to account for the annual income or produce of the above-mentioned properties with the exception of

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[45] Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

the property described in the preceding paragraph, and to divide the same into four (4) equal parts in the manner above-described, commencing from 1957 until the accounting is made and the shares corresponding to the plaintiffs delivered;[46]

On a final note, partition is a right much favored, because it not only secures peace, but also promotes industry and enterprise.[47] The rule of the civil as of the common law that no one should be compelled to hold property in common with another grew out of a purpose to prevent strife and disagreement, to facilitate transmission of titles and avoid the inconvenience of joint holding.[48] The reason of the law in recognizing in favor of a co-owner the right to ask under certain limitations the partition of the property held in common is that the good faith and harmony which the law regards as necessary to exist among co-owners may sometimes be broken by one who, against the wish of others, is opposed to the further continuance of the co-ownership.[49] By reason thereof, the law allows, as a general rule, the pro-indiviso condition to cease and to proceed with the partition of the party, adjudicating as a result thereof to each of the co-owners their respective interest in the community property.[50]

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED** for lack of merit, and the Decision dated July 23, 2012 of the Court of Appeals in CA-G.R. CV No. 90846 is **AFFIRMED.** In the interest of justice, however, the Decision of the Regional Trial Court of Alaminos City, Pangasinan, Branch 54, in Civil Case No. A-1850, is **MODIFIED** in the sense that a *nunc pro tunc* judgment is hereby entered as follows:

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[46] CA *rollo*, pp. 152-153; CFI Decision dated October 5, 1972, pp. 36-37.

[47] The Revised Rules of Court in the Philippines, Special Civil Actions Volume IV-B, Part II, Vicente J. Francisco, 1973, p. 2.

[48] *Id.*, citing 40 Am. Jur. 5.

[49] *Id.* at 5.

[50] *Id.*

a) Declaring petitioners Elpidio Magno, *et al.*[51] and respondents Lorenzo Magno, *et al.*[52] as the respective successors-in-interest of Teofilo Magno, *et al.* and Gavino Magno, *et al.*, who are the legal heirs of Nicolas Magno and, thus, the absolute and exclusive owners of the three (3) real properties covered by Tax Declaration Nos. 4246, 4249 and 13385; and

b) Ordering the said three (3) properties to be subject of partition and accounting of annual income and produce, in accordance with the terms of the dispositive portion of the Decision dated October 5, 1972 of the Court of First Instance of Pangasinan in Civil Case No. A-413.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 207586. August 17, 2016]

AFP RETIREMENT AND SEPARATION BENEFITS SYSTEM (AFPRSBS), *petitioner, vs.* **EDUARDO SANVICTORES,** *respondent.*

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[51] Elpidio Magno, Heirs of Isidro M. Cabatic, namely: Jose Cabatic, Rodrigo Cabatic, and Melba Cabatic, and Odelito M. Bugayong, as Heir of the late Aurora Magno.

[52] Lorenzo Magno, Nicolas Magno, Petra Magno, Marciano Magno, Isidro Magno, Teodista Magno, Estrella Magno, Bienvenido M. de Guzman, Conchita M. de Guzman, Silary M. de Guzman, Manuel M. de Guzman and Manolo M. de Guzman.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS AND CONCLUSIONS OF AN ADJUDICATIVE BODY, ESPECIALLY WHEN AFFIRMED ON APPEAL AND SUPPORTED BY ENOUGH EVIDENCE, ARE ENTITLED TO GREAT WEIGHT, FULL RESPECT AND EVEN FINALITY BY THE SUPREME COURT; CASE AT BAR.—** In a wealth of cases, the Court has consistently ruled that factual findings and conclusions of an adjudicative body, especially when affirmed on appeal and supported by enough evidence, are entitled to great weight, full respect and even finality by this Court, because administrative agencies or quasi-judicial bodies are clothed with special knowledge and expertise on specific matters within their jurisdiction. In the absence of any proof showing grave abuse of discretion, the appellate courts will not disturb their factual findings and conclusions. In the case at bench, the HLURB, the OP and the CA were one in ruling that AFPRSBS was jointly and severally liable with PEPI to Sanvictores. The Court reviewed the records and found their factual findings and conclusions to be in accordance with the evidentiary records.

2. **CIVIL LAW; OBLIGATIONS; SOLIDARY OBLIGATIONS; A LIABILITY IS SOLIDARY ONLY WHEN THE OBLIGATION EXPRESSLY SO STATES, WHEN THE LAW SO PROVIDES OR WHEN THE NATURE OF THE OBLIGATION SO REQUIRES.—** In *Spouses Berot v. Siapno*, the Court defined solidary obligation as one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors. On the other hand, a joint obligation is one in which each debtor is liable only for a proportionate part of the debt, and the creditor is entitled to demand only a proportionate part of the credit from each debtor. The well-entrenched rule is that solidary obligations cannot be inferred lightly. They must be positively and clearly expressed. A liability is solidary "only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires." x x x Article 1207 does not presume solidary liability unless: 1] the obligation expressly so states; or 2] the law or nature requires solidarity.

3. ID.; SPECIAL CONTRACTS; AGENCY; AGENCY BY ESTOPPEL OR APPARENT AUTHORITY; THE PRINCIPAL IS BOUND BY THE ACTS OF HIS AGENT WITH THE APPARENT AUTHORITY WHICH HE KNOWINGLY PERMITS THE AGENT TO ASSUME, OR WHICH HE HOLDS THE AGENT OUT TO THE PUBLIC AS POSSESSING.— There is estoppel when the principal has clothed the agent with indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such authority. "In an agency by estoppel or apparent authority, "the principal is bound by the acts of his agent with the apparent authority which he knowingly permits the agent to assume, or which he holds the agent out to the public as possessing." "A corporation may be held in estoppel from denying as against innocent third persons the authority of its officers or agents who have been clothed by it with ostensible or apparent authority."

APPEARANCES OF COUNSEL

AFPRSBS Legal Department for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

Assailed in this Petition for Review on *Certiorari* is the November 28, 2012 Decision[1] and the June 6, 2013 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 118427, which affirmed the June 22, 2010 Decision[3] of the Office of the President *(OP)*, upholding the August 31, 2007 Decision[4] of the Housing

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[1] *Rollo*, pp. 37-48. Penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia.

[2] *Id*. at 49.

[3] *Id*. at 151-154.

[4] *Id*. at 125-127.

and Land Use Regulatory Board-Board of Commissioners *(HLURB Board)*. The decision of the HLURB Board dismissed the appeal filed by petitioner AFP Retirement and Separation Benefit System *(AFPRSBS)* together with Prime East Properties, Inc. *(PEPI)*, questioning the order of rescission of the contract of sale of the subject parcel of land.

The Antecedents

The records show that sometime in 1994, PEPI, formerly Antipolo Properties, Inc., offered to Eduardo Sanvictores *(Sanvictores)* for sale on installment basis a parcel of land in Village East Executive Homes, a subdivision project, designated as Lot 5, Block 64, Phase II, covering an area of approximately 204 square meters, and situated in Tayuman, Pantok, Binangonan, Rizal; that on April 20, 1994, Sanvictores paid the required down payment of ₱81,949.04; that on June 9, 1994, a Contract to Sell[5] was executed by and between PEPI and AFPRSBS, as the seller, and Sanvictores, as the buyer; that on February 27, 1999, Sanvictores paid in full the purchase price of the subject property in the amount of ₱534,378.79; that despite the full payment, PEPI and AFPRSBS failed to execute the corresponding deed of absolute sale on the subject property and deliver the corresponding title thereto; that on September 6, 2000, Sanvictores demanded from PEPI the execution of the deed of sale and the delivery of the transfer certificate of title; that PEPI claimed that the title of the subject property was still with the Philippine National Bank *(PNB)* and could not be released due to the economic crisis; that despite several follow-ups with PEPI, the latter did not communicate with Sanvictores for a period of four (4) years; and that, thereafter, Sanvictores filed a complaint for rescission of the contract to sell, refund of payment, damages, and attorney's fees against PEPI and AFPRSBS before the HLURB.

In its defense, PEPI argued, among others, that the complaint should be dismissed for lack of cause of action; that it could not be faulted for the delay in the delivery of the title due to

[5] *Id*. at 54-57.

force majeure; that it substantially complied with its obligations in good faith; and that it was always transparent in dealing with the public.

For its part, AFPRSBS countered that it was not the owner and developer of Village East Executive Homes but PEPI; that PEPI alone was the seller; and that Norma Espina *(Espina)* was neither the treasurer nor the authorized representative of AFPRSBS, but the Treasurer of PEPI.

The Decision of the HLURB Arbiter

On March 27, 2006, the HLURB Arbiter rendered a decision[6] in favor of Sanvictores, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Declaring the Contract to Sell executed by and between the complainant and the respondents covering the subject property as **RESCINDED**, and
>
> 2. Ordering the respondents to pay jointly and severally the complainant the following sums:
>
> a) The amount of FIVE HUNDRED THIRTY FOUR THOUSAND THREE HUNDRED SEVENTY EIGHT PESOS & 79/100 (₱534,378.79) plus twelve percent (12%) interest per annum to be computed from the date of the filing of the complaint on September 20, 2001 until fully paid,
>
> b) The amount of TEN THOUSAND PESOS (₱10,000.00) as moral damages,
>
> c) The amount of TEN THOUSAND PESOS (₱10,000.00) as exemplary damages,
>
> d) The amount of TEN THOUSAND PESOS (₱10,000.00) as attorney's fees,
>
> e) The costs of litigation, and

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[6] *Id*. at 96-100. Penned by Housing and Land Use Regulatory Board Arbiter Atty. Joselito F. Melchor.

f) An administrative fine of TEN THOUSAND PESOS (₱10,000.00) payable to this Office fifteen (15) days upon receipt of this decision, for violation of Section 20 in relation to Section 38 of PD 957.

SO ORDERED.[7]

The HLURB Arbiter ruled that Sanvictores was entitled to the reliefs he prayed for in the complaint and that the rescission of the contract to sell was just and proper because of the unjustified refusal of the seller to execute the deed of absolute sale and to deliver the title of the subject property despite the full payment of the purchase price. The seller's unjustified refusal constituted a substantive breach of its legal and contractual obligation.

Decision of the HLURB Board

On August 31, 2007, acting on the appeal of PEPI and AFPRSBS, the HLURB Board affirmed the decision of the HLURB Arbiter as it found no reversible error in the findings of fact and conclusions of the HLURB Arbiter.

The respective motions for reconsideration of PEPI and AFPRSBS were denied by the HLURB Board.

The Decision of the Office of the President

PEPI and AFPRSBS filed separate appeals before the OP with AFPRSBS insisting that it should not be held jointly and severally liable with PEPI for the refund, administrative fine and the payment of the interest. On June 22, 2010, the OP upheld the decision of the HLURB Board. It stated that in the contract to sell "PEPI and AFPRSBS were referred to singly as the 'seller,' and there were no delineations whatsoever as to their rights and obligations."[8] Hence, the OP concluded that their obligation to Sanvictores was joint and several.

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[7] *Id*. at 99-100.

[8] *Id*. at 154.

Motions for reconsideration were separately filed by PEPI and AFPRSBS, but both were denied by the OP in its February 8, 2011 Resolution.[9]

AFPRSBS alone filed a petition for review before the CA.

The CA Decision

On November 28, 2012, the CA affirmed the decision of the OP. The CA echoed the view of the OP that PEPI and AFPRSBS were indicated as the "Seller" in the subject contract, without any delineation whatsoever as to the rights and obligations of the respective parties. It wrote that PEPI and AFPRSBS came to the contracting table with the intention to be bound jointly and severally. Hence, the CA concluded that the nature of the obligation of PEPI and AFPRSBS under the subject contract was solidary pursuant to Article 1207 of the Civil Code.[10] It sustained the award of moral and exemplary damages but lowered the interest rate on the award of actual damages to 6% *per annum*. Thus, it disposed as follows:

> WHEREFORE, in view of the foregoing, the Petition is hereby DENIED and the Decision dated June 22, 2010 is AFFIRMED with modification that the interest rate on the actual damages in the amount of FIVE HUNDRED THIRTY FOUR THOUSAND THREE HUNDRED SEVENTY EIGHT PESOS & 79/100 (₱534,378.79), is REDUCED to six percent (6%) *per annum*.
>
> SO ORDERED.[11]

The CA denied the motion for reconsideration filed by AFPRSBS in its June 6, 2013 Resolution.

Hence, this petition with the following

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[9] *Id.* at 155-156.

[10] ART. 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.

[11] *Rollo,* p. 47.

ASSIGNMENT OF ERRORS

The Honorable Court of Appeals committed grave abuse of discretion and misconstrued the facts and misapplied the law when:

I It held Petitioner AFPRSBS jointly and severally liable with PEPI to the Respondent

II It held herein Petitioner AFPRSBS liable for moral and exemplary damages, costs of litigation and attorney's fees.

III It held Petitioner AFPRSBS to pay administrative fine of ten thousand pesos (₱10,000.00) payable to HLURB for violation of Section 20 in relation to Section 38 of P.D. 957.

Position of AFPRSBS

In advocacy of its position, AFPRSBS argues that it was not the owner/developer of the Village East Executive Homes subdivision, but PEPI; that all the certificates of title of the lots in the said subdivision project were in the name and possession of PEPI; that it was not the seller of the subject property, but PEPI; that although it appeared in the contract to sell that AFPRSBS was a co-seller of the subject lot, it was not signed by any of its authorized representative; that the contract to sell was signed by Espina, the Treasurer and the authorized representative of PEPI; that because it was not a party in the said contract, it could not be affected, favored or prejudiced thereby; that under Article 1311 of the Civil Code, contracts take effect only between the parties, their assigns and heirs; that it never dealt with Sanvictores with respect to the sale of the subject subdivision lot; that its officers and employees never made any representation to him relative to the subject lot; that the transaction and the communications were exclusively held between Sanvictores and PEPI as evidenced by his passbook and the letter of PEPI addressed to him, dated September 26, 2000; that the failure to deliver the title to Sanvictores was due to the mortgage of the subject lot by PEPI to PNB; that it was not a party or privy to the said mortgage; that the mortgage

was executed solely by PEPI to secure the loan it obtained from PNB as shown by the Loan Agreement and the Real Estate Mortgage; that assuming that it would be adjudged liable to Sanvictores on the basis of the said contract to sell, its liability would only be joint and not *in solidum* with PEPI; that solidary liability could not be presumed; and that it could not be liable for damages and administrative fine because it was not the owner or developer of the subject parcel of land.

Counter-Position of Sanvictores

Sanvictores countered that both PEPI and AFPRSBS were referred to as the "seller" in the contract to sell; that the signatures of their respective representatives, Espina and Menandro Mena *(Mena)*, appeared in the said contract; that AFPRSBS could not disclaim liability by the mere expedient of denying that it was not a party to the transaction and that the person who signed the contract was not authorized; that AFPRSBS should be estopped in denying the authority of their representative because it gave the latter the apparent authority to represent it in the subject transaction; that there was nothing on the face of the notarized contract to sell that would arouse any suspicion that Espina and Mena were not authorized by PEPI and AFPRSBS, respectively; that PEPI and AFPRSBS were referred to in the entire contract as "Seller" and not "Sellers," denoting that they were only one; that they came to the contracting table with the intention to be bound jointly and severally; that there was no delineation whatsoever as to their rights and obligations; that PEPI and AFPRSBS represented themselves as the "Seller" in the contract to sell and they appeared to be partners; and that AFPRSBS should be liable for moral and exemplary damages, costs of litigation and attorney's fees.

The Court's Ruling

The petition lacks merit.

In a wealth of cases, the Court has consistently ruled that factual findings and conclusions of an adjudicative body, especially when affirmed on appeal and supported by enough

evidence, are entitled to great weight, full respect and even finality by this Court, because administrative agencies or quasi-judicial bodies are clothed with special knowledge and expertise on specific matters within their jurisdiction. In the absence of any proof showing grave abuse of discretion, the appellate courts will not disturb their factual findings and conclusions.

In the case at bench, the HLURB, the OP and the CA were one in ruling that AFPRSBS was jointly and severally liable with PEPI to Sanvictores. The Court reviewed the records and found their factual findings and conclusions to be in accordance with the evidentiary records.

In *Spouses Berot v. Siapno*,[12] the Court defined solidary obligation as one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors. On the other hand, a joint obligation is one in which each debtor is liable only for a proportionate part of the debt, and the creditor is entitled to demand only a proportionate part of the credit from each debtor. The well-entrenched rule is that solidary obligations cannot be inferred lightly. They must be positively and clearly expressed. A liability is solidary "only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires." In this regard, Article 1207 of the Civil Code provides:

> Art. 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.

As can be gleaned therefrom, Article 1207 does not presume solidary liability unless: 1] the obligation expressly so states; or 2] the law or nature requires solidarity.[13]

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[12] G.R. No. 188944, July 9, 2014, 729 SCRA 475.

[13] *Guy v. Gacott,* G.R. No. 206147, January 13, 2016.

Here, there is no doubt that the nature of the obligation of PEPI and AFPRSBS under the subject contract to sell was solidary. In the said contract, PEPI and AFPRSBS were expressly referred to as the "SELLER" while Sanvictores was referred to as the "BUYER." Indeed, the contract to sell did not state "SELLERS" but "SELLER." This could only mean that PEPI and AFPRSBS were considered as one seller in the contract. As correctly pointed out by the administrative tribunals below and the CA, there was no delineation as to their rights and obligations.

Also in the said contract, the signatories were Espina, representing PEPI; Mena, representing AFPRSBS; and Sanvictores. Espina signed under PEPI as seller while Mena signed under AFPRSBS also as seller. Furthermore, the signatures of Espina and Mena were affixed again in the last portion of the Deed of Restrictions[14] under the word "OWNER" with Espina signing for PEPI and Mena for AFPRSBS.

AFPRSBS repeatedly argues that the contract was not signed by any of its authorized representative. It was resolute in its claim that Espina was not its treasurer or authorized representative. Conveniently, however, it remained silent as to Mena. It never denied that Mena was its representative.

Indeed, there could be no other conclusion except that PEPI and AFPRSBS came to the contracting table with the intention to be bound jointly and severally. AFPRSBS is estopped from denying Mena's authority to represent it. It is quite obvious that AFPRSBS clothed Mena with apparent authority to act on its behalf in the execution of the contract to sell. There is estoppel when the principal has clothed the agent with indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such authority.[15] "In an agency by estoppel or apparent authority, "the principal is bound by the

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[14] *Rollo*, pp. 58-61.

[15] *Megan Sugar Corp. v. Regional Trial Court of Iloilo, Branch 68*, 665 Phil. 245-261 (2011).

acts of his agent with the apparent authority which he knowingly permits the agent to assume, or which he holds the agent out to the public as possessing."[16] "A corporation may be held in estoppel from denying as against innocent third persons the authority of its officers or agents who have been clothed by it with ostensible or apparent authority."[17]

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

Brion, J., on leave.

SECOND DIVISION

[G.R. No. 210128. August 17, 2016]

ATTY. AMADO Q. NAVARRO, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN AND DEPARTMENT OF FINANCE-REVENUE INTEGRITY PROTECTION SERVICES (DOF-RIPS), REPRESENTED BY JOSE APOLONIO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURTS GENERALLY RESPECT THE FINDINGS OF FACT OF ADMINISTRATIVE AGENCIES, EXCEPT WHEN THE ISSUE IS WHETHER THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT SUCH FINDINGS.— Indeed, the general rule in administrative law is that the courts of justice

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[16] *Republic v. Bañez*, G.R. No. 169442, October 14, 2015.

[17] *Megan Sugar Corp. v. Regional Trial Court of Iloilo, Branch 68, supra* note 16.

should respect the findings of fact of administrative agencies. The rule, however, is not absolute as there are recognized exceptions thereto. One is when the precise issue is whether there is substantial evidence to support the findings of the administrative agency. Substantial evidence has been held as that which is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.

2. ID.; ID.; REPUBLIC ACT NO. 6713 (CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES); STATEMENT OF ASSETS, LIABILITIES AND NET WORTH (SALN); DUTY OF PUBLIC OFFICIALS AND EMPLOYEES TO DISCLOSE THEIR ASSETS, LIABILITIES AND NET WORTH ACCURATELY AND TRUTHFULLY.— The submission of a sworn SALN is expressly required by R.A. No. 6713. Section 8 thereof provides that it is the duty of public officials and employees to accomplish and submit declarations under oath of their assets, liabilities, net worth, and financial and business interests, including those of their spouses and of unmarried children under eighteen (18) years of age living in their households. The sworn statement is embodied in a *pro forma* document with specific blanks to be filled out with the necessary data or information. Insofar as the details for real properties are concerned, the information required to be disclosed are limited to the following: 1) kind, 2) location, 3) year acquired, 4) mode of acquisition, 5) assessed value, 6) current fair market value, and 7) acquisition cost. Examining the form to be filled-out, the Court notes that it requires information that gives a general statement of the assets, liabilities and net worth of an employee. This, however, does not give the employee an unbridled license to fill out the form whimsically. The contents must be true and verifiable. x x x The Court is mindful of the duty of public officials and employees to disclose their assets, liabilities and net worth accurately and truthfully. In keeping up with the constantly changing and fervent society and for the purpose of eliminating corruption in the government, the new SALN is stricter, especially with regard to the details of real properties, to address the pressing issue of transparency among those in the government service.

3. ID.; ID.; ID.; ID.; ID.; PUBLIC OFFICIALS AND EMPLOYEES ARE GIVEN OPPORTUNITY TO EXPLAIN ANY *PRIMA FACIE* APPEARANCE OF DISCREPANCY IN THEIR STATEMENTS.— Although due regard is given to those charged with the duty of filtering malicious elements in the government service, it must still be stressed that such duty must be exercised with great caution as grave consequences result therefrom. Thus, some leeway should be accorded the public officials. They must be given the opportunity to explain any *prima facie* appearance of discrepancy. To repeat, where his explanation is adequate, convincing and *verifiable*, his assets cannot be considered unexplained wealth or illegally obtained.

4. ID.; ID.; ID.; ID.; ID.; ID.; WHERE THE SOURCE OF THE UNDISCLOSED WEALTH CAN BE PROPERLY ACCOUNTED FOR, THEN IT IS "EXPLAINED WEALTH" WHICH THE LAW DOES NOT PENALIZE.— The Court has once emphasized that a mere misdeclaration in the SALN does not automatically amount to dishonesty. Only when the accumulated wealth becomes manifestly disproportionate to the income or other sources of income of the public officer/employee and he fails to properly account or explain his other sources of income, does he become susceptible to dishonesty. x x x It should be understood that the laws on SALN aim to curtail the acquisition of unexplained wealth. Where the source of the undisclosed wealth can be properly accounted for, then it is "explained wealth" which the law does not penalize.

5. ID.; ID.; DISHONESTY AND MISCONDUCT; THE ELEMENT OF INTENT TO COMMIT A WRONG EXISTS IN BOTH ADMINISTRATIVE OFFENSES OF DISHONESTY AND GRAVE MISCONDUCT WITHOUT WHICH, ADMINISTRATIVE LIABILITY CANNOT ATTACH.— Dishonesty is committed when an individual intentionally makes a false statement of any material fact, practices or attempts to practice any deception or fraud in order to secure his examination, registration, appointment, or promotion. It is understood to imply the disposition to lie, cheat, deceive, betray or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; and the lack of fairness and straightforwardness. Misconduct, on the other hand, is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an

administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest. From the given definitions above, the element of **intent to commit a wrong** exists in both administrative offenses of dishonesty and grave misconduct which, under the law, merit the penalty of dismissal from service. Thus, without any malice or wrongful intent, administrative liability cannot attach. x x x Without concrete corroborating evidence to substantiate the charges, the Court cannot simply rely on such surmises as they are "not equivalent to proof; they have little, if any, probative value and, surely, cannot be the basis of a sound judgment." The Court's decision must be based upon competent proof "for the truth must have to be determined by the hard rules of admissibility and proof."

6. ID.; ID.; ID.; NEGLIGENCE AND GROSS NEGLIGENCE; IN THE CASE OF PUBLIC OFFICIALS, THERE IS NEGLIGENCE WHEN THERE IS A BREACH OF DUTY OR FAILURE TO PERFORM THE OBLIGATION, AND THERE IS GROSS NEGLIGENCE WHEN THE BREACH OF DUTY IS FLAGRANT AND PALPABLE.— Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when the breach of duty is flagrant and palpable.

APPEARANCES OF COUNSEL

Gacayan Paredes Agmata & Associates Law Offices for petitioner.

Office of the Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the April 24, 2013

Decision[1] and the November 8, 2013 Resolution[2] of the Court of Appeals *(CA),* in CA-G.R. SP No. 124353, which affirmed the September 8, 2009 Decision[3] and the May 31, 2011 Order[4] of the Office of the Ombudsman *(Ombudsman),* in OMB-C-A-05-0260-F.

The questioned issuances of the Ombudsman found petitioner Atty. Amado Q. Navarro *(Navarro)* guilty of the administrative offenses of Dishonesty, Grave Misconduct and Violation of Republic Act *(R.A.)* No. 6713,[5] resulting in his dismissal from the service, with the accessory penalties of forfeiture of retirement benefits, except the cash equivalent of his accrued leave credits, and perpetual disqualification to hold public office.

The Antecedents

In 1980, CPA-lawyer Navarro began his employment at the Bureau of Internal Revenue *(BIR)* as Revenue Examiner I with an annual gross salary of ₱11,904.00. He then became the Revenue District Officer *(RDO)* of Baguio City and was later designated as Chief Revenue Officer IV *(CRO IV)* with an annual salary of ₱246,876.00.

The Department of Finance-Revenue Integrity Protection Service *(DOF-RIPS)*, a division of the Department of Finance *(DOF)* tasked to conduct investigations on allegations of corrupt practices of officials and employees of offices attached to or supervised by the DOF, received a complaint against Navarro.

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon, concurring. *Rollo*, pp. 38-49.

[2] *Id*. at 397-398.

[3] *Id*. at 342-361.

[4] *Id*. at 372-395.

[5] An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes.

Acting thereon, the DOF-RIPS investigated Navarro and opined that based on his Statement of Assets, Liabilities and Networth *(SALN)*, he had been steadily amassing landholdings in Baguio City since his appointment as the RDO there and had constructed three (3) structures on some of the parcels of land.[6]

On May 30, 2005, Intelligence Officers Oscar Moratin, Virman L. Sayang-od and Johnny S. Lassin, representing the DOF-RIPS, filed their Joint Complaint-Affidavit[7] before the Ombudsman against Navarro, for acts and omissions that are deemed illegal, unjust, improper, and/or otherwise irregular or immoral.[8] It was averred in the said complaint that Navarro did not properly declare his assets in his SALNs; that Navarro did not own any real property prior to his employment with the BIR in 1980; that he acquired his real properties, including a resort and commercial buildings, in Baguio City and La Union; that, even assuming they were declared under "Improvements," the amounts declared in his SALN were miniscule, as the improvements constructed were two (2) multi-storey buildings and a two-storey building;[9] and that he overstated his liabilities to decrease his networth and failed to disclose his engagement in other forms of businesses. For said reason, it was the conclusion of the DOF-RIPS that "his substantial real property ownership is manifestly out of proportion to his lawful income."[10]

On July 21, 2005, Navarro filed his Counter-Affidavit[11] in the criminal aspect thereof denying the averments therein. He attached the documents pertaining to his applicable share of ownership with his siblings over the properties enumerated in the said complaint-affidavit and his other sources of lawful income. This counter-affidavit was later considered by the Ombudsman in the administrative case.

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[6] *Rollo*, pp. 39-40.

[7] *Id.* at 71-86.

[8] *Id.* at 71.

[9] *Id.*

[10] *Id.* at 78.

[11] *Id.* at 210-217.

On April 4, 2008, the Ombudsman placed Navarro under preventive suspension pending investigation and while awaiting the adjudication of the administrative complaint against him.

On September 8, 2009, the Ombudsman rendered a decision finding Navarro guilty of dishonesty, grave misconduct and violation of R.A. No. 6713 and meted out the penalty of dismissal from the service with its accessory penalties.[12]

Navarro filed a motion for reconsideration claiming that he was deprived of his right to due process, but it was denied.

Aggrieved, he filed a petition for review under Rule 43 before the CA.

Acting thereon, the CA dismissed Navarro's petition for lack of merit as it considered the Ombudsman decision and resolution amply supported by substantial evidence. The CA was not convinced that he was denied due process. The CA was of the view that he was able to file a motion for reconsideration of the assailed decision and even attached thereto a copy of the counter-affidavit he had submitted in the criminal case against him, where he answered in detail all the accusations against him. The CA reiterated the principle that the essence of due process was simply to be heard, or as applied in administrative proceedings, to be given an opportunity to explain one's side, or to seek a reconsideration of the action or ruling complained of; and that the quantum of evidence necessary to find an individual administratively liable was merely substantial evidence.[13]

The CA found that Navarro failed to comply with his obligation as a government employee to truthfully disclose in detail all of his business interests in his SALN. The CA noted that in his SALNs submitted from 1998-2002, Navarro simply lumped together the declared properties based on their location, which

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[12] *Id*. at 362.

[13] *Id*. at 43-44.

went against the legal mandate for a government employee to submit a true and detailed statement of his assets and liabilities. Moreover, he did not disclose any of the business interests he and his wife were engaged in. The CA agreed with the Ombudsman that because his total income in 1982 from the government and from other sources was only ₱28,244.00 and that he was able to purchase a lot with improvements worth ₱55,000.00, his assets were disproportionate to his lawful income.[14]

Aggrieved, Navarro moved for a reconsideration but the CA denied his motion.

Hence, the present petition raising the following

ISSUES

I

WHETHER OR NOT THE DECISION AND ORDER OF THE RESPONDENT OMBUDSMAN, WHICH WERE AFFIRMED BY THE COURT OF APPEALS, WERE BASED ON MISAPPREHENSION OF FACTS, ON CONJECTURES, SURMISES AND SPECULATIONS, UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

II

WHETHER THE DECISION AND ORDER OF THE OFFICE OF THE OMBUDSMAN, WHICH WERE AFFIRMED BY THE COURT OF APPEALS, FAILED TO TAKE INTO ACCOUNT THE CONVINCING EXPLANATIONS OF THE PETITIONER DULY SUPPORTED BY DOCUMENTARY EVIDENCE WHICH ARE ALL PUBLIC DOCUMENTS SHOWING:

a. THAT HIS PROPERTIES WERE ALL LEGALLY ACQUIRED AND WITHIN HIS LAWFUL INCOME AS A GOVERNMENT EMPLOYEE AND FROM OTHER LAWFUL SOURCES; AND

b. THAT IF THERE WAS ANY "MISDECLARATION OR INCOMPLETE DETAILS" IN HIS SALN, THE

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[14] *Id.* at 47.

SAME WERE NOT INTENTIONAL TO CONCEAL HIS ASSETS BUT THE SAME WAS COMMITTED IN GOOD FAITH WHICH SHOULD NOT BE VISITED WITH THE EXTREME PENALTY OF DISMISSAL FROM GOVERNMENT SERVICE AND FORFEITURE OF ALL BENEFITS DUE HIM FOR MORE THAN THIRTY (30) YEARS OF DEDICATED, SATISFACTORY AND UNBLEMISHED GOVERNMENT SERVICE.

Navarro argues that the conclusion of the Ombudsman and the CA that his assets were disproportionate to his lawful income, without considering his other sources of income before and after he was taken in, was erroneous. He further explained that he could not have declared other assets as exclusively his because he co-owned those properties with his brother, Engr. Victor Navarro *(Engr. Victor),* and sister, Atty. Epifania Navarro *(Atty. Epifania),* who had assets and sources of income of their own.

In its Comment,[15] the Ombudsman insisted that there was substantial evidence to support the finding of culpability against Navarro for grave misconduct, dishonesty and violation of R.A. No. 6713 because he failed to declare true and detailed SALNs and he accumulated assets which were manifestly disproportionate to his lawful income. The Ombudsman considered such failure as constituting grave misconduct and asserted that Navarro deliberately concealed his financial and business interests in his SALNs, by intentionally lumping together all of his real properties, depending on their location and, thus, hiding the true nature of the properties.

In its Comment,[16] the DOF-RIPS argued that Navarro's disclosure of his Baguio properties was highly irregular as the said properties were lumped in a single amount, without specifying the cost and location of each property because the number of properties and their respective locations imply a higher value. As far as the declared improvements were concerned,

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[15] *Id*. at 432-446.

[16] *Id*. at 451-460.

the DOF-RIPS claimed that the stated value thereof did not match the kind of buildings constructed on the lots. It added that Navarro misdeclared the cost of the improvements on certain La Union properties, which he co-owned with his relatives, by not specifying his proportionate shares in the said improvements.

The DOF-RIPS also averred that the records showed that Navarro was usually joined by his siblings in the acquisition of real properties as well as in the construction of the improvements. Thus, the values indicated in Navarro's SALNs should have been equivalent to his proportionate shares in the commonly owned properties. It admitted though that this was so in Navarro's SALNs for the years 1980, 1981, 1982, 1990, 1993, and 1994.

The DOF-RIPS agreed with the Ombudsman and the CA that the rest of Navarro's SALNs were laden with numerous discrepancies and so they could not be possibly considered truthful statement of his assets, liabilities and business interests.

The pleadings show that the central issue to be addressed is whether Navarro's failure to declare with particularity his assets and business interests in his SALN was a sufficient ground to hold him administratively liable for the offenses of dishonesty and grave misconduct, warranting his dismissal from the service. The Ombudsman stated that he committed misdeclaration, over-declaration and nondeclaration of his assets and liabilities in his SALNs.

Ruling of the Court

The Court finds merit in the petition.

Indeed, the general rule in administrative law is that the courts of justice should respect the findings of fact of administrative agencies. The rule, however, is not absolute as there are recognized exceptions thereto. One is when the precise issue is whether there is substantial evidence to support the findings of the administrative agency.[17] Substantial evidence has been

[17] *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842, 877 (2007).

held as that which is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[18]

The SALN and the Manner of Accomplishing it

The submission of a sworn SALN is expressly required by R.A. No. 6713.[19] Section 8 thereof provides that it is the duty of public officials and employees to accomplish and submit declarations under oath of their assets, liabilities, net worth, and financial and business interests, including those of their spouses and of unmarried children under eighteen (18) years of age living in their households. The sworn statement is embodied in a *pro forma* document with specific blanks to be filled out with the necessary data or information. Insofar as the details for real properties are concerned, the information required to be disclosed are limited to the following: 1) kind, 2) location, 3) year acquired, 4) mode of acquisition, 5) assessed value, 6) current fair market value, and 7) acquisition cost.

Examining the form to be filled-out, the Court notes that it requires information that gives a general statement of the assets, liabilities and net worth of an employee. This, however, does not give the employee an unbridled license to fill out the form whimsically. The contents must be true and verifiable.

In the subject years or before 2011, public officers and employees accomplished their SALNs by filling out the prescribed form drawn up by the Civil Service Commission *(CSC)*. As can be gleaned therefrom, what was only required

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[18] *Gupilan-Aguilar v. Office of the Ombudsman*, G.R. No. 197307, February 26, 2014, 717 SCRA 503, 532.

[19] An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes.

was a statement of one's assets and liabilities in general. There appeared to be no obligation to state in detail his assets and liabilities in the prescribed form.

On July 8, 2011, the CSC came out with CSC Resolution No. 1100902, prescribing the guidelines in the filling out of the Revised SALN form for the year 2011.

On March 15, 2012, however, the CSC issued CSC Resolution No. 1200480 *deferring* the implementation of CSC Resolution No. 1100902 for several reasons, one of which was the concern of the Senate Committee that "the majority of government workers are unequipped with sufficient knowledge on how to accomplish the said form properly."[20]

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[20] **Civil Service Resolution No. 1200480**
Re: DEFERMENT OF THE USE OF THE
REVISED SALN FORM
FOR YEAR 2011
x————————————————-x

Number. 1200480

Promulgated: 15 MAR 2012

RESOLUTION

WHEREAS, the Civil Service Commission issued **CSC Resolution No. 1100902** dated July 8, 2011, which prescribes the Guidelines in the Use of the Revised Statement of Assets, Liabilities and Net Worth (SALN) Form for Year 2011 and Onwards;

WHEREAS, Memorandum Circular No. 19 dated August 17, 2011 was also issued, enjoining all public officers and employees to use the Revised SALN Form for year 2011 and onwards;

WHEREAS, the Commission received several requests for deferment from various sectors such as the Philippine Government Employees Association, Local Government Mechanical Engineers' Association of the Philippines, Asian Labor Network on International and Financial Institutions/Philippine Chapter, and the National Convention of Government Employees Working Council, all claiming that government workers have not fully comprehended the requirements in filling out the new form;

WHEREAS, the House Committee on Civil Service and Professional Regulation passed House Resolution No. 2199 requesting the Commission to study the legality of the Revised SALN Form, while the Senate Committee on Civil Service and Government Reorganization, headed by Senator Antonio F. Trillanes IV, wrote the Commission on February 27, 2012, stating that

Nondeclaration or Concealment

Refuting the conclusion reached by the Ombudsman and the CA, Navarro submits that he accomplished his annual SALN in accordance with the prescribed format by the CSC, the details of which, to the best of his knowledge and belief, were generally accepted in the government service and was in substantial compliance with the provisions of law.[21]

After a thorough study on the matter, the Court is of the considered view that Navarro's "lumping" of his properties in his SALN starting in the year 1998 did not, *per se*, amount to making an untruthful statement. A perusal of the records would show that whatever properties were combined, grouped or lumped together from that year onwards were the same properties previously declared, adding only those new or recent acquisitions. The respondents did not identify a property which he did not declare.

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the Revised SALN Form has possible constitutional infirmity, illegality and/or impracticality;

WHEREAS, the Senate Committee also expressed concern that **majority of government workers are unequipped with sufficient knowledge on how to accomplish the said form properly**;

WHEREAS, in view of the foregoing considerations, both Committees requested the Commission to defer the implementation of CSC Resolution No. 1100902 until the issues raised are settled;

WHEREAS, the Commission maintains that the Revised SALN Form is anchored on subsisting laws that require the submission of SALN. However, keeping an open mind, the Commission agreed to undertake a more thorough and comprehensive review of the issues raised as it will greatly affect the proper filling out of the Revised SALN Form;

WHEREFORE, foregoing premises considered, the Commission hereby RESOLVES **to defer** the use of the Revised SALN Form for the year 2011; RESOLVED FURTHER that the 1994 SALN Form shall be used for the 2011 declarations, deadline of submission on April 30, 2012. However, those who have already submitted their SALN for 2011 using the Revised SALN Form shall be considered as having complied with the required filing. [http://www.gov.ph/2012/03/15/csc-resolution-no-1200480-s-2012/Last visited May 14, 2016]. (Emphases supplied)

[21] *Rollo*, p. 30.

As properly explained by Navarro, the properties, ascribed to him but which were not declared by him, were not his. The improvements on the property located at No. 148 Rimando Road, Baguio City, were not his. This property belonged to Merceditas Navarro, wife of his brother, Engr. Victor. His property was at No. 140 Rimando Road, where two buildings were then being constructed. One was his and the other one belonged to Atty. Epifania, his sister. He could not include their properties or shares in his SALNs as these were not owned by him, not being claimed by him, and not declared in his name.[22]

There was no clear proof either that Engr. Victor and Atty. Epifania were his dummies. Navarro claimed that Engr. Victor was a civil engineer, a sanitary and geodetic engineer and the sole distributor of almost all the national daily newspapers in Baguio City and the Cordillera region; while Atty. Epifania is a CPA and a bar topnotcher from the Ateneo de Manila University. Both, as practitioners of their professions, earned more than he did. Pooling their resources, they bought properties near their ancestral home where they were born.[23]

Over-declaration of acquisition costs in the 1996 SALN

The DOF-RIPS charged that Navarro over-declared the total acquisition cost of his real properties in the 1996 SALN by as much as ₱260,000.00. It explained that his 1994 SALN only showed a total amount of ₱350,000.00 as the acquisition cost for land which suddenly increased to ₱980,000.00 in 1996, though records revealed a total of ₱720,000.00 after adding his proportionate share in the acquisitions he made in the said year in the amount of ₱370,000.00.[24]

At the outset, Navarro had pointed out that the over-declaration of his property was not used as a ground by the Ombudsman to justify the conclusion in its September 8, 2009 decision. It

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

[23] *Id*. at 26.

[24] *Id*. at 460.

was brought about *for the first time* in the Ombudsman Order, dated May 31, 2011, which denied his motion for reconsideration.

At any rate, Navarro disputed the charges and explained that there was a purchase of property in the year 1995 in the amount of ₱400,000.00, half of which pertained to him. Although the terms and conditions were finalized in 1995, but because of some infirmities in the documentation, the transfer was only effected late in the year 1997. As far as the remaining ₱60,000.00 was concerned, it referred to a purchase of real property in the amount of ₱120,000.00, half of which belonged to him. Navarro also admitted that the latter property was being introduced for the first time in this petition to prove that his declarations in all his SALNs were true to the best of his knowledge and information and that there was no intention to conceal the said property and the transaction as they were, in fact, declared in his SALN. He added that he did not touch on them as they were never alleged or put in issue in the complaint-affidavit.[25]

The above explanation, however, did not convince the DOF-RIPS. It stressed that there was no evidence of the 1995 sale because the purchase was made only in 1997 as evidenced by the deed of sale. Hence, it concluded that there was over-declaration in the 1996 SALN of Navarro.

Following Navarro's explanation, the property subject of the sale in 1995 was the same property subject of the transfer made in 1997. He really acquired an interest in the property in 1995 so that in his 1996 SALN, as the sale was finalized in 1995, he already declared the property.

To the Court, this is an acceptable explanation for the increase in the total amount of acquisition costs in his 1996 SALN. That the documentation was finally perfected in 1997 had no controlling significance because he actually claimed the property as his and so declared it in his 1996 SALN. The Court sees nothing wrong with such reporting.

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[25] *Id*.

The records further revealed that in the 1996 SALN, Navarro separately indicated the year of acquisition of each of his Baguio properties as 1981, 1987, 1990, **1995**, and 1996. The total cost of these acquisitions amounted to **₱535,000.00**. In his 1998 SALN, he lumped all of his Baguio properties, indicating "1981 to 1997" as the years of acquisition, the total cost of which amounted to **₱735,000.00**. The last amount remained consistent over the succeeding SALNs as there were no other Baguio purchases made.

When Navarro included "1997" in his 1998 SALN, it meant that he declared a purchase made in that year. Considering that the records showed no other purchase in 1997 but the property subject of the December 31, 1997 deed of sale with the consideration of ₱400,000.00, half of which belonged to him, it could be fairly deduced that the said property was the "1997" referred to in the 1998 SALN resulting in the increase of ₱200,000.00 in the total acquisition cost.

Following Navarro's explanation that the property he declared in his 1996 SALN was the very same property he added in 1997, then there was double declaration resulting in an inaccuracy – the over-declaration of ₱200,000.00. Because the common practice in accomplishing the SALN is copying the entries in the immediately preceding year and just adding any subsequent acquisitions,[26] inaccuracies are very likely to happen. In this regard, Navarro was remiss in failing to rectify the details of his SALN. His attention regarding the double declaration, however, should have been called so he could have made the necessary corrective action, as will be shown later.

Nondeclaration of business interests as well as a specific improvement

The DOF-RIPS also charged Navarro with failure to specifically disclose his and his wife's business interests in his SALNs. Navarro himself submitted certifications showing his other sources of income and also admitted renting out

[26] *Pleyto v. PNP-CIDG, supra* note 17, at 906.

apartment units and public store spaces as early as 1984, yet these were never declared in any of his SALNs.[27] Navarro, however, insisted that incomes from all sources were properly declared in his Income Tax Returns *(ITR)*.[28] In resolving this matter, the Ombudsman found that:

> As to his business interests, the respondent, at the time of accomplishing and filing his SALNs, **did not disclose with particularity the businesses he and his wife were engaged in, although there was a declaration as to the existence of these interests**. On the contrary, the complainant was able to gather documents showing that they operate a grocery/general merchandise store, bicycles for hire, a resort, the renting out of stalls and apartment units, and a gasoline station. These, again, constitute misdeclaration.[29] [Emphasis Supplied]

Affirming the findings of the Ombudsman, the CA concluded that Navarro failed to comply with his obligation as a government employee to truthfully disclose in detail all of his business interests in his SALNs.[30] The CA stated that the petitioner failed to declare in his SALNs 1] the 504 sq. m. property which he and his brother Engr. Victor purchased for ₱400,000.00 in December 1997; and 2] his business interests and those of his wife.

As earlier pointed out, the alleged nondeclaration of his share in the 504 sq. m. property was adequately explained. It was already declared upon completion of the transaction but the documentation was finalized only two years later because of some infirmities therein. With respect to Navarro's business interest, the Court is satisfied with his explanation. Thus:

> (c) x x x. The details required in the prescribed format of the statement were all indicated properly and adequately. The Petitioner's

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[27] *Rollo*, p. 464.

[28] *Id*. at 29.

[29] *Id*. at 355.

[30] *Id*. at 47.

declarations, as well as all those required to accomplish and file a SALN, are limited by the fields of information required in the prescribed form. The details in question in the subject decision of the Office of the Ombudsman are **not required** in the prescribed form of the SALN as provided by the Civil Service Commission in use for the years in question. The details in question have been addressed and are **now required** in the Revised SALN Form as prescribed by the Civil Service Commission, the use of which has been, however, **deferred** for reasons cited for 2011 declarations of those required to accomplish and submit a SALN. xxx[31] [Emphases supplied]

In *Pleyto vs. PNP-Criminal Investigation & Detection Group (Pleyto)*,[32] the Court held that neither could the failure to answer the question "Do you have any business interest and other financial connections including those of your spouse and unmarried children living in your household?" be tantamount to gross misconduct or dishonesty. In this case, Navarro did not conceal any business interest of his wife because he had disclosed the same and other sources of income with proof thereof. As likewise held in *Pleyto*, a disclosure of his wife's occupation would be inconsistent with the charge that he concealed his and his wife's business interests.

As regards the nondeclaration of a specific improvement, the DOF-RIPS averred that Navarro owned the improvement located at No. 148 Rimando Road, Baguio City, but it was not declared in his SALN. It further claimed that, contrary to his self-serving statement of not owning the said property, Navarro failed to present any document to disprove his presumed ownership of the lot as shown by its corresponding tax declaration. The Ombudsman agreed with the DOF-RIPS that Navarro was not able to rebut the presumption of such ownership.[33]

As earlier pointed out, however, the properties which were being ascribed to Navarro did not belong to him and had never

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[31] *Id.* at 30.

[32] *Supra* note 17.

[33] *Rollo*, p. 390.

been claimed by him. The improvements located at No. 148 Rimando Road, Baguio City, could not be his because the property at No. 148 Rimando belonged to Merceditas Navarro, wife of his brother, Engr. Victor. His property was at No. 140 Rimando Road, where two buildings were then being constructed. One was his, as properly explained, and the other one belonged to Atty. Epifania, his sister. The important point was that the parcel of land covered by the said tax declarations and deed of sale was, in fact, declared in his SALN.

Corrective Action

Navarro, at the outset, has claimed that he filled out and accomplished the annual SALN in accordance with the prescribed format by the CSC, the details of which, to the best of his knowledge and belief, were generally accepted in the government service and were in substantial compliance with the provisions of law. He was never informed by the applicable office of any incompleteness or any impropriety in the accomplishment of his SALNs.[34]

In this regard, Navarro is correct. The appropriate office or committee should have given him the opportunity to correct the entries to conform to the prescribed requirements at that time. Section 10 of R.A. No. 6713 covering Review and Compliance Procedure and its Implementing Rules and Regulations *(IRR)*, provide that in the event the authorities determine that a statement is not properly filed, *the appropriate committee shall inform the reporting individual and direct him to take the necessary corrective action.* Section 10 reads:

Section 10. Review and Compliance Procedure. - (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements which have been submitted on time, are complete, and are in proper form. In the event a determination is made that a statement is not so filed, **the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.**

[34] *Id.* at 30.

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of Congress shall have the power within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.

(c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department. [Emphasis supplied]

Section 1, Rule VIII, Review and Compliance Procedure of the Rules Implementing the Code Of Conduct And Ethical Standards For Public Officials And Employees R.A. No. 6713 reads:

Section 1. The following shall have the authority to establish compliance procedures for the review of statements to determine whether said statements have been properly accomplished:

(a) In the case of Congress, the designated committees of both Houses of Congress subject to approval by the affirmative vote of the majority of the particular House concerned;

(b) In the case of the Executive Department, the heads of the departments, offices and agencies insofar as their respective departments, offices and agencies are concerned subject to approval of the Secretary of Justice.

(c) In the case of the Judicial Department, the Chief Justice of the Supreme Court; and

(d) In the case of the Constitutional Commissions and other Constitutional Offices, the respective Chairman and members thereof; in the case of the Office of the Ombudsman, the Ombudsman.

The above official shall likewise have the authority to render any opinion interpreting the provisions on the review and compliance procedures in the filing of statements of assets, liabilities, net worth and disclosure of information.

In the event said authorities determine that a statement is not properly filed, they shall inform the reporting individual and direct him to take the necessary corrective action.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in the Code. [Emphasis Supplied]

Given the opportunity, Navarro could have disclosed the acquisition costs and cost of the improvements in a more detailed way. His failure to amend his presentation, without his attention on the matter being called, cannot be considered as indicative of an untruthful declaration of his assets. Unless there is a concrete proof that the values or acquisition costs stated in Navarro's SALNs were not what they were supposed to be, then a conclusion that the same were untruthful cannot be reached.

Dishonesty and Grave Misconduct

Dishonesty is committed when an individual intentionally makes a false statement of any material fact, practices or attempts to practice any deception or fraud in order to secure his examination, registration, appointment, or promotion. It is understood to imply the disposition to lie, cheat, deceive, betray or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; and the lack of fairness and straightforwardness.[35]

Misconduct, on the other hand, is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions

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[35] *Office of the Ombudsman v. Bernardo*, 705 Phil. 524, 542 (2013), citing *Office of the Ombudsman v. Valencia*, 664 Phil. 190 (2011).

and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.[36]

From the given definitions above, the element of **intent to commit a wrong** exists in both administrative offenses of dishonesty and grave misconduct which, under the law, merit the penalty of dismissal from service. Thus, without any malice or wrongful intent, administrative liability cannot attach.

Here, there was no substantial evidence showing any malice or intent to deceive on the part of Navarro in accomplishing the questioned SALNs. Navarro would not have endeavoured to produce voluminous documents to prove that he truthfully declared his properties, albeit lumped together, if his intention was to conceal them. The documents he submitted showed the veracity of the acquisitions he made and their respective costs as reflected in his SALNs. The physical impression of the DOF-RIPS of what and how the properties actually looked, without anything more concrete than mere conjectures that the said properties commanded a higher value or that the amounts did not match the kind of buildings constructed thereon, would not make Navarro's SALNs any less truthful.

The Court cannot help but observe that the charges filed by the DOF-RIPS against Navarro, that his SALNs bore misdeclarations, over-declarations and nondeclarations, are based on mere speculations and conjectures. Without concrete corroborating evidence to substantiate the charges, the Court cannot simply rely on such surmises as they are "not equivalent to proof; they have little, if any, probative value and, surely, cannot be the basis of a sound judgment."[37] The Court's decision must be based upon competent proof "for the truth must have to be determined by the hard rules of admissibility and proof."[38]

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[36] *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013).

[37] *Roque v. Comelec*, 626 Phil. 75, 83 (2010).

[38] *Lagon v. Hooven Comalco Industries, Inc.*, 402 Phil. 404, 422 (2001).

The Court has once emphasized that a mere misdeclaration in the SALN does not automatically amount to dishonesty. Only when the accumulated wealth becomes manifestly disproportionate to the income or other sources of income of the public officer/employee and he fails to properly account or explain his other sources of income, does he become susceptible to dishonesty.[39] Although there appeared to have a *prima facie* evidence giving rise to the presumption of accumulation of wealth disproportionate to his income, Navarro was able to overcome such presumption by coming out with documentary evidence to prove his financial capacity to make the subject acquisitions and to prove that the amounts he stated in his SALNs were true. It should be understood that the laws on SALN aim to curtail the acquisition of unexplained wealth. Where the source of the undisclosed wealth can be properly accounted for, then it is "explained wealth" which the law does not penalize.[40]

Considering that Navarro sufficiently explained his acquisitions as well as his other lawful sources of income to show his and his wife's financial capacity to acquire the subject real properties, he cannot be deemed to have committed dishonesty. He cannot be adjudged guilty of grave misconduct either as his alleged "lumping" of real properties in his SALN did not affect the discharge of his duties as a revenue officer.

The question now is: did he commit simple negligence for improperly accomplishing his SALNs?

A review of the case and the applicable rules and jurisprudence guides the Court to a negative finding.

Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. In the case of public officials, there is negligence when there is

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[39] *Office of the Ombudsman v. Racho,* 656 Phil. 148, 164 (2011).

[40] *Gupilan-Aguilar v. Office of the Ombudsman*, *supra* note 18, at 536, citing *Office of the Ombudsman v. Racho*, 656 Phil. 148 (2011).

a breach of duty or failure to perform the obligation, and there is gross negligence when the breach of duty is flagrant and palpable.[41]

As previously discussed, however, evident bad faith was wanting on the part of Navarro. Although it is the duty of every public official/employee to properly accomplish his/her SALN, it is not too much to ask for the head of the appropriate department/office to have called his attention should there be any incorrectness in his SALN. The DOF, which has supervision over the BIR, could have directed Navarro to correct his SALN. This is in consonance with the above-quoted Review and Compliance Procedure under R.A. No. 6713, as well as its Implementing Rules and Regulations *(IRR)*, providing for the procedure for review of statements to determine whether they have been properly accomplished. To reiterate, it is provided in the IRR that in the event authorities determine that a SALN is not properly filed, they should **inform the reporting individual and direct him to take the necessary corrective action**.

In this case, however, Navarro was not given the chance to rectify the nebulous entries in his SALNs. Instead, the DOF, through its RIPS, filed a complaint-affidavit with the Ombudsman on the ground that his SALN was "generalized." Regardless, Navarro was able to show and explain the details of his SALN when he submitted his counter-affidavit with the necessary documents, to which the DOF-RIPS and the Ombudsman and the CA coldly closed their eyes.

As there was only a failure to give proper attention to a task expected of an employee because of either carelessness or indifference,[42] Navarro should have been informed so he could have made the necessary explanation or correction. There is nothing wrong with a generalized SALN if the entries therein can be satisfactorily explained and verified.

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[41] *Office of the Ombudsman v. Bernardo*, *supra* note 35, citing *Pleyto v. PNP-CIDG*, 563 Phil. 842, 906 (2007).

[42] *Office of the Ombudsman v. Racho, supra* note 39.

Lest it be misunderstood, the corrective action to be allowed should only refer to typographical or mathematical rectifications and explanation of disclosed entries. It does not pertain to hidden, undisclosed or undeclared acquired assets which the official concerned intentionally concealed by one way or another like, for instance, the use of dummies. There is actually no hard and fast rule. If income has been actually reported to the BIR in one's ITR, such fact can be considered a sign of good faith.

The Court is not unaware that in the cases of *Office of the Ombudsman v. Bernardo (Bernardo)*[43] and *Pleyto,* the officers concerned were adjudged liable for simple neglect of duty and meted out the penalty of suspension of six (6) months for filing generalized SALNs. In *Pleyto*, it was written:

> xxx It also rules that while petitioner may be guilty of negligence in accomplishing his SALN, he did not commit gross misconduct or dishonesty, for there is no substantial evidence of his intent to deceive the authorities and conceal his other sources of income or any of the real properties in his and his wife's names. Hence, the imposition of the penalty of removal or dismissal from public service and all other accessory penalties on petitioner is indeed too harsh. **Nevertheless, petitioner failed to pay attention to the details and proper form of his SALN, resulting in the imprecision of the property descriptions and inaccuracy of certain information, for which suspension from office for a period of six months, without pay, would have been appropriate penalty.** [Emphasis Supplied]

A careful reading of *Bernardo* and *Pleyto*, however, discloses that Navarro is not similarly situated. In the two cases, the public officials concerned did not include or specify the business interests and other sources of income of their respective spouses. In this case, Navarro disclosed their common assets and sources although his presentation was wanting in some details. During the investigation and in his pleadings, he was able to explain the cited incongruity.

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[43] *Supra* note 35.

The Court is mindful of the duty of public officials and employees to disclose their assets, liabilities and net worth accurately and truthfully. In keeping up with the constantly changing and fervent society and for the purpose of eliminating corruption in the government, the new SALN is stricter, especially with regard to the details of real properties, to address the pressing issue of transparency among those in the government service. Although due regard is given to those charged with the duty of filtering malicious elements in the government service, it must still be stressed that such duty must be exercised with great caution as grave consequences result therefrom. Thus, some leeway should be accorded the public officials. They must be given the opportunity to explain any *prima facie* appearance of discrepancy. To repeat, where his explanation is adequate, convincing and *verifiable,* his assets cannot be considered unexplained wealth or illegally obtained.

WHEREFORE, the petition is **GRANTED.** The April 24, 2013 Decision of the Court of Appeals, in CA-G.R. SP No. 124353, is hereby **REVERSED** and **SET ASIDE** and another one entered exonerating respondent Atty. Amado Q. Navarro of the charges against him.

SO ORDERED.

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

Brion, J., on leave.

SECOND DIVISION

[G.R. No. 210218. August 17, 2016]

NATIONAL POWER CORPORATION, *petitioner, vs.* **HEIRS OF ANTONINA RABIE, represented by ABRAHAM R. DELA CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; JUDGMENTS; EXECUTION PENDING APPEAL; EXECUTION PENDING APPEAL, ALSO CALLED DISCRETIONARY EXECUTION, IS ALLOWED UPON GOOD REASONS TO BE STATED IN A SPECIAL ORDER AFTER DUE HEARING; CASE AT BAR.— Execution pending appeal, also called discretionary execution under Section 2(a), Rule 39 of the Rules of Court, is allowed upon good reasons to be stated in a special order after due hearing. x x x In this case, the motion for execution pending appeal was filed by respondents seven days after their receipt of the trial court's order denying the motions for reconsideration filed by both parties. Clearly, respondents filed the motion for execution pending appeal before the lapse of the period to file an appeal, which is fifteen days from notice of the order denying the motion for reconsideration. Therefore, the trial court still had jurisdiction when respondents filed their motion for execution pending appeal. Further, prior to transmittal of the records of the case, the trial court does not lose jurisdiction over the case and in fact, may issue an order for execution pending appeal.

2. ID.; ID.; ID.; ID.; ID.; DISCRETIONARY EXECUTION DOES NOT APPLY TO EMINENT DOMAIN PROCEEDINGS.— While the trial court still had jurisdiction when it issued the order granting execution pending appeal, the Court holds that discretionary execution does not apply to eminent domain proceedings. In *Spouses Curata v. Philippine Ports Authority*, where movants alleged advanced age as ground for their motion for discretionary execution, the Court found the trial court to have committed grave abuse of discretion in issuing the order granting execution pending appeal. The Court held that

discretionary execution is not applicable to expropriation proceedings.

3. **ID.; ID.; ID.; ID.; ID.; A MERE STATEMENT OF "GOOD REASONS AS STATED IN THE MOTION" DOES NOT SUFFICE TO JUSTIFY EXECUTION PENDING APPEAL.—** A mere statement of "good reasons as stated in the motion" does not suffice to justify execution pending appeal. It is basic that the trial court should make a finding on whether the allegations in the motion for execution pending appeal constitute good reasons as required in Section 2 of Rule 39. The trial court should have expressed clearly and distinctly the facts and law on which the order granting the motion for execution pending appeal was based, but it did not. Without such finding, the allegations in the motion for execution pending appeal remain as allegations. Consequently, the trial court committed grave abuse of discretion in granting discretionary execution without stating and explaining clearly the basis therefor.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Alarice L. Yang for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review on certiorari[1] assails the 28 November 2013 Decision[2] of the Court of Appeals in CA-G.R. SP No. 131335, dismissing the petition for certiorari filed by petitioner National Power Corporation (NAPOCOR).

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 46-59. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring.

The Facts

NAPOCOR is a government-owned and controlled corporation created pursuant to Republic Act No. 6395,[3] as amended. Under the EPIRA,[4] NAPOCOR was tasked to perform the missionary electrification function and to provide power generation and its associated power delivery systems in areas that are not connected to the transmission system.

On 1 December 2009, NAPOCOR filed a complaint for expropriation[5] against respondents Heirs of Antonina Rabie (respondents) for the acquisition of the 822-square meter portion of Lot No. 1439, a residential lot located in Barangay Lewin, Lumban, Laguna consisting of 12,657 square meters and covered by Original Certificate of Title No. P-9196, to be used as access road for the Caliraya Hydro Electric Power Plant of the Caliraya-Botocan-Kalayaan Build Rehabilitate and Operate Transfer Project of the NAPOCOR. The case was raffled to Regional Trial Court, Branch 91, Sta. Cruz, Laguna (trial court) and docketed as Civil Case No. SC-4842.

On 25 February 2010, respondents filed a Verified Answer,[6] claiming that the then current market value of the property was ₱10,000 per square meter on the inner portion and ₱12,000 per square meter near the highway. Respondents prayed, among others, for a just compensation in the amount of ₱1,250,700, representing the Bureau of Internal Revenue (BIR) zonal valuation for the "actual area to be occupied" by NAPOCOR which is 2,274 square meters, instead of 822 square meters only. In addition, respondents sought payment for NAPOCOR's alleged unauthorized entry and use of the property from 1940 to date.

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[3] An Act Revising the Charter of the National Power Corporation.

[4] Republic Act No. 9136 or the *Electric Power Industry Reform Act of 2001*.

[5] *Rollo,* pp. 91-95.

[6] *Id*. at 102-112.

On 5 July 2010, NAPOCOR deposited with the Land Bank of the Philippines (Land Bank) the amount of ₱411,000 representing the BIR zonal valuation of the affected portion of the subject property, which was ₱500 per square meter.

Respondents filed a Motion to Withdraw Deposit dated 15 November 2010,[7] which the trial court granted in an Order dated 17 November 2010.[8]

NAPOCOR filed a Motion to Issue Order of Expropriation dated 18 March 2011.[9] NAPOCOR also filed a Motion for Annotation/Registration of Partial Payment dated 7 June 2011.[10]

In an Order dated 5 October 2011,[11] the trial court granted the motions and constituted the Board of Commissioners to assist the trial court in the determination of just compensation for the affected portion of the subject property.

On 8 February 2012, the Board of Commissioners submitted its Report. On 17 May 2012, NAPOCOR filed its Comment/ Opposition to the Commissioners' Report objecting to the recommendation that the affected portion of the subject property consists of 2,274 square meters and that the value per square meter is ₱11,000. NAPOCOR also questioned the Commissioners' recommendation on the payment of rentals and the fact that NAPOCOR was not given the opportunity to be heard and to argue as to the amount of just compensation.

On 29 January 2013, the trial court issued an Order, the dispositive portion of which reads:

> WHEREFORE, the Eight Hundred Twenty Two (822) square meters of the land owned by the defendants is hereby expropriated in favor of the National Power Corporation effective December 2009 upon

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[7] *Id*. at 113-115.

[8] *Id*. at 117.

[9] *Id*. at 118-121.

[10] *Id*. at 122-125.

[11] *Id*. at 126-127.

payment of the fair market value of the property at Eleven Thousand (₱11,000.00) Pesos per square meter or a total of Nine Million Forty-Two Thousand (₱9,042,000.00) Pesos. Defendants' claim that said property was occupied by plaintiff since 1940 is unrebutted, hence, reasonable rentals of Twelve Thousand Pesos (₱12,000.00) yearly is hereby awarded to defendants from the year 1940 to the present at a twelve percent (12%) annual interest rate, until fully paid.

SO ORDERED.[12]

On 8 March 2013, NAPOCOR filed a Motion for Reconsideration of the Order. However, the trial court denied the motion in an Order dated 30 April 2013[13] which was received by NAPOCOR on 23 May 2013 and by respondents on 15 May 2013.

On 22 May 2013, respondents filed a Motion for Execution Pending Appeal.[14] NAPOCOR filed its Comment/Opposition thereto on 4 June 2013.

On 6 June 2013, NAPOCOR filed its Notice of Appeal and Record on Appeal.[15]

In an Order dated 18 June 2013,[16] the trial court gave due course to NAPOCOR's Notice of Appeal and directed the transmittal of the records of the case to the Court of Appeals.

The trial court set for hearing respondents' Motion for Execution Pending Appeal on 10 July 2013.

On 11 July 2013, the trial court issued an Order granting respondents' Motion for Execution Pending Appeal.[17] The trial court held:

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[12] *Id*. at 151. Penned by Judge Divinagracia G. Bustos-Ongkeko.

[13] *Id*. at 161.

[14] *Id*. at 162-170.

[15] *Id*. at 184-190.

[16] *Id*. at 191.

[17] *Id*. at 84-85.

In determining the propriety of execution of its Order dated January 29, 2013, pending appeal, showing good reasons as stated in the motion and while the Court has its jurisdiction over the case and still in possession of original record thereof or the record on appeal, the Court grants the "Motion for Execution Pending Appeal."[18]

On 12 July 2013, the trial court's Officer-in-Charge issued a Writ of Execution.[19] Sheriff Raymundo P. Claveria issued a Notice[20] addressed to the President of NAPOCOR demanding payment of ₱9,042,000 and ₱12,000 yearly rentals plus 12% interest from 1940 up to the present until fully paid within ten days from receipt thereof.

On 30 July 2013, NAPOCOR received a letter from the LBP-NAPOCOR Extension Office informing NAPOCOR of its receipt of a Notice of Garnishment in the amount of ₱14,873,999.28 issued by Sheriff Claveria.

Aggrieved, NAPOCOR filed with the Court of Appeals a petition for certiorari under Rule 65, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

On 28 November 2013, the Court of Appeals rendered a Decision dismissing the petition.

Hence, this petition filed on 23 January 2014.

On 22 October 2014, respondents filed an Omnibus Motion (to Dismiss and to Cite Petitioner in Contempt), contending that NAPOCOR is guilty of forum-shopping considering that there is another petition[21] filed by NAPOCOR before this Court (docketed as G.R. No. 214070). Respondents alleged that G.R. No. 214070 involves the same parties and the same facts and

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[18] CA *rollo*, p. 29.

[19] *Rollo*, pp. 86-87.

[20] *Id.* at 88.

[21] G.R. No. 214070 entitled *National Power Corporation v. Court of Appeals (Former Second Division) and Heirs of Antonina Rabie, represented by Abraham R. Dela Cruz.*

seeks the same relief of preventing the implementation of the trial court's Order dated 11 July 2013 granting execution pending appeal and the Order dated 29 January 2013 ordering NAPOCOR to pay just compensation to respondents.

In its 19 November 2014 Resolution, the Court noted the motion.

In its 29 September 2014 Resolution, the Court dismissed the petition in G.R. No. 214070 for NAPOCOR's failure to sufficiently show that the assailed resolutions of the Court of Appeals, dated 15 April 2014 and 8 August 2014, are tainted with grave abuse of discretion. The 15 April 2014 Resolution of the Court of Appeals assailed in G.R. No. 214070 ordered NAPOCOR to submit an affidavit containing a list of its assets and ordered Land Bank to submit a bank certification containing a list of NAPOCOR's bank deposits with Land Bank.

The Court of Appeals' Ruling

The Court of Appeals held that the trial court still had jurisdiction when respondents filed their motion for execution pending appeal on 22 May 2013, or seven days after their receipt of the trial court's order denying their Motion for Partial Reconsideration. Hence, respondents' motion for execution pending appeal was timely filed.

The Court of Appeals ruled that there exists good reasons for the trial court's order granting execution pending appeal. The Court of Appeals agreed with respondents' invocation of *Borja v. Court of Appeals*,[22] where petitioner's advanced age, together with the posting of a supersedeas bond, justified the execution pending appeal.

The Court of Appeals rejected NAPOCOR's argument that the alleged physical and financial conditions of respondents do not outweigh the damages that it would suffer in the event that the Order subject of the writ of execution is later reversed, and that such conditions increase the risk that respondents would

[22] 274 Phil. 258 (1991).

not be able to reimburse the amounts fixed in the Order. The CA held that "where the executed judgment is reversed, x x x the trial court may, on motion, issue such orders of restitution or reparation of damages x x x."[23]

The Court of Appeals also held that NAPOCOR's funds may be garnished as "it would be absurd to rule that petitioner's funds may not be garnished x x x considering that the winning party would not enjoy the fruits of his victory, x x x."[24] The Court of Appeals cited *Cosculluela v. Court of Appeals*,[25] where the Court held that "[i]t is arbitrary and capricious for a government agency to initiate expropriation proceedings x x x and then refuse to pay on the ground that there are no appropriations for the property earlier taken x x x."[26]

The Issues

The issues in this case are: (1) whether the trial court still had jurisdiction when it ruled on the Motion for Execution Pending Appeal; (2) whether there exists good reasons for the execution of the trial court's decision pending appeal; and (3) whether the NAPOCOR's funds may be garnished or be the subject of execution.

The Court's Ruling

We grant the petition.

Trial court had jurisdiction to resolve motion for discretionary execution

Execution pending appeal, also called discretionary execution under Section 2(a), Rule 39 of the Rules of Court, is allowed upon good reasons to be stated in a special order after due hearing. Section 2(a), Rule 39 provides:

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[23] *Rollo*, p. 57.

[24] *Id*.

[25] 247 Phil. 359, 367 (1988).

[26] *Rollo*, p. 58.

SEC. 2. *Discretionary execution*. –

(a) *Execution of a judgment or a final order pending appeal*. — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

In this case, the motion for execution pending appeal was filed by respondents seven days after their receipt of the trial court's order denying the motions for reconsideration filed by both parties. Clearly, respondents filed the motion for execution pending appeal before the lapse of the period to file an appeal, which is fifteen days from notice of the order denying the motion for reconsideration.[27] Therefore, the trial court still had jurisdiction when respondents filed their motion for execution pending appeal.

Further, prior to transmittal of the records of the case, the trial court does not lose jurisdiction over the case and in fact, may issue an order for execution pending appeal. Section 9, Rule 41 of the Rules of Court provides:

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[27] Section 3, Rule 41 of the Rules of Court provides:

SEC. 3. *Period of ordinary appeal*. — The appeal shall be taken within fifteen (15) days from notice of judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. x x x.

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.

SEC. 9. *Perfection of appeal; effect thereof.* A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, **prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39,** and allow withdrawal of the appeal. (Emphasis supplied)

In this case, the trial court issued its Order granting the motion for execution pending appeal on 11 July 2013. That Order expressly stated that the trial court was still in possession of the original record of the case at the time. In fact, the records were transmitted to the Court of Appeals on 19 July 2013.[28] In other words, the trial court issued the Order granting the motion for execution pending appeal before the transmittal of the records to the Court of Appeals. Hence, contrary to NAPOCOR's contention, the Court of Appeals correctly ruled that the trial court still had jurisdiction when the motion for execution pending appeal was filed and when the trial court resolved such motion.

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[28] CA *rollo* (G.R. No. 214070), p. 4.

Discretionary execution does not apply to eminent domain proceedings

While the trial court still had jurisdiction when it issued the order granting execution pending appeal, the Court holds that discretionary execution does not apply to eminent domain proceedings. In *Spouses Curata v. Philippine Ports Authority*,[29] where movants alleged advanced age as ground for their motion for discretionary execution, the Court found the trial court to have committed grave abuse of discretion in issuing the order granting execution pending appeal. The Court held that discretionary execution is not applicable to expropriation proceedings, thus:

> The Court rules that discretionary execution of judgments pending appeal under Sec. 2(a) of Rule 39 does not apply to eminent domain proceedings.
>
> As early as 1919 in *Visayan Refining Co. v. Camus and Paredes*, the Court held:
>
> > When the Government is plaintiff the judgment will naturally take the form of an order merely requiring the payment of the award as a condition precedent to the transfer of the title, as a personal judgment against the Government could not be realized upon execution.
>
> In *Commissioner of Public Highways v. San Diego*, no less than the eminent Chief Justice Claudio Teehankee explained the rationale behind the doctrine that government funds and properties cannot be seized under a writ of execution, thus:
>
> > The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimants action only up to the completion of proceedings anterior to the stage of execution and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of

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[29] 608 Phil. 9 (2009).

> public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

PPA's monies, facilities and assets are government properties. Ergo, they are exempt from execution whether by virtue of a final judgment or pending appeal.

PPA is a government instrumentality charged with carrying out governmental functions through the management, supervision, control and regulation of major ports of the country. It is an attached agency of the Department of Transportation and Communication pursuant to PD 505.

xxx xxx xxx

Therefore, an undeniable conclusion is that the funds of PPA partake of government funds, and such may not be garnished absent an allocation by its Board or by statutory grant. **If the PPA funds cannot be garnished and its properties, being government properties, cannot be levied via a writ of execution pursuant to a final judgment, then the trial court likewise cannot grant discretionary execution pending appeal, as it would run afoul of the established jurisprudence that government properties are exempt from execution. What cannot be done directly cannot be done indirectly.**

From the above discussion, we find that the RTC committed grave abuse of discretion in its July 24, 2000 Order directing the execution of the First Compensation Order (July 10, 2000 Order) pending appeal.[30] (Emphasis supplied)

The Court of Appeals' reliance on the case of *Borja v. Court of Appeals*[31] is misplaced. *Borja* involved a complaint for sum of money totalling ₱78,325 representing unpaid commissions and damages. On the other hand, this case involves expropriation proceedings, where the trial court fixed the just compensation for the subject property at ₱9,042,000 and yearly rentals at

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

[31] *Supra* note 22.

₱12,000 since 1940 plus 12% interest *per annum* for a total award of ₱14,873,999.28. The difference in the nature of the actions and the amounts involved in *Borja* and in this case justifies the non-application of the rule on discretionary execution.

Non-existence of good reasons for the execution pending appeal

The trial court also committed grave abuse of discretion when it failed to specify and discuss any good reason required for granting execution pending appeal.

In *Villamor v. NAPOCOR*,[32] the Court discussed the requisites for execution pending appeal, thus:

> Execution pending appeal requires the observance of the following requisites: (a) there must be a motion therefor by the prevailing party; (b) there must be a good reason for issuing the writ of execution; and (c) the good reason must be stated in a special order.
>
> The prevailing doctrine as provided for in Section 2, paragraph 3 of Rule 39 of the Rules of Civil Procedure is that discretionary execution is permissible only when good reasons exist for immediately executing the judgment before finality or pending appeal or even before the expiration of the period to appeal. Good reasons consist of compelling circumstances justifying immediate execution lest judgment becomes illusory, or the prevailing party after the lapse of time be unable to enjoy it, considering the tactics of the adverse party who may have apparently no cause but to delay. Such reasons must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment. Were it otherwise, execution pending appeal may well become a tool of oppression and inequity instead of an instrument of solicitude and justice.
>
> **The execution of judgment pending appeal is an exception to the general rule and must, therefore, be strictly construed. So, too, it is not to be availed of and applied routinely, but only in extraordinary circumstances.**
>
> **This rule is strictly construed against the movant, for courts look with disfavor upon any attempt to execute a judgment which has not acquired a final character. In the same vein, the Court**

[32] 484 Phil. 298, 312-314(2004).

has held that such execution is "usually not favored because it affects the rights of the parties which are yet to be ascertained on appeal."

The exercise of the power to grant or deny immediate or advance execution is addressed to the sound discretion of the trial court. However, the existence of good reasons is indispensable to the grant of execution pending appeal. Absent any such good reason, the special order of execution must be struck down for having been issued with grave abuse of discretion. (Emphasis supplied)

In this case, the trial court granted the motion for execution pending appeal based on "good reasons as stated in the motion," without identifying and discussing any of these alleged good reasons. A mere statement of "good reasons as stated in the motion" does not suffice to justify execution pending appeal. It is basic that the trial court should make a finding on whether the allegations in the motion for execution pending appeal constitute good reasons as required in Section 2 of Rule 39. The trial court should have expressed clearly and distinctly the facts and law on which the order granting the motion for execution pending appeal was based, but it did not. Without such finding, the allegations in the motion for execution pending appeal remain as allegations. Consequently, the trial court committed grave abuse of discretion in granting discretionary execution without stating and explaining clearly the basis therefor.

In view of the foregoing, the Court deems it unnecessary to discuss the issue of garnishment of NAPOCOR's funds.

WHEREFORE, the petition is **GRANTED.** The 28 November 2013 Decision of the Court of Appeals in CA-G.R. SP No. 131335 is **SET ASIDE.**

SO ORDERED.

Del Castillo, Mendoza, and *Leonen, JJ.,* concur.

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 210752. August 17, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDDIE REGALADO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS.—** Articles 266-A and 266-B of the Revised Penal Code, as amended by R.A. No. 8353, define and punish Statutory Rape as follows: Art. 266-A. Rape: *When and How Committed*. - Rape is committed: 1) by a man who shall have carnal knowledge of a woman xxx: xxx 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. Art. 266-B. *Penalty*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. For a conviction for Statutory Rape to prosper, the following elements must concur: (a) the victim is a female under 12 years of age or is demented; and (b) the offender has carnal knowledge of the victim.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE OFFENDED PARTY IS OF TENDER AGE AND IMMATURE, COURTS ARE INCLINED TO GIVE CREDIT TO HER ACCOUNT OF WHAT TRANSPIRED, CONSIDERING NOT ONLY HER RELATIVE VULNERABILITY BUT ALSO THE SHAME TO WHICH SHE WOULD BE EXPOSED IF THE MATTER TO WHICH SHE TESTIFIED IS NOT TRUE.—** AAA's testimony deserves full weight and credence. Her positive identification of accused-appellant in open court as the perpetrator of the crime is worthy of belief. Upon perusal of the records of this case, We likewise see no reason to depart from the lower courts' assessment of AAA's testimony. Moreover, "testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When

the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity." Time and again, this Court has held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.

3. ID.; ID.; ID.; ALIBI AS A DEFENSE; ALIBI TO PROSPER, TWO ELEMENTS MUST BE ESTABLISHED; CASE AT BAR.— No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected. For alibi to prosper, it is imperative that the accused establish two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission. Accused-appellant failed to establish the same. More importantly, accused-appellant failed to provide any corroborative evidence that could prove his defense.

4. ID.; ID.; ID.; MINOR INCONSISTENCIES IN THE TESTIMONY OF A WITNESS DO NOT REFLECT ON HIS CREDIBILITY.— As consistently ruled by the Court, the testimony of children of sound mind is likely to be more correct and truthful than that of older persons, so that once established that they have fully understood the character and nature of an oath, their testimony should be given full credence. The trivial inconsistencies in AAA's narration of details are understandable, considering the traumatic effect of the crime on his. It is for this reason that jurisprudence uniformly pronounces that minor inconsistencies in the testimony of a witness do not reflect on his credibility. What remains important is the positive identification of the accused as the assailant. Ample margin of error and understanding must be accorded to young witnesses who, much more than adults, would be gripped

with tension due to the novelty of the experience of testifying before a court.

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 September 02, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05488 affirming with modification the March 14, 2012 Consolidated Judgment[2] of the Regional Trial Court (RTC), Branch 60, Iriga City, in Criminal Case Nos. IR-8140, IR-8141 & IR-8142, which found Eddie Regalado (accused-appellant) guilty of three (3) counts of Statutory Rape.

Accused-appellant was charged with three (3) counts of Statutory Rape. The accusatory portions of the Informations narrate:

Criminal Case No. IR-8140

> "That on or about the 3rd week of June 2007, at xxx, xxx, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously lie with and succeed in having carnal knowledge with [AAA],[3] a 10 year old minor, against her will and consent and to her damage and prejudice.

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[1] *Rollo*, pp. 2-16; penned by CA Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Rebecca De Guia-Salvador and Samuel H. Gaerlan.

[2] Records, pp. 228-236; penned by Judge Timoteo A. Panga, Jr.

[3] Substituted name/alias pursuant to Sec. 44 of R.A. No. 9262 (VAWC Law) prohibiting publication/identification of women and child victims of violent crimes.

ACTS CONTRARY TO LAW."[4] (Italics and boldface in the original)

Criminal Case No. IR-8141

"That on or about June, 2007, at xxx, xxx, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously lie with and succeed in having carnal knowledge with [AAA], a 10 year old minor, in the presence of her friend, against private complainant's will and consent and to her damage and prejudice.

ACTS CONTRARY TO LAW."[5] (Italics and boldface in the original)

Criminal Case No. IR- 8142

"That on or about October 1, 2007 at xxx, xxx, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously lie with and succeed in having carnal knowledge with [AAA], a 10-year-old minor, against her will and consent and to her damage and prejudice.

ACTS CONTRARY TO LAW."[6] (Italics and boldface in the original)

On arraignment, accused-appellant entered a plea of NOT GUILTY.[7] At the joint pre-trial of the cases, the prosecution and the defense agreed on the following stipulation of facts: (1) the identity of accused-appellant as the accused in the three criminal cases; and (2) that the offended party is a 10 year old minor.[8] Trial on the merits ensued thereafter.

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[4] Records, Vol. 1, IR-8140, p. 1.

[5] *Id*., Vol. 2, IR-8141, p. 1.

[6] *Id*., Vol. 3, IR-8142, p. 1.

[7] *Supra* note 4 at 21.

[8] *Id*. at 39.

The Facts

The facts culled from the records and as summarized by the CA are as follows:

Sometime in June 2007, at around 12 o'clock noon, AAA, a 10-year-old school girl was at the *pansitan* in the public market of Iriga City. She claimed that accused-appellant undressed her and threatened her not to tell anybody or else she will be killed. Afterwhich, accused-appellant inserted his penis into her vagina and AAA kept the incident all to herself.[9] Throughout the month of June 2007, the sexual assault was repeated everyday at noontime, at the same place.[10] AAA recalled that she was last raped on October 01, 2007, at the same place.[11]

AAA testified that there were no people around the place where she was raped, despite it being a public market, because market day was only every Sunday;[12] that after each rape incident, accused-appellant would give her thirty pesos (₱30.00), and sometimes ten pesos (₱10.00);[13] that each time accused-appellant committed his bestial acts, he would hold her hands and lock the door; that accused-appellant would undress her and whenever she refused, he would force her to remove her panty or do it himself; that accused-appellant would insert his penis to her vagina; and that accused-appellant would then let her out of the place and warn her not to tell anybody of what he had done to her.

Out of fear, AAA did not tell her guardian-mother BBB about the incident. However, one afternoon after her class, she revealed to her teacher, CCC, what accused-appellant had been doing to her, hoping that the incident will not happen again.[14] CCC then relayed the information to BBB that same afternoon. AAA was then brought to The Women and Children's Welfare Desk of the Philippine National Police in Iriga City. The Department of Social Welfare and

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[9] TSN, September 16, 2009, p. 7.

[10] *Id.* at 9.

[11] *Id.*

[12] *Id.* at 12.

[13] *Id.* at 8.

[14] *Id.* at 11.

Development (DSWD) took AAA into custody and for some time, AAA stayed at the DSWD Home for Girls, Sorsogon City. Merly Yanto, a DSWD Social Worker conducted a social case study on AAA and submitted a report to the court.[15]

Dr. Angelo Agudo (Dr. Agudo), the doctor who examined AAA, testified that upon examination of the latter's genitalia, he found "*incomplete healed superficial laceration with sharp coaptable borders at 11:00 and 2:00 o'clock positions*"[16] which may have been caused "*by a blunt object*" that may have been a male sex organ.[17] The findings were reflected in a certification issued by Dr. Agudo. He concluded that the hymenal lacerations that he noted were compatible with the alleged time of sexual assault which was about two weeks prior to the medical examination.

BBB, the person who stood as AAA's guardian, testified that the biological parents of AAA entrusted the latter to her in 1999 when the child was only a year and nine (9) months old; that she treated AAA as her own daughter; and that the child's attitude towards her changed after the rape incidents. It was also established during the trial that AAA quit school after the last incident of sexual abuse and thereafter stayed with her biological father in XXX, Camarines Sur. AAA also positively identified accused-appellant in court as the perpetrator of the crimes charged.[18]

The defense of accused-appellant is one of denial and alibi. Accused-appellant claimed that he could not have possibly raped AAA in June and October 2007 since he was then working for Arce Gamboa (Gamboa). Accused-appellant contended that from April 2007 until November 2008, he stayed in his employer's piggery to take care and feed the latter's sows because he was under strict instructions not to leave the piggery. Accused-appellant vehemently claimed that he never left the farm, save for the two instances when he was asked by his employer to buy dog meat from the public market.[19]

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[15] TSN, July 14, 2010, p. 4.

[16] TSN, July 29, 2009, p. 6.

[17] *Id.* at 8.

[18] TSN, September 16, 2009, p. 6.

[19] TSN, August 17, 2011, p. 5.

In an attempt to discredit AAA's testimony, the defense presented the testimony of one Elsie Diaz (Diaz), the owner of the parlor referred to by AAA as the place where she was repeatedly raped. Diaz claimed that the parlor is closed during weekdays and only open during Sundays. The witness also testified that the parlor was always locked and no person other than herself has a key to the premises.[20]

Ruling of the Regional Trial Court

On March 14, 2012, the RTC rendered a Consolidated Judgment finding accused-appellant guilty of three counts of Statutory Rape. The dispositive portion of the decision reads:

"WHEREFORE, finding the accused Eddie Regalado guilty beyond reasonable doubt, judgment is hereby rendered convicting him of three (3) counts of Statutory Rape in Criminal Case No. [IR-8140], Criminal Case No[. IR-8141] and Criminal Case No. [IR-8142]. Accordingly, he is sentenced to suffer the penalty of *Reclusion Perpetua* for each count, and he is further adjudged liable to pay AAA the following:

1. ₱75,000.00 for each count as moral damages,
2. ₱30,000.00 for each count as exemplary damages, and
3. the Costs.

SO ORDERED."

Ruling of the Court of Appeals

The CA, in its assailed decision dated September 02, 2013, affirmed the judgment of conviction of the RTC. The appellate court found no cogent reason to disturb the factual findings of the trial court. The dispositive portion of the decision reads:

"**WHEREFORE**, the appeal is **DENIED**. The assailed *Consolidated Judgment* in Criminal Case Nos. IR-8140, 8141 and 8142 is **AFFIRMED with the MODIFICATION** that accused-appellant EDDIE REGALADO is further ordered to indemnify AAA the amount of ₱75,000.00 as civil indemnity for each count of rape in addition to the other monetary awards ordered by the trial court.

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[20] TSN, October 25, 2011, p. 4.

IT IS SO ORDERED."[21]

Accused-appellant appealed the decision of the CA. The Notice of Appeal was given due course and the records were ordered elevated to this Court for review. In a Resolution dated February 17, 2014, We required the parties to file their respective supplemental briefs. Both parties manifested that they are adopting all the arguments contained in their respective briefs in lieu of filing supplemental briefs.

Our Ruling

We find no reason to deviate from the findings and conclusions of the courts below as the degree of proof required in criminal cases has been met in the case at bar. Accused-appellant's defenses of denial and alibi are bereft of merit.

Statutory Rape

Articles 266-A and 266-B of the Revised Penal Code, as amended by R.A. No. 8353,[22] define and punish Statutory Rape as follows:

Art. 266-A. Rape: *When and How Committed.* - Rape is committed:

1) by a man who shall have carnal knowledge of a woman xxx:

xxx xxx xxx

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.

Art. 266-B. *Penalty*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

For a conviction for Statutory Rape to prosper, the following elements must concur: (a) the victim is a female under 12 years

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[21] *Rollo*, pp. 16-17.

[22] An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes; effective on October 22, 1997.

of age or is demented; and (b) the offender has carnal knowledge of the victim.[23] We quote the pertinent disquisition of the CA with approval:

"xxx, neither the use of force, threat or intimidation on the female, nor the female's deprivation of reason or being otherwise unconscious, nor the employment on the female of fraudulent machinations or grave abuse of authority is necessary to commit statutory rape. Further, the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act.

Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant. In the three (3) cases under review, the prosecution was able to prove the existence of all the elements of statutory rape.

The age of the victim AAA was proven by her birth certificate which established that she was only eight (8) years of age at the time she was repeatedly molested by Regalado in June 2007 and 01 October 2007. In fact, it was stipulated upon by the parties that AAA was only ten (10) years old during the pre-trial of the case."[24] (Citations omitted)

Moreover, the finding that accused-appellant had carnal knowledge of the victim was proved by the prosecution beyond reasonable doubt on the basis of AAA's credible, positive and categorical testimony relative to the circumstances surrounding the rape.

Positive Identification

AAA's testimony deserves full weight and credence. Her positive identification of accused-appellant in open court as the perpetrator of the crime is worthy of belief. Upon perusal of the records of this case, We likewise see no reason to depart

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[23] *People v. Besmonte*, G.R. No. 196228, June 04, 2014, 725 SCRA 37, 50.

[24] *Rollo*, pp. 9-10.

from the lower courts' assessment of AAA's testimony. Moreover, "testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity."[25] Time and again, this Court has held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[26]

Denial and Alibi as Inherently Weak Defenses

Accused-appellant's denial could not prevail over AAA's direct, positive and categorical assertion. For accused-appellant's alibi to be credible and given due weight, he must show that it was physically impossible for him to have been at the scene of the crime at the approximate time of its commission. This Court has uniformly held that denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[27] No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected.[28] For alibi to prosper, it is imperative that the accused establish two elements: (1) he was

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[25] *People v. Prodenciado*, G.R. No. 192232, December 10, 2014, 744 SCRA 429, 442; citing *People v. Piosang*, 710 Phil. 519, 526 (2013).

[26] *People v. Perez*, 595 Phil. 1232, 1251 (2008); citing *People v. Villafuerte*, G.R. No. 154917, May 18, 2004, 428 SCRA 427, 433.

[27] *People v. Villafuerte*, *supra* at 435.

[28] *People v. Sanchez*, 426 Phil. 19, 31 (2002).

not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.[29]Accused-appellant failed to establish the same. More importantly, accused-appellant failed to provide any corroborative evidence that could prove his defense.

It is also worth noting that accused-appellant's argument — that it is too good to be true that nobody noticed or heard what was happening during the incidents – deserves scant consideration. The argument that it would be highly unthinkable for rape to be committed in a public place is wanting of merit. Rape does not only occur in seclusion[30] as "lust is no respecter of time and precinct and known to happen in most unlikely places such as in a park, along a roadside, within school premises, or even in an occupied room."[31]

Inconsistencies in testimonies with respect to minor details may be disregarded without impairing witness' credibility

According to AAA's testimony, the incidents repeatedly occurred in a *pansitan.* In an attempt to cast doubt on the veracity of AAA's allegations, the defense presented a witness to testify that the scene of the crime was in fact a parlor and not a *pansitan*. As consistently ruled by the Court, the testimony of children of sound mind is likely to be more correct and truthful than that of older persons, so that once established that they have fully understood the character and nature of an oath, their testimony should be given full credence.[32] The trivial inconsistencies in AAA's narration of details are understandable, considering the traumatic effect of the crime on his. It is for this reason that jurisprudence uniformly pronounces that minor

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[29] *People v. Flora*, 389 Phil. 601, 611 (2000).

[30] *People v. Ramon*, 378 Phil. 542, 557 (1999); citing *People v. Sangil, Sr.*, 342 Phil. 499, 507 (1997).

[31] *People v. Cabillan*, 334 Phil. 912, 919-920 (1997).

[32] *People v. Tenoso, et al.*, 637 Phil. 595, 602 (2010).

inconsistencies in the testimony of a witness do not reflect on his credibility. What remains important is the positive identification of the accused as the assailant.[33] Ample margin of error and understanding must be accorded to young witnesses who, much more than adults, would be gripped with tension due to the novelty of the experience of testifying before a court.[34]

Damages Awarded

Anent the damages awarded by the appellate court, We find that modification of the amount of exemplary damages awarded is in order. In line with recent jurisprudence,[35]the amount of exemplary damages shall be modified and increased to ₱75,000.00 for each count of rape. AAA shall likewise be entitled to civil indemnity of ₱75,000.00 for each count of rape and moral damages of ₱75,000.00 for each count of rape.

WHEREFORE, the September 02, 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05488 is **AFFIRMED with MODIFICATIONS** in that accused-appellant EDDIE REGALADO is found **GUILTY** beyond reasonable doubt of three (3) counts of Statutory Rape and sentenced to suffer the penalty of *reclusion perpetua* for each count of rape and ordered to indemnify AAA the amounts of ₱75,000.00 as civil indemnity for each count of rape, ₱75,000.00 as moral damages for each count of rape, and ₱75,000.00 as exemplary damages for each count of rape. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.

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

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[33] *People v. Lagota*, 271 Phil. 923, 931-932 (1991).

[34] *People v. Abaño*, 425 Phil. 264, 278 (2002).

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

[*] Designated as Additional Member in lieu of Justice Francis H. Jardeleza per raffle dated June 13, 2016.

FIRST DIVISION

[G.R. No. 212340. August 17, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERRJAN MANAGO *y* ACUT,** *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; BILL OF RIGHTS; SEARCH AND SEIZURE; ONE OF THE RECOGNIZED EXCEPTIONS TO THE NEED OF A WARRANT BEFORE A SEARCH MAY BE EFFECTED IS A SEARCH INCIDENTAL TO A LAWFUL ARREST.— Section 2, Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause**, **absent which such search and seizure becomes "unreasonable" within the meaning of the said constitutional provision**. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding**. One of the recognized exceptions to the need of a warrant before a search may be effected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed**.

2. ID.; ID.; ID.; WARRANTLESS ARREST; THERE ARE THREE INSTANCES WHEN WARRANTLESS ARREST MAY BE EFFECTED.— A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with: x x x Under the foregoing provision, there are three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto;* (*b*) **an arrest of a suspect where, based on personal knowledge of the arresting officer,**

there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.

3. ID.; ID.; ID.; ID.; IT IS ESSENTIAL THAT THE ELEMENT OF PERSONAL KNOWLEDGE MUST BE COUPLED WITH THE ELEMENT OF IMMEDIACY; NOT ESTABLISHED IN CASE AT BAR.— In warrantless arrests made pursuant to Section 5 (b), it is essential that **the element of personal knowledge must be coupled with the element of immediacy**; otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible in consonance with the exclusionary rule of the 1987 Constitution. In *Pestilos v. Generoso*, the Court explained the requirement of immediacy: x x x The reason for the element of the immediacy is this – as the time gap from the commission of the crime to the arrest widens, the pieces of information gathered are prone to become contaminated and subjected to external factors, interpretations and hearsay. On the other hand, **with the element of immediacy imposed under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure, the police officer's determination of probable cause would necessarily be limited to raw or uncontaminated facts or circumstances, gathered as they were within a very limited period of time.** The same provision adds another safeguard with the requirement of probable cause as the standard for evaluating these facts of circumstances before the police officer could effect a valid warrantless arrest. x x x The foregoing circumstances show that while the element of personal knowledge under Section 5 (b) above was present – given that PO3 Din actually saw the March 15, 2007 robbery incident and even engaged the armed robbers in a shootout – the required element of immediacy was not met. This is because, at the time the police officers effected the warrantless arrest upon Managо's person, investigation and verification proceedings were already conducted, which consequently yielded sufficient information on the suspects of the March 15, 2007 robbery incident. As the Court sees it, the information the police officers had gathered therefrom would have been enough for them to secure the necessary warrants against the robbery

suspects. However, they opted to conduct a "hot pursuit" operation which – considering the lack of immediacy – unfortunately failed to meet the legal requirements therefor. Thus, there being no valid warrantless arrest under the "hot pursuit" doctrine, the CA erred in ruling that Manago was lawfully arrested. In view of the finding that there was no lawful arrest in this case, the CA likewise erred in ruling that the incidental search on Manago's vehicle and body was valid. In fact, the said search was made even ***before*** he was arrested and thus, violated the cardinal rule on searches incidental to lawful arrests **that there first be a lawful arrest before a search can be made.**

4. ID.; ID.; ID.; ID.; CONCEPT OF WARRANTLESS SEARCHES ON MOVING VEHICLE; ROUTINE INSPECTIONS IN A POLICE (OR MILITARY) CHECKPOINTS DO NOT GIVE POLICE OFFICERS *CARTE BLANCHE* DISCRETION TO CONDUCT WARRANTLESS SEARCHES IN THE ABSENCE OF PROBABLE CAUSE.— In *Caballes v. People*, the Court explained the concept of warrantless searches on moving vehicles: x x x A variant of searching moving vehicles without a warrant may entail the **setup of military or police checkpoints** – as in this case – which, based on jurisprudence, are **not illegal *per se* for as long as its necessity is justified by the exigencies of public order and conducted in a way least intrusive to motorists**. Case law further states that routine inspections in checkpoints are not regarded as violative of an individual's right against unreasonable searches, and thus, permissible, if limited to the following: (*a*) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (*b*) simply looks into a vehicle; (*c*) flashes a light therein without opening the car's doors; (*d*) where the occupants are not subjected to a physical or body search; (*e*) where the inspection of the vehicles is limited to a visual search or visual inspection; and (*f*) where the routine check is conducted in a fixed area. It is well to clarify, however, that routine inspections do not give police officers *carte blanche* discretion to conduct warrantless searches in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search – as opposed to a mere routine inspection – such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find

the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Alex D. Tolentino for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Gerrjan Managо *y* Acut (Managо) assailing the Decision[2] dated May 20, 2013 and the Resolution[3] dated November 6, 2013 of the Court of Appeals (CA) in C.A.-G.R. CEB-C.R. No. 01342, which affirmed the Decision[4] dated March 23, 2009 of the Regional Trial Court of Cebu City, Branch 58 (RTC), in Criminal Case No. CBU-79707, finding Managо guilty beyond reasonable doubt of violating Section 11, Article II[5] of

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[1] See Notice of Appeal dated December 13, 2013; *rollo*, pp. 18-19.

[2] *Id*. at 5-17. Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla concurring.

[3] CA *rollo*, pp. 224-225.

[4] *Id*. at 106-117. Penned by Presiding Judge Gabriel T. Ingles.

[5] The pertinent portion of Section 11, Article II of RA 9165 provides:

SEC. 11. *Possession of Dangerous Drugs*. – The penalty x x x shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drugs in the following quantities, regardless of the degree of purity thereof:

xxx xxx xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride or "*shabu*" x x x.

Republic Act No. (RA) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

On April 10, 2007, an Information[7] was filed before the RTC, charging Manago of Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165, the accusatory portion of which reads:

> That on or about the 16th day of March, 2007, at about 11:50 in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there have in his possession and under his control one (1) heat-sealed transparent plastic packet of white crystalline substance weighing 5.85 grams containing *Methylamphetamine Hydrochloride* [sic], a dangerous drug, without being authorized by law.
>
> CONTRARY TO LAW.[8]

According to the prosecution, at around 9:30 in the evening of March 15, 2007, PO3 Antonio Din (PO3 Din) of the Philippine National Police (PNP) Mobile Patrol Group was waiting to get a haircut at Jonas Borces Beauty Parlor when two (2) persons entered and declared a hold-up. PO3 Din identified himself as a police officer and exchanged gun shots with the two suspects. After the shootout, one of the suspects boarded a motorcycle, while the other boarded a red Toyota Corolla. The plate numbers of the vehicles were noted by PO3 Din.[9]

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[6] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[7] Records, pp. 1-2.

[8] *Id*. at 1. Italics supplied.

[9] *Rollo*, p. 7.

After the incident, PO3 Din received word from Barangay Tanod Florentino Cano (Cano),[10] that the robbery suspects were last seen in Barangay Del Rio Pit-os. Thus, S/Insp. George Ylanan (S/Insp. Ylanan) conducted an investigation in the said barangay, and discovered that before the robbery incident, Manago told Cano that three persons – namely, Rico Lumampas, Arvin Cadastra, and Allan Sordiano – are his employees in his roasted chicken business, and they were to stay in Manago's house. Further, upon verification of the getaway vehicles with the Land Transportation Office, the police officers found out that the motorcycle was registered in Manago's name, while the red Toyota Corolla was registered in the name of Zest-O Corporation, where Manago worked as a District Sales Manager.[11]

With all the foregoing information at hand, the police officers, comprised of a team including PO3 Din and S/Insp. Ylanan, conducted a "hot pursuit" operation one (1) day after the robbery incident, or on March 16, 2007, by setting up a checkpoint in Sitio Panagdait. At around 9:30 in the evening of even date, the red Toyota Corolla, then being driven by Manago, passed through the checkpoint, prompting the police officers to stop the vehicle. The police officers then ordered Manago to disembark, and thereafter, conducted a thorough search of the vehicle. As the search produced no contraband, the police officers then frisked Manago, resulting in the discovery of one (1) plastic sachet containing a white crystalline substance suspected to be *methamphetamine hydrochloride* or *shabu*. The police officers seized the plastic pack, arrested Manago, informed him of his constitutional rights, and brought him and the plastic pack to their headquarters. Upon reaching the headquarters, S/Insp. Ylanan turned over the seized plastic pack to PO3 Joel Taboada, who in turn, prepared a request for a laboratory examination of the same. SPO1 Felix Gabijan then delivered the said sachet and request to Forensic Chemist Jude Daniel Mendoza of the PNP Crime Laboratory, who, after conducting an examination,

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[10] "Florentino Cano, Jr." in some parts of the records.

[11] *Rollo*, p.7.

confirmed that the sachet contained *methamphetamine hydrochloride* or *shabu*.[12]

In his defense, Manago denied possessing the plastic pack recovered by the police officers. He claimed that at around 11:50 in the evening of March 16, 2007, he was about to start his vehicle and was on his way home from the office when a pick-up truck stopped in front of his car. Three (3) police officers armed with long firearms disembarked from the said truck. One of the officers knocked on the door of Manago's vehicle and asked for his driver's license, to which Manago complied. When the same officer saw Manago's name on the license, the former uttered "*mao na ni* (this is him)." Manago was then ordered to sit at the back of his car as the vehicle was driven by one of the police officers directly to the Cebu City Police Station. After arriving at the police station, Manago was interrogated about who the robbers were and to divulge their whereabouts so that no criminal charges would be filed against him. Manago claimed that he requested for a phone call with his lawyer, as well as a copy of the warrant for his arrest, but both requests went unheeded. After he was dispossessed of his laptop, wallet, and two (2) mobile phones, he was then photographed and placed in a detention cell. Thereafter, he was brought to the Cebu City Prosecutor's Office where he was charged with, among others, illegal possession of *shabu*.[13]

Prior to his arraignment, Manago filed a Motion to Dismiss for Lack of Probable Cause and/or Motion for the Suppression of Evidence,[14] contending, *inter alia*, that there is neither probable cause nor *prima facie* evidence to conduct an arrest and search on him; as such, the item seized from him, *i.e.*, the plastic sachet containing *shabu*, is inadmissible in evidence pursuant to the fruit of the poisonous tree doctrine.[15] However, in an

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

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

[14] Dated April 25, 2007. Records, pp. 35-49.

[15] *Id*. at 35.

Order[16] dated May 31, 2007, the RTC denied the said motion. The RTC held that while (*a*) the police officers, through PO3 Din, had no personal knowledge of Manago's involvement in the robbery as they had to conduct an investigation to identify him as the registered owner of the motorcycle and (*b*) there was no *in flagrante delicto* arrest as Manago was merely driving and gave no indication that he was committing an offense, the RTC nevertheless held that there was a valid warrantless search of a moving vehicle, considering that PO3 Din had probable cause to believe that Manago was part of the robbery, because the latter was driving the getaway vehicle used in the March 15, 2007 robbery incident.[17]

On July 12, 2007, Manago was arraigned with the assistance of counsel and pleaded not guilty to the charge against him.[18]

During the course of the trial, the contents of the plastic sachet were re-examined by the National Bureau of Investigation, revealing that out of the 5.7158 grams of white crystalline substance contained in the sachet, only 0.3852 grams is *methamphetamine hydrochloride*, while the rest is potassium aluminum sulphate or *tawas*, which is not a dangerous drug substance. Thus, Manago applied for and was granted bail.[19]

The RTC Ruling

In a Decision[20] dated March 23, 2009, the RTC found Manago guilty beyond reasonable doubt of possession of 0.3852 grams of *shabu* and accordingly, sentenced him to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine in the amount of ₱300,000.00.[21]

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[16] *Id*. at 74-78. Penned by Presiding Judge Gabriel T. Ingles.

[17] *Id*.

[18] *Rollo*, p. 6.

[19] See CA *rollo*, pp. 51-53. See also pp. 54-55.

[20] *Id*. at 106-117. Penned by Presiding Judge Gabriel T. Ingles.

[21] *Id*. at 117.

Echoing its earlier findings in its May 31, 2007 Order, the RTC found that the police officers conducted a valid warrantless search of a moving vehicle, considering that PO3 Din positively identified the red Toyota Corolla, then being driven by Manago, as the getaway vehicle in the March 15, 2007 robbery incident. Thus, the item found in the search, *i.e.*, the plastic sachet containing *shabu* obtained from Manago, is admissible in evidence and is enough to sustain a conviction against him for violation of Section 11, Article II of RA 9165.[22]

Manago moved for reconsideration[23] and applied for bail pending appeal, which were, however, both denied in an Omnibus Order[24] dated May 12, 2009. Aggrieved, Manago appealed his conviction before the CA.[25]

The CA Proceedings

Upon Manago's motion to post bail, the CA rendered a Resolution[26] dated August 13, 2010, allowing Manago to post bail in the amount of ₱200,000.00, noting that the quantity of the *shabu* seized from him was only 0.3852 grams, thus bailable, and that the Office of the Solicitor General did not oppose Manago's motion.[27]

In a Decision[28] dated May 20, 2013, the CA affirmed Manago's conviction *in toto*. It held that the police officers conducted a valid hot pursuit operation against Manago, considering that PO3 Din personally identified him as the one driving the red Toyota Corolla vehicle used in the March 15, 2007 robbery

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[22] *Id*. at 112-117.

[23] Dated April 27, 2009. Records, pp. 531-549.

[24] CA *rollo*, p. 118.

[25] See Notice of Appeal dated May 19, 2009; records, p. 555.

[26] CA *rollo*, pp. 51-53. Penned by Associate Justice Erwin D. Sorongon with Executive Justice Portia A. Hormachuelos and Associate Justice Socorro B. Inting concurring.

[27] *Id*.

[28] *Rollo*, pp. 5-17.

incident. As such, the CA concluded that the warrantless arrest conducted against Manago was valid, and consequently, the plastic sachet seized from him containing *shabu* is admissible in evidence as it was done incidental to a lawful arrest.[29]

Undaunted, Manago moved for reconsideration,[30] which was denied in a Resolution[31] dated November 6, 2013; hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Manago's conviction for violation of Section 11, Article II of RA 9165 should be upheld.

The Court's Ruling

The appeal is meritorious.

Section 2, Article III[32] of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause**, **absent which such search and seizure becomes "unreasonable" within the meaning of the said constitutional provision**. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III[33]

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[29] *Id*. at 11-15.

[30] CA *rollo*, pp. 201-212.

[31] *Id*. at 224-225.

[32] Section 2, Article III of the 1987 Constitution states:

Sec. 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.

[33] Section 3(2), Article III of the 1987 Constitution states:

Sec 3. x x x

xxx xxx xxx

of the 1987 Constitution provides that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding**.[34]

One of the recognized exceptions to the need of a warrant before a search may be effected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed**.[35]

A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with:

> SEC. 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

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(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[34] See *Comerciante v. People*, G.R. No. 205926, July 22, 2015, 763 SCRA 587, 594-595, citing *Ambre v. People*, 692 Phil. 681, 693 (2012).

[35] *Id*. at 595, citations omitted.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

Under the foregoing provision, there are three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto;* (*b*) **an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed**; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.[36]

In warrantless arrests made pursuant to Section 5 (b), it is essential that **the element of personal knowledge must be coupled with the element of immediacy**; otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible in consonance with the exclusionary rule of the 1987 Constitution. In *Pestilos v. Generoso*,[37] the Court explained the requirement of immediacy as follows:

Based on these discussions, it appears that the Court's appreciation of the elements that "the offense has just been committed" and "personal knowledge of facts and circumstances that the person to be arrested committed it" depended on the particular circumstances of the case.

However, we note that the element of "personal knowledge of facts or circumstance" under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure requires clarification.

The phrase covers facts or, in the alternative, circumstances. According to the Black's Law Dictionary, "circumstances are attendant or accompanying facts, events or conditions." Circumstances may

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[36] *Id*. at 596, citing *Malacat v. CA*, 347 Phil. 462, 480 (1997).

[37] G.R. No. 182601, November 10, 2014, 739 SCRA 337.

pertain to events or actions within the actual perception, personal evaluation or observation of the police officer at the scene of the crime. Thus, even though the police officer has not seen someone actually fleeing, he could still make a warrantless arrest if, based on his personal evaluation of the circumstances at the scene of the crime, he could determine the existence of probable cause that the person sought to be arrested has committed the crime. However, the determination of probable cause and the gathering of facts or circumstances should be made immediately after the commission of the crime in order to comply with the element of immediacy.

In other words, **the clincher in the element of "personal knowledge of facts or circumstances" is the required element of immediacy within which these facts or circumstances should be gathered. This required time element acts as a safeguard to ensure that the police officers have gathered the facts or perceived the circumstances within a very limited time frame. This guarantees that the police officers would have no time to base their probable cause finding on facts or circumstances obtained after an exhaustive investigation.**

The reason for the element of the immediacy is this – as the time gap from the commission of the crime to the arrest widens, the pieces of information gathered are prone to become contaminated and subjected to external factors, interpretations and hearsay. On the other hand, **with the element of immediacy imposed under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure, the police officer's determination of probable cause would necessarily be limited to raw or uncontaminated facts or circumstances, gathered as they were within a very limited period of time.** The same provision adds another safeguard with the requirement of probable cause as the standard for evaluating these facts of circumstances before the police officer could effect a valid warrantless arrest.[38] (Emphases and underscoring supplied)

In this case, records reveal that at around 9:30 in the evening of March 15, 2007, PO3 Din personally witnessed a robbery incident while he was waiting for his turn to have a haircut at Jonas Borces Beauty Parlor. After his brief shootout with the

[38] *Id*. at 373-374.

armed robbers, the latter fled using a motorcycle and a red Toyota Corolla. Through an investigation and verification made by the police officers headed by PO3 Din and S/Insp. Ylanan, they were able to: (*a*) find out that the armed robbers were staying in Barangay Del Rio Pit-os; and (*b*) trace the getaway vehicles to Manago. The next day, or on March 16, 2007, the police officers set up a checkpoint in Sitio Panagdait where, at around 9:30 in the evening, the red Toyota Corolla being driven by Manago passed by and was intercepted by the police officers. The police officers then ordered Manago to disembark the car, and from there, proceeded to search the vehicle and the body of Manago, which search yielded the plastic sachet containing *shabu*. Thereupon, they effected Manago's arrest.

The foregoing circumstances show that while the element of personal knowledge under Section 5 (b) above was present – given that PO3 Din actually saw the March 15, 2007 robbery incident and even engaged the armed robbers in a shootout – the required element of immediacy was not met. This is because, at the time the police officers effected the warrantless arrest upon Manago's person, investigation and verification proceedings were already conducted, which consequently yielded sufficient information on the suspects of the March 15, 2007 robbery incident. As the Court sees it, the information the police officers had gathered therefrom would have been enough for them to secure the necessary warrants against the robbery suspects. However, they opted to conduct a "hot pursuit" operation which – considering the lack of immediacy – unfortunately failed to meet the legal requirements therefor. Thus, there being no valid warrantless arrest under the "hot pursuit" doctrine, the CA erred in ruling that Manago was lawfully arrested.

In view of the finding that there was no lawful arrest in this case, the CA likewise erred in ruling that the incidental search on Manago's vehicle and body was valid. In fact, the said search was made even ***before*** he was arrested and thus, violated the cardinal rule on searches incidental to lawful arrests **that there first be a lawful arrest before a search can be made.**

For another, the Court similarly finds the RTC's ruling that the police officers conducted a lawful warrantless search of a moving vehicle on Manago's red Toyota Corolla untenable.

In *Caballes v. People*,[39] the Court explained the concept of warrantless searches on moving vehicles:

> Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity. **Thus, the rules governing search and seizure have over the years been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality.** This is so considering that before a warrant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge – a requirement which borders on the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity. **We might add that a warrantless search of a moving vehicle is justified on the ground that it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.** Searches without warrant of automobiles is also allowed for the purpose of preventing violations of smuggling or immigration laws, provided such searches are made at borders or "constructive borders" like checkpoints near the boundary lines of the State.[40] (Emphases and underscoring supplied)

A variant of searching moving vehicles without a warrant may entail the **setup of military or police checkpoints** – as in this case – which, based on jurisprudence, are **not illegal *per se* for as long as its necessity is justified by the exigencies of public order and conducted in a way least intrusive to motorists**.[41] Case law further states that routine inspections in checkpoints are not regarded as violative of an individual's right against unreasonable searches, and thus, permissible, if

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[39] 424 Phil. 263 (2002).

[40] *Id*. at 278-279, citations omitted.

[41] *Id*. at 280, citations omitted.

limited to the following: (*a*) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (*b*) simply looks into a vehicle; (*c*) flashes a light therein without opening the car's doors; (*d*) where the occupants are not subjected to a physical or body search; (*e*) where the inspection of the vehicles is limited to a visual search or visual inspection; and (*f*) where the routine check is conducted in a fixed area.[42]

It is well to clarify, however, that routine inspections do not give police officers *carte blanche* discretion to conduct warrantless searches in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search – as opposed to a mere routine inspection – such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.[43]

In the case at bar, it should be reiterated that the police officers had already conducted a thorough investigation and verification proceedings, which yielded, among others: (*a*) the identities of the robbery suspects; (*b*) the place where they reside; and (*c*) the ownership of the getaway vehicles used in the robbery, *i.e.*, the motorcycle and the red Toyota Corolla. As adverted to earlier, these pieces of information were already enough for said police officers to secure the necessary warrants to accost the robbery suspects. Consequently, there was no longer any exigent circumstance that would have justified the necessity of setting up the checkpoint in this case for the purpose of searching the subject vehicle. In addition, it is well to point out that the checkpoint was arranged for the targeted arrest of Managо, who was already identified as the culprit of the robbery incident. In this regard, it cannot, therefore, be said that the checkpoint was meant to conduct a routinary and indiscriminate

[42] See *id.* at 280, citations omitted.

[43] See *People v. Mariacos*, 635 Phil. 315, 329 (2010), citing *People v. Bagista*, G.R. No. 86218, September 18, 1992, 214 SCRA 63, 68-69.

search of moving vehicles. Rather, it was used as a subterfuge to put into force the capture of the fleeing suspect. Unfortunately, this setup cannot take the place of – nor skirt the legal requirement of – procuring a valid search/arrest warrant given the circumstances of this case. Hence, the search conducted on the red Toyota Corolla and on the person of its driver, Manago, was unlawful.

In fine, Manago's warrantless arrest, and the search incidental thereto, including that of his moving vehicle were all unreasonable and unlawful. In consequence, the *shabu* seized from him is rendered inadmissible in evidence pursuant to the exclusionary rule under Section 3 (2), Article III of the 1987 Constitution. Since the confiscated *shabu* is the very *corpus delicti* of the crime charged, Manago must necessarily be acquitted and exonerated from criminal liability.[44]

WHEREFORE, the appeal is **GRANTED**. The Decision dated May 20, 2013 and the Resolution dated November 6, 2013 of the Court of Appeals in C.A.-G.R. CEB-C.R. No. 01342 are hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Gerrjan Manago *y* Acut is hereby **ACQUITTED** of the crime of violation of Section 11, Article II of Republic Act No. 9165.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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[44] See *Comerciante v. People, supra* note 34, at 603.

SECOND DIVISION

[G.R. No. 212848. August 17, 2016]

ISIDRO COSME and FERNAN COSME, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE GENERALLY BINDING AND CONCLUSIVE; EXCEPTION.— Well-settled is the rule that the trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies. Factual findings of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive unless certain facts of substance and value were overlooked, which if considered would materially affect the result of the case.

2. ID.; ID.; ID.; DEFENSE OF DENIAL CANNOT PREVAIL OVER POSITIVE TESTIMONIES OF PROSECUTION WITNESSES WHO HAVE NO MOTIVE TO TESTIFY FALSELY AGAINST THE ACCUSED.— Petitioners' denial is belied by the positive testimony of the other victim, Pablito, that petitioners mauled and beat the already bloodied Antonio with their firearms. Petitioners' defense of denial cannot prevail over the positive testimonies of the prosecution witnesses who have no motive to testify falsely against them.

3. CRIMINAL LAW; REVISED PENAL CODE; HOMICIDE; IN CASE CONSPIRACY IS ESTABLISHED, EVIDENCE AS TO WHO AMONG THE CONSPIRATORS ACTUALLY FIRED THE FATAL SHOT IS NO LONGER INDISPENSABLE.— On the charge for homicide, we agree with the Court of Appeals that the accused conspired to kill Antonio as shown by their collective act of mauling and beating Antonio with their firearms despite the fact that Antonio was already bleeding from gunshot wounds. The manner by which

the accused attacked the victim clearly and convincingly shows that the accused were motivated by a common intent to kill Antonio. The actions of accused show that they were impelled by the same motive to retaliate against Antonio for shooting Pantaleon and Sonora. Since conspiracy is established in this case, evidence as to who among the conspirators actually fired the fatal shots is no longer indispensable. In conspiracy, the act of one is the act of all and each of the offender is equally guilty of the criminal act.

APPEARANCES OF COUNSEL

Renato R. Sarmiento for petitioners.
Office of the Solicitor General for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 29 November 2013 Decision[2] and the 5 June 2014 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 33692. The Court of Appeals affirmed the 28 July 2010 Decision[4] of the Regional Trial Court of Tanauan City, Batangas, Branch 6, finding Isidro Cosme (Isidro), Fernan Cosme (Fernan), and Fred Cosme (Fred) guilty of homicide in Criminal Case No. 02-10-493, and finding Fernan guilty of attempted homicide in Criminal Case No. 02-10-494.

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[1] Under Rule 45 of the Revised Rules of Court.

[2] *Rollo*, pp. 108-124. Penned by Associate Justice Angelita A. Gacutan, with Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta concurring.

[3] *Id*. at 130-131. Penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Ricardo R. Rosario concurring.

[4] *Id*. at 77-106. Penned by Judge Arcadio I. Manigbas.

The Facts

Isidro, Fernan, and Fred were charged for the crimes of Homicide and Frustrated Homicide in two separate Informations, to wit:

Criminal Case No. 02-10-493

The undersigned Fourth Assistant Provincial Prosecutor accuses Isidro Cosme, Fernan Cosme and Fred Cosme of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code, committed as follows:

That on or about the 17th day of June 2002, at about 7:30 o'clock in the evening, at Barangay Sampaloc, Municipality of Talisay, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with unlicensed long and short firearms, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearms one Antonio Balinado y Almendras, thereby inflicting upon the latter gunshot wounds on the different parts of his body, which directly caused his death.

Contrary to law.[5]

Criminal Case No. 02-10-494

The undersigned Fourth Assistant Provincial Prosecutor accuses Isidro Cosme, Fernan Cosme and Fred Cosme of the crime of Frustrated Homicide, defined and penalized under Article 249, in relation to Article 50 of the Revised Penal Code, committed as follows:

That on or about the 17th day of June 2002, at about 7:30 o'clock in the evening, at Barangay Sampaloc, Municipality of Talisay, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with unlicensed long and short firearms, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said

[5] *Id*. at 71-72.

firearms one Pablito Punzalan y Cuerva, thereby inflicting upon the latter lacerated wound, left, occipital area, 3 cm., which required medical attendance and incapacitated him from performing his customary work for a period of fourteen to twenty one (14-21) days, the said accused having performed all the acts of execution which should have produced the crime of homicide as a consequence, but which nevertheless was not produced by reason of some cause independent of the will of the perpetrators, that is, because of the timely and able medical attendance rendered to the said Pablito C. Punzalan, which prevented his death.

Contrary to law.[6]

Upon arraignment, Isidro, Fernan, and Fred pleaded not guilty in both cases. Joint trial ensued thereafter.

During trial, it was found that the true name of the deceased Antonio Balinado is Florentino Balinado. The trial court, in its Order dated 28 October 2004,[7] granted the prosecution's Motion for Leave of Court to Amend the Information to state the real name of the victim, and the Amended Information inserted the true name of the victim as "Florentino Balinado y Almendras" alias "Antonio Balinado y Almendras alias Tony" (Antonio).

The Version of the Prosecution

The prosecution presented six witnesses: Pablito Punzalan, Lope Punzalan, SPO2 Esmeraldo S. Manimtim, Dr. Teodoro Cabiscuelas, Pantaleon Balinado, and Anastacia Balinado.

Pablito Punzalan testified that on 17 June 2002, at around 4:00 p.m., he was at the house of Jose Tenorio, who was celebrating his birthday. He saw Antonio and Fernan arguing about politics and he heard Fernan warning Antonio: "*Tinoy, hindi ka na uumagahin.*"Fernan left at around 5:00 p.m. while Pablito and Antonio left at around 6:00 p.m.

While walking along the national highway, Pablito heard a shot. He met a child who told him to help Antonio. At the front

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[6] *Id.* at 74-75.

[7] Records (Criminal Case No. 02-10-493), pp. 265-266.

yard of the Cosmes, he saw Isidro, Fred, Fernan, and Pantaleon Cosme boxing, kicking, and beating Antonio with their guns. Pablito shouted *"tama na?"* and introduced himself as a *barangay tanod*. When Antonio, who was already bloodied, embraced him, he told Antonio to run away because he might be killed. When Antonio ran away, Fernan shot Pablito, who was later brought to the Daniel O. Mercado Medical Center for the treatment of a lacerated wound located at the left occipital area.

Lope Punzalan testified that on 17 June 2002, he was also at the house of Jose Tenorio. He remembered a shirtless Fernan, who appeared drunk when he arrived at the party. Later, during a heated debate on the elections, Fernan stood up and said "*Pumirmi kayo dyan.*" Fernan then pointed at Antonio and said "*Hindi ka na uumagahin pa.*" After the party, Lope instructed Antonio to go home. Later, while Lope was walking along the highway on his way home, he heard gunshots. When he looked towards the direction of the gunshots, he saw two persons running toward him and who told him that his cousin Antonio was shot. Lope proceeded to help and saw Antonio with a gunshot wound on his back. He told Antonio to run away and they went separate ways. Later, he saw Pablito running while holding the back of his head which was bloodied. He then saw Antonio lying on the ground, and he instructed the people nearby to carry Antonio inside a jeep. While inside the jeep, Antonio told Lope that he was shot by the Cosmes. He did not ask further questions from Antonio since he was more concerned on bringing Antonio to the hospital.

According to Lope, he executed a sworn statement dated 18 June 2002 before PO3 Ernesto Serrano Cabrera, Jr. regarding the shooting incident but PO3 Cabrera lost the said statement.

SPO2 Esmeraldo S. Manimtim was ordered by their Chief of Police to conduct an investigation on the case. SPO2 Manimtim testified that at 10:00 p.m. on 17 June 2002, he asked Antonio why he was at the Daniel O. Mercado Medical Center. Antonio replied that he had gunshot wounds because he was shot by the father and son, Pame and Edong Cosme. SPO2 Manimtim learned from PO3 Cabrera that Pame Cosme is Pantaleon Cosme, while

Edong Cosme is Isidro Cosme. When SPO2 Manimtim asked Antonio if his gunshot wound was fatal, Antonio merely replied that he was not feeling well. SPO2 Manimtim testified that at the time he took his statement, Antonio was already having a hard time speaking because of the gunshot wounds. SPO2 Manimtim further testified that he also received information that Antonio shot Pantaleon and Sonora Cosme who both sustained gunshot wounds.

Dr. Teodoro Cabiscuelas, a general surgeon at the Daniel O. Mercado Medical Center, testified that on 17 June 2002, Antonio was brought to the emergency room of the Daniel O. Mercado Medical Center. Antonio's vital signs of blood pressure of 60/80 palpatory indicated that he was losing a lot of blood. Antonio sustained gunshot wounds at the right thorax and lumbar area which were fatal, and at the right arm which was non-fatal. Antonio underwent extensive operation and his physical condition was declared unstable.

Dr. Cabiscuelas also treated Pablito Punzalan who sustained a non-fatal lacerated wound which would heal within 14 days or 2 to 3 weeks, provided no complication occurs. Dr. Cabiscuelas stated that the wound could have been caused by a bullet, but he could not really tell the real cause of Pablito's wound.

Pantaleon Balinado testified that on 17 June 2002 at around 7:00 to 7:30 p.m., his brother-in-law informed him that his father, Antonio, was shot. He immediately proceeded to the place of incident, where he was informed that his father was already brought to the hospital. When he saw his father at the hospital, he asked him who shot him. His father answered that it was Fernan, Fred, Isidro, and Pantaleon (Cosme). Pantaleon testified that at that time, his father was in a bad condition and he could hardly talk.

Pantaleon Balinado further testified that they spent ₱124,603.37 for the hospital and doctor's fees and ₱143,662.89 for the medicines and burial expenses. At the time of his death, his father Antonio was earning around ₱20,000 tending a nursery.

He hired a lawyer for the case and the agreed acceptance fee was ₱25,000, and ₱3,000 appearance fee for every hearing.

Anastacia Balinado, wife of Antonio, testified that on 17 June 2002, she was informed that Antonio was shot and she immediately ran to the place of incident. She saw Antonio already inside a jeep and about to be rushed to the hospital. She met her son Pantaleon and they went to the hospital, where she overheard Antonio telling Pantaleon that the ones who shot him were "*apat na mag-aamang Cosme*." Anastacia further testified that Antonio was confined at the hospital for three days, and died on 20 June 2002.

The Version of the Defense

The defense presented seven witnesses: Pantaleon Cosme, Sonora Cosme, Isidro, Fernan, Dr. Raul Desipeda, PO3 Cabrera, and Police Inspector Donna Villa Huelgas.

Pantaleon Cosme, the son of Isidro and Socorro Cosme, testified that on 17 June 2002, at around 7:30 p.m., he and his siblings, Sonora and Fernan, were in front of their parents' house. They were talking about the altercation between Antonio and Fernan which happened at a birthday party when Antonio and Pablito Punzalan approached them. When Pantaleon Cosme asked them what was the problem, Antonio replied "*Patay kayo sa akin.*" and then drew his gun and shot Pantaleon Cosme. Pantaleon Cosme fell to the ground and regained consciousness three days later at the hospital, where he learned that he sustained seven gunshot wounds. He was hospitalized for almost two weeks. Pantaleon Cosme further testified that Antonio also shot Sonora, who was hit at her side. At the time of the incident, his father Isidro was inside the house watching television.

Sonora Cosme testified that at around 7:30 p.m. on 17 June 2002, she was in front of their house with her brothers Pantaleon, Fred, and Fernan. Antonio and Pablito approached them and she saw Antonio shoot Pantaleon several times, causing him to fall to the ground. Sonora rushed to Pantaleon and while she was about to embrace him, Antonio shot her. She sustained a wound on her right buttock where the bullet entered and another

on her left buttock which was the exit wound. She passed out and regained consciousness at the hospital. At the time of the attack, her father Isidro was inside the house. She stayed at the hospital for four days where she was interrogated by PO3 Cabrera.

Isidro testified that at around 7:30 p.m. on 17 June 2002, he was inside his house watching television when he heard six gunshots. Being used to gunshots in their neighborhood, he just ignored the incident. Five seconds later, someone knocked on the door, and when he opened it, Fernan went inside carrying an unconscious Sonora with blood oozing from her side. Isidro also saw his other son Pantaleon, lying bloodied on the ground less than 10 meters away. With the help of some relatives, they brought Pantaleon and Sonora to the hospital. Isidro denied firing any firearm during the incident. In fact, when Fred, Fernan, and he were subjected to paraffin tests, the results were negative.

Fernan testified that on 17 June 2002, he was attending a birthday party at the house of his neighbors Maximo and Jose Tenorio. While they were drinking, an altercation ensued regarding Fernan's non-affiliation with Antonio's political party in the election. Fernan denied that he told Antonio: "*Hindi ka na uumagahin.*" When he got home, Fernan told his siblings, Pantaleon and Sonora, about the altercation during their conversation at the terrace. While they were still discussing the incident, Antonio arrived. Pantaleon approached Antonio, who immediately shot Pantaleon. Pantaleon fell to the ground, and Sonora rushed to embrace him but Antonio also fired at her. Fernan hurriedly left to inform Isidro about the incident and they later helped carry the unconscious Pantaleon and Sonora inside Fred's jeep. At that time, Antonio was no longer in the vicinity.

On 20 June 2002, Fernan learned that Antonio had been shot and that he died from a gunshot wound. Fernan claimed that it was Antonio who was angry with him.

Dr. Raul Desipeda testified that at around 8:55 p.m. on 17 June 2002, Pantaleon Cosme was brought to the emergency room of the C.P. Reyes Hospital. He attended to Pantaleon who

was then in a state of shock due to significant blood loss as a result of the five gunshot wounds he sustained. He also treated Sonora, who sustained a "gunshot wound over the right buttock, thru-and-thru with exit wound over the left buttock."

PO3 Cabrera denied taking the statement of Lope Punzalan. According to PO3 Cabrera, he only took the statements of Pablito Punzalan and Sonora Cosme, as ordered by their Chief of Police.

Police Inspector Donna Villa Huelgas, the forensic chemist assigned at the Regional Crime Laboratory Office in Camp Vicente Lim, Calamba City, testified that on 19 June 2002, she conducted paraffin tests on the three accused, Isidro, Fernan, and Fred, and a certain Andres Cosme. The results on the paraffin tests were all negative for the presence of gunpowder nitrates. Police Inspector Huelgas stated that the absence of gunpowder means that the person probably did not fire a gun.

During trial and prior to the promulgation of the trial court's decision, Fred died.[8]

The Ruling of the Trial Court

On 28 July 2010, the trial court rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, accused Isidro Cosme, Fernan Cosme, and Fred Cosme, in Criminal Case No. 02-10-493, are hereby found GUILTY beyond reasonable doubt for the crime of Homicide and they are hereby sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum [and] to indemnify the heirs of Antonio Balinado a.k.a. Florentino Balinado the following:
>
> (1) Fifty Thousand Pesos (₱50,000.00) by way of civil indemnity;
>
> (2) Fifty Thousand Pesos (₱50,000.00) by way of moral damages;

[8] An Order dated 28 July 2010 of the trial court stated that its decision was promulgated in the presence of the accused Isidro and Fernan Cosme, but not Fred Cosme who was already dead.

(3) Two Hundred Sixty-Four Thousand Eight Hundred Sixteen Pesos [and] Twenty-Six Centavos (₱264,816.26) by way of compensatory damages.

On the other hand, in Criminal Case No. 02-10-494, accused Isidro Cosme and Fred Cosme are hereby ACQUITTED for the crime charged. Accused Fernan Cosme is, however, found GUILTY for the crime of attempted homicide committed against Pablito C. Punzalan of which he is hereby sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of *arresto mayor* as minimum to two (2) years, four (4) months and one (1) day of *prision correccional* as maximum.

SO ORDERED.[9]

Based on the evidence of the defense, the trial court stated that Antonio seemed to be the aggressor by firing several shots at Pantaleon. The Cosmes retaliated by shooting Antonio and beating and kicking him. The trial court found that Isidro, Fernan, and Fred all participated in beating and mauling Antonio with the use of firearms even after he sustained gunshot wounds. The trial court concluded that it can be inferred from their combined acts that Isidro, Fernan, and Fred had the same criminal intent and were bent to commit the felony. Thus, it is immaterial who among the accused shot Antonio because in their collective participation, the act of one is the act of all.

As regards the charge for attempted homicide on Pablito, the trial court only held Fernan liable considering that there was no evidence showing that Isidro and Fred also shot Pablito. Nor was it shown that Isidro and Fred had the same criminal intent as Fernan who was positively identified by Pablito as the person who shot him.

The Ruling of the Court of Appeals

The Court of Appeals agreed with the trial court and considered the statement of Antonio to SPO2 Manimtim as an *ante-mortem* statement or a dying declaration which is entitled to highest credence. Based on the circumstances surrounding the

[9] *Rollo,* pp. 105-106.

declaration, the Court of Appeals concluded that it was clear that Antonio was conscious of his imminent death when he made his statement to SPO2 Manimtim.

The Court of Appeals likewise considered as part of *res gestae* the declaration of Antonio to Lope, Pantaleon Balinado, and Anastacia. Thus, although Antonio failed to name all the accused to SPO2 Manimtim, the Court of Appeals noted that Antonio did divulge to Lope, Anastacia, and Pantaleon Balinado that the perpetrators of the crime were the Cosmes, referring to Isidro, Fred, Fernan, and Pantaleon Cosme. Furthermore, the Court of Appeals emphasized that prosecution witness Pablito testified that he saw the accused mauling and beating Antonio, although he did not witness the actual shooting of Antonio. Nevertheless, the Court of Appeals held that since there was conspiracy, it does not matter whether only one or two of the accused had actually fired the fatal shots.

As regards the paraffin test, the Court of Appeals held that negative findings for gunpowder nitrates do not conclusively show that a person did not fire a gun.

The Issue

The issue is whether petitioners are guilty of the crimes charged.

The Court's Ruling

We find the petition without merit. The Court of Appeals did not err in affirming the ruling of the trial court that the petitioners' guilt for the crimes charged was clearly established by the witnesses and the evidence of the prosecution.

Petitioners question the credibility of the prosecution witnesses and the factual findings of the trial court. Well-settled is the rule that the trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies.[10] Factual

[10] *People v. Espejon*, G.R. No. 199445, 4 February 2015, 749 SCRA 639; *People v. Pareja*, 724 Phil. 759 (2014); *People v. Bonaagua*,665 Phil.

findings of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive unless certain facts of substance and value were overlooked, which if considered would materially affect the result of the case.[11] We find no such misapprehension of facts in this case.

The statement of the victim Antonio after he was fatally wounded that his assailants were the Cosmes was corroborated by the eyewitness Pablito who testified that he saw Isidro, Fred, Fernan, and Pantaleon Cosme mauling and beating the already bloodied Antonio with a gun. Pablito, who tried to stop the mauling, was also shot by Fernan, but fortunately sustained only a non-fatal lacerated wound. Pablito's testimony was further corroborated by another prosecution witness, Lope, who testified that he heard gunshots and upon being informed that Antonio was shot, he proceeded to the crime scene and saw Antonio, who was bleeding from a gunshot wound at his back. While bringing Antonio to the hospital on board a jeep, Antonio told Lope that he was shot by the Cosmes. Clearly, the identification of the accused as the persons responsible for the crimes charged was established by the prosecution.

Petitioners claim that Antonio shot the siblings Pantaleon and Sonora Cosme but denied any knowledge of the shooting and mauling of Antonio. Petitioner Fernan, who was one of the defense witnesses, testified that when they were about to bring Pantaleon and Sonora to the hospital, Antonio was no longer in the vicinity. Petitioners' denial is belied by the positive testimony of the other victim, Pablito, that petitioners mauled and beat the already bloodied Antonio with their firearms. Petitioners' defense of denial cannot prevail over the positive testimonies of the prosecution witnesses who have no motive to testify falsely against them.[12]

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750 (2011); *People v. Oliquino*, 546 Phil. 410 (2007); *People v. Diunsay-Jalandoni*, 544 Phil. 163 (2007); *Navarrete v. People*,542 Phil. 496 (2007).

[11] *Roque v. People*, G.R. No. 193169, 6 April 2015, 755 SCRA 20; *People v. Matibag*, G.R. No. 206381, 25 March 2015, 754 SCRA 529;*People v. Dela Peña*, G.R. No. 207635, 18 February 2015,751 SCRA 178.

[12] *People v. Balute*, G.R. No. 212932, 21 January 2015, 748 SCRA 172.

On the charge for homicide, we agree with the Court of Appeals that the accused conspired to kill Antonio as shown by their collective act of mauling and beating Antonio with their firearms despite the fact that Antonio was already bleeding from gunshot wounds. The manner by which the accused attacked the victim clearly and convincingly shows that the accused were motivated by a common intent to kill Antonio. The actions of accused show that they were impelled by the same motive to retaliate against Antonio for shooting Pantaleon and Sonora. Since conspiracy is established in this case, evidence as to who among the conspirators actually fired the fatal shots is no longer indispensable. In conspiracy, the act of one is the act of all and each of the offender is equally guilty of the criminal act.[13]

We likewise affirm the ruling of the Court of Appeals and the trial court, convicting Fernan of the crime of attempted homicide. The victim, Pablito, clearly identified Fernan as the one who shot him when he tried to stop Fernan's group from mauling and beating Antonio.

It should be noted that of the three accused originally charged with homicide and frustrated homicide, only Fernan is still alive. Fred died prior to the promulgation of the trial court's decision, while Isidro died after the Court of Appeals' decision was promulgated. In a manifestation dated 11 January 2015, the counsel for petitioners informed the Court that Isidro died on 10 November 2014, and a copy of Isidro's death certificate was attached to the manifestation. Thus, in a Resolution dated 20 April 2015, the Court considered the case closed and terminated insofar as petitioner Isidro Cosme is concerned.

Thus, the Court finds no reversible error in the assailed decision and resolution. However, the award of civil indemnity, moral damages, and compensatory damages should earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.[14]

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[13] *People v. Alvarez*, G.R. No. 191060, 2 February 2015, 748 SCRA 674.

[14] *People v. Matibag*, G.R. No. 206381, 25 March 2015, 754 SCRA 529.

WHEREFORE, the 29 November 2013 Decision and the 5 June 2014 Resolution of the Court of Appeals in CA-G.R. CR No. 33692, finding Isidro Cosme, Fernan Cosme, and Fred Cosme guilty of homicide in Criminal Case No. 02-10-493, and finding Fernan Cosme guilty of attempted homicide in Criminal Case No. 02-10-494, are **AFFIRMED** with the **MODIFICATION** that interest at the rate of 6% *per annum* is imposed on all the monetary awards for damages from the date of finality of this Resolution until fully paid. However, the case is considered **CLOSED** and **TERMINATED** insofar as Fred Cosme and Isidro Cosme are concerned due to their death prior to the promulgation of this Resolution.

SO ORDERED.

Del Castillo, Mendoza, and *Leonen, JJ.,* concur.

Brion, J., on leave.

SPECIAL FIRST DIVISION

[G.R. No. 215551. August 17, 2016]

JAKERSON G. GARGALLO, *petitioner, vs.* **DOHLE SEAFRONT CREWING (MANILA), INC., DOHLE MANNING AGENCIES, INC., and MR. MAYRONILO B. PADIZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (RA 8042, AS AMENDED BY RA 10022); CORPORATE DIRECTORS AND OFFICERS ARE JOINTLY AND SOLIDARILY LIABLE WITH THE RECRUITMENT/

PLACEMENT AGENCY FOR ALL MONEY CLAIMS OR DAMAGES THAT MAY BE AWARDED TO OVERSEAS FILIPINO WORKERS (OFWS); CASE AT BAR.— Section 10 of RA 8042, as amended, expressly provides for joint and solidary liability of corporate directors and officers with the recruitment/placement agency for all money claims or damages that may be awarded to Overseas Filipino Workers (OFWs). While a corporate director, trustee, or officer who entered into contracts in behalf of the corporation generally cannot be held personally liable for the liabilities of the latter, in deference to the separate and distinct legal personality of a corporation from the persons composing it, personal liability of such corporate director, trustee, or officer, along (although not necessarily) with the corporation, may validly attach when **he is made by a specific provision of law personally answerable for his corporate action**, as in this case. Thus, in the recent case of *Sealanes Marine Services, Inc. v. Dela Torre*, the Court had sustained the joint and solidary liability of the manning agency, its foreign principal and the manning agency's President in accordance with Section 10 of RA 8042, as amended. In addition, Dohle Seafront is presumed to have submitted a verified undertaking by its officers and directors that they will be jointly and severally liable with the company over claims arising from an employer-employee relationship when it applied for a license to operate a seafarer's manning agency, as required under the 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers (POEA Rules). "Applicable laws form part of, and are read into, contracts without need for any express reference thereto; more so, when it pertains to a labor contract which is imbued with public interest.

2. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; THE AWARD OF ATTORNEY'S FEES IS NOT PROPER WHEN THE COURT DECLARED THAT THERE WAS NO UNLAWFUL WITHHOLDING OF BENEFITS IN LABOR CASES.— As a rule, the mere fact of having been forced to litigate to protect one's interest does not amount to a compelling legal reason to justify an award of attorney's fees in the claimant's favor. Verily, jurisprudence is replete with cases holding that attorney's fees may be awarded to a claimant who is compelled to litigate with third persons or incur expenses to protect his interest by reason of an unjustified act or omission on the part of the party from whom it is sought only when there is sufficient

showing of bad faith on the part of the latter in refusing to pay. However, in the case of *Montierro v. Rickmers Marine Agency Phils., Inc. (Montierro)*, similarly involving a claim for permanent total disability benefits filed by a seafarer, the Court had pronounced that in labor cases, the withholding of wages and benefits need not be coupled with malice or bad faith to warrant the grant of attorney's fees since all that is required is that the refusal to pay was without justification, thus, compelling the employee to litigate. Nonetheless, since the complaint in *Montierro* was filed; (*a*) when the petitioner therein was still under treatment; (*b*) prior to the assessment of the company-designated physician within the allowable 240-day period; and (*c*) without complying with the prescribed conflict-resolution procedure, the Court declared that there was no unlawful withholding of benefits, rendering the award of attorney's fees to be improper. Thus, considering that similar circumstances obtain in the present case, the Court finds it proper to rule in the same way.

APPEARANCES OF COUNSEL

Rowena A. Martin for petitioner.
Retoriano & Olalia-Retoriano for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution are the Motion for Reconsideration[1] and Motion for Partial Reconsideration[2] filed by petitioner Jakerson G. Gargallo (petitioner), and respondents Dohle Seafront Crewing (Manila), Inc. (Dohle Seafront), Dohle Manning Agencies, Inc. (Dohle Manning), and Mr. Mayronilo B. Padiz (Padiz; collectively, respondents), respectively, of the Court's Decision[3] dated September 16, 2015, which affirmed

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[1] Dated November 25, 2015. *Rollo*, pp. 139-147.

[2] Dated November 17, 2015. *Id.* at 148-159.

[3] See *id.* at 126-137.

the Decision[4] dated June 10, 2014 and the Resolution[5] dated November 21, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 130266, dismissing petitioner's claim for permanent total disability benefits, but ordered respondents Dohle Seafront and Dohle Manning, jointly and severally, to pay petitioner his income benefit for one hundred ninety-four (194) days, plus 10% of the total amount of the income benefit as attorney's fees.

The Facts

On July 20, 2012, petitioner filed a complaint for permanent total disability benefits against respondents before the National Labor Relations Commission (NLRC).[6] The complaint stemmed from his claim that: (*a*) he accidentally fell on deck while lifting heavy loads of lube oil drum, with his left arm hitting the floor first, bearing his full body weight;[7] (*b*) he has remained permanently unfit for further sea service despite major surgery and further treatment by the company-designated physicians;[8] and (*c*) his permanent total unfitness to work was duly certified by his chosen physician whose certification must prevail over the palpably self-serving and biased assessment of the company-designated physicians.[9]

For their part, respondents countered that the fit-to-work findings of the company-designated physicians must prevail over that of petitioner's independent doctor, considering that: (*a*) they were the ones who continuously treated and monitored petitioner's medical condition; and (*b*) petitioner failed to comply with the conflict-resolution procedure under the Philippine

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[4] *Id*. at 14-34. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Rosmari D. Carandang and Edwin D. Sorongon concurring.

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

[6] See September 16, 2015 Decision; *id*. at 128.

[7] *Id*. at 127.

[8] *Id*. at 128.

[9] *Id*.

Overseas Employment Administration-Standard Employment Contract (POEA-SEC). Respondents further averred that the filing of the disability claim was premature since petitioner was still undergoing medical treatment within the allowable 240-day period at the time the complaint was filed.[10]

The Labor Arbiter (LA)[11] and the NLRC[12] gave more credence to the medical report of petitioner's independent doctor and, thus, granted petitioner's disability claim, and ordered respondents to jointly and severally pay petitioner his permanent total disability benefits, albeit at different amounts.[13]

However, the CA disagreed with the conclusions of the LA and the NLRC, and dismissed petitioner's complaint.[14] It ruled that the claim was premature because at the time the complaint was filed: (*a*) petitioner was still under medical treatment by the company-designated physicians; (*b*) no medical assessment has yet been issued by the company-designated physicians as to his fitness or disability since the allowable 240-day treatment period during which he is considered under temporary total disability has not yet lapsed; and (*c*) petitioner has not yet consulted his own doctor, hence, had no sufficient basis to prove his incapacity.[15] The CA likewise gave more credence to the fit to work assessment of the company-designated physician who treated and closely monitored petitioner's condition, over the contrary declaration of petitioner's doctor who attended to him only once, two (2) months after the filing of the complaint.[16]

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[10] *Id*.

[11] See *id*. at 129.

[12] See *id*. at 129-130.

[13] The LA ordered respondents, jointly and severally, to pay petitioner US$ 156,816.00 or its peso equivalent as his permanent total disability benefits, while the NLRC reduced said amount to US$125,000.00 (see *id*. at 129).

[14] See *id*. at 130.

[15] *Id*; underscoring supplied.

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

In its September 16, 2015 Decision, the Court upheld the CA's dismissal of petitioner's claim for permanent total disability benefits, but ordered Dohle Seafront and Dohle Manning, jointly and severally, to pay petitioner the income benefit arising from his temporary total disability which lasted for 194 days from his repatriation on March 11, 2012 until his last visit to the company-designated physician on September 21, 2012[17] (the date when he was declared fit to work)[18] plus 10% of the total amount of the income benefit as attorney's fees.[19] Meanwhile, the Court found no basis to hold Padiz solidarily liable with Dohle Seafront and Dohle Manning for the payment of the monetary awards to petitioner, absent any showing that he acted beyond the scope of his authority or with malice.[20]

Dissatisfied, both parties filed their respective motions for reconsideration of the Court's September 16, 2015 Decision.[21]

I. Petitioner's Motion for Reconsideration

At the outset, the Court notes that, except as to the issue of respondents' liability for the payment of income benefit, the arguments propounded in petitioner's Motion for Reconsideration had been adequately passed upon in its September 16, 2015 Decision. In essence, petitioner argues that: (*a*) the lapse of the 120-day period from the onset of disability rendered him permanently and totally disabled because the extension of the medical treatment was unjustified;[22] and (*b*) resort to a third doctor is a mere directory, not a mandatory requirement.[23]

Such arguments remain untenable.

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[17] *Id*. at 136.

[18] *Id*. at 135.

[19] *Id*. at 136.

[20] *Id*.

[21] See *id*. at 139-147 and 148-159.

[22] *Id*. at 143.

[23] *Id*. at 144.

The Court had already disposed of the foregoing matters in its September 16, 2015 Decision, dismissing the complaint on the grounds of: (*a*) premature filing; and (*b*) failure to comply with the mandated conflict-resolution procedure under the POEA-SEC, *viz.*:

> It is undisputed that petitioner was repatriated on March 11, 2012 and immediately subjected to medical treatment. Despite the lapse of the initial 120-day period on July 9, 2012, such treatment continued due to persistent pain complained of by petitioner, which was observed until his 180th day of treatment on September 7, 2012. In this relation, the CA correctly ruled that the filing of the complaint for permanent total disability benefits on July 20, 2012 was premature, and should have been dismissed for lack of cause of action, considering that at that time: (*a*) petitioner was still under the medical treatment of the company-designated physicians within the allowable 240-day period; (*b*) the latter had not yet issued any assessment as to his fitness or disability; and (*c*) petitioner had not yet secured any assessment from his chosen physician, whom he consulted only more than two (2) months thereafter, or on October 2, 2012.
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> Moreover, petitioner failed to comply with the prescribed procedure under the afore-quoted Section 20 (A) (3) of the 2010 POEA-SEC on the joint appointment by the parties of a third doctor, in case the seafarer's personal doctor disagrees with the company-designated physician's fit-to-work assessment. The [2008-2011 ver.di. IMEC IBF CBA (IBF CBA)] similarly outlined the procedure, *viz.*:
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> 25.2 The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.
>
> xxx xxx xxx
>
> 25.4. A seafarer whose disability, in accordance with 25.2 above is assessed at 50% or more shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to 100% compensation. Furthermore, any seafarer assessed at less than 50% disability but certified as permanently unfit for further sea service in

> any capacity by the Company-nominated doctor, shall also be entitled to 100% compensation. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 25.2 above.

In the recent case of *Veritas Maritime Corporation v. Gepanaga, Jr.* [(see G.R. No. 206285, February 4, 2015, 750 SCRA 104, 117-118)], involving an almost identical provision of the CBA, the Court reiterated the well-settled rule that the seafarer's non-compliance with the mandated conflict-resolution procedure under the POEA-SEC and the CBA militates against his claims, and results in the affirmance of the fit-to-work certification of the company-designated physician, thus:

> The [POEA-SEC] and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
>
> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. x x x[24]

There being no cogent reason to depart from the aforementioned ruling, the Court denies petitioner's Motion for Reconsideration insofar as it seeks to reinstate the NLRC's ruling finding petitioner entitled to permanent total disability benefits.

Nonetheless, the Court concurs with petitioner's asseveration that it was erroneous to absolve Padiz from joint and several liability with Dohle Seafront and Dohle Manning for the payment

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[24] *Id*. at 134-135.

of the income benefit arising from his temporary total disability,[25] in view of Section 10 of Republic Act No. (RA) 8042,[26] otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," as amended by RA 10022[27] (RA 8042, as amended), which pertinently reads:

> SECTION. 10. *Money Claims*. – x x x
>
> The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. **If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves <u>be jointly and solidarily liable</u> with the corporation or partnership for the aforesaid claims and damages.**[28] (Emphasis and underscoring supplied)

Section 10 of RA 8042, as amended, expressly provides for joint and solidary liability of corporate directors and officers with the recruitment/placement agency for all money claims or damages that may be awarded to Overseas Filipino Workers (OFWs). While a corporate director, trustee, or officer who entered into contracts in behalf of the corporation <u>generally</u> cannot be held personally liable for the liabilities of the latter,

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[25] See *id*. at 145-146.

[26] Entitled "AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," approved on June 7, 1995.

[27] Entitled "AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," approved on **March 8, 2010.**

[28] See Section 7 of RA 10022.

in deference to the separate and distinct legal personality of a corporation from the persons composing it, personal liability of such corporate director, trustee, or officer, along (although not necessarily) with the corporation, may validly attach when **he is made by a specific provision of law personally answerable for his corporate action**,[29] as in this case. Thus, in the recent case of *Sealanes Marine Services, Inc. v. Dela Torre*,[30] the Court had sustained the joint and solidary liability of the manning agency, its foreign principal and the manning agency's President in accordance with Section 10 of RA 8042, as amended.

In addition, Dohle Seafront is presumed to have submitted a verified undertaking by its officers and directors that they will be jointly and severally liable with the company over claims arising from an employer-employee relationship when it applied for a license to operate a seafarer's manning agency, as required under the 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers (POEA Rules).[31]

"Applicable laws form part of, and are read into, contracts without need for any express reference thereto; more so, when it pertains to a labor contract which is imbued with public interest. Each contract thus contains not only what was explicitly stipulated therein, but also the statutory provisions that have any bearing on the matter."[32] As applied herein, Section 10 of RA 8042, as amended, and the pertinent POEA Rules are deemed incorporated in petitioner's employment contract with respondents. These provisions are in line with the State's policy of affording protection to labor and alleviating the workers' plight,[33] and are meant to assure OFWs immediate and sufficient

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[29] See *Queensland-Tokyo Commodities, Inc. v. George*, 644 Phil. 574, 584 (2010).

[30] See G.R. No. 214132, February 18, 2015, 751 SCRA 243, 254-255.

[31] See Section 1 (f), Rule II of the POEA Rules.

[32] See *Halili v. Justice for Children International*, G.R. No. 194906, September 9, 2015.

[33] See Section 18, Article II, and Section 3, Article XIII of the 1987 Constitution.

payment of what is due them.[34] Thus, as the law provides, corporate directors and officers are themselves solidarily liable with the recruitment/placement agency for all money claims or damages that may be awarded to OFWs.

Based on the foregoing premises, the Court, therefore, finds Padiz jointly and solidarily liable with Dohle Seafront and Dohle Manning for the payment of the income benefit arising from petitioner's temporary total disability, and, to such extent, grants petitioner's motion for reconsideration, and, in consequence, modifies the September 16, 2015 Decision accordingly.

II. Respondents' Motion for Partial Reconsideration

Petitioner's entitlement to income benefit was clearly shown in this case, in light of the undisputed fact that he needed continuous medical treatment for 194 days from his repatriation on March 11, 2012, until his last visit with the company-designated physician on September 21, 2012,[35] when he was declared fit to work.[36]

In this relation, the Court cannot subscribe to respondents' contention that entitlement to income benefit is applicable only to land-based employees compulsorily registered with the Social Security System (SSS),[37] considering that the 2010 POEA-SEC accords upon the manning agency/foreign principal the **duty** to cover Filipino seafarers under the SSS and other social protection government agencies.[38] Neither is the Court persuaded by respondents' argument that the obligation to pay the same

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[34] See *Sameer Overseas Placement Agency, Inc. v. Cabiles*, G.R. No. 170139, August 5, 2014, 732 SCRA 22, 69-70.

[35] *Rollo*, p. 136.

[36] *Id*. at 135.

[37] *Id*. at 153.

[38] Section 1 (A) (2) of the 2010 POEA-SEC provides:

SECTION 1. DUTIES

A. **Duties of the Principal/Employer/Master/Company**:

xxx xxx xxx

falls on the SSS in view of their compliance with the above duty,[39] because **the income benefit arising from a covered employee's temporary total disability is to be advanced by the employer**, subject to reimbursement by the SSS[40] upon compliance with the conditions set forth under Section 1,[41] Rule X of the Rules Implementing Title II, Book IV of the Labor Code. Consequently, the Court finds no reason to reverse or modify the directive for respondents to jointly and severally pay petitioner his income benefit for 194 days, save for the inclusion of Padiz as a solidary debtor.

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2. To **extend coverage to the seafarers** under the Philippine Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), Employees' Compensation Commission (ECC) and Home Development Mutual Fund (Pag-IBIG Fund), unless otherwise provided in multilateral or bilateral agreements entered into by the Philippine government with other countries. (Emphases supplied)

[39] *Rollo*, p. 155. Respondents claimed that they have already reported petitioner for coverage under the SSS, and duly remitted his monthly SSS and ECC contributions from October 2011 to February 2012. See Annexes 1-MR to 1-S attached to respondents' Motion for Partial Reconsideration; *id*. at 167-186.

[40] <https://www.sss.gov.ph/sss/appmanager/pages.jsp?page=employees compensation> (visited August 12, 2016).

[41]
Rule X
TEMPORARY TOTAL DISABILITY

SECTION. 1. **Condition to Entitlement** — An employee shall be entitled to an income benefit for temporary total disability if all of the following conditions are satisfied:

(1) He has been duly reported to the System;

(2) He sustains the temporary total disability as a result of the injury or sickness; and

(3) The System has been duly notified of the injury or sickness which caused his disability.

His employer shall be liable for the benefit if such illness or injury occurred before the employee is duly reported for coverage to the system. (Emphasis supplied)

See also https://www.sss.gov.ph/sss/appmanager/pages.jsp?page= employees compensation> (visited August 12, 2016).

However, after surveying existing jurisprudence on the matter, the Court finds merit in respondents' supplication[42] that the award of attorney's fees must be deleted. As a rule, the mere fact of having been forced to litigate to protect one's interest does not amount to a compelling legal reason to justify an award of attorney's fees in the claimant's favor.[43] Verily, jurisprudence is replete with cases holding that attorney's fees may be awarded to a claimant who is compelled to litigate with third persons or incur expenses to protect his interest by reason of an unjustified act or omission on the part of the party from whom it is sought only when there is sufficient showing of bad faith on the part of the latter in refusing to pay.[44]

However, in the case of *Montierro v. Rickmers Marine Agency Phils., Inc.* (*Montierro*),[45] similarly involving a claim for permanent total disability benefits filed by a seafarer, the Court had pronounced that in labor cases, the withholding of wages and benefits need not be coupled with malice or bad faith to warrant the grant of attorney's fees since all that is required is that the refusal to pay was without justification, thus, compelling the employee to litigate.[46] Nonetheless, since the complaint in *Montierro* was filed: (*a*) when the petitioner therein was still under treatment; (*b*) prior to the assessment of the company-designated physician within the allowable 240-day period; and (*c*) without complying with the prescribed conflict-resolution procedure, the Court declared that there was no unlawful

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[42] See *Rollo*, pp. 156-158.

[43] See *Asian Terminals, Inc. v. Allied Guarantee Insurance, Co., Inc.*, G.R. No. 182208, October 14, 2015, citing *Philippine National Construction Corporation v. APAC Marketing Corporation*, 710 Phil. 389, 395-396 (2013).

[44] See *Asian Terminals, Inc. v. Allied Guarantee Insurance, Co., Inc.*; *id*. See also *Diaz v. Encanto*, G.R. No. 171303, January 20, 2016; *Malayan Insurance Company, Inc. v. St. Francis Square Realty Corporation*, G.R. Nos. 198916-17 and 198920-21, January 11, 2016; and *CCC Insurance Corporation v. Kawasaki Steel Corporation*, G.R. No. 156162, June 22, 2015, 759 SCRA 332.

[45] G.R. No. 210634, January 14, 2015, 746 SCRA 287.

[46] *Id*. at 299.

withholding of benefits, rendering the award of attorney's fees to be improper. Thus, considering that similar circumstances obtain in the present case, the Court finds it proper to rule in the same way.

WHEREFORE, the Court hereby **RESOLVES** to:

1. **PARTLY GRANT** petitioner Jakerson G. Gargallo's (petitioner) Motion for Reconsideration and, hereby, **DECLARE** respondent Mr. Mayronilo B. Padiz (Padiz) jointly and severally liable with respondents Dohle Seafront Crewing (Manila), Inc. (Dohle Seafront) and Dohle Manning Agencies, Inc. (Dohle Manning), to pay petitioner his income benefit for one hundred ninety-four (194) days; and

2. **PARTLY GRANT** the Motion for Partial Reconsideration filed by respondents Dohle Seafront, Dohle Manning, and Padiz, thereby, deleting the award of attorney's fees equivalent to 10% of the adjudged income benefit in favor of petitioner.

The rest of the Court's September 16, 2015 Decision stands.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 215750. August 17, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARLITO TAYAO *y* LAYA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; REQUISITES WHEN CIRCUMSTANTIAL EVIDENCE IS SUFFICIENT FOR CONVICTION.—** To justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal liability of the accused. Rule 133, Section 4 of the Rules of Court enumerates the conditions when circumstantial evidence is sufficient for conviction, to wit: SEC. 4. Circumstantial Evidence, when sufficient. – Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all circumstances is such as to produce conviction beyond reasonable doubt.

2. **ID.; ID.; DISPUTABLE PRESUMPTIONS; IN THE ABSENCE OF ANY EVIDENCE OF COERCION, THE COURT COULD ONLY PRESUME THAT THE POLICE SIMPLY PERFORMED THEIR REGULAR DUTY WITHOUT RESORTING TO EXTRAJUDICIAL MEASURES.—** Carlito's argument that he was forced by the police to confess the killing of his wife was not substantiated. He failed to prove how he was forced and coerced by the police in confessing to the crime against his wife. In the absence of any evidence of coercion, the Court could only presume that the police simply performed their regular duty without resorting to extrajudicial measures.

3. **CRIMINAL LAW; CIVIL LIABILITY; TEMPERATE DAMAGES MAY BE RECOVERED WHEN SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT DEFINITE PROOF OF ITS AMOUNT WAS NOT PRESENTED IN COURT.—** The Court, however, modifies the damages the CA awarded. In line with the recent jurisprudence, the amount of civil indemnity, moral damages and exemplary damages must be increased to ₱100,000.00. In addition, the Court imposes temperate damages in the amount of ₱50,000.00. Temperate damages may be recovered when some pecuniary loss has been suffered but definite proof of its amount was not presented in court. All awards should earn

interest at the legal rate of 6% per annum from the finality of this judgment.

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

MENDOZA, *J.*:

Subject of this appeal is the June 3, 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 05532, which affirmed with modification the July 27, 2011 Decision[2] of the Regional Trial Court, Branch 90, Dasmariñas, Cavite *(RTC)*, finding the accused-appellant, Carlito Tayao *y* Laya *(Carlito)* guilty beyond reasonable doubt of the crime of parricide, defined and penalized under Article 246 of the Revised Penal Code *(RPC)*. The Information charging Carlito with the crime of parricide reads:

> That on or about the 22nd day of November 2000, in the Municipality of Dasmariñas, Province of Cavite, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, qualified by treachery and abuse of superior strength, did, then and there, willfully, unlawfully and feloniously maul and strangle his wife, MA. THERESA TAYAO y FERNANDEZ, with whom he was united in lawful wedlock, with the use of stretchable (elastic) hose, inflicting upon the latter injuries and asphyxia by ligature strangulation which resulted to her instantaneous death, to the damage and prejudice of the latter's heirs.
>
> CONTRARY TO LAW.[3]

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Andres B. Reyes, Jr. and Manuel M. Barrios.

[2] *Id*. at 69-72; penned by Executive Judge Perla V. Cabrera-Faller.

[3] As quoted in the CA Decision, *id*. at 3.

On September 16, 2008, Carlito was arraigned and he pleaded "not guilty" to the crime charged in the Information. Pre-trial and trial ensued.

During the trial, the prosecution presented Clarisse F. Tayao *(Clarisse)* and Cherry F. Tayao *(Cherry)*, daughters of Carlito; and Dr. Antonio Vertido *(Dr. Vertido)*, National Bureau of Investigation *(NBI)* Medico-Legal Officer, as its witnesses. The parties stipulated that Dr. Vertido, who conducted a post-mortem examination on the body of the victim, Ma. Theresa Tayao *y* Fernandez *(Ma. Theresa)*, would testify that she died of asphyxia by ligature strangulation and they agreed to dispense with his testimony. Likewise, the presentation of Cherry as a witness was dispensed with after it was stipulated that her testimony would only corroborate that of her sister, Clarisse's.

Version of the Prosecution

As succinctly recited in the CA decision, the version of the prosecution is as follows:

> The evidence for the prosecution established that on November 22, 2000, at about 9:00 a.m., inside the Tayao residence located at Block 64, Lot 6-B, Barangay Sto. Cristo, DBB, Dasmariñas, Cavite, Clarisse woke up from her sleep and decided to go to the bathroom. She woke up her sister, Charmaine F. Tayao, to accompany her to the bathroom since she was afraid to go alone. The two (2) girls thereafter found their mother, Ma. Theresa, lying lifeless on the floor somewhere between the bathroom and the kitchen, with a plastic transparent hose (the kind used for nebulizers) tied around her neck and with blood oozing from her nose. Horrified, the girls started crying. Their aunt, Rizza F. Tayao (Rizza), who lives in a room right beside their house, came rushing in after hearing their cries. The Accused-Appellant, who was still sleeping, was awakened by the commotion. Rizza then loosened the plastic hose around Ma. Theresa's neck and tried to revive her. The Accused-Appellant looked on and told her, *"Wala na 'yan,"* to which she replied, *"Hindi," kailangang dalhin natin ito sa ospital."* Thereafter, Nelio Fernandez (Nelio), father of Ma. Theresa, came. Rizza and Nelio rushed Ma. Theresa to the hospital but she was pronounced dead on arrival. Meanwhile, the Accused-Appellant went to fetch his other daughters Cherry and Cate Lynn, from school. Nelio advised him not to go anywhere

thereafter. When Rizza came back in the afternoon to check on the Accused-Appellant, she saw him sitting down and then went on to hang clothes which he just washed, as if unfazed by the death of his wife.

From the documentary exhibits of the prosecution, it was also gathered that the Accused-Appellant and Ma. Theresa were in a love-hate relationship; that they fought and shouted at each other the night before the incident; that the Accused-Appellant is capable of killing Ma. Theresa since he physically abused her and their children; that he hit his child, Clarisse, on the head and feet with a broom for several times and banged her head against the wall; that he banged the head of his other daughter, Cate Lynn, against the wall; that the Accused-Appellant was allegedly using illegal drugs; and, that the post-mortem examination of Ma. Theresa's body by Dr. Vertido revealed that the cause of death was not suicide but asphyxia by ligature strangulation.[4]

Version of the Defense

The defense, on the other hand, presented the testimonies of Carlito and his daughter, Cate Lynn, which narrated the following:

The Accused-Appellant denied the charges against him. He testified that at about 9:00 in the morning of November 22, 2000, he was awakened by the cries of his daughter, Clarisse. When he asked her what was wrong, she replied that her mother was at the door of the bathroom. He then saw his wife, Ma. Theresa, in a sitting position, lifeless and with a plastic transparent hose tied around her neck. Worried and scared, he asked her, *"Ano ba ang ginagawa mo d'yan?"* and immediately cut the hose, which other end was tied to a decorative block inside the bathroom. He tried to resuscitate her by blowing air into her mouth but she was no longer moving. He asked help from one of his brothers, Charlie Tayao, who went to fetch Nelio. Rizza also came and tried to revive Ma. Theresa.

The Accused-Appellant then proceeded to the nearby Barangay health center to look for an ambulance. Thereat, he met his father-in-law, Nelio, who suddenly boxed him in the stomach. A neighbor, who saw what happened, commented that they should help Ma. Theresa

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

first. Nelio went to his daughter and, together with Rizza, brought the former to the hospital. Nelio warned the Accused-Appellant not to leave the house.

In the afternoon, Rizza came back to the house and confirmed to the Accused-Appellant that Ma. Theresa was dead. He thought that Ma. Theresa killed herself because she got jealous of the fact that he still talks with his ex-girlfriend. He did not leave the house for fear that once he did, he would look guilty and be blamed for her death. Thereafter, the police came and brought him to the police station.

Thereat, the police officers urged the Accused-Appellant to admit that he killed Ma. Theresa and asked him to hold the plastic hose that was tied around her neck. He insisted that he did not kill his wife.

During his cross-examination, the Accused-Appellant admitted that he failed to submit a counter-affidavit despite being given the opportunity to do so; that the plastic hose wrapped around Ma. Theresa's neck was elastic; that the height of the door of the bathroom was too low for her to hang herself; that he and his wife had a fight the night before; and, as per the medico-legal certificate issued by Dr. Vertido, the cause of death was asphyxia by ligature strangulation.

Cate Lynn testified that her mother, Ma. Theresa, killed herself. She disclosed that two (2) days prior to Ma. Theresa's death or on November 20, 2000, she and her three (3) siblings saw their mother trying to commit suicide inside their bedroom. They called their father, the Accused-Appellant, who then removed the hose tied around their mother's neck and asked her the reason why she was trying to kill herself. She then saw their parents talk between themselves about the said incident.

When asked by the trial court if she knew of any reason why Ma. Theresa would want to end her life, Cate Lynn answered that she did not know the specific reason but their mother always asked them if they would want her dead. She also told the trial court that her testimony was the truth.

On cross-examination, Cate Lynn admitted that she did not see her mother hang herself and that her father banged her (Cate Lynn) head on the wall of their house for several times on November 19, 2000.[5]

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[5] *Id*. at 6-8.

The Ruling of the RTC

In its July 27, 2011 Decision, the RTC found Carlito guilty as charged. In so finding, the RTC wrote:

> The testimony of the accused is incredible. His demeanor in Court is far from convincing that he did not kill his wife. While his daughter [Cate Lynn] has tried to convince this Court that her father did not kill his mother, yet, one fact still remains, she was at school at the time of the incident and she did not see how her mother had died. On the other hand, the testimony of Clarisse is a lot credible than her sister Caitlin's testimony. The testimony and the findings of the medico-legal officer although simply stipulated by the prosecution and the defense have clearly established that the cause of death of the victim was asphyxia by ligature strangulation.
>
> Research shows that suicides by ligature strangulation are rare events (14550616, Pub Med – Indexed for MEDLINE, Google Search). Strangulation is death by crushing the throat until breathing ceases. A ligature is an item other than the hands. This could be a rope, pantyhose, necktie, shoelaces or anything else that can be wrapped around the neck tightly. This is often a weapon of opportunity that the killer finds at the scene. In this case, the weapon used was a stretchable plastic hose, which item could be easily found in the household by the accused. Verily, the victim was found with the ligature in her neck as she was slumped near the bathroom door. The accused even admitted that his wife could not hang from the low bathroom door. Somehow, the Court could not mistake this ligature strangulation with suicide. Based on the post-mortem examination of Dr. Antonio Vertido, whose testimony on his findings was stipulated upon, the victim was found with contused abrasion and hematoma on the forehead; hence, in the mind of the Court, it is not possible that the victim had committed suicide. Obviously, the victim was banged and beaten before the accused tied the ligature around her neck, until he had already killed his wife. He did not even give any resistance to his wife's relatives when he was told not to leave his house. Neither did he lift a finger to bring his wife to the hospital. His claim that he was scared of his wife's relatives is downright hard to believe. Likewise, his story that the police officers have forced him to admit to his wife's murder is totally unfounded.
>
> However, the expenses for the interment of the victim were not duly proven by proper receipts. Neither did anyone testify as to such

fact. Likewise, the award of moral damages is not warranted for lack of factual and legal basis. However, the accused is liable for the payment of indemnity for death or homicide which is pegged by the courts to a minimum of Php 50,000.00.[6]

Accordingly, the RTC disposed:

WHEREFORE, premises considered, the Court hereby finds the accused CARLITO TAYAO *y* LAYA "guilty" beyond reasonable doubt of the crime of Parricide as defined and penalized under Article 246 of the Revised Penal Code and hereby sentences him to suffer the penalty of reclusion perpetua, considering that the penalty of death can no longer be imposed, and to indemnify the victim's heirs the sum of ₱50,000.00.

Costs against the accused.

SO ORDERED.[7]

The Ruling of the CA

Not in conformity, Carlito sought the review of his conviction by the CA. The appellate court did evaluate the evidentiary records but it could not accommodate his claim of innocence. The CA stated that the prosecution was able to prove all the elements of the crime of parricide. Although there was no direct evidence to prove that Carlito killed his wife, there was enough circumstantial evidence showing that he perpetrated the killing beyond reasonable doubt. These were: [1] the medico-legal examination of Dr. Vertido which proved that Ma. Theresa was strangled to death; [2] the suicide theory was weak; [3] the frequent quarrels between Carlito and his wife; [4] Carlito regularly subjected his wife and children to physical abuse and maltreatment; [5] Carlito was physically present inside the house when the incident happened; and [6] Carlito's behavior after the incident was consistent with guilt. To the CA, all the circumstantial evidence in this case constituted an unbroken chain which led to the conclusion that Carlito was guilty of killing his wife, to the exclusion of others.

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[6] *Id*. at 71-72.

[7] *Id*. at 72.

Hence, in its June 3, 2014 Decision, the CA affirmed with modification the RTC decision by increasing the amount of indemnity and imposing moral and exemplary damages. Thus, the decretal portion of the CA decision reads:

> WHEREFORE, the Decision of the Regional Trial Court of Dasmariñas, Cavite, Br. 90, in Crim. Case No. 4973-08, is AFFIRMED with MODIFICATION in that the award of civil indemnity is increased from Fifty Thousand Pesos (PhP50, 000.00) to Seventy-Five Thousand Pesos (PhP75,000.00). The Accused-Appellant is ORDERED to pay the heirs of the victim moral damages in the amount of Seventy-Five Thousand Pesos (PhP75,000.00) and exemplary damages in the amount of Thirty Thousand Pesos (PhP30, 000.00).
>
> SO ORDERED.[8]

Unsatisfied with the unfavorable CA decision, Carlito filed this appeal anchored on the

LONE ASSIGNMENT OF ERROR

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF PARRICIDE.[9]

Carlito argues that the decisions of the courts below were based on wrong inferences and misapprehension of facts; that although the death of Ma. Theresa was due to asphyxia by ligature strangulation, there was no showing as to how it was done, when it was done and who did it; that the testimony of Clarisse deserved scant consideration because she failed to implicate him for the death of her mother; that the "banging and beating" incidents were not true because Dr. Vertido failed to explain the cause of the contused abrasion or hematoma; that Clarisse and Cate Lynn did not testify on her physical injuries; that he demonstrated a husbandly care when he removed the rope from her neck; that he did not attempt to escape after the incident occurred; and that the "suicide theory" found support in the testimony of their daughter, Cate Lynn.

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[8] *Id*. at 16.

[9] Brief for the Accused-Appellant, *id*. at 54.

The Court's Ruling

The appeal lacks merit.

To justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal liability of the accused. Rule 133, Section 4 of the Rules of Court enumerates the conditions when circumstantial evidence is sufficient for conviction, to wit:

> SEC. 4. Circumstantial Evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstance;
>
> (b) The facts from which the inferences are derived are proven; and
>
> (c) The combination of all circumstances is such as to produce conviction beyond reasonable doubt.[10]

In the case at bench, although there was no eyewitness who could positively point to Carlito as the killer of his wife, the circumstantial evidence presented, when taken together, sufficiently supported and justified Carlito's conviction beyond reasonable doubt.

It is noteworthy that the post-mortem examination conducted by Dr. Vertido disclosed that the cause of Ma. Theresa's death was asphyxia by ligature strangulation, not suicide. She was found lying lifeless near the bathroom door with a plastic hose wrapped around her neck. It was found that she suffered a contused abrasion and hematoma on the forehead which may be caused by banging or beating. Appraising the physical surroundings, it was very unlikely that she committed suicide because the bathroom door was too low to allow her to hang herself – the plastic hose itself was stretchable and would not hold her weight.

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[10] *People v. Guting y Tomas*, G.R. No. 205412, September 9, 2015.

What was undisputed was the fact that Carlito and his wife had a marital relationship that was far from being harmonious and peaceful. They frequently quarreled because of his womanizing. In fact, they argued and shouted at each other the night before the horrible incident happened. The Court agrees with the CA that their frequent quarrels could be the motive of the slaying.

Taken against Carlito was his strange behavior during and after his wife was found dead. When Rizza F. Tayao *(Rizza)*, his sister-in-law, loosened the plastic hose around her neck and tried to revive her, he only watched her and told her, *"Wala na yan."* Rizza then insisted that they bring her to the hospital but he only replied, *"Hindi kailangang dalhin natin ito sa ospital."* It was Rizza and Nelio Fernandez, father of Ma. Theresa, who rushed her to the hospital. What was even more unusual was the fact that after his wife was rushed to the hospital, he did not follow but instead fetched his daughters from school. Later in the afternoon, Carlito just washed and hanged some clothes without a care in the world. In this regard, the Court cites with approval what the CA wrote on the matter:

> Here is a case of a husband who refused to rush his dying wife to the hospital for possible resuscitation, in the face of anguished pleas of his sister-in-law; who did not go to the hospital to be with his dying wife but instead chose to go to school to fetch his daughters; and, who still washed clothes in the face of the realization that his wife just recently died. Such cold and heartless actuations are contrary to human nature. How the Accused-Appellant could not feel pity or remorse in light of such incident is beyond comprehension.
>
> Foregoing considered, We are satisfied that the circumstantial evidence in this case constitutes an unbroken chain which leads to the conclusion that the Accused-Appellant, to the exclusion of all others, is guilty of killing his wife, Ma. Theresa.[11]

It was also proven that Carlito had an uncontrolled violent behavior toward his wife and children. He maltreated them by

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[11] *Rollo*, p. 13.

banging their heads against the wall of their house. It was pointed out that his dangerous behavior was due to his drug abuse. All these, he admitted when he was on the witness stand.

The Court looked into the defense of Carlito but found it to be weak and insufficient to prevail over the circumstantial evidence of the prosecution. As earlier pointed out, suicide was ruled out as it was impossible because the plastic hose wrapped around Ma. Theresa's neck was stretchable and would not hold her weight. More importantly, the bathroom door, from where she supposedly hanged herself, was too low.

The Court cannot give credence to the testimony of Cate Lynn who testified that her mother committed suicide only because she already once tried to end her life. To begin with, she did not witness her mother hang herself as she was in school when the incident happened. Moreover, she earlier stated during the preliminary investigation that her father killed her mother and that she wanted him locked up in jail.

Carlito's argument that he was forced by the police to confess the killing of his wife was not substantiated. He failed to prove how he was forced and coerced by the police in confessing to the crime against his wife. In the absence of any evidence of coercion, the Court could only presume that the police simply performed their regular duty without resorting to extrajudicial measures.

The Court, however, modifies the damages the CA awarded. In line with the recent jurisprudence,[12] the amount of civil indemnity, moral damages and exemplary damages must be increased to ₱100,000.00. In addition, the Court imposes temperate damages in the amount of ₱50,000.00. Temperate damages may be recovered when some pecuniary loss has been suffered but definite proof of its amount was not presented in

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

court. All awards should earn interest at the legal rate of 6% per annum from the finality of this judgment.[13]

WHEREFORE, the June 3, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05532, is **AFFIRMED with MODIFICATIONS,** in that the accused-appellant, Carlito Tayao *y* Laya, is sentenced to suffer the penalty of *reclusion perpetua* without the benefit of parole, and to pay the heirs of the victim, Ma. Theresa Tayao *y* Fernandez, the amounts of ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱50,000.00 as temperate damages.

In addition, all the monetary awards shall earn interest at the legal rate of 6% per annum from the date of finality of this decision until fully paid.

SO ORDERED.

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

Brion, J., on leave.

FIRST DIVISION

[G.R. No. 219569. August 17, 2016]

HSY MARKETING LTD., CO.,* *petitioner, vs.* **VIRGILIO O. VILLASTIQUE,** *respondent.*

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[13] *People v. Macal y Bolasco,* G.R. No. 211062, January 13, 2016.

* HSY Manufacturing Ltd., Co. in some parts of the *rollo*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDING IN LABOR CASES; THE ISSUE OF WHETHER OR NOT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS IS ESSENTIALLY A QUESTION OF FACT.— Case law instructs that **the issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact**. It is settled that the Court is not a trier of facts, and this rule applies with greater force in labor cases. Generally, it may only look into factual issues in labor cases when the factual findings of the LA, the NLRC, and the CA are conflicting. Hence, if there is no cogent reason to hold otherwise, the Court ought to defer to the findings of the foregoing tribunals on this question of fact.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AS A RELIEF GRANTED IN LIEU OF REINSTATEMENT, AN AWARD OF SEPARATION PAY IS INCONSISTENT WITH A FINDING THAT THERE WAS NO ILLEGAL DISMISSAL.— Properly speaking, **liability for the payment of separation pay is but a legal consequence of illegal dismissal where reinstatement is no longer viable or feasible**. As a relief granted in lieu of reinstatement, it goes without saying that an award of separation pay is inconsistent with a finding that there was no illegal dismissal. **This is because an employee who had not been dismissed, much less illegally dismissed, cannot be reinstated**. Moreover, **as there is no reinstatement to speak of, respondent cannot invoke the doctrine of strained relations** to support his prayer for the award of separation pay.

3. ID.; ID.; SERVICE INCENTIVE LEAVE; COMPANY DRIVERS WHO ARE UNDER THE CONTROL AND SUPERVISION OF MANAGEMENT OFFICERS ARE REGULAR EMPLOYEES ENTITLED TO BENEFITS INCLUDING SERVICE INCENTIVE LEAVE PAY.— The Court has already held that **company drivers who are under the control and supervision of management officers – like respondent herein – are regular employees entitled to benefits including service incentive leave pay**. "Service incentive leave is a right which accrues to every employee who has served

> 'within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one [(1)] year.' It is also commutable to its money equivalent if not used or exhausted at the end of the year. In other words, an employee who has served for one (1) year is entitled to it. He may use it as leave days or he may collect its monetary value."

APPEARANCES OF COUNSEL

Jaenicen A. Lamsen for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated October 29, 2014 and the Resolution[3] dated July 14, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 05002-MIN, which affirmed the Resolutions dated April 30, 2012[4] and June 29, 2012[5] of the National Labor Relations Commission (NLRC) in NLRC Case No. MAC-02-012459-2012 (RAB-X-04-00179-2011), upholding the Labor Arbiter's (LA) dismissal of respondent Virgilio O. Villastique's (respondent)

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[1] *Rollo*, pp. 9-25.

[2] *Id*. at 30-40. Penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Maria Filomena D. Singh concurring.

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

[4] *Id*. at 61-67. Penned by Commissioner Proculo T. Sarmen with Commissioner Dominador B. Medroso, Jr. concurring. Presiding Commissioner Bario-Rod M. Talon was on leave.

[5] *Id*. at 68-69. Penned by Commissioner Proculo T. Sarmen with Presiding Commissioner Bario-Rod M. Talon and Commissioner Dominador B. Medroso, Jr. concurring.

complaint for illegal dismissal against petitioner HSY Marketing Ltd., Co. (petitioner), and the award of separation pay in lieu of reinstatement, as well as service incentive leave pay, in favor of respondent.[6]

The Facts

On January 3, 2003, petitioner hired respondent as a field driver for Fabulous Jeans & Shirt & General Merchandise[7] (Fabulous Jeans), tasked to deliver ready-to-wear items and/or general merchandise for a daily compensation of ₱370.00.[8] On January 10, 2011, respondent figured in an accident when the service vehicle (a 2010-model Mitsubishi Strada pick up) he was driving in Iligan City bumped a pedestrian, Ryan Dorataryo (Dorataryo).[9] Fabulous Jeans shouldered the hospitalization and medical expenses of Dorataryo in the amount of ₱64,157.15, which respondent was asked to reimburse, but to no avail.[10] On February 24, 2011,[11] respondent was allegedly required to sign a resignation letter, which he refused to do. A couple of days later, he tried to collect his salary for that week but was told that it was withheld because of his refusal to resign.[12] Convinced that he was already terminated on February 26, 2011,[13] he lost no time in filing a complaint for illegal dismissal with money claims[14] against petitioner, Fabulous Jeans, and its owner,

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[6] See Decision dated November 28, 2011 penned by LA Rammex C. Tiglao; *id*. at 117-124.

[7] "Fabulous Jeans & Shirts & General Merchandise" in some parts of the *rollo*.

[8] *Rollo*, pp. 31 and 117.

[9] "Dorotayo" or "Dorotaryo" in some parts of the *rollo*.

[10] *Rollo*, pp. 31 and 117-118.

[11] In respondent's position paper, he claimed that it was on February 23, 2011 when he was required to sign a resignation letter (see *id*. at 86).

[12] *Id*. at 31-32 and 118.

[13] See *id*. at 87, 110, and 120.

[14] See Complaint dated April 4, 2011; *id*. at 70-71.

Alexander G. Arqueza (Arqueza; collectively, petitioner, *et al.*) before the NLRC, docketed as RAB-X-04-00179-2011.

In their defense,[15] petitioner, *et al*. contended that respondent had committed several violations in the course of his employment, and had been found by his superior and fellow employees to be a negligent and reckless driver, which resulted in the vehicular mishap involving Doratarayo.[16] After they paid for Doratarayo's hospitalization and medical expenses, respondent went on absence without leave, presumably to evade liability for his recklessness.[17] Since respondent was the one who refused to report for work, he should be considered as having voluntarily severed his own employment.[18] Thus, his money claims cannot prosper as he was not terminated.

The LA Ruling

In a Decision[19] dated November 28, 2011, the LA dismissed the charge of illegal dismissal, finding no evidence to substantiate respondent's claim that he was dismissed from his job on February 26, 2011.[20] The LA declared that neither was there a notice of termination issued to him, nor was he prevented from showing up in petitioner's place of business.[21] There was likewise no evidence submitted by petitioner that respondent had indeed voluntarily resigned.[22] According to the LA, mere absence or failure to report for work, even after a notice to return, is not tantamount to abandonment.[23] However, it was not even shown that respondent was notified in writing to report for work, or warned that his continued failure to report would

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[15] See petitioner, *et al*.'s position paper dated June 23, 2011; *id*. at 72-80.

[16] *Id*. at 73.

[17] *Id*.

[18] *Id*. at 74.

[19] *Id*. at 117-124.

[20] *Id*. at 120.

[21] *Id*. at 120-121.

[22] *Id*. at 121.

[23] *Id*.

be construed as abandonment or resignation.[24] Thus, the LA ruled that the employer-employee relationship between the parties should be maintained.[25] Nonetheless, since the LA pronounced that there were strained relations between the parties, petitioner was not ordered to reinstate respondent, and instead, was directed to pay the latter the amount of ₱86,580.00 as separation pay.[26]

Also, the LA awarded respondent the amount of ₱16,418.75 as service incentive leave pay, pointing out that respondent was a field driver who regularly performed work outside petitioner's place of business and whose hours of work could not be ascertained with reasonable certainty; and that petitioner had failed to present the payroll or pay slips to prove that respondent was paid such benefit.[27]

Finally, the LA dismissed the complaint against Fabulous Jeans and Arqueza for lack of factual and evidentiary basis, finding petitioner to be respondent's employer.[28]

Aggrieved, petitioner, *et al.* appealed[29] the case to the NLRC, imputing error on the part of the LA in holding that respondent did not voluntarily resign from his employment, and in awarding separation pay and service incentive leave pay.[30] They likewise asserted that petitioner was not the employer of respondent.[31]

The NLRC Ruling

In a Resolution[32] dated April 30, 2012, the NLRC affirmed the finding of the LA that there was no illegal dismissal to

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[24] *Id*. at 122.

[25] *Id*.

[26] See *id*. at 123-124.

[27] *Id*.

[28] *Id*. at 124.

[29] Docketed as NLRC Case No. MAC-02-012459-2012. See Notice of Appeal with Memorandum of Appeal dated February 10, 2012; *id*. at 126-127 and 128-139.

[30] See *id*. at 132-136.

[31] *Id*. at 137.

[32] *Id*. at 61-67.

speak of, stressing the failure of respondent to discharge the burden of proof, which shifted to him when his employer denied having dismissed him.[33] Similarly, the NLRC found no evidence of deliberate or unjustified refusal on the part of respondent to resume his employment, or of overt acts unerringly pointing to the fact that respondent did not want to work anymore.[34]

Petitioner, *et al*. moved for reconsideration,[35] but was denied in a Resolution[36] dated June 29, 2012. Undaunted, they elevated the case to the CA by way of *certiorari*.[37]

The CA Ruling

In a Decision[38] dated October 29, 2014, the CA affirmed *in toto* the NLRC Resolutions, observing that the failure of petitioner, *et al*. to present the alleged resignation letter of respondent belied their claim that he voluntarily resigned; and that the fact of filing by respondent of the labor complaint was inconsistent with the charge of abandonment.[39] Thus, the CA found no grave abuse of discretion on the part of the NLRC in sustaining the award of separation pay, which respondent had expressly prayed for from the very start of the proceedings,[40] thereby foreclosing, by implication, reinstatement as a relief.[41] In addition, the CA held that reinstatement was no longer feasible considering the resentment and enmity between the parties.[42]

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[33] *Id*. at 64.

[34] *Id*. at 65.

[35] See motion for reconsideration dated May 28, 2012; *id*. at 158-164.

[36] *Id*. at 68-69.

[37] *Id*. at 44-60.

[38] *Id*. at 30-40.

[39] See *id*. at 35-36.

[40] In his Complaint filed before the NLRC Regional Arbitration Branch 10, Cagayan de Oro City, respondent prayed for reinstatement with full backwages (see *id*. at 70-71). However, in his position paper, respondent alleged that due to strained relationship with petitioner, he should be given separation pay instead (see *id*. at 92).

[41] *Id*. at 38.

[42] *Id*.

On the issue of respondent's entitlement to service incentive leave pay, the CA declared that respondent was not a field personnel but a regular employee whose task was necessary and desirable to the usual trade and business of his employer, which, thus, entitled him to the benefit in question.[43]

Finally, the CA debunked petitioner's contention that it is a total stranger to the case, not having shown that it has a personality separate and distinct from that of Fabulous Jeans.[44]

Again, petitioner, *et al*. moved for reconsideration,[45] but was denied in a Resolution[46] dated July 14, 2015; hence, this petition solely filed by herein petitioner.

The Issues Before the Court

The issues for the Court's resolution are whether or not the CA correctly: (*a*) found that an employment relationship existed between the parties in this case; (*b*) affirmed the findings of the NLRC that respondent did not voluntarily resign from work and petitioner did not dismiss him from employment, and consequently, awarded respondent separation pay; and (*c*) declared respondent to be a regular employee and thus, awarded him service incentive leave pay.

The Court's Ruling

The petition is partly meritorious.

I.

The Court first resolves the issue on the parties' employment relationship.

Case law instructs that **the issue of whether or not an employer-employee relationship exists in a given case is**

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[43] *Id*. at 39.

[44] *Id*.

[45] See motion for reconsideration dated November 25, 2014; *id*. at 170-178.

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

essentially a question of fact. It is settled that the Court is not a trier of facts, and this rule applies with greater force in labor cases.[47] Generally, it may only look into factual issues in labor cases when the factual findings of the LA, the NLRC, and the CA are conflicting.[48] Hence, if there is no cogent reason to hold otherwise, the Court ought to defer to the findings of the foregoing tribunals on this question of fact.

In this case, it should be recalled that in the LA's November 28, 2011 Decision, the LA categorically declared petitioner to be the employer of respondent and accordingly, dismissed the complaint against Fabulous Jeans and Arqueza.[49] Consequently, in the Memorandum of Appeal[50] before the NLRC, where Fabulous Jeans joined petitioner as respondent-appellant, it was argued that the LA should have dismissed the charges against petitioner instead, considering that respondent was employed as a field driver for Fabulous Jeans, and that there was no employer-employee relationship between him and petitioner.[51] The NLRC failed to explicitly address the said issue in its April 30, 2012 Resolution, referring to respondents-appellants (petitioner, *et al.* in this case) collectively as the employer. However, it particularly debunked petitioner's assertion that there was ample evidence that respondent voluntarily resigned and that he refused to return to work anymore;[52] and pinpointed petitioner as the one that knew where to look for respondent after the latter had allegedly disappeared.[53] The CA, on the other hand, minced no words when it declared petitioner as attempting to avoid liability by claiming that it has a separate

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[47] *South East International Rattan, Inc. v. Coming*, G.R. No. 186621, March 12, 2014, 718 SCRA 658, 666.

[48] *Id*.

[49] *Rollo*, p. 124.

[50] *Id*. at 128-142.

[51] *Id*. at 137.

[52] *Id*. at 64.

[53] *Id*. at 65.

and distinct personality from that of Fabulous Jeans without offering evidence to buttress the same.[54] Hence, considering that the LA, the NLRC, and the CA consistently found petitioner liable as the employer of respondent, the Court sees no compelling reason to depart from their judgment on this score.

In fact, it is even worth noting that respondent claimed in his Position Paper[55] before the LA that he was hired by petitioner and was required to report for work at its store in Cagayan de Oro City.[56] This was confirmed by petitioner in its own Position Paper,[57] declaring respondent to be "a field driver for the Cagayan de Oro Branch of (petitioner) HSY MARKETING LTD., CO., (NOVO JEANS & SHIRT)."[58] Clearly, petitioner should be bound by such admission and must not be allowed to continue to deny any employer-employee relationship with respondent.

To add, the Court had already exposed the practice of setting up "distributors" or "dealers" which are, in reality, dummy companies that allow the mother company to avoid employer-employee relations and, consequently, shield the latter from liability from employee claims in case of illegal dismissal, closure, unfair labor practices, and the like.[59] Respondent had categorically alleged the commission of such pernicious practice in his Affidavit[60] dated July 14, 2011, as follows:

> 2. That for the many years that I have been employed with NOVO, I have observed that although they used the business name NOVO Jeans and Shirts, the ownership of each and every branch in the entire Mindanao was put under different corporate names like a) Asian Distributor in Bayugan; b) Novotel (with Hotel) in Ozamis City; c) HSY Marketing

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[54] *Id*. at 39.

[55] *Id*. at 84-94.

[56] *Id*. at 85.

[57] *Id*. at 72-80.

[58] *Id*. at 72.

[59] *San Miguel Corporation v. NLRC*, 539 Phil. 236, 249-250 (2006).

[60] *Rollo*, pp. 113-114.

Limited Corporation as their mother corporation; d) Fabulous Jeans and Shirts in Iligan City and Cagayan de Oro City;

3. That the different ownership used by Respondent NOVO in its different branches was to minimize business tax;[61]

Despite these statements, petitioner failed to present evidence to rebut the same. Therefore, it cannot be allowed to evade liability as the employer of respondent.

II.

The Court likewise upholds the unanimous conclusion of the lower tribunals that respondent had not been dismissed at all. Other than the latter's unsubstantiated allegation of having been verbally terminated from his work, no substantial evidence was presented to show that he was indeed dismissed or was prevented from returning to his work. In the absence of any showing of an overt or positive act proving that petitioner had dismissed respondent, the latter's claim of illegal dismissal cannot be sustained, as such supposition would be self-serving, conjectural, and of no probative value.[62]

Similarly, petitioner's claims of respondent's voluntary resignation and/or abandonment deserve scant consideration, considering petitioner's failure to discharge the burden of proving the deliberate and unjustified refusal of respondent to resume his employment without any intention of returning. It was incumbent upon petitioner to ascertain respondent's interest or non-interest in the continuance of his employment,[63] but to no avail.

Hence, since there is no dismissal or abandonment to speak of, the appropriate course of action is to reinstate the employee (in this case, herein respondent) without, however, the payment of backwages.[64]

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[61] *Id*. at 113.

[62] *MZR Industries v. Colambot*, 716 Phil. 617, 624 (2013).

[63] *Id*. at 628.

[64] See *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 146 (2011).

Notably, the reinstatement ordered here should not be construed as a relief proceeding from illegal dismissal; instead, it should be considered as a declaration or affirmation that the employee may return to work because he was not dismissed in the first place.[65] For this reason, the Court agrees with petitioner that the LA, the NLRC, and the CA erred in awarding separation pay in spite of the finding that respondent had not been dismissed. Properly speaking, **liability for the payment of separation pay is but a legal consequence of illegal dismissal where reinstatement is no longer viable or feasible**. As a relief granted in lieu of reinstatement, it goes without saying that an award of separation pay is inconsistent with a finding that there was no illegal dismissal.[66] **This is because an employee who had not been dismissed, much less illegally dismissed, cannot be reinstated**.[67] Moreover, **as there is no reinstatement to speak of, respondent cannot invoke the doctrine of strained relations**[68] to support his prayer for the award of separation pay. In the case of *Capili v. NLRC*,[69] the Court explained that:

> The award of separation pay cannot be justified solely because of the existence of "strained relations" between the employer and the employee. **It must be given to the employee only as an alternative to reinstatement emanating from illegal dismissal. When there is no illegal dismissal, even if the relations are strained, separation pay has no legal basis.** Besides, the doctrine on "strained relations" cannot be applied indiscriminately since every labor dispute almost invariably results in "strained relations;" otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement. That is human nature.[70] (Emphasis supplied)

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[65] *Capili v. NLRC*, 337 Phil. 210, 216 (1997).

[66] *Leopard Security and Investigation Agency v. Quitoy*, 704 Phil. 449, 460 (2013).

[67] *Jordan v. Grandeur Security & Services, Inc.*, G.R. No. 206716, June 18, 2014, 727 SCRA 36, 48.

[68] *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, 693 Phil. 646, 660 (2012).

[69] *Supra* note 65.

[70] *Id.* at 216.

In fine, petitioner is ordered to reinstate respondent to his former position without the payment of backwages. If respondent voluntarily chooses not to return to work, he must then be considered as having resigned from employment. This is without prejudice, however, to the willingness of both parties to continue with their former contract of employment or enter into a new one whenever they so desire.[71]

III.

While petitioner should not be adjudged liable for separation pay, the Court nonetheless sustains the award of service incentive leave pay in favor of respondent, in accordance with the finding of the CA that respondent was a regular employee of petitioner and is, therefore, entitled to such benefit. As the CA aptly pointed out:

> [R]espondent is not a field personnel as defined above because of the nature of his job as a company driver. Expectedly, respondent is directed to deliver the goods at a specified time and place and he is not given the discretion to solicit, select[,] and contact prospective clients. Respondent in his Position Paper claimed that he was required to report for work from 8:00 a.m. to 8:00 p.m. at the company's store located at Velez-Gomez Street, Cagayan de Oro City. Certainly then, respondent was under the control and supervision of petitioners. Respondent, therefore, is a regular employee whose task is usually necessary and desirable to the usual trade and business of the company. Thus, he is entitled to the benefits accorded to regular employees, including service incentive leave pay.[72]

The Court has already held that **company drivers who are under the control and supervision of management officers – like respondent herein – are regular employees entitled to benefits including service incentive leave pay**.[73] "Service incentive leave is a right which accrues to every employee who has served 'within 12 months, whether continuous or broken reckoned from the date the employee started working, including

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[71] *Id*. at 217.

[72] *Rollo*, p. 39.

[73] See *Far East Agricultural Supply, Inc. v. Lebatique*, 544 Phil. 420, 429 (2007).

authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one [(1)] year.' It is also commutable to its money equivalent if not used or exhausted at the end of the year. In other words, an employee who has served for one (1) year is entitled to it. He may use it as leave days or he may collect its monetary value."[74]

Petitioner, as the employer of respondent, and having complete control over the records of the company, could have easily rebutted the said monetary claim against it by presenting the vouchers or payrolls showing payment of the same. However, since petitioner opted not to lift a finger in providing the required documentary evidence, the ineluctable conclusion that may be derived therefrom is that it never paid said benefit and must, perforce, be ordered to settle its obligation to respondent.[75]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated October 29, 2014 and the Resolution dated July 14, 2015 of the Court of Appeals in CA-G.R. SP No. 05002-MIN are hereby **AFFIRMED** with **MODIFICATION** deleting the award of separation pay in the amount of ₱86,580.00. Instead, petitioner HSY Marketing Ltd., Co. is **ORDERED** to reinstate respondent Virgilio O. Villastique to his former position without payment of backwages in accordance with this Decision. Furthermore, petitioner is **ORDERED** to pay respondent his unpaid service incentive leave pay in the amount of ₱16,418.75.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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[74] *Mansion Printing Center v. Bitara, Jr.*, 680 Phil. 43, 62 (2012); citations omitted.

[75] *Exodus International Construction Corporation v. Biscocho*, *supra* note 64, at 158.

THIRD DIVISION

[G.R. No. 219592. August 17, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARTHUR PARCON *y* ESPINOSA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; DISMISSAL OF APPEAL; THE RIGHT TO APPEAL IS STATUTORY AND THE ONE WHO SEEKS TO AVAIL OF IT MUST COMPLY WITH THE STATUTE OR RULES.— We find that the Court of Appeals acted in accord with paragraph 1, Section 8 of Rule 124 of the Rules of Court when it dismissed the motion for reconsideration by reason of delay in the filing of the appellant's brief. x x x Clearly, it is within the appellate court's mandate to dismiss the appeal *motu proprio* if the appellant fails to file his brief within the prescribed time. The primordial policy is faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases. A bare invocation of "the interest of substantial justice" will not suffice to override a stringent implementation of the rules. The reason for the dismissal lies in the nature of the right to appeal. The right to appeal is statutory and one who seeks to avail of it must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well; hence, failure to perfect the same renders the judgment final and executory.

2. ID.; ID.; ID.; AS A RULE, NEGLIGENCE AND MISTAKES OF COUNSEL BIND THE CLIENT, EXCEPT WHEN THE LAWYER'S NEGLIGENCE WOULD RESULT IN THE GRAVE INJUSTICE OF DEPRIVING HIS CLIENT OF THE DUE PROCESS OF LAW; CASE AT BAR.— Furthermore, in a long line of cases ruled by the Court, negligence and mistakes of counsel bind the client. A disregard of this rule would bring about never-ending suits, so long as lawyers

> could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law. The only exception would be where the lawyer's gross negligence would result in the grave injustice of depriving his client of the due process of law. x x x Same ruling was arrived at in the case of *Bejarasco, Jr. v. People of the Philippines*, that the mistake of a counsel binds the client with the exception of gross or palpable negligence of the counsel that would deprive the client of due process, provided further, that the client was free from guilt of his own negligence. x x x In this case, the appellate court exercised utmost leniency in providing the accused-appellant several extensions of time to file the required Appellant's Brief. He was given, through his lawyer, his day in court but he failed to comply. It was only after the promulgation of the resolution dismissing the case that the Brief was submitted without even an explanation for the delay. Unfortunately for the accused-appellant, he was bound by the negligence and mistake of his lawyer that resulted in lost appeal.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Romero Espera & Associates for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

Before this Court is an appeal[1] from the Resolutions[2] dated 20 December 2012 and 17 November 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 01342, which dismissed the appeal of (accused-appellant) Arthur Parcon *y* Espinosa of the Regional Trial Court, Branch 36, Iloilo City, finding him guilty of the illegal sale and possession of *shabu* or *methamphetamine hydrochloride*, a dangerous drug, and illegal possession of equipment, instrument, apparatus and other paraphernalia for

[1] Via Notice of Appeal.

[2] CA *rollo*, p. 58 and pp. 197-200.

Dangerous Drugs, in violation of Section 5, 1st paragraph, Section 11, 3rd paragraph of Article II and Section 12 of Republic Act No. 9165 (R.A. No. 9165), otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

On 6 June 2005, three (3) sets of information were filed against accused-appellant, as follows:

In Criminal Case No. 05-61023 (Violation of Section 5, R.A. No. 9165):

That, on or about the 20th day of April, 2005, in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, said accused, with deliberate intent and without any justifiable motive, did, then and there wilfully, unlawfully and criminally sell, distribute and deliver to a PNP poseur buyer PO2 June Esporas one (1) small heat-sealed transparent bag containing 0.070 gram of methamphetamine hydrochloride [*shabu*], a dangerous drug, in consideration of [₱]100.00 without the authority to sell and distribute the same; that one (1) piece One Hundred peso bill with Serial Number BJ 788630, of the buy-bust money were recovered from the possession and control of the said accused, that the accused has been convicted by final judgment in Criminal Case No. 01-53439 last June 22, 2001 for Violation of Sec. 15, Art. III, R.A. 6425, then the law in effect penalizing drug related offenses.[3]

In Criminal Case No. 05-61024 (Violation of Section 12, R.A. No. 9165):

That, on or about the 20th day of April, 2005, in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, herein accused, with deliberate intent and without any justifiable motive, did, then and there wilfully, unlawfully and feloniously have in his possession and control the following, to wit: one (1) improvised tooter, two (2) alcohol lamp, one (1) electric sealer, one (1) disposable lighter, and one (1) scissor, all paraphernalia/equipment fit and intended for administering, consuming and introducing into the body methamphetamine hydrochloride [*shabu*], a dangerous drug, without authority to possess the same, that the accused has been convicted by final judgment in Criminal Case No. 01-53439 last June 22, 2001

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[3] RTC Decision; CA *rollo*, p. 138

for Violation of Sec. 15, Art. III, R.A. 6425, then the law in effect penalizing drug related offenses.[4]

In Criminal Case No. 05-61025 (Violation of Section 11, R.A. No. 9165):

That, on or about the 20th day of April, 2005, in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, herein accused, with deliberate intent and without any justifiable motive, did then and there wilfully, unlawfully and feloniously have in his possession and control fifteen (15) plastic sachets containing a total weight of 3.339 grams of methamphetamine hydrochloride [*shabu*] without the authority to possess the same, that the accused has been convicted by final judgment in Criminal Case No. 01-53438 last June 22, 2001 for Violation of Sec. 15, Art. III, R.A. 6425, then the law in effect penalizing drug related offenses.[5]

Upon arraignment on 7 June 2005, the accused-appellant pleaded not guilty to the offenses charged.[6]

After trial on the merits ensued, the trial court held that the prosecution successfully discharged the burden of proof in three offenses charged. Convinced that the accused-appellant sold and delivered the *shabu* to the police acting as poseur-buyer, the trial court relied on the credible and positive declaration of the two police officers as against the denial and allegation of frame-up of the accused-appellant. The court found that the accused-appellant was in possession of several sachets of *shabu* and of equipment and other paraphernalia for administration and consumption of *shabu* without any authority to possess the same. Finding them guilty, the dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered as follows:

1. Finding accused Arthur Parcon y Espinosa Guilty beyond reasonable doubt of violation of Section 5, Article II of

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[4] *Id*.

[5] *Id*. at 138-139.

[6] *Id*. at 139.

Republic Act No. 9165 in Criminal Case No. 05-61023 and sentencing him to suffer the penalty of life imprisonment and to pay the fine of Five Hundred Thousand (₱500, 000.00) Pesos;

2. Finding accused Arthur Parcon y Espinosa Guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. 05-61025 and sentencing him to suffer an indeterminate penalty of imprisonment ranging from Twelve (12) Years and One (1) Day, as minimum to Fourteen (14) Years, as maximum and to pay fine the fine of Three Hundred Thousand (₱300, 000.00) Pesos;

3. Finding accused Arthur Parcon y Espinosa Guilty beyond reasonable doubt of violation of Section 12, Article II of Republic Act No. 9165 in Criminal Case No. 05-61024 and sentencing him to suffer an indeterminate penalty of imprisonment ranging from Six (6) Months and One (1) Day, as minimum to Two Years, as maximum and to pay fine of Ten Thousand (₱10,000.00) Pesos.[7]

Upon appeal, the appellate court directed the accused-appellant, through his counsel Atty. Edeljulio R. Romero (Atty. Romero), to file an appellant's brief within thirty (30) days from receipt of such notice or until 7 August 2011. However, after several motions for extension of time to file the required brief during the period from 7 August 2011 to 1 July 2012, or a total of three hundred and thirty (330) days, no appellant's brief was filed by the accused-appellant. As a result, the Court of Appeals on 20 December 2012 *motu proprio* dismissed the appeal for failure to file the required appellant's brief within the time prescribed by the Rules of Court and the additional period prayed for in his motions for extension.[8]

On 28 December 2012, the accused-appellant finally submitted his required brief which was received by the Court of Appeals

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[7] *Id*. at 160.

[8] Resolution dated 20 December 2012; *id*. at 58.

on 28 January 2013. On 7 February 2013, a Motion[9] was filed for reconsideration of the 20 December 2012 Resolution dismissing the appeal and to admit the submitted appellant's brief. On 5 November 2013, the Court of Appeals, without giving due course to the motion, required the People, through the Office of the Solicitor General (OSG), to submit a Comment.[10]

On 20 December 2013, the OSG, by way of compliance, submitted its Comment and argued primarily that the Court of Appeals acted in accordance with the Rules of Court since it was exercised pursuant to the provisions of Section 8, Rule 124. It further argued that a client is bound by the mistakes of his counsel even in the realm of procedural technique. Any act or omission of his counsel within this authority is considered as an act or omission of the client himself.[11]

On 17 November 2014, the Court of Appeals through a Resolution denied the Motion for Reconsideration.[12]

Elevating the case to the Supreme Court, a notice of appeal was filed by the accused-appellant on 15 December 2014.[13] In a manifestation, the accused-appellant adopted his appellant's brief as his supplemental brief before this Court.[14]

From the foregoing, the issue rests on whether the appeal of the accused-appellant can still be allowed despite his failure to file his appellant's brief within the required time.

On his part, the accused-appellant insisted on his willingness to submit his Brief, but understandably, he lacks the technical knowledge to prepare the pleading, in addition to the fact that the preparation is not within his immediate control as he is presently detained in the National Bilibid Prison in Muntinlupa.

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[9] *Id*. at 113-115.

[10] *Id*. at 166-167.

[11] *Id*. at 174-181.

[12] *Id*. at 197-200.

[13] *Id*. at 201-202.

[14] Manifestation dated 4 May 2016.

On the other hand, Atty. Romero tried to justify his delay in view of the past yuletide season and preparation of pleadings in his other cases.

We dismiss the appeal.

We find that the Court of Appeals acted in accord with paragraph 1, Section 8 of Rule 124 of the Rules of Court when it dismissed the motion for reconsideration by reason of delay in the filing of the appellant's brief. The rule states that:

> **Section 8.** *Dismissal of appeal for abandonment or failure to prosecute*. — The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de oficio*.
>
> The Court of Appeals may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal.

Clearly, it is within the appellate court's mandate to dismiss the appeal *motu proprio* if the appellant fails to file his brief within the prescribed time. The primordial policy is faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases. A bare invocation of "the interest of substantial justice" will not suffice to override a stringent implementation of the rules.[15]

The reason for the dismissal lies in the nature of the right to appeal. The right to appeal is statutory and one who seeks to avail of it must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well;

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[15] *Asia United Bank v. Goodland Company, Inc.*, 650 Phil. 174, 185 (2010).

hence, failure to perfect the same renders the judgment final and executory.[16]

Furthermore, in a long line of cases ruled by the Court, negligence and mistakes of counsel bind the client. A disregard of this rule would bring about never-ending suits, so long as lawyers could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law. The only exception would be where the lawyer's gross negligence would result in the grave injustice of depriving his client of the due process of law.[17]

In *Sofio, et al. v. Valenzuela, et al.*,[18] the Court held that:

> Although the petitioners' former counsel was blameworthy for the track their case had taken, there is no question that any act performed by the counsel within the scope of his general or implied authority is still regarded as an act of the client. In view of this, even the negligence of the former counsel should bind them as his clients. To hold otherwise would result to the untenable situation in which every defeated party, in order to salvage his cause, would simply claim neglect or mistake on the part of his counsel as a ground for reversing the adverse judgment. There would then be no end to litigation, for every shortcoming of the counsel could become the subject of challenge by his client through another counsel who, if he should also be found wanting, would similarly be disowned by the same client through yet another counsel, and so on *ad infinitum*. This chain of laying blame could render court proceedings indefinite, tentative and subject to reopening at any time by the mere replacement of the counsel.
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> xxx the test herein is whether their former counsel's negligence deprived the petitioners of due process of law.[19]

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[16] *Boardwalk Business Ventures, Inc. v. Elvira A. Villareal (deceased), et al.*, 708 Phil. 443, 456 (2013), citing *Apex Mining Co., Inc. v. Commissioner of Internal Revenue*, 510 Phil. 268, 275 (2005).

[17] *Building Care Corporation / Leopard Security & Investigation Agency, et al. v. Macaraeg*, 700 Phil. 749, 756 (2012).

[18] 682 Phil. 51 (2012).

[19] *Id*. at 62-63.

Same ruling was arrived at in the case of *Bejarasco, Jr. v. People of the Philippines*,[20] that the mistake of a counsel binds the client with the exception of gross or palpable negligence of the counsel that would deprive the client of due process, provided further, that the client was free from guilt of his own negligence.

> The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself. A recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the clients own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.
>
> 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 clients 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.[21] (Citations omitted)

In this case, the appellate court exercised utmost leniency in providing the accused-appellant several extensions of time to file the required Appellant's Brief. He was given, through his lawyer, his day in court but he failed to comply. It was only after the promulgation of the resolution dismissing the case that the Brief was submitted without even an explanation for the delay. Unfortunately for the accused-appellant, he was bound by the negligence and mistake of his lawyer that resulted in lost appeal.

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[20] 656 Phil. 337 (2011).

[21] *Id.* at 340.

WHEREFORE, the appeal is **DISMISSED** and the Resolutions of the Court of Appeals dated 20 December 2012 and 17 November 2014 in CA-G.R. CR-H.C. No. 01342 are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 220479. August 17, 2016]

PASDA, INCORPORATED, *petitioner, vs.* **REYNALDO P. DIMAYACYAC, SR., substituted by the HEIRS, represented by ATTY. DEMOSTHENES D. C. DIMAYACYAC,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; CERTIFICATION AGAINST FORUM SHOPPING; PROCEEDINGS INVOLVING DIFFERENT ISSUES NEED NOT BE STATED IN THE CERTIFICATION AGAINST FORUM SHOPPING; CASE AT BAR.— Forum shopping is the simultaneous or successive institution of two or more actions or proceedings involving the same parties for the same cause of action with the hope that one or the other court would make a favorable disposition. It vexes the courts and the litigants because different courts are asked to rule on the same or related causes, raising the same issues and praying for similar reliefs,

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[*] As per Raffle dated 15 February 2016, Justice Lucas P. Bersamin is designated member vice Justice Francis H. Jardeleza.

which creates the possibility of conflicting decisions rendered by two different tribunals. In the case at bench, PASDA's certification against forum shopping complied with existing rules and regulations, notwithstanding that the respondents' motion for partial reconsideration was never mentioned therein. PASDA was not obliged to state the said motion in its certification against forum shopping because it involved different issues and relief compared to the present petition before this Court.

2. CIVIL LAW; CONTRACTS; EXCEPT WHEN THE TERMS ARE AMBIGUOUS, THE LITERAL MEANING OF A CONTRACT'S STIPULATION IS CONTROLLING.— Contracts have the force of law between the parties, and unless the stipulations are contrary to laws, morals, good customs, public order, or public policy, the same are binding as between the parties. Except when the terms are ambiguous, the literal meaning of a contract's stipulation is controlling. The courts cannot enforce the contract contrary to its express terms, otherwise, it would trample the rights of the parties to stipulate the terms of their agreement. x x x In other words, the courts must first determine whether there is ambiguity in a particular provision of a contract and the absence of which leaves the courts to read the provision on its face as it was written and treat it as the binding law of the parties to the contract.

3. ID.; ID.; INTEREST RATE; THE PARTIES ARE FREE TO STIPULATE ON THE INTEREST RATE, PROVIDED IT IS CONSCIONABLE.— To stress, parties have the right to stipulate any conditions or terms in their contract provided they are not contrary to law, morals, good customs, public order, or public policy. In *Mallari v. Prudential Bank*, the Court explained that the parties were free to stipulate on the interest rate, provided that it was conscionable, to wit: Parties are free to enter into agreements and stipulate as to the terms and conditions of their contract, but such freedom is not absolute. As Article 1306 of the Civil Code provides, "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." Hence, if the stipulations in the contract are valid, the parties thereto are bound to comply with them, since such contract is the law between the parties.

4. REMEDIAL LAW; CIVIL ACTIONS; PARTIES; IN THE EVENT THE RESPONDENT-DEBTOR DIES DURING THE PENDENCY OF AN ACTION ON CONTRACTUAL MONEY CLAIMS, THE SAME IS NOT DISMISSED BUT IS ALLOWED TO CONTINUE UNTIL ENTRY OF FINAL JUDGMENT; CASE AT BAR.— The provision of Section 20, Rule 3 of the Rules of Court should be read in consonance with Section 5, Rule 86 of the Rules of Court, x x x From the foregoing provisions of the Rules of Court, it is clear that in the event that the respondent-debtor dies during the pendency of the case, the same is not dismissed but is allowed to continue. If, eventually, the court rules against the deceased respondent, the same shall be enforced as a claim against his estate, and not against the individual heirs. In *Genato v. Bayhon*, the Court wrote that the remedy of a creditor in case of the death of the debtor is to enforce the former's claim against the latter's estate, x x x The fact that Dimayacyac's heirs have not instituted any action for the settlement of his estate does not warrant the conclusion that the judgment award must be enforced against the individual heirs.

APPEARANCES OF COUNSEL

V. Rey Santos Law Office for petitioner.
D. Dimayacyac Law Firm for respondent.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review on *Certiorari* seeks to reverse and set aside the September 8, 2015 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. SP No. 133647, which affirmed with modification the December 17, 2013 Decision[2] of the Regional Trial Court, Branch 215, Quezon City (*RTC*), upholding the

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[1] Penned by Associate Justice Ramon R. Garcia with Associate Justice Leoncia R. Dimagiba and Associate Justice Zenaida T. Galapate-Laguilles, concurring; *rollo,* pp. 183-194.

[2] Penned by Acting Presiding Judge Wilfredo L. Maynigo; *id*. at 89-94.

March 12, 2013 Decision[3] of the Metropolitan Trial Court, Branch 36, Quezon City (*MeTC*) in a complaint for Sum of Money.

The Antecedents

In March 1999, petitioner PASDA, Incorporated (*PASDA*) and respondent Reynaldo P. Dimayacyac, Sr. (*Dimayacyac*) entered into a Contract of Lease[4] of Suite 506 PASDA Mansion in Quezon City with a monthly rental of ₱17,000.00, plus 10% Value-Added Tax (*VAT*), and two percent (2%) interest per month in case of default. Dimayacyac, as lessee, was also to pay the utility costs for the said unit. The lease contract also provided that, in case of litigation, Dimayacyac should pay liquidated damages in the sum of ₱10,000.00 and attorney's fees equivalent to 25% of the amount claimed in the complaint.[5]

On July 16, 2005, Dimayacyac vacated the unit leaving an outstanding arrearage for monthly rentals, 10% VAT, and utility costs, in the aggregate amount of ₱340,071.00. Pursuant to paragraph 24 of the lease contract, PASDA took possession of Dimayacyac's articles and equipment found in the rented unit and prepared an inventory of the said items. In spite of the lapse of the agreed 30-day period to settle his obligations and the demand letters sent to him, he still failed to pay his outstanding obligation.

On May 11, 2007, PASDA filed a complaint[6] for sum of money before the MeTC against Dimayacyac to collect the outstanding obligation in the amount of ₱340,071.00.

The MeTC Ruling

In its March 12, 2013 Decision, the MeTC found Dimayacyac liable for the amount claimed in PASDA's complaint. It, however, reduced the amount from ₱340,071.00 to ₱16,271.00 because it deducted the value of the items confiscated by PASDA, which

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[3] Penned by Presiding Judge Edgardo B. Bellosillo; *id*. at 67-71.

[4] *Id*. at 32-35.

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

[6] *Id*. at 28-31.

amounted to ₱323,800.00. Further, the MeTC reduced the interest rate from 2% per month to 6% per *annum* and awarded ₱20,000.00 as attorney's fees. The dispositive portion of the said decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the former as follows:
>
> 1. The amount of Sixteen thousand two hundred seventy-one pesos (₱16,271.00), plus interest of six percent (6%) per annum reckoned from September 22, 2006 until the whole obligation is fully paid;
>
> 2. The amount of Twenty thousand pesos (₱20,000.00) as and for attorney's fees; and
>
> 3. To pay the costs of suit.
>
> SO ORDERED.[7]

Unsatisfied with the reduction of the monetary award, PASDA appealed before the RTC.

The RTC Ruling

In its December 17, 2013 decision, the RTC affirmed in *toto* the MeTC ruling. It held that the provisions of the lease contract were valid and had the force and effect of law, and bound the parties; and that Dimayacyac could no longer assail the provisions therein which he claimed to be confiscatory. The RTC noted that as a lawyer, Dimayacyac could have asked for the amendment or revision of the contract, instead of merely noting his objection thereto. The RTC also agreed with the MeTC in the monetary awards granted to PASDA.

Unconvinced, PASDA filed a petition for review before the CA.

The CA Ruling

In its September 8, 2015 Decision, the CA affirmed with modification the RTC decision. The appellate court opined that

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[7] *Id*. at 71.

it was appropriate to deduct the value of the mentioned items from Dimayacyac's total liability. It cited paragraph 23 of the lease contract, which authorized PASDA to retain Dimayacyac's properties inside the leased unit, in case of the latter's default, and to dispose the same in a private sale and apply the proceeds thereof against the outstanding obligation. This forfeiture clause, according to the CA, was ruled to be valid by the Court in *Fort Bonifacio Development Corp. v. Yllas Lending Corp. (Fort Bonifiacio)*.[8]

The appellate court further stated that, upon Dimayacyac's default, PASDA exercised its right to retain his properties under the forfeiture clause but it opted not to sell the same in a private sale. It also stated that the courts below did not err in the valuation of the retained items as it was based on an inventory list of Dimayacyac's properties with their corresponding prices, which was admitted in open court by PASDA's own witness.

Moreover, the CA affirmed the reduction of the interest rate and the attorney's fees. It said that the courts could reduce the amount even if it had been agreed upon, if the rate stipulated was unconscionable taking into consideration the circumstances of the case. The appellate court noted that the partial payment of the obligation warranted the reduction of the interest rate and the attorney's fees. The CA, however, awarded ₱10,000.00 as liquidated damages, as prayed for by PASDA because it was stipulated under the lease contract. Thus, it disposed:

> WHEREFORE, premises considered, the instant petition is hereby DENIED. The Decision dated December 17, 2013 of the Regional Trial Court, Branch 215, Quezon City is hereby AFFIRMED with MODIFICATION in that respondents Reynaldo P. Dimayacyac, Sr., substituted by his heirs, represented by Atty. Demosthenes D.C. Dimayacyac, are ordered to pay petitioner PASDA, Incorporated the amount of ₱16,271.00 plus legal interest of six percent (6%) per annum from September 22, 2006 until fully paid; ₱10,000.00 as liquidated damages; and ₱20,000.00 as attorney's fees. Moreover, from the finality of this Decision until full satisfaction, the total amount

[8] 588 Phil. 748 (2008).

due shall likewise earn another interest at six percent (6%) per annum until fully satisfied.

SO ORDERED.[9]

In the course of the proceedings before the CA, Dimayacyac died and he was substituted by his heirs as respondents.

Hence, this appeal instituted by PASDA raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS GRIEVOUSLY ERRED IN ITS INTERPRETATION OF THE PROVISIONS OF PARAGRAPH 24 OF THE CONTRACT OF LEASE THAT THE VALUES OF THE ARTICLES OF DIMAYACYAC WHICH WERE RETAINED BY (NOT FORFEITED TO) THE PETITIONER SHOULD BE DEDUCTED FROM THE UNPAID RENTAL ACCOUNTABILITIES OF DIMAYACYAC;

II

WHETHER THE COURT OF APPEALS GRIEVOUSLY ERRED IN ITS APPRECIATION OF THE EVIDENCE ON THE VALUATION OF THE SAID RETAINED (NOT FORFEITED) ARTICLES BY GIVING DUE WEIGHT AND CREDENCE TO THE BARE AND SELF-SERVING VALUATION WHICH HAVE NOT BEEN SUPPORTED BY ANY EVIDENCE;

III

WHETHER THE COURT OF APPEALS ERRED IN REDUCING THE AMOUNT OF THE ATTORNEY'S FEES CONTRARY TO THE EXPRESS STIPULATION IN THE CONTRACT OF LEASE; AND

IV

WHETHER THE COURT OF APPEALS ERRED IN REDUCING THE STIPULATED RATE OF INTEREST TO BE IMPOSED ON THE UNPAID ACCOUNTABILITIES OF DIMAYACYAC

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[9] *Rollo*, pp. 190-191.

TO ONLY SIX PER CENT (6%) CONTRARY TO THE EXPRESS STIPULATION IN THE CONTRACT OF LEASE.[10]

PASDA asserts that the value of the items it had retained should not have been deducted from Dimayacyac's unpaid obligation, claiming that, under paragraph 24, not paragraph 23, of the lease contract, it merely had the right, and not the obligation, to sell the items in case of the lessee's default and apply the proceeds thereof to the remaining balance. PASDA explains that it decided to file the present action after it was unable to sell the said articles. It insists that it did not appropriate Dimayacyac's properties for itself and merely retained them until they could be sold under execution of a final judgment in this case.

Likewise, PASDA assails the valuation of the items in the inventory list as the corresponding prices were merely added or inserted by Dimayacyac. It claims that at the time the parties signed the inventory, no price for each item was indicated. Thus, PASDA bewails that its representatives merely admitted the contents of the inventory but not their monetary value. Moreover, it avers that it was improper to reduce the interest rate and the attorney's fees as these were stipulated in the lease contract.

Respondents' Position

In their Comment,[11] dated April 4, 2016, the respondent heirs countered that the petition should be summarily dismissed because PASDA failed to indicate in its certificate against forum shopping that they had filed their Motion for Partial Reconsideration[12] of the September 8, 2015 CA decision. They noted that PASDA filed its opposition thereto and their motion was denied by the CA in its Resolution,[13] dated January 11, 2016.

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[10] *Id*. at 16.

[11] *Id*. at 209-224.

[12] *Id*. at 232-235.

[13] *Id*. at 240-242.

Moreover, the respondents contended that PASDA was estopped from questioning the RTC decision because they had already complied with the same. In his Manifestation of Compliance,[14] dated February 4, 2014, Dimayacyac stated that he would no longer appeal the RTC decision as he voluntarily complied with it by paying the judgment award in the amount of ₱43,511.60, through a China Bank check, which was allegedly accepted by PASDA as evidenced by the acknowledgment receipt signed by its counsel.

The respondents further argued that the courts *a quo* correctly deducted the values of the articles from Dimayacyac's obligations because PASDA's representative admitted in open court that she was aware of the contents of the inventory, and as such, could no longer deny the values thereof. They also agreed that the interest rates and the attorney's fees should be reduced because the proper interest imposed as indemnity for damages, if the debtor would incur delay in his payment of a sum of money, was 6%, and that attorney's fees could not even be recovered because no premium should be placed on the right to litigate.

Meanwhile, the respondents prayed that the CA decision should be modified as the running of the period within which the 6% interest must apply should stop as of February 4, 2014 when Dimayacyac made a full payment of the judgment award rendered by the RTC; and that they should not be made to pay the award of damages and attorney's fees, but should be enforced against Dimayacyac's estate as provided under Rule 86 of the Revised Rules of Court.

PASDA Reply

In its Reply,[15] dated April 26, 2016, PASDA manifested that its failure to mention the filing of the respondents' motion for partial reconsideration in its certification against forum shopping was simply due to inadvertence. PASDA noted that it was an

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[14] *Id*. at 228-230.

[15] *Id*. at 243-249.

excusable mistake because it received its copy of the motion several days after its filing of the motion for extension of time to file a petition for review on *certiorari* before the Court.

PASDA reiterated that its representative only admitted to the contents of the inventory but not the values thereof. Likewise, it also denied the respondents' claim that it had accepted the China Bank check as judgment award because in its Counter-Manifestation,[16] dated February 10, 2014, PASDA categorically stated that it had appealed the RTC decision to the CA, so, it was not yet final and there was nothing yet to be complied with; and that they were rejecting the check as payment for its money claims, which they returned to Dimayacyac.

The Court's Ruling

The petition has merit.

Proceedings involving different issues need not be stated in the certification against forum shopping

Forum shopping is the simultaneous or successive institution of two or more actions or proceedings involving the same parties for the same cause of action with the hope that one or the other court would make a favorable disposition.[17] It vexes the courts and the litigants because different courts are asked to rule on the same or related causes, raising the same issues and praying for similar reliefs, which creates the possibility of conflicting decisions rendered by two different tribunals.[18]

In the case at bench, PASDA's certification against forum shopping complied with existing rules and regulations, notwithstanding that the respondents' motion for partial reconsideration was never mentioned therein. PASDA was not

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[16] *Id*. at 250.

[17] *Yap v. Chua*, 687 Phil. 392, 399 (2012).

[18] *Id*. at 399-400.

obliged to state the said motion in its certification against forum shopping because it involved different issues and relief compared to the present petition before this Court.

Parties are bound by the literal meaning of the contract in the absence of ambiguity

Contracts have the force of law between the parties, and unless the stipulations are contrary to laws, morals, good customs, public order, or public policy, the same are binding as between the parties.[19] Except when the terms are ambiguous, the literal meaning of a contract's stipulation is controlling.[20] The courts cannot enforce the contract contrary to its express terms, otherwise, it would trample the rights of the parties to stipulate the terms of their agreement. The Court's ruling in *Norton Resources and Development Corporation v. All Asia Bank Corporation*,[21] is instructive:

The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "[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." This provision is akin to the "plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement". x x x A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them.**The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous.** A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations.**Where the written terms of the contract are not**

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[19] *Morla v. Belmonta*, 678 Phil. 102, 117 (2011), citing *Roxas v. Zuzvaregui, Jr.*, 516 Phil. 605 (2006).

[20] Article 1370 of the Civil Code.

[21] 620 Phil. 381 (2009), citing *Benguet Corporation v. Cabildo*, 585 Phil. 23 (2009).

ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.

xxx xxx xxx

The agreement or contract between the parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties. x x x Time and again, we have stressed the rule that a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs or public policy. Otherwise, courts would be interfering with the freedom of contract of the parties. **Simply put, courts cannot stipulate for the parties or amend the latter's agreement, for to do so would be to alter the real intention of the contracting parties when the contrary function of courts is to give force and effect to the intention of the parties.**[22] [Emphases supplied]

In other words, the courts must first determine whether there is ambiguity in a particular provision of a contract and the absence of which leaves the courts to read the provision on its face as it was written and treat it as the binding law of the parties to the contract.[23] Thus, a perusal of the lease contract in this case is in order for the determination of the propriety of the application of the value of the retained items to Dimayacyac's total liabilities. PASDA correctly pointed out that while the CA cited paragraph 23 in its decision, paragraph 24 was the one that pertained to non-payment of rentals and the particular provision to be interpreted. The said portion reads:

This Contract shall be considered automatically terminated and cancelled should the LESSEE violate any of the provisions of this Contract or fail to pay rentals due thereon within the time herein provided or where the premises are abandoned by LESSEE as herein above state; in any of such cases, the LESSOR is hereby given the

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[22] *Id*. at 388.

[23] *The Wellex Group, Inc. v. U-Land Airlines, Co., Ltd.*, G.R. No. 167519, January 14, 2015, 745 SCRA 563, 601-602.

right without need of formal notice or demand to enter into and take possession of the leased premises and to exercise its right of ownership, as well as the LESSOR'S rights as provided for in this Contract of Lease;

Furthermore, when any or all of the above circumstances occur, the LESSE hereby constitutes and appoints the LESSOR as his duly authorized attorney-in-fact with the power and authority to cause the premises to be opened in the presence of any peace officer, to take inventories of all LESSEE'S merchandise, effects, and/or equipment therein and to remove and transfer the same to the LESSOR'S bodega. LESSEE hereby expressly agrees to pay for all responsible expenses incurred by the LESSOR in connection therewith, including storage fees, which expenses and fees in addition to back rentals or any other liabilities of the LESSEE to the LESSOR, if any, shall be first and preferential lien on said LESSEE'S merchandise, effects, and equipment; Provided, furthermore, that failure of the LESSEE to clear any such merchandise, effects, and equipment within thirty (30) days from date of closure and abandonment of the premises as herein provided shall give rise to the **LESSOR'S right to dispose of the same in a private sale and to apply the proceeds thereof first to the back rentals, next to expenses incurred by the LESSOR for transfer storage and private sale to the other liabilities of LESSEE to LESSOR and the excess if any, shall be given to the LESSEE**; LESSOR shall not incur any civil and/or criminal liabilities whatsoever by exercising its rights granted under these provisions. The rights granted to the LESSOR in this section may be exercised by the LESSOR'S duly authorized employees, agents or representatives and in so doing shall not incur civil and/or criminal liabilities whatsoever.[24] [Emphasis supplied]

Paragraph 24 is clear and unequivocal. Hence, it must be applied according to its literal and express terms and not in a manner which would expand or run contrary to it. Literally applying the provisions of the present contract, PASDA merely had the right or authority to sell the articles in the leased premises and apply the proceeds thereof to Dimayacyac's liabilities. It neither mandated PASDA to sell the same nor authorized it to appropriate them and offset their value against the outstanding

[24] *Rollo*, p. 34.

liabilities of Dimayacyac. PASDA was even bound to return to Dimayacyac any excess from the private sale.

The CA postulated that paragraph 23, which was of the same tenor as paragraph 24 of the lease contract, was a forfeiture clause and, that pursuant to *Fort Bonifacio*, the items retained by PASDA had been appropriated in its favor. *Fort Bonifacio*, however, does not fall squarely with the facts at hand.

A closer scrutiny of the lease contract in *Fort Bonifacio* reveals that the lessor therein had **the right to possess the properties of the lessee in the leased premises**, in case of the latter's default, and the authority **to offset the prevailing value thereof as appraised by the lessor against any unpaid rentals, charges and/or damages**. The contract did not only limit the lessor to sell the same and apply the proceeds thereof to any existing obligations but it also provided that the lessor might opt to appropriate for itself the retained items.

In the case at bench, on the other hand, paragraph 24 of the subject lease contract did not grant PASDA the authority to appropriate and apply the value of the retained articles against the lessee's outstanding liabilities. It merely gave the lessor the right or authority to sell them in a private sale, apply the proceeds thereof to the lessee's existing liabilities, and turn over any excess to the latter.

Thus, paragraph 24 of the lease contract between PASDA and Dimayacyac is not akin to the forfeiture clause stipulated in *Fort Bonifacio*. Although similar to the forfeiture clause in *Fort Bonifacio* as it serves as a security in the lessor's favor in the event of the lessee's default, paragraph 24 differs in that it stated that the articles involved were not automatically forfeited in favor of PASDA as the latter could only sell them and use the proceeds to pay Dimayacyac's obligations.

As can be gleaned from paragraph 24, PASDA's options were to either enforce the security and sell the articles or claim the principal obligation and return the articles. As explained by PASDA, it opted to institute the present action as it was unable to successfully sell the retained items in a private sale. To rule

that the value of the subject properties should be deducted from Dimayacyac's outstanding obligations would run afoul to the express provisions of paragraph 24 of the lease contract which merely gave PASDA the right to possess the items and sell them in a private sale before applying the proceeds to Dimayacyac's existing obligations and returning the excess, if any, to the latter.

Strictly applying the provisions of paragraph 24 of the lease contract will not lead to PASDA's unjust enrichment. Nowhere in the said provision does it mention that PASDA will retain the properties of Dimayacyac in the concept of an owner and dispose of them in any way it wishes. PASDA merely possessed the properties as a security in case Dimayacyac defaulted in his obligations. The said items were only to be sold in a private sale and any excess proceeds, after applying them against Dimayacyac's liabilities, were to be returned. In short, PASDA had no authority to appropriate the items it had retained as security.

Considering that PASDA opted to file the present action to recover the principal obligation, it could no longer keep the retained items which it had kept as security and could have disposed in a private sale. As PASDA had decided to collect the principal obligation, it no longer had any reason to continue to possess the personal properties of Dimayacyac.

Value of the items in the inventory baseless

Even granting that the value of the articles PASDA possessed may be deducted from Dimayacyac's outstanding obligation, it was improper to use the values provided by Dimayacyac. PASDA's representative merely admitted the contents of the inventory and not the stated values of the particular items therein. PASDA claims that Dimayacyac intercalated the values of the items after the inventory was prepared pointing out that the inventory list was typewritten while the prices were handwritten. This is supported by a copy of the inventory,[25] which Dimayacyac attached to his answer filed with the MeTC, as the same merely

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

enumerated the items inventoried without any notation as to their prices. Moreover, even Dimayacyac admitted that the prices he wrote down were not supported by appropriate documents or receipts.[26]

On the Interest Rates

With regard to the decrease of the interest rate, the CA opined that the 2% interest per month was unconscionable considering that a partial payment was already made. As discussed above, however, the application of the value of the retained articles to the outstanding balance was contrary to the explicit provisions of the lease contract. Hence, the alleged partial payment of the obligation made by deducting the value of the retained articles from the existing obligation cannot be a ground to reduce the interest rate.

To stress, parties have the right to stipulate any conditions or terms in their contract provided they are not contrary to law, morals, good customs, public order, or public policy. In *Mallari v. Prudential Bank*,[27] the Court explained that the parties were free to stipulate on the interest rate, provided that it was conscionable, to wit:

> Parties are free to enter into agreements and stipulate as to the terms and conditions of their contract, but such freedom is not absolute. As Article 1306 of the Civil Code provides, "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." Hence, if the stipulations in the contract are valid, the parties thereto are bound to comply with them, since such contract is the law between the parties. x x x
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> xxx xxx xxx
>
> **Clearly, jurisprudence establish that the 24% p.a. stipulated interest rate was not considered unconscionable**, thus, the 23% p.a. interest rate imposed on petitioners' loan in this case can by no

[26] *Id.* at 20.

[27] 710 Phil. 490 (2013).

means be considered excessive or unconscionable.[28] [Emphasis supplied]

Nevertheless, the Court is of the considered view that the stipulated attorney's fees can be equitably reduced under the circumstances. As the attorney's fees were not integral to the rentals but merely incidental to its collection, and it was intended as a penal clause to answer for liquidated damages,[29] decreasing the rate equitably balances the rights and interests of both parties. The Court also takes into account that in the lease contract, the attorney's fees would already serve as penalty for the default of the lessee, and the payment of liquidated damages in the amount of ₱10,000.00 was also provided.

PASDA's money claims should be enforced against Dimayacyac's Estate

Section 20, Rule 3 of the Rules of Court provides:

When the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person.

The said provision should be read in consonance with Section 5, Rule 86 of the Rules of Court, which reads:

All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred

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[28] *Id*. at 497-499.

[29] *RGM Industries, Inc. v. United Pacific Capital Corporation*, 689 Phil. 660 (2012).

forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead of present them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claim had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at their present value.

From the foregoing provisions of the Rules of Court, it is clear that in the event that the respondent-debtor dies during the pendency of the case, the same is not dismissed but is allowed to continue. If, eventually, the court rules against the deceased respondent, the same shall be enforced as a claim against his estate, and not against the individual heirs. In *Genato v. Bayhon*,[30] the Court wrote that the remedy of a creditor in case of the death of the debtor is to enforce the former's claim against the latter's estate, to wit:

> The loan in this case was contracted by respondent. He died while the case was pending before the Court of Appeals. **While he may no longer be compelled to pay the loan, the debt subsists against his estate.** No property or portion of the inheritance may be transmitted to his heirs unless the debt has first been satisfied. x x x

The procedure in vindicating monetary claims involving a defendant who dies before final judgment is governed by Rule 3, Section 20 of the Rules of Civil Procedure, to wit:

> When the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in

[30] 613 Phil. 318 (2009).

> the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person.
>
> **Pursuant to this provision, petitioner's remedy lies in filing a claim against the estate of the deceased respondent.**[31] [Emphases supplied]

The fact that Dimayacyac's heirs have not instituted any action for the settlement of his estate does not warrant the conclusion that the judgment award must be enforced against the individual heirs.

Accordingly, PASDA may recover the amount of ₱340,071.00, plus interest at the rate of six percent (6%) *per annum*, ₱10,000.00 liquidated damages, and ₱20,000.00 as attorney's fees. The same may be enforced as a claim against the estate of Reynaldo P. Dimayacyac, Sr. PASDA is, however, obligated to return the items it retained to his estate.

WHEREFORE, the September 8, 2015 Decision of the Court of Appeals in CA-G.R. SP No. 133647 is **REVERSED** and **SET ASIDE**. The Court hereby declares that PASDA, Incorporated can recover the amount of ₱340,071.00, plus interest at the rate of six percent (6%) *per annum*; ₱10,000.00 as liquidated damages, and ₱20,000.00 as attorney's fees, from the Estate of Reynaldo P. Dimayacyac, Sr., less the amount recovered from the sales of some of his assets, if any.

The balance of the obligation shall be subject to interest at the rate of six percent (6%) *per annum* from the finality of the decision until fully paid.

PASDA is ordered to return the retained items to the estate of Reynaldo P. Dimayacyac, Sr.

SO ORDERED.

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

Brion, J., on leave.

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[31] *Id*. at 327.

FIRST DIVISION

[G.R. No. 222658. August 17, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIO GALIA BAGAMANO,**[1] *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL IN CRIMINAL CASES THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW AND THE REVIEWING TRIBUNAL CAN CORRECT ERRORS, THOUGH UNASSIGNED IN THE APPEALED JUDGMENT.—** At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.—** For a charge of Rape by sexual intercourse under Article 266-A (1) of the RPC to prosper, the prosecution must prove that: (*a*) the offender had carnal knowledge of a woman; and (*b*) he accomplished this act through force, threat or intimidation, when the victim was deprived of reason or otherwise unconscious, by means of fraudulent machination or grave abuse of authority, or when the victim is under 12 years of age or is demented. The gravamen of Rape is sexual intercourse with a woman against her will.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; TO CONSIDER MATTERS NOT SPECIFICALLY ALLEGED IN THE INFORMATION, EVEN IF PROVEN IN TRIAL, WOULD BE TANTAMOUNT TO THE DEPRIVATION OF THE ACCUSED'S RIGHT TO BE INFORMED OF THE CHARGE LODGED AGAINST**

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[1] Mentioned as "DDD in CA-G.R. CR-CH No. 01057-MIN (formerly Criminal Case No. 59, 211-06)" and "DDD" in the CA Decision.

HIM; CASE AT BAR.— It must be stressed that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him to ensure that his due process rights are observed. Thus, every indictment must embody the essential elements of the crime charged with reasonable particularity as to the name of the accused, the time and place of commission of the offense, and the circumstances thereof. Hence, to consider matters not specifically alleged in the Information, even if proven in trial, would be tantamount to the deprivation of the accused's right to be informed of the charge lodged against him. In this case, suffice it to say that AAA's mental retardation, while proven during trial, cannot be considered in view of the fact that it was not specifically alleged in the Information charging Bagamano of Rape. Therefore, the CA incorrectly appreciated such circumstance in determining the means by which Bagamano committed the crime. The foregoing notwithstanding, in view of the fact that the prosecution duly established that Bagamano employed force and intimidation to accomplish his criminal desires and that this circumstance was properly alleged in the Information, his conviction for Rape is proper.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Dela Victoria Law Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[2] filed by accused-appellant Mario Galia Bagamano (Bagamano) assailing the Decision[3] dated October 22, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01057-MIN, which affirmed with modification the Decision[4] dated December 7, 2011 and

[2] See Notice of Appeal dated November 9, 2015; *rollo*, pp. 18-19.

[3] *Id*. at 3-17. Penned by Associate Justice Pablito A. Perez with Associate Justices Romulo V. Borja and Oscar V. Badelles.

[4] CA *rollo*, pp. 47-50. Penned by Presiding Judge Salvador M. Ibarreta, Jr.

the Order[5] dated April 13, 2012 of the Regional Trial Court of Davao City, Branch 8 (RTC) in Crim. Case No. 59,211-06 finding Bagamano guilty beyond reasonable doubt of the crime of Rape, defined and penalized under Article 266-A (1) of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,[6] otherwise known as "The Anti-Rape Law of 1997."

The Facts

On May 3, 2006, an Information[7] was filed before the RTC charging Bagamano of one (1) count of Rape,[8] the accusatory portion of which reads:

> That on or about May 1, 2006 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused [Bagamano], by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA],[9] 16 years old, against her will.
>
> Contrary to Law.[10]

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[5] *Id.* at 51.

[6] Entiled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES," approved on September 30, 1997.

[7] Not attached to the *rollo*.

[8] See *rollo*, p. 3.

[9] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 573, 578 [2014]; citations omitted).

[10] See CA *rollo*, p. 47.

According to the prosecution, AAA, her mother and sister, and her sister's common-law spouse, Bagamano, lived at the same house. At around five (5) o'clock in the afternoon of May 1, 2006, AAA was in the house of a neighbor, when suddenly, Bagamano, who was drunk at the time, pulled her into their house while AAA's mother and sister were not around. Once inside, Bagamano ordered AAA to take off her clothes, covered her mouth, and then proceeded to have carnal knowledge of her. Later that day, AAA's mother noticed that AAA was pale, bruised, limping, and her dress soiled, making her suspect that Bagamano had something to do with AAA's disheveled appearance. Such suspicion was later confirmed when AAA admitted to her sister that Bagamano raped her, prompting AAA's mother and sister to bring her to the hospital for medical examination. They also went to the police station to report the matter.[11]

For his part, Bagamano pleaded not guilty to the charge,[12] but did not present any evidence.[13]

During the trial, the prosecution presented Dr. Daisy Ann-Artuz, a psychiatric consultant of Davao Medical Center. She testified that: (*a*) while AAA is already 20 years old, she has a mild to moderate mental retardation, with a mental age of 6 to 7 years old; (*b*) children of this mental age can recall and narrate events if coupled with subtle prodding; (*c*) AAA has difficulty in answering questions and can only respond in phrases; (*d*) AAA had no overtures or distortions in her perception or memory; and (*e*) AAA was not suffering from psychosis, which meant that she was in touch with reality and not hallucinating strangely.[14]

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[11] See *id*. at 47-48. See also *rollo*, pp. 4-5.

[12] *Rollo*, p. 4.

[13] *Id*. at 5. See also CA *rollo*, p. 48.

[14] *Id*. at 4.

The RTC Ruling

In a Decision[15] dated December 7, 2011, the RTC found Bagamano guilty beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of *reclusion perpetua*, as well as ordered him to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.[16]

In finding Bagamano's guilt, the RTC held that AAA's testimony that Bagamano raped her was trustworthy and should be given credence, especially in light of the corroborative testimonies of her mother and sister. The RTC further noted that no ill motive can be attributed to AAA in imputing liability to Bagamano.[17]

Bagamano moved for reconsideration,[18] which was, however, denied in an Order[19] dated April 13, 2012. Aggrieved, he appealed[20] to the CA.

The CA Ruling

In a Decision[21] dated October 22, 2015, the CA affirmed Bagamano's conviction, with modification increasing the damages awarded to AAA as follows: (*a*) ₱75,000.00 as civil indemnity; (*b*) ₱75,000.00 as moral damages; and (*c*) ₱30,000.00 as exemplary damages.[22]

Agreeing with the RTC, the CA ruled that taking into consideration that AAA is a mental retardate, her positive testimony that Bagamano took advantage of her is credible and

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[15] CA *rollo*, pp. 47-50.

[16] *Id*. at 50.

[17] See *id*.

[18] Not attached to the *rollo*.

[19] CA *rollo*, p. 51.

[20] See Notice of Appeal dated May 10, 2012; *id*. at 11-12.

[21] *Rollo*, pp. 3-17.

[22] *Id*. at 17.

trustworthy and, thus, sufficient to convict him of the crime of rape.[23] In this relation, the CA noted AAA's mental retardation in imposing the appropriate penalty on Bagamano.[24]

Aggrieved, Bagamano filed the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether Bagamano's conviction for Rape should be upheld.

The Court's Ruling

The appeal is bereft of merit.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[25]

As will be explained hereunder, the CA correctly upheld Bagamano's conviction, but erred in taking into consideration AAA's mental retardation.

Article 266-A (1) of the RPC reads as follows:

ART. 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;

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[23] See *id*. at 7-14.

[24] See *id*. at 16.

[25] See *People v. Comboy*, G.R. No. 218399, March 2, 2016, citing *Manansala v. People*, G.R. No. 215424, December 9, 2015.

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

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

xxx xxx xxx

For a charge of Rape by sexual intercourse under Article 266-A (1) of the RPC to prosper, the prosecution must prove that: (*a*) the offender had carnal knowledge of a woman; and (*b*) he accomplished this act through force, threat or intimidation, when the victim was deprived of reason or otherwise unconscious, by means of fraudulent machination or grave abuse of authority, or when the victim is under 12 years of age or is demented.[26] The gravamen of Rape is sexual intercourse with a woman against her will.[27]

In this case, the Court agrees with the findings of both the RTC and the CA that the prosecution established, *among others*, that: (*a*) on May 1, 2006, AAA was in her neighbor's house when Bagamano pulled her into their own house; (*b*) once inside, Bagamano covered her mouth then had carnal knowledge of her; (*c*) AAA confessed to her sister that Bagamano took advantage of her; and (*d*) a medical examination confirmed that AAA was indeed raped. Verily, the assessment and findings of the trial court are generally accorded great weight, and are conclusive and binding to the Court if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence,[28] as in this case.

However, the CA should not have taken into account AAA's mental retardation. It must be stressed that in all criminal

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[26] See *People v. Hilarion*, 722 Phil. 52, 55 (2013).

[27] See *People v. Comboy*, *supra* note 25, citing *People v. Mateo*, 588 Phil. 543, 554 (2008).

[28] See *People v. Arguta*, G.R. No. 213216, April 20, 2015, 756 SCRA 376, 386, citing *People v. Manalili*, 716 Phil. 762, 772 (2013).

prosecutions, the accused shall be informed of the nature and cause of the accusation against him to ensure that his due process rights are observed. Thus, every indictment must embody the essential elements of the crime charged with reasonable particularity as to the name of the accused, the time and place of commission of the offense, and the circumstances thereof.[29] Hence, to consider matters not specifically alleged in the Information, even if proven in trial, would be tantamount to the deprivation of the accused's right to be informed of the charge lodged against him.[30] In this case, suffice it to say that AAA's mental retardation, while proven during trial, cannot be considered in view of the fact that it was not specifically alleged in the Information charging Bagamano of Rape.[31] Therefore, the CA incorrectly appreciated such circumstance in determining the means by which Bagamano committed the crime. The foregoing notwithstanding, in view of the fact that the prosecution duly established that Bagamano employed force and intimidation to accomplish his criminal desires and that this circumstance was properly alleged in the Information, his conviction for Rape is proper.

Finally, the RTC and the CA correctly sentenced Bagamano to *reclusion perpetua*.[32] However, the Court finds it necessary

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[29] See *Garcia v. CA*, 420 Phil. 25, 34 (2001).

[30] See *People v. Arcillas*, 692 Phil. 40, 52-53 (2012).

[31] See *rollo*, p. 4. See also CA *rollo*, p. 47.

[32] Item II (1) of A.M. No. 15-08-02-SC, entitled "*Guidelines for the Proper Use of the Phrase 'Without Eligibility for Parole' in Indivisible Penalties*," dated August 4, 2015 provides:

II.

In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "*without eligibility for parole*":

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "*without eligibility for parole*" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; x x x

xxx xxx xxx

to modify the amount of exemplary damages awarded to AAA in order to conform with prevailing jurisprudence.[33] Hence, accused appellant is ordered to pay AAA the amount of ₱75,000.00 as exemplary damages. Meanwhile, the awards of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages are affirmed. In addition, the Court imposes, on all monetary awards, interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.[34]

WHEREFORE, the appeal is **DENIED**. The Decision dated October 22, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01057-MIN, finding accused-appellant Mario Galia Bagamano **GUILTY** beyond reasonable doubt of the crime of Rape as defined and penalized under Article 266-A (1) of the Revised Penal Code, as amended, is hereby **AFFIRMED** with **MODIFICATION** sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with legal interest at the rate of six percent (6%) per annum on all the monetary awards from the date of finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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

[34] *People v. Inciong*, G.R. No. 213383, June 22, 2015, 760 SCRA 249, 258.

THIRD DIVISION

[G.R. No. 191527. August 22, 2016]

BALIBAGO FAITH BAPTIST CHURCH, INC. and PHILIPPINE BAPTIST S.B.C., INC., *petitioners, vs.* **FAITH IN CHRIST JESUS BAPTIST CHURCH, INC. and REYNALDO GALVAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; AN ACTION TO RECOVER POSSESSION FOUNDED ON ILLEGAL OCCUPATION FROM THE BEGINNING IS FORCIBLE ENTRY WHILE AN ACTION FOUNDED ON UNLAWFUL DETENTION BY A PERSON WHO ORIGINALLY ACQUIRED POSSESSION LAWFULLY IS UNLAWFUL DETAINER.— In *Sumulong v. Court of Appeals*, the Court differentiated the distinct causes of action in forcible entry *vis-a-vis* unlawful detainer, x x x From the foregoing, it is then clear that unlawful detainer and forcible entry are entirely distinct causes of action, to wit: (a) action to recover possession founded on illegal occupation from the beginning — forcible entry; and (b) action founded on unlawful detention by a person who originally acquired possession lawfully — unlawful detainer. x x x It should then be stressed that what determines the cause of action is the nature of defendants' entry into the land. If entry is illegal, then the cause of action which may be filed against the intruder within one year therefrom is forcible entry. If, on the other hand, entry is legal but thereafter possession became illegal, the case is one of illegal detainer which must be filed within one year from the date of the last demand. Indeed, to vest the court of jurisdiction to effect the ejectment of an occupant, it is necessary that the complaint should embody such a statement of facts which brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face the court's jurisdiction without resort to parol testimony.

2. ID.; ID.; UNLAWFUL DETAINER; ALLEGATIONS IN THE COMPLAINT, SUFFICIENT TO SUPPORT A CAUSE OF ACTION FOR UNLAWFUL DETAINER, CITED.— In *Cabrera, et al. v. Getaruela, et al.*, the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

APPEARANCES OF COUNSEL

Panlilio Paras Timbol & Panlilio for petitioners.
Raul C. Villanueva for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated March 5, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 97292.

The facts follow.

The instant petition originated from a Complaint[2] for unlawful detainer and damages filed by Balibago Faith Baptist Church, Inc. (*BFBC*) and Philippine Baptist S.B.C., Inc. (*PBSBC*) against Faith in Christ Jesus Baptist Church, Inc. (*FCJBC*) and Reynaldo Galvan (*Galvan*) before the Municipal Trial Court

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[1] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Vicente S.E. Veloso and Rodil V. Zalameda, concurring; *rollo*, pp. 52-68.

[2] *Rollo*, pp. 107-111.

(*MTC*), Branch 2, Angeles City, docketed as Civil Case No. 02-388. The complaint sought the ejectment of FCJBC from the subject parcel of land with improvements, known as Lot 3, Blk. 35 of (*LRC*) PCS-2364, covered by Transfer Certificate of Title (*TCT*) No. 82587,[3] and located at 35-3 Sarita St., Diamond Subdivision, Balibago, Angeles City, and owned by PBSBC.

On March 7, 1990, a contract of loan was entered into between PBSBC and BFBC where the latter borrowed money from the former to enable it to purchase the subject property. Thereafter, respondent BFBC took possession of the subject property and held therein their religious activities.

While BFBC was still in possession of the subject property, Galvan and his companions began attending BFBC's religious activities at the subject property. BFBC alleged that Galvan apparently was interested on the property because after some time Galvan formed and incorporated FCJBC and took control of the subject property.

Galvan's actuations came to the attention of the Luzon Convention of Southern Baptist Churches, Inc. (*LCSBC*). Thus, in a Letter[4] dated September 5, 2001, LCSBC upheld BFBC's right over the subject property and recognized BFBC's pastor, Rev. Rolando T. Santos, as its legitimate pastor.

However, FCJBC continued to occupy the subject property, thus, in a Demand Letter[5] dated September 4, 2002, BFBC demanded that FCJBC vacate the property within five (5) days from notice and to pay the amount of ₱10,000.00 per month beginning October 2001 as reasonable compensation for its use.

Due to non-compliance with its demand, on September 24, 2003, BFBC and PBSBC filed a Complaint[6] for unlawful detainer and damages against FCJBC and Galvan.

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[3] *Id*. at 112.

[4] *Id*. at 113.

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

[6] *Id*. at 107-111.

In its Answer, FCJBC and Galvan contend that it has been in existence since 1984. Allegedly, it was formerly known as "Faith Baptist Church" (*FBC*) and held services at the Tacipit family residence at 31-1 Dona Maria St., Diamond Subdivision, Angeles City. FBC eventually moved to a building along MacArthur Highway in the same subdivision. Sometime in 1990, some of the members of the FBC availed of the loan from the Church Loan Fund of Foreign Mission Board, SBC, Philippine Baptist Mission for the purpose of purchasing the subject property. This was embodied in a Contract of Simple Loan or *Mutuum* dated March 7, 1990.

Rolando Santos was the pastor of FBC from 1993 to 2000. Due to a misunderstanding within the church group, Santos left FBC, together with some of its members. In February 2001, Santos' group formed BFBC, an organization which was duly registered with the Securities and Exchange Commission.

Meanwhile, FBC continued to occupy the subject property and, on January 9, 2001, organized themselves into FCJBC.

On May 30, 2001, FCJBC paid installments due on the subject property in the sum of ₱10,000.00, leaving a balance of ₱240,615.53. FCJBC alleged that since June 2001, they were willing and able to pay the installments due on the subject property, however, PBSBC refused to accept any payment from it. By September 9, 2002, the installments due had reached ₱47,232.00.

FCJBC further averred that, prior to BFBC's filing of the present complaint, a Petition for Consignation of Payment was already filed on October 9, 2002 with the RTC, Branch 62, Angeles City entitled "*Carlos Gelacio, et al. v. Foreign Mission Board, S.B.C. Philippine Baptist Mission, now Philippine Baptist, S.B.C., Inc.*" docketed as Civil Case No. 10713. FCJBC prayed that PBSBC be required to accept the amount of ₱240,615.53 as full payment of the Contract of Simple Loan or *Mutuum*.

On October 29, 2002, FCJBC filed a Motion seeking the suspension of proceedings in Civil Case No. 02-388 pending resolution of the petition for consignation.

On February 9, 2004, the MTC rendered its Decision[7] in favor of respondent BFBC in Civil Case No. 02-388. The MTC ruled that the case was one of forcible entry and not unlawful detainer. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Balibago Faith Baptist Church, Inc. and against the defendants Faith in Christ Jesus Baptist Church, Inc., Reynaldo Galvan and all persons claiming rights under them, ordering the latter the following:
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> 1. To vacate and surrender possession of the subject property to plaintiff within three (3) months from receipt of this Decision;
> 2. To pay the sum of ₱20,000.00 as reasonable attorney's fees; and
> 3. To pay the costs of the suit.
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> Defendants' counterclaim is hereby DISMISSED for lack of merit.
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> SO ORDERED.[8]

Both parties filed their respective appeal memoranda with the RTC. On April 19, 2006, the RTC issued the assailed Decision[9] which affirmed the Decision of the MTC. FCJBC moved for reconsideration, but was denied on November 24, 2006. Thus, FCJBC filed a petition for review on *certiorari* before the appellate court.[10]

In the disputed Decision[11] dated March 5, 2010, the appellate court granted the petition, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition is GRANTED. The assailed orders of the Regional Trial Court, Branch 57,

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[7] *Id*. at 199-206.

[8] *Id*. at 206.

[9] *Id*. at 207-211.

[10] *Id*. at 215-268.

[11] *Id*. at 52-68.

Angeles City, dated April 19, 2006 and November 24, 2006, are REVERSED and SET ASIDE. The complaint for unlawful detainer is DISMISSED.

SO ORDERED.[12]

Undaunted, BFBC and PBSBC filed the instant petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues:

I

WHETHER THE COURT OF APPEALS ERRED IN DISMISSING THE COMPLAINT FOR UNLAWFUL DETAINER AND RULING THAT THE MTC HAS NO JURISDICTION OVER THE CASE.

II

WHETHER THE COURT OF APPEALS ERRED IN RAISING ISSUES ON THE SUFFICIENCY OF THE COMPLAINT AND THE MTC JURISDICTION WHICH WERE NOT BROUGHT OUT BY THE PARTIES.

III

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED TO DISMISS THE COMPLAINT INSTEAD OF DECIDING THE CASE ON THE MERITS IN LIGHT OF SECTION 8, RULE 140 OF THE RULES OF COURT.

In a nutshell, the main issue before us is whether the instant case is one of unlawful detainer or forcible entry.

In *Sumulong v. Court of Appeals*,[13] the Court differentiated the distinct causes of action in forcible entry *vis-a-vis* unlawful detainer, to wit:

Forcible entry and unlawful detainer are two distinct causes of action defined in Section 1, Rule 70 of the Rules of Court. In forcible entry, one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful

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[12] *Id*. at 67.

[13] G.R. No. 108817, May 10, 1994, 232 SCRA 372.

detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the only issue is who has the prior possession *de facto*. In unlawful detainer, possession was originally lawful but became unlawful by the expiration or termination of the right to possess and the issue of rightful possession is the one decisive, for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.[14]

From the foregoing, it is then clear that unlawful detainer and forcible entry are entirely distinct causes of action, to wit: (a) action to recover possession founded on illegal occupation from the beginning — forcible entry; and (b) action founded on unlawful detention by a person who originally acquired possession lawfully — unlawful detainer.

The rule is that the allegations in the complaint determine both the nature of the action and the jurisdiction of the court.[15] The cause of action in a complaint is not what the designation of the complaint states, but what the allegations in the body of the complaint define and describe. The designation or caption is not controlling, more than the allegations in the complaint themselves are, for it is not even an indispensable part of the complaint.[16] The complaint must specifically allege the facts constituting unlawful detainer or forcible entry if the complaint filed was for unlawful detainer, or forcible entry, respectively. It cannot be made to depend on the exclusive characterization of the case by one of the parties, jurisdiction cannot be made to depend upon the defenses set up in the answer, in a motion to dismiss or in a motion for reconsideration.[17]

It should then be stressed that what determines the cause of action is the nature of defendants' entry into the land. If entry

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[14] *Sumulong v. Court of Appeals, supra,* at 382-283.

[15] *Dela Cruz v. Court of Appeals*, 539 Phil. 158, 172 (2006).

[16] *Id*.; *Feranil v. Judge Arcilla*, 177 Phil. 713, 717-718 (1979).

[17] See *Tamano v. Hon. Ortiz*, 353 Phil. 775, 780 (1998).

is illegal, then the cause of action which may be filed against the intruder within one year therefrom is forcible entry. If, on the other hand, entry is legal but thereafter possession became illegal, the case is one of unlawful detainer which must be filed within one year from the date of the last demand.[18]

Indeed, to vest the court of jurisdiction to effect the ejectment of an occupant, it is necessary that the complaint should embody such a statement of facts which brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face the court's jurisdiction without resort to parol testimony.[19] This is where petitioners' cause of action fails.

In *Cabrera, et al. v. Getaruela, et al.*,[20] the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

(1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;

(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[21]

In this case, BFBC presented the following allegations in support of its unlawful detainer complaint:

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[18] *Sarmiento v. CA*, 320 Phil. 146, 154 (1995).

[19] *Zacarias v. Anacay*, G.R. No. 202354, September 24, 2014, 736 SCRA 508, 515.

[20] 604 Phil. 59 (2009).

[21] *Cabrera, et al. v. Getaruela, et al., supra*, at 66.

2. Plaintiff Philippine Baptist S.B.C., Inc. is the registered owner of a parcel of land with improvements under Lot 3 Blk. 35 of (LRC) Pcs-2364 described under Transfer Certificate of Title (TCT) No. 82587 issued by the Registry of Deeds of Angeles City, located at 35-3 Sarita St., Diamond Subd., Balibago, Angeles City, which is the subject matter of this case and hereinafter referred to as subject premises. A copy of the title is hereto attached as Annex "A" and to form an integral part hereof;

3. On March 7, 1990, plaintiff PBSBC granted a contract of simple loan to plaintiff BFBC for the latter's purchase of the subject premises and plaintiff BFBC started to possess the same and hold their religious activities thereat;

4. ***While plaintiff BFBC was in possession of the subject premises, defendant Reynaldo Galvan and his companions joined the regular religious services of plaintiff BFBC at the subject premises;***

5. ***It turned out that defendants have an interest in the subject premises and defendant Reynaldo Galvan formed and incorporated the defendant FCJBC and took control of the subject premises;***

6. The take-over of the defendants was brought to the attention of the Luzon Convention of Southern Baptist Churches, Inc., (LCSBC) and the latter, in letter dated September 5, 2001, has affirmed the right of the plaintiff BFBC, headed by Rev. Rolando T. Santos, to occupy the subject premises. A copy of LCSBC's letter dated September 5, 2001 is hereto attached as Annex "B";

7. Despite [LCSBC's] letter and plaintiff's peaceful overtures for the defendants to turn over to plaintiffs the subject premises, defendants ignored the same;

8. Due to exhaustion, expense and exasperation, plaintiffs were constrained to refer this matter to the undersigned counsel and, accordingly, on September 4, 2002, a demand letter was sent to the defendants for them to pay the reasonable compensation of TEN THOUSAND (₱10,000.00) PESOS per month beginning October 2001 for the use of the subject premises and to vacate the same within five (5) [days upon] their receipt thereof. A copy of the demand letter is hereto attached as Annex "C" and to form an integral part hereof;

9. Despite plaintiffs' lawyer's demand letter, defendants failed and refused to pay the reasonable compensation for the subject premises and to vacate the subject premises;

xxx xxx xxx.[22]

A perusal of the above-quoted allegations in the complaint would show that it contradicts the requirements for unlawful detainer. In an unlawful detainer action, the possession of the defendant was originally legal and its possession was tolerated or permitted by the owner through an express or implied contract.

In this case, paragraphs 5 and 6 make it clear that FCJBC's occupancy was unlawful from the start and was bereft of contractual or legal basis. There was, likewise, no allegation that BFBC and PBSBC tolerated FCJBC's possession of the subject property. Neither was there any averment in the complaint which shows any overt act on the part of BFBC and PBSBC indicative of permission to occupy the land. In an unlawful detainer case, the defendant's possession becomes illegal only upon the plaintiff's demand for the defendant to vacate the property and the defendant's subsequent refusal. Here, paragraphs 7 and 8 characterize the defendant's occupancy as unlawful even before the formal demand letters were written by the petitioner's counsel. Given these allegations, the unlawful withholding of possession should not be based on the date the demand letters were sent, as the alleged unlawful act had taken place at an earlier unspecified date.

This case would have to fall under the concept of forcible entry as it has been long settled that in forcible entry cases, no force is really necessary. The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary.[23] However, while BFBC sufficiently alleged that they had prior physical possession of the subject property, nothing has been said on how FCJBC's entry was effected or when dispossession started. It is in this light that we rule that the present complaint is similarly defective even if we are to treat

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[22] *Rollo*, pp. 108-109. (Emphasis ours.)

[23] *Mediran v. Villanueva*, 37 Phil. 752, 756 (1918); *David v. Cordova*, 502 Phil. 626, 642 (2005); *Quizon v. Juan*, 577 Phil. 470, 478 (2008).

the same as forcible entry as it failed to allege how and when entry was effected. The bare allegation of BFBC that "***[i]t turned out that defendants have an interest in the subject premises and defendant Reynaldo Galvan formed and incorporated the defendant FCJBC and took control of the subject premises,***" would not suffice since it only shows that FCJBC entered the land and occupied the house thereon without BFBC and PBSBC's consent or permission which are constitutive of forcible entry. Unfortunately, BFBC and PBSBC's failure to allege when the dispossession took place and how it was effected leaves the complaint wanting in jurisdictional ground.

Suffice it to say, the one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry on the land, except that when entry was made through stealth, the one-year period is counted from the time the plaintiff learned thereof.[24] If the dispossession did not occur by any of the means stated in Section 1, Rule 70, as in this case, the proper recourse is to file a plenary action to recover possession with the Regional Trial Court.[25] Consequently, the MTC has no jurisdiction over the case.

We likewise reiterate that a court's jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. Indeed, a void judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void.[26]

WHEREFORE, all premises considered, the instant petition is **DENIED** for lack of merit. Accordingly, the Decision dated

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[24] *Nuñez v. SLTEAS Phoenix Solutions, Inc.*, 632 Phil. 143, 155 (2010).

[25] *Spouses Ong v. Parel*, 407 Phil. 1045, 1053 (2001).

[26] *Zacarias v. Anacay*, *supra* note 19, at 522.

March 5, 2010 of the Court of Appeals in CA-G.R. SP No. 97292 is **AFFIRMED *in toto*.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206878. August 22, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCELINO CAGA *y* FABRE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ENUMERATION OF CIRCUMSTANCES WHEN RAPE IS COMMITTED.— Under Article 266-A of the RPC, rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force, threat, or intimidation; 2. When the offended party is deprived of reason or is otherwise unconscious; 3. By means of fraudulent machination or grave abuse of authority; and 4. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2. ID.; ID.; ID.; RAPE IS COMMITTED WHEN THE OFFENDED PARTY IS DEPRIVED OF REASON OR IS OTHERWISE UNCONSCIOUS; ESTABLISHED IN CASE AT BAR.— This Court finds that Caga did have sexual intercourse with "AAA" when she was asleep and still under the influence of alcohol. The case thus falls under the second paragraph of rape: "when the offended party is deprived of

reason or is otherwise unconscious." It is altogether immaterial that the prosecution's evidence failed to establish the presence of physical force, threat, or intimidation because, as the evidence at bar shows, Caga raped an unconscious and extremely intoxicated woman a fact that was duly alleged in the Information and duly established by the prosecution's evidence during the trial. In the case at bench, physical force, threat or intimidation is not necessary, for the simple reason that an unconscious and extremely intoxicated woman cannot freely and voluntarily give her consent to engaging in sexual intercourse.

3. ID.; ID.; ID.; CONVICTION; THE ACCUSED IN RAPE CASES MAY BE CONVICTED SOLELY ON THE TESTIMONY OF THE VICTIM, PROVIDED THE TESTIMONY IS CREDIBLE, NATURAL, CONVINCING, AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.— Time and again, this Court has consistently ruled that, "[i]n rape cases, the accused may be convicted solely on the testimony of the victim, provided the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things." The credibility ascribed by the trial judge to the victim and her testimony is an essential aspect of evidence which appellate courts can rely on because of the unique opportunity to observe the witnesses, their demeanor, attitude, and conduct during their direct and cross-examination.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the February 14, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04248.

[1] CA *rollo*, pp. 101-111; penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Romeo F. Barza and Edwin D. Sorongon.

The CA Decision affirmed the November 13, 2009 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 26 in Criminal Case No. 06-246762, finding the appellant Marcelino Caga *y* Fabre (Caga) guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

Factual Antecedents

Caga was charged with the crime of rape for having carnal knowledge of "AAA"[3] after having a drinking spree with her and her boyfriend, *viz*.:

> That on or about September 17, 2006, in the City of Manila, Philippines, the said accused, with lewd design, and by means of force, violence and intimidation, commit sexual assault upon "AAA", by then and there, while sleeping, placing himself on top of her (*"pumatong"*) and inserting his penis into the vagina of said complainant, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge with the said "AAA," against her will and consent.
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> Contrary to law.[4]

Arraigned thereon, Caga, assisted by counsel, entered a negative plea. After pre-trial conference, trial on the merits followed.

Version of the Prosecution

The prosecution presented the following witnesses: the rape victim herself, "AAA," *Barangay Kagawad* Cresencio Aquino (Aquino), and the Women's Desk Officer, SPO1 Josette Saturnino

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[2] Records, pp. 190-195; penned by Presiding Judge Silvino T. Pampilo, Jr.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, as well as that of her/his immediate family members, is withheld and [instead] fictitious initials x x x are used to represent her/him, both to protect their privacy. (*People v. Cabalquinto*, 533 Phil. 703 [2006]).

[4] Records, p. 1.

(SPO1 Saturnino). Their collective testimonies tended to establish the following facts:

On September 17, 2006, "AAA" and her boyfriend, Randy Bomita (Randy), went to Caga's residence at No. 2027 Kahilum II, Pandacan, Manila for a drinking spree. Along with other guests, Caga, Randy, and "AAA" started drinking from midnight of September 17, 2006 until the early hours of the following day. After consuming about four bottles of Red Horse Grande, "AAA" and Randy decided to spend the night at Caga's house since they were both very intoxicated. In fact "AAA" vomited a couple of times due to her alcohol intake.

Caga was already asleep on a foam cushion on the floor when "AAA" and Randy slept beside him. While still intoxicated and asleep, "AAA" felt someone kiss her vagina. At first, she thought it was her boyfriend Randy who did it. She tried to push him away as she had menstruation at that time, but failed to stop him as this person proceeded to kiss her on the lips and then went on to take undue liberties with her person. Indeed, in no time at all Caga succeeded in mounting her and in penetrating her private parts with his penis. All the while, "AAA" thought that it was her boyfriend Randy who was having coitus with her.

When she ("AAA") slowly opened her eyes, a tiny glimmer of light coming from the window revealed that it was Caga who had copulated with her while she was in a drunken stupor. "AAA" then became hysterical. She started hitting and slapping Caga and accused him of violating her. She also kicked Randy who was still asleep on the floor. She yelled at Randy exclaiming, "*Bakit mo ako pinabayaan?*"

"AAA" immediately reported the incident at the *Barangay* Hall and the Police Station in Pandacan, Manila; and thereafter submitted herself to a medical examination at the Philippine General Hospital (PGH).

During trial, "AAA" positively identified Caga in open court as the person who raped her.

Barangay Kagawad Aquino testified that "AAA" appeared at the *Barangay* Hall where she declared that Caga had raped her. After this, he accompanied "AAA" to the Police Station in Pandacan. Then he (Aquino) went to Caga's house and confronted him with "AAA's" accusation that he (Caga) had raped her. According to Aquino, Caga admitted that he did rape "AAA" — an admission that Caga repeated at the Police Station.

SPO1 Saturnino testified that she received a complaint for rape lodged by "AAA" against Caga; and that she conducted an investigation into the complaint for rape. She identified "AAA's" sworn statement and the booking sheet she prepared relative to Caga's arrest and detention.

The prosecution concluded its case with the presentation of the PGH's medical examination report which revealed that "AAA" did sustain physical injuries, and that this was indicative of a possible sexual assault.

Version of the Defense

The defense presented Caga as its sole witness. His testimony tended to establish the following:

On the night of September 17, 2006, he (Caga) was in his house having a drinking spree with some friends, including his relative, Randy, and his girlfriend, "AAA." Because he was already drunk, he (Caga) slept ahead of Randy and "AAA." He had no idea that Randy and "AAA" would spend the night in his house and he was even surprised upon waking up that the two were sleeping beside him.

He tried to rouse them up so they could transfer to a bed. When "AAA" was awakened, she immediately asked him if he did something wrong to her. He denied doing anything wrong to her. "AAA" nevertheless became hysterical. He (Caga) then roused up Randy who tried to pacify "AAA."

When Randy and "AAA" left his house, he (Caga) cleaned up and ate breakfast outside his house. He had another drinking spree at a friend's house nearby. Upon returning to his house

at around 10:00 a.m., he met *Barangay Kagawad* Aquino who invited him to the *Barangay* Hall. From there, the two of them went to the Pandacan Police Station where he was informed that he was accused of a crime. It was during the Inquest proceedings when he learned that he was accused of raping "AAA."

Ruling of the Regional Trial Court

After due proceedings, the RTC of Manila, Branch 26, rendered judgment finding Caga guilty beyond reasonable doubt of the crime of rape punishable under Article 266-A, paragraph 1 of the Revised Penal Code (RPC), and sentencing him to suffer the penalty of *reclusion perpetua*.

The dispositive part of the RTC Decision reads:

> PREMISES CONSIDERED, this Court finds accused MARCELINO CAGA *y* FABRE, GUILTY beyond reasonable doubt of the crime of Rape under the Revised Penal Code of the Philippines, as charged in the Information. He is hereby sentenced to suffer the penalty of Reclusion Perpetua there being no aggravating nor mitigating circumstances, with all the accessory penalties provided by law; and to indemnify private complainant "AAA" the sum of Fifty Thousand (₱50,000.00) Pesos by way of moral damages.
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> Considering that the accused is a detention prisoner, he is hereby credited with the full length of time he has been under detention.
>
> Cost de Oficio.
>
> SO ORDERED.[5]

Ruling of the Court of Appeals

Against this judgment, appellant appealed to the CA contending that the RTC gravely erred in finding him guilty based only on the incredible, implausible and uncorroborated testimony of "AAA." The CA however, rejected this posture.

Inevitably, on February 14, 2012, the CA disposed of the appeal as follows:

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[5] *Id*. at 195.

WHEREFORE, the appeal is DISMISSED. The Decision, dated November 13, 2009, of the Regional Trial Court of Manila, Branch 26, in Criminal Case No. 06-246762, finding accused-appellant *Marcelino Caga y Fabre*, guilty beyond reasonable doubt of the crime of rape, is hereby AFFIRMED.

SO ORDERED.[6]

Caga filed a Motion for Reconsideration[7] of the CA's Decision, but this was denied in a Resolution[8] dated August 23, 2012. Undeterred, Caga instituted the instant appeal before this Court.

Assignment of Error

In his Supplemental Brief,[9] Caga assigns the following error.

I.

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO CONVINCINGLY PROVE HIS GUILT.[10]

Caga argues that while the Information alleged that force, violence, and intimidation were employed to consummate the alleged rape, the prosecution's evidence failed to establish the existence thereof. He claims that "AAA" did not offer any resistance against his sexual advances, "because she thought that it was her boyfriend (Randy) who was then making love with her."[11]

Our Ruling

We deny the appeal. We hold that the RTC and the CA correctly found the appellant guilty beyond reasonable doubt of the crime of rape.

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[6] CA *rollo*, p. 110.

[7] *Id*. at 116-121.

[8] *Id*. at 128-130.

[9] *Rollo*, pp. 29-35.

[10] *Id*. at 29.

[11] *Id*. at 30.

Elements of Rape

Under Article 266-A of the RPC, rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force, threat, or intimidation;

2. When the offended party is deprived of reason or is otherwise unconscious;

3. By means of fraudulent machination or grave abuse of authority; and

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

This Court finds that Caga did have sexual intercourse with "AAA" when she was asleep and still under the influence of alcohol. The case thus falls under the second paragraph of rape: "when the offended party is deprived of reason or is otherwise unconscious." It is altogether immaterial that the prosecution's evidence failed to establish the presence of physical force, threat, or intimidation because, as the evidence at bar shows, Caga raped an unconscious and extremely intoxicated woman — a fact that was duly alleged in the Information and duly established by the prosecution's evidence during the trial. In the case at bench, physical force, threat or intimidation is not necessary, for the simple reason that an unconscious and extremely intoxicated woman cannot freely and voluntarily give her consent to engaging in sexual intercourse.

In point are these succinct observations of the appellate court:

> At the core of almost all rape cases, the credibility of the victim's testimony is crucial in view of the intrinsic nature of the crime where only the participants therein can testify to its occurrence. In this regard, a restatement of a consistent ruling is in order. The rule is that 'the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect.'

The complainant's testimonies and the pieces of evidence, taken together, all point to the accused-appellant's complicity to the crime charged.

There is nothing in the records to render suspicious the evidence put forth by the complainant. The accused-appellant is the uncle of her boyfriend. She has no known ill-motive to impute such a grave crime to him and, like the trial court, [w]e did not find any motive why she would fabricate a story that could, in fact, subject herself to public ridicule and humiliation. As settled, no woman would want to go through the process, the trouble and the humiliation of trial for such a debasing offense unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice.

Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget.

Where there is no evidence to indicate that the prosecution witnesses were actuated by improper motive, the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit.

Besides, the records are reflective of the complainant's version that she was initially sleeping at the time she was ravished right after a drinking spree of hard liquor. There is even no dispute that complainant was at such intoxicated condition. Interestingly, not even the accused-appellant has ever put in issue the [level] of intoxication that the complainant might be at the time of the crime.

The complainant's credibility is further strengthened by the subsequent events that transpired. That she immediately reported the matter to the authorities and submitted herself readily to physical examination are indications of the truth of her accusation.

Indeed, the complainant has consistently been resolute in her desire to seek justice for what has been unlawfully done [to] her. This Court, therefore, has no reason to depart from the findings and conclusion of the trial court when it declared that: 'The fact that [the complainant] immediately reported the matter to the authorities which led to the immediate arrest of the accused and the filing of the instant case, sustained more than ever the credibility of the victim's testimony.'

Viewed under all of these premises, there is no iota of doubt in the mind of this Court that accused-appellant undeniably committed the crime of rape against the complainant.

In his attempt to exculpate himself from this serious charge, all that the accused-appellant did was to proffer his denial which must fail.

It is a well-settled rule that positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law.[12]

Credibility of the Prosecution's Witnesses

Indeed, the CA's findings are in accord with the RTC's assessment that "AAA" is a credible witness and her testimony deserves full faith and credit.

Time and again, this Court has consistently ruled that, "[i]n rape cases, the accused may be convicted solely on the testimony of the victim, provided the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things."[13] The credibility ascribed by the trial judge to the victim and her testimony is an essential aspect of evidence which appellate courts can rely on because of the unique opportunity to observe the witnesses, their demeanor, attitude, and conduct during their direct and cross-examination. Thus, the RTC pertinently observed:

During her testimony, the victim appeared to be straightforward, positive and convincing in her testimony. Such personal demeanor of the victim truly persuaded and satisfied this Court that the crime charged was indeed perpetrated by the accused. The victim would not have allowed herself to undergo the ordeal of public trial and expose herself to humiliation and embarrassment if her motive is not to bring to justice the person who sexually abused her.

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[12] CA *rollo*, pp. 108-110.

[13] *People v. Villanueva*, 644 Phil. 175, 188 (2010), citing *People v. Valenzuela*, 597 Phil. 732, 744 (2009).

The Court found no motive on the part of the victim to concoct such a false charge. x x x From all indications, she does not appear to have any ill motive to falsely testify against the accused.

The fact that she immediately reported the matter to the authorities, which led to the immediate arrest of the accused and the filing of the instant case, sustained more than ever the credibility of the victim's testimony.[14]

We are shown no reason why this Court ought not to defer to the findings of facts of both the RTC and the CA. Indeed, such findings of facts of both courts bear the hallmark of truth and have the ring of candor and sincerity.

Finally, in line with prevailing jurisprudence,[15] this Court hereby modifies the award of moral damages from ₱50,000.00 to ₱75,000.00. Civil indemnity and exemplary damages are further added to the award of damages, both in the amount of ₱75,000.00. Also, interest at the rate of 6% *per annum* shall be imposed on all damages awarded.

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals dated February 14, 2012 in CA-G.R. CR-H.C. No. 04248, is **AFFIRMED, subject to the MODIFICATIONS** that the appellant Marcelino Caga *y* Fabre is hereby ordered to pay "AAA" civil indemnity and exemplary damages, both in the amount of ₱75,000.00, as well as the upgraded amount of ₱75,000.00 by way of moral damages. All damages awarded shall earn interest at the rate of 6% *per annum*, reckoned from the finality of this Decision until fully paid.

SO ORDERED.

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

Brion, J., on leave.

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[14] Records, p. 194.

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

FIRST DIVISION

[G.R. No. 220399. August 22, 2016]

ENRIQUE Y. SAGUN, *petitioner, vs.* **ANZ GLOBAL SERVICES AND OPERATIONS (MANILA), INC., GAY CRUZADA, and PAULA ALCARAZ,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACTS; REQUISITES.—** A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. There is no contract unless the following essential requisites concur: (*a*) consent of the contracting parties; (*b*) object certain which is the subject matter of the contract; and (*c*) cause of the obligation which is established.

2. **ID.; ID.; ID.; ID.; STAGES.—** In general, contracts undergo three distinct stages. These are negotiation, perfection or birth, and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of their agreement. Thereafter, perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Finally, consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.

3. **ID.; ID.; ID.; EMPLOYMENT CONTRACTS; PERFECTED AT THE MOMENT THE PARTIES COME TO AGREE UPON ITS TERMS AND CONDITIONS, AND CONCUR IN THE ESSENTIAL ELEMENTS THEREOF.—** An employment contract, like any other contract, is perfected at the moment the parties come to agree upon its terms and conditions, and thereafter, concur in the essential elements thereof. In this relation, the contracting parties may establish such stipulations, clauses, terms, and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy.

4. ID.; ID.; ID.; CONDITIONAL OBLIGATIONS; A PERFECTED CONTRACT MAY EXIST, ALTHOUGH THE OBLIGATIONS ARISING THEREFROM, IF PREMISED UPON A SUSPENSIVE CONDITION, WOULD YET TO BE PUT INTO EFFECT.— [T]here was already a perfected contract of employment when petitioner signed ANZ's employment offer and agreed to the terms and conditions that were embodied therein. Nonetheless, the offer of employment extended to petitioner contained several conditions before he may be deemed an employee of ANZ. Among those conditions for employment was the "*satisfactory completion of any checks (e.g. background, bankruptcy, sanctions and reference checks) that may be required by ANZ.*" Accordingly, petitioner's employment with ANZ depended on the outcome of his background check, which partakes of the nature of a suspensive condition, and hence, renders the obligation of the would-be employer, *i.e.*, ANZ in this case, conditional. x x x In the realm of civil law, a condition is defined as "every future and uncertain event upon which an obligation or provision is made to depend. It is a future and uncertain event upon which the acquisition or resolution of rights is made to depend by those who execute the juridical act." Jurisprudence states that when a contract is subject to a suspensive condition, its *effectivity* shall take place only if and when the event which constitutes the condition happens or is fulfilled. A contract is one of the five (5) sources of obligations as stated in the Civil Code. An obligation is defined as the juridical necessity to give, to do or not to do. While a contract may be perfected in the manner of operation described above, the efficacy of the obligations created thereby may be held in suspense pending the fulfillment of particular conditions agreed upon. In other words, a perfected contract may exist, although the obligations arising therefrom – if premised upon a suspensive condition – would yet to be put into effect. Here, the subject employment contract required a satisfactory completion of petitioner's background check before he may be deemed an employee of ANZ. x x x To reiterate, in a contract with a suspensive condition, if the condition does not happen, the obligation does not come into effect. Thus, until and unless petitioner complied with the satisfactory background check, there exists no obligation on the part of ANZ to recognize and fully accord him the rights under the employment contract. In fact, records also show that petitioner failed to report for work

on or before July 11, 2011, which was also a suspensive condition mandated under sub-paragraph 4 of Schedule 1 of the contract. Consequently, no employer-employee relationship was said to have been created between petitioner and ANZ under the circumstances x x x.

APPEARANCES OF COUNSEL

Gabriel Law Office for petitioner.
Quisumbing Torres for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 25, 2015 and the Resolution[3] dated August 27, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 127777, which affirmed the Decision[4] dated July 31, 2012 and the Resolution[5] dated September 28, 2012 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 07-001962-12, dismissing petitioner Enrique Y. Sagun's (petitioner) complaint for illegal dismissal for lack of merit.

The Facts

Petitioner was employed at Hongkong and Shanghai Banking Corporation Electronic Data Processing (Philippines), Inc. (HSBC-EDPI) when he applied online for the position of

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[1] *Rollo*, pp. 8-29.

[2] *Id*. at 31-38. Penned by Associate Justice Ricardo R. Rosario with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Edwin D. Sorongon concurring.

[3] *Id*. at 40.

[4] *Id*. at 149-156. Penned by Presiding Commissioner Alex A. Lopez with Commissioners Gregorio O. Bilog, III and Pablo C. Espiritu, Jr. concurring.

[5] *Id*. at 170-171.

Payments and Cash Processing Lead at respondent ANZ Global Services and Operations (Manila), Inc. (ANZ), a domestic corporation whose businesses involve a full range of banking products and services.[6]

After passing the interview and online examination, ANZ, through its Senior Vice President for Operations, Gay Cruzada (Cruzada), offered petitioner the position of Customer Service Officer, Payments and Cash Resolution,[7] which the latter accepted on June 8, 2011.[8]

In the letter of confirmation of the offer[9] which constituted petitioner's employment agreement with ANZ, the terms and conditions of his employment required, among others, a satisfactory result of his pre-employment screening.[10] The pertinent portions of which read as follows:

13. Pre-employment screening & ongoing screening

In accordance with its legal and regulatory obligations, and in accordance with ANZ policy, you may be required to undergo a police record check prior to commencing work with ANZ, or at other times during your employment.

You may also be required to undergo other checks (e.g. bankruptcy checks, sanctions screening, reference checks, etc.). ANZ may engage the services of an external provider to conduct these checks.

Your initial and ongoing **employment is <u>conditional</u> on ANZ being satisfied that the results of**:

- a police record check are compatible with the inherent requirements of your position; and

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[6] *Id.* at 10.

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

[8] See *id.* at 53.

[9] See letter of confirmation dated June 8, 2011; *id.* at 43-55.

[10] *Id.* at 46 and 53.

- **any other required background or other checks are to the satisfaction of ANZ** (keeping in mind your position and ANZ's role as a financial institution).

ANZ may use any information you provide to conduct reference checks and any other background checks.

Your employment is also conditional upon you holding all necessary visas and meeting all immigration requirements necessary for you to work in Philippines in this position.

If, in the opinion of ANZ, any of your background checks, reference checks or visas are not satisfactory, ANZ may choose not to commence your employment, or where you have already started, to end your employment immediately, with no liability to pay compensation to you.[11] (Emphases supplied)

In addition, the Schedules,[12] which likewise formed part of the employment agreement, provided that petitioner was to be placed on a probationary status for a period of six (6) months[13] and that his appointment would take effect from the date of reporting, which was to be not later than July 11, 2011.[14]

Accordingly, on June 11, 2011, petitioner tendered his resignation[15] at HSBC-EDPI and the acknowledged copy thereof was transmitted to ANZ together with his other pre-employment documentary requirements.[16]

On July 11, 2011, petitioner was instructed to report to ANZ[17] and was handed a letter of retraction[18] signed by ANZ's Human Resources Business Partner, Paula Alcaraz (Alcaraz), informing

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[11] *Id*. at 46.

[12] See *id*. at 48-52.

[13] *Id*. at 51.

[14] *Id*. at 48.

[15] CA *rollo*, p. 312.

[16] See *rollo* pp. 59-60.

[17] *Id*. at 60.

[18] *Id*. at 56.

him that the job offer had been withdrawn on the ground that the company found material inconsistencies in his declared information and documents provided after conducting a background check with his previous employer, particularly at Siemens.[19]

Asserting that his employment contract had already been perfected upon his acceptance of the offer on June 8, 2011, and as such, was already deemed an employee of ANZ who can only be dismissed for cause, petitioner filed a complaint for illegal dismissal with money claims against ANZ, Cruzada, and Alcaraz (respondents) before the NLRC, National Capital Region, docketed as NLRC NCR Case No. 08-11752-11.

For their part, respondents countered that the NLRC had no jurisdiction over the complaint as they have no employer-employee relationship with petitioner. They contended that their offer was conditional and the effectivity of petitioner's employment contract was subject to a term or period.[20] They claimed that petitioner made material misrepresentations in his job application and interview that prompted them to withdraw the offer. They pointed out that the discrepancies in his declarations, namely: (*a*) that he only held the position of a Level 1 and not a Level 2 Technical Support Representative at Siemens; and (*b*) that he was terminated for cause due to his absence without official leave (AWOL) and not because of his resignation, were not satisfactorily explained despite the opportunity accorded to him. They added that petitioner likewise failed to report for work on or before July 11, 2011; hence, his employment never took effect and no employer-employee relationship was created. Thus, they asserted that petitioner was never dismissed, more so, illegally. Finally, they denied his money claims for lack of basis and further averred that the impleaded officers cannot be held personally liable under the circumstances.[21]

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[19] See *id*. at 73-74.

[20] See Position Paper filed by respondents; *id*. at 72-73.

[21] *Id*. at 68-94.

The LA Ruling

In a Decision[22] dated April 23, 2012, the Labor Arbiter (LA) dismissed the complaint, holding that there was no perfected employment contract between petitioner and respondents since there was a valid cause for the withdrawal of the offer that was made prior to the commencement of petitioner's service with the company. The LA held that the material misrepresentation committed by petitioner was a reasonable ground to withdraw the employment offer and as such, no employer-employee relationship was created between them.[23]

Aggrieved, petitioner appealed to the NLRC.[24]

The NLRC Ruling

In a Decision[25] dated July 31, 2012, the NLRC affirmed the findings of the LA, ruling that no employer-employee relationship existed between petitioner and respondents. It held that petitioner's employment with ANZ never took effect since its effectivity was dependent on his reporting for work on or before July 11, 2011, which he admittedly failed to comply. The NLRC added that the withdrawal of job offer was valid and reasonable, there being substantial evidence to show that petitioner committed misrepresentations in his job application.[26]

Petitioner filed a motion for reconsideration,[27] which was, however, denied in a Resolution[28] dated September 28, 2012, prompting him to elevate his case to the CA v*ia* a petition for *certiorari*,[29] docketed as CA-G.R. SP. No. 127777.

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[22] See CA *rollo*, pp. 47-57. Penned by LA Madjayran H. Ajan.

[23] *Id*. at 56-57.

[24] *Rollo*, pp. 129-147.

[25] *Id*. at 149-156.

[26] *Id*. at 154-155.

[27] Dated August 28, 2012. *Id*. at 157-168.

[28] *Id*. at 170-171.

[29] *Id*. at 172-201.

The CA Ruling

In a Decision[30] dated May 25, 2015, the CA found no grave abuse of discretion to have been committed by the NLRC in upholding the dismissal of the complaint. The CA distinguished between the perfection of an employment contract and the commencement of the employer-employee relationship, citing the case of *Santiago v. CF Sharp Crew Management, Inc. (Santiago)*.[31] It held that the contract was perfected on June 8, 2011 when it was signed by the parties. However, it ruled that the employment contract did not commence since respondents did not allow petitioner to begin work due to the misrepresentations he made in his application form. The CA also pointed out that since the employment offer was conditioned on the satisfactory completion of his background check, his failure to comply with the same rendered the withdrawal of the offer justified. Hence, no employer-employee relationship was created between the parties.[32] Lastly, relying on the *Santiago* case, it clarified that even if there was no employer-employee relationship, the NLRC still had jurisdiction over the complaint since the LA's jurisdiction was not limited to claims arising from employer-employee relationship.

Dissatisfied, petitioner moved for reconsideration,[33] but was denied in a Resolution[34] dated August 27, 2015; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA erred in not finding grave abuse of discretion on the part of the NLRC in holding that no employer-employee relationship existed between petitioner and respondent.

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[30] *Id*. at 31-38.

[31] 554 Phil. 63 (2007).

[32] *Rollo*, p. 37.

[33] CA *rollo*, pp. 519-525.

[34] *Rollo*, p. 40.

The Court's Ruling

The petition lacks merit.

A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.[35] There is no contract unless the following essential requisites concur: (*a*) consent of the contracting parties; (*b*) object certain which is the subject matter of the contract; and (*c*) cause of the obligation which is established.[36]

In general, contracts undergo three distinct stages. These are negotiation, perfection or birth, and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of their agreement. Thereafter, perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Finally, consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.[37]

An employment contract, like any other contract, is perfected at the moment the parties come to agree upon its terms and conditions, and thereafter, concur in the essential elements thereof.[38] In this relation, the contracting parties may establish such stipulations, clauses, terms, and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy.[39]

In this case, the Court agrees with the finding of the CA that there was already a perfected contract of employment when petitioner signed ANZ's employment offer and agreed to the terms and conditions that were embodied therein. Nonetheless,

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[35] Civil Code, Article 1305.

[36] Civil Code, Article 1318.

[37] *C.F. Sharp & Co., Inc. v. Pioneer Insurance & Surety Corporation*, 682 Phil. 198, 207 (2012); citation omitted.

[38] See *Stolt-Nielsen Transportation Group, Inc. v. Medequillo, Jr.*, 679 Phil. 297, 310 (2012).

[39] Civil Code, Article 1306.

the offer of employment extended to petitioner contained several conditions before he may be deemed an employee of ANZ. Among those conditions for employment was the "*satisfactory completion of any checks (e.g. background, bankruptcy, sanctions and reference checks) that may be required by ANZ.*"[40] Accordingly, petitioner's employment with ANZ depended on the outcome of his background check, which partakes of the nature of a suspensive condition, and hence, renders the obligation of the would-be employer, *i.e.*, ANZ in this case, conditional. Article 1181 of the Civil Code provides:

> Art. 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

In the realm of civil law, a condition is defined as "every future and uncertain event upon which an obligation or provision is made to depend. It is a future and uncertain event upon which the acquisition or resolution of rights is made to depend by those who execute the juridical act."[41] Jurisprudence states that when a contract is subject to a suspensive condition, its *effectivity* shall take place only if and when the event which constitutes the condition happens or is fulfilled.[42] A contract is one of the five (5) sources of obligations as stated in the Civil Code.[43] An obligation is defined as the juridical necessity to give, to do or not to do.[44] While a contract may be perfected in the manner of operation described above, the efficacy of the obligations created thereby may be held in suspense pending the fulfillment of particular conditions agreed upon. In other words, a perfected contract may exist, although the obligations arising therefrom — if premised upon a suspensive condition — would yet to be put into effect.

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[40] See *rollo*, p. 53.

[41] *Gonzales v. The Heirs of Cruz*, 373 Phil. 368, 384-385 (1999); citation omitted.

[42] See *Insular Life Assurance Co., Ltd v. Toyota Bel-Air, Inc.*, 573 Phil. 222, 232 (2008); citation omitted.

[43] Civil Code, Article 1157.

[44] Civil Code, Article 1156.

Here, the subject employment contract required a satisfactory completion of petitioner's background check before he may be deemed an employee of ANZ. Considering, however, that petitioner failed to explain the discrepancies in his declared information and documents that were required from him relative to his work experience at Siemens, namely: (*a*) that he was only a Level 1 and not a Level 2 Technical Support Representative that conducts troubleshooting for both computer hardware and software problems; and (*b*) that he was found to have been terminated for cause and not merely resigned from his post, that rendered his background check unsatisfactory, ANZ's obligations as a would-be employer were held in suspense and thus, had yet to acquire any obligatory force.[45] To reiterate, in a contract with a suspensive condition, if the condition does not happen, the obligation does not come into effect. Thus, until and unless petitioner complied with the satisfactory background check, there exists no obligation on the part of ANZ to recognize and fully accord him the rights under the employment contract. In fact, records also show that petitioner failed to report for work on or before July 11, 2011, which was also a suspensive condition mandated under sub-paragraph 4 of Schedule 1 of the contract.

Consequently, no employer-employee relationship was said to have been created between petitioner and ANZ under the circumstances, and the dismissal of the former's complaint for illegal termination from work, as held by the NLRC, was correctly sustained by the CA.

WHEREFORE, the petition is **DENIED**. The Decision dated May 25, 2015 and the Resolution dated August 27, 2015 of the Court of Appeals in CA-G.R. SP No. 127777 are hereby **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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[45] See *rollo,* p. 79.

EN BANC

[A.C. No. 7178. August 23, 2016]

VICENTE M. GIMENA, *complainant, vs.* **ATTY. SALVADOR T. SABIO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; AN ATTORNEY IMPLIEDLY ACCEPTS THE ATTORNEY-CLIENT RELATIONSHIP WHEN HE ACTS ON BEHALF OF HIS CLIENT IN PURSUANCE OF THE REQUEST MADE BY THE LATTER; CASE AT BAR.— The contention of respondent that there was no attorney-client relationship between him and the company is, at best, flimsy. It is improper for him to capitalize on the fact that no formal contract for legal retainer was signed by the parties, for formality is not an essential element in the employment of an attorney. The contract may be express or implied and it is sufficient that the advice and assistance of the attorney is sought and received, in matters pertinent to his profession. An attorney impliedly accepts the relation when he acts on behalf of his client in pursuance of the request made by the latter.

2. ID.; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER MUST EXERCISE THE DILIGENCE OF A GOOD FATHER OF A FAMILY WITH RESPECT TO THE CASE THAT HE IS HANDLING; VIOLATION IN CASE AT BAR.— Canon 18 of the Code of Professional Responsibility mandates that a lawyer shall serve his client with competence and diligence. Corollarily, Rule 18.03 directs that a lawyer shall not neglect a legal matter entrusted to him. He must exercise the diligence of a good father of a family with respect to the case that he is handling. This is true whether he accepted the case for free or in consideration of a fee. A lawyer is presumed to be prompt and diligent in the performance of his obligations and in the protection of his client's interest and in the discharge of his duties as an officer of the court. x x x Lawyering is not primarily concerned with money-making; rather, public service and administration of justice are the tenets of the profession.

> Due to respondent's negligence, the labor arbiter did not consider the position paper of the company and the complainant. This circumstance deprived the company of the chance to explain its side of the controversy – an unfortunate incident brought about by its own counsel. Respondent's inattention is further highlighted by his disobedience to the labor arbiter's directive that he sign the position paper. His conduct evinces a willful disregard to his duty as officer of the court. This alone warrants the imposition of administrative liability.

D E C I S I O N

JARDELEZA, *J.*:

Before us is a Complaint for Disbarment[1] filed by Vicente M. Gimena (complainant) against Atty. Salvador T. Sabio (respondent) for gross negligence in handling RAB Case No. 06-11-10970-99 (case). Complainant laments that his company, Simon Peter Equipment and Construction Systems, Inc. (company) lost in the case because respondent filed an unsigned position paper and ignored the order of the labor arbiter directing him to sign the pleading. Aware of the unfavorable decision, respondent did not even bother to inform complainant of the same. The adverse decision became final and executory, robbing complainant of a chance to file a timely appeal.

Facts

Complainant is the president and general manager of the company.[2] In his Complaint[3] dated March 7, 2006, he narrated that he engaged the legal services of respondent in relation to a case for illegal dismissal[4] filed against him and the company.

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

[2] *Id.* at 3, 69.

[3] *Id.* at 1-2.

[4] Titled *Ronilo Medel, Armando Vasquez and Roberto Togonon, Jr. v. Simon Peter Equipment & Construction System, Inc./Vicente M. Gimena, G.M.*, filed before the National Labor Relations Commission, Regional Arbitration Branch XI in Davao City. *Id.* at 69.

All the pleadings and orders were directed to respondent because the company no longer had active presence in Bacolod, save for the stockpile of construction equipment found in Barangay Mansilingan.[5] Sometime in February 2000, complainant signed the verification page of the position paper for the case and sent it to respondent for his signature. However, respondent filed the position paper without signing it.[6] The labor arbiter noticed the unsigned pleading and directed respondent to sign it within 10 days from notice.[7] Respondent did not comply with the directive.

In a Decision[8] dated October 21, 2004, the labor arbiter ruled against the company and noted that: *"[the company] filed an unsigned position paper which cannot be considered as such. Despite the order to Atty. Salvador Sabio to sign said position paper, the order was deemed to have been taken for granted."*[9] Respondent received a copy of the Decision on January 13, 2005 but he did not notify complainant about it.[10] Complainant only learned of the Decision after a writ of execution was served on the company on June 2005 and by that time, it was already too late to file an appeal.[11]

Complainant stressed that respondent was previously suspended from the practice of law on two (2) occasions: first was in the case of *Cordova v. Labayen*,[12] where respondent was suspended for six (6) months, and the second was in the case of *Credito v. Sabio*,[13] where he was suspended for one (1) year. The latter case involved facts analogous to the present Complaint.

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[5] *Rollo,* p. 1.

[6] *Id.*

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

[8] *Id.* at 19-31.

[9] *Id.* at 19-20.

[10] *Id.* at 32.

[11] *Id.* at 2.

[12] A.M. RTJ-93-1033, October 10, 1995, 249 SCRA 172.

[13] A.C. No. 4920, October 19, 2005, 473 SCRA 301.

In his Comment,[14] respondent countered that complainant engaged his services in 2000. Complainant, however, did not pay the expenses and attorney's fees for the preparation and filing of the position paper in the amount of ₱20,000.00.[15] The lack of payment contributed to respondent's oversight in the filing of the unsigned position paper.[16] Respondent also insisted that the unfavorable Decision of the labor arbiter is based on the merits and not due to default.[17] Respondent further explained that he was not able to inform complainant of the outcome of the case because he does not know the address of the company after it allegedly abandoned its place of business in Barangay Mansilingan, without leaving any forwarding address.[18] Respondent claimed that complainant only communicated to him when the writ of execution was issued on July 27, 2005.[19] He faulted complainant and the company for being remiss in their legal obligation to be in constant communication with him as to the status of the case.[20]

Moreover, respondent averred that the filing of the administrative case against him is tainted with ill will to compensate for complainant's failure to post a bond to stay the writ of execution and the sale of the construction equipment levied upon.[21] Respondent submitted that if it were true that he was negligent in the handling of the case, then why did complainant, the company and the third party claimants still avail of his services as attorney-in-fact in the auction sale?[22]

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[14] *Rollo*, pp. 37-49.

[15] *Id.* at 38.

[16] *Id.* at 44.

[17] *Id.* at 43.

[18] *Id.*

[19] *Rollo*, p. 39.

[20] *Id.* at 43.

[21] *Id.* at 45-46.

[22] *Id.* at 46.

In his Reply,[23] complainant insisted that the acceptance fee of respondent was ₱50,000.00. Complainant paid respondent ₱20,000.00 as advance payment, but which was without a receipt because complainant trusted him.[24] The remaining ₱30,000.00 was also paid to respondent, as evidenced by photocopies of deposit slips to his Banco De Oro account.[25]

We referred the case to the Integrated Bar of the Philippines (IBP) for report and recommendation. During the mandatory conference before the IBP Commission on Bar Discipline (the Commission), complainant and respondent were asked to discuss their complaint and defense, respectively. For the first time, respondent raised the issue of lack of attorney-client relationship. He pointed out that he and complainant had never met each other and that there was no formal engagement of his services.[26] The parties did not enter into stipulation of facts and limited the issues to the following:

a) Whether or not there was attorney-client relationship between respondent and the company in RAB Case No. 06-11-10970-99;

b) If in the affirmative, whether or not respondent was negligent in handling RAB Case No. 06-11-10970-99 and whether such negligence renders him liable under the Code of Professional Responsibility.[27]

The Commission ordered the parties to file their verified position papers. Respondent, in his Position Paper,[28] reiterated that he cannot be expected to render legal services to the company and the complainant because no formal contract for legal retainer services was executed.[29]

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[23] *Id.* at 64-67.

[24] *Id.* at 64.

[25] *Id.* at 68.

[26] *Id.* at 111-113.

[27] *Id.* at 128-129.

[28] *Id.* at 156-164.

[29] *Id.* at 160.

On December 2, 2008, the Commission issued its Report and Recommendation[30] finding respondent guilty of gross negligence.

IBP Recommendation

As regards the first issue, the Investigating Commissioner Atty. Randall C. Tabayoyong (the Investigating Commissioner) ruled that there is indeed an attorney-client relationship between complainant and respondent. Respondent's assertion that he was not a counsel of record in the case is belied by his own admission in the Comment he filed before the Commission.[31] In paragraph 1 of his Comment, respondent stated that he was "engaged by complainant in 2000 regarding the labor case of the [company]."[32] Then, in paragraph 2, he averred that he was not paid for legal expenses and legal charges for the filing of the position paper.[33] More, the Order and Decision of the labor arbiter referred to respondent as the counsel of the company.[34]

With respect to the second issue, the Investigating Commissioner declared that the evidence on record sufficiently supports the charges of negligence against respondent.[35] Again, it was respondent's own admissions that put the final nail on his coffin. Respondent neither denied that he filed an unsigned pleading nor refuted the claim that he did not inform complainant of the outcome of the case and the due date of the appeal before the National Labor Relations Commission. He only offered excuses, which the Investigating Commissioner found as "reprehensible" and "downright misleading."[36]

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[30] *Id.* at 223-231.

[31] *Id.* at 226-227.

[32] *Id.* at 38.

[33] *Id.*

[34] *Rollo*, pp. 226-227.

[35] *Id.* at 227.

[36] *Id.* at 229.

The Investigating Commissioner noted that respondent violated Rule 18.03 of the Code of Professional Responsibility for the negligence that he committed in handling the case referred to him.[37] Weight was also given to the fact that respondent was previously suspended for the same offense in *Credito*.[38] Hence, it was recommended that respondent be suspended from the practice of law for a period of two (2) years with a warning that a similar violation in the future will merit a heavier penalty.[39]

The recommendation was adopted and approved by the IBP Board of Governors in its Resolution[40] dated April 16, 2010. Respondent filed a Motion for Reconsideration[41] but the same was denied.[42]

Issue

Whether respondent should be held administratively liable for the acts complained of.

Ruling

We concur with the findings of the IBP, with the addition that respondent also violated Rule 18.04 of the Code of Professional Responsibility. We also find that a longer period of suspension is warranted in view of the number of times that respondent had been disciplined administratively.

There is attorney-client relationship between respondent and complainant

The contention of respondent that there was no attorney-client relationship between him and the company is, at best, flimsy. It is improper for him to capitalize on the fact that no

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[37] *Id.* at 230.

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

[39] *Id.* at 231.

[40] *Id.* at 222.

[41] *Id.* at 232-240.

[42] *Id.* at 249.

formal contract for legal retainer was signed by the parties, for formality is not an essential element in the employment of an attorney.[43] The contract may be express or implied and it is sufficient that the advice and assistance of the attorney is sought and received, in matters pertinent to his profession. An attorney impliedly accepts the relation when he acts on behalf of his client in pursuance of the request made by the latter.[44]

Respondent acted on behalf of the company and the complainant in relation to the case. Albeit unsigned, he allowed his name to appear as "counsel for respondent"[45] in the position paper that he filed before the labor arbiter. He never called the attention of the labor court that he was not the counsel of the company. More importantly, he admitted in his Comment that the complainant engaged his legal services. Respondent cannot plead the same before us then later on deny it before the IBP to save him from his omissions. Estoppel works against him. Basic is the rule that an admission made in the pleading cannot be controverted by the party making it for such is conclusive as to him, and all proofs to the contrary shall be ignored, whether objection is interposed by the said party or not.[46]

Respondent is grossly negligent in handling RAB Case No. 06-11-10970-99

Canon 18 of the Code of Professional Responsibility (the "Code") mandates that a lawyer shall serve his client with competence and diligence. Corollarily, Rule 18.03 directs that

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[43] *Hilado v. David,* 84 Phil. 569, 576 (1949), citing (7 C.J.S., 848-849; see *Hirach Bros. and Co. v. R.E. Kennington Co.*, 88 A.L.R., 1).

[44] *Id.*

[45] *Rollo,* p. 9.

[46] *Alfelor v. Halasan*, G.R. No. 165987, March 31, 2006, 486 SCRA 451, 460, citing *Elayda v. Court of Appeals*, G.R. No. L-49327, July 18, 1999, 199 SCRA 349, 353, citing *Joe's Radio & Electrical Supply v. Alto Electronics Corp. and Alto Surety & Insurance Co., Inc.*, 104 Phil. 333 (1958).

a lawyer shall not neglect a legal matter entrusted to him.[47] He must exercise the diligence of a good father of a family with respect to the case that he is handling. This is true whether he accepted the case for free or in consideration of a fee.

A lawyer is presumed to be prompt and diligent in the performance of his obligations and in the protection of his client's interest and in the discharge of his duties as an officer of the court.[48] Here, however, this presumption is overturned by clear and convincing evidence that respondent was grossly negligent as counsel of the company and complainant in the case.

Every law student is taught that an unsigned pleading creates no legal effect, such that the party may be deemed not to have filed a pleading at all. Yet, respondent, a long standing legal practitioner, did not sign a position paper that he filed in a labor suit allegedly due to oversight. What more, he claimed that his client's failure to pay legal expenses and attorney's fees contributed to such oversight. These actuations of respondent demean the legal profession. Lawyering is not primarily concerned with money-making; rather, public service and administration of justice are the tenets of the profession.[49] Due to respondent's negligence, the labor arbiter did not consider the position paper of the company and the complainant. This circumstance deprived the company of the chance to explain its side of the controversy – an unfortunate incident brought about by its own counsel.

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[47] Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

[48] Agpalo, *COMMENTS ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT*, 2004, pp. 201-202, citing *Galvez v. Court of Appeals*, G.R. No. L-22760, November 29, 1971, 42 SCRA 278, *Johnlo Trading Co. v. Flores*, 88 Phil. 741 (1951), *People v. Mantawar*, 80 Phil. 817 (1948), and *In re Tionko*, 43 Phil. 191 (1922).

[49] *Brunet v. Guaren*, A.C. No. 10164, March 10, 2014, 718 SCRA 224, 226-227, citing *Bengco v. Bernardo*, A.C. No. 6368, June 13, 2012, 672 SCRA 8, 18.

Respondent's inattention is further highlighted by his disobedience to the labor arbiter's directive that he sign the position paper. His conduct evinces a willful disregard to his duty as officer of the court. This alone warrants the imposition of administrative liability.

Respondent's irresponsibility went beyond the unsigned pleading and refusal to obey court orders; he also admittedly failed to apprise the company and the complainant of the adverse decision against them. He even had the audacity to place the blame on his client for not communicating to him as regards the status of the case. He furthermore justified his omission by saying that he was not aware of the address of the company.

The foregoing excuses should be rejected. As the IBP correctly observed, respondent overlooked the attached affidavit of the complainant in the unsigned position paper, which clearly indicates that the principal office address of the company is at Quirino Highway, Sacred Heart Village IV, Novaliches, Caloocan City.[50] Respondent himself had notarized the affidavit.[51] Thus, contrary to his contention, it appears from the records that he was fully aware of the address of the company. There was no justifiable reason for him not to notify complainant and the company of the adverse decision against them.

Respondent's conduct is inconsistent with Rule 18.04 of the Code, which requires that "[a] lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information."

In *Alcala v. De Vera*,[52] we ruled that the failure of a lawyer to notify his client of a decision against him manifests a total lack of dedication or devotion to his client's interest expected under the lawyer's oath and the then Canons of Professional Ethics.[53]

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[50] *Rollo,* pp. 256-257.

[51] *Id.* at 257.

[52] A.C. No. 620, March 21, 1974, 56 SCRA 30.

[53] *Id.* at 39.

Then in *Garcia v. Manuel*,[54] we decreed that the failure of a lawyer to inform his client of the status of the case signifies bad faith, for the relationship between an attorney and his client is highly fiduciary; thus, the ever present need to inform clients of the developments of the case.[55] It is only in this manner that the trust and faith of the client in his counsel will remain unimpaired.[56]

Respondent is a repeat offender

This is not the first time that respondent was subjected to disciplinary proceedings. In *Credito*,[57] the then members of the Third Division found respondent guilty of violating Canons 17 and 18 of the Code of Professional Responsibility. Similar to the present case, respondent's legal services were engaged in connection with a labor suit. The labor case went up to us only to be dismissed due to respondent's failure to attach the required certification on non-forum shopping and to pay the total revised docket and other legal fees. Respondent also kept his clients in the dark as to the fact that their petition was dismissed.

Prior to *Credito*, respondent was also held administratively liable in *Cordova*[58] for instigating his clients to file a complaint against a judge to frustrate the enforcement of lawful court orders.

All told, respondent seems unfazed by the sanctions we have so far imposed upon him. He did not learn from his previous suspensions and continued with his negligent ways. In *Tejano*

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[54] A.C. No. 5811, January 20, 2003, 395 SCRA 386.

[55] *Id.* at 390. *See also Heirs of Tiburcio F. Ballesteros, Sr. v. Apiag*, A.C. No. 5760, September 30, 2005, 471 SCRA 111, 124.

[56] *Id.* citing *Tolentino v. Mangapit*, A.C. No. 2251, September 29, 1983, 124 SCRA 741, 745.

[57] *Supra* note 13.

[58] *Supra* note 12.

v. Baterina,[59] we imposed a longer period of suspension on account of the lawyer's previous suspension for negligence in handling a case. We found the lawyer's pattern of neglecting his duty to his clients and his propensity to disrespect the authority of the courts unacceptable.[60]

For this reason, we impose upon the respondent the penalty of suspension from the practice of law for three (3) years.

WHEREFORE, for violating Rules 18.03 and 18.04 of Canon 18 of the Code of Professional Responsibility, respondent Atty. Salvador T. Sabio is hereby **SUSPENDED from the practice of law for THREE (3) YEARS**. He is likewise **STERNLY WARNED** that a repetition of the same or similar offense will be dealt with more severely.

Let copies of this Decision be furnished all courts and the Office of the Bar Confidant, which is instructed to include a copy in respondent's personal file.

SO ORDERED.

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

Brion, J., on leave.

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[59] A.C. No. 8235, January 27, 2015, 748 SCRA 259.

[60] *Id.* at 269.

EN BANC

[A.C. No. 11317. August 23, 2016]

ETHELENE W. SAN JUAN, *complainant, vs.* **ATTY. FREDDIE A. VENIDA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; MISAPPROPRIATION OF CLIENT'S FUNDS AND NEGLIGENCE IN HANDLING CLIENT'S CASE CONSTITUTE VIOLATION OF CANONS 16, 17, AND 18 AND RULES 1.01, 16.01, 18.03 AND 18.04 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— Lawyers are duty-bound to exhibit fidelity to their client's cause and to be mindful of the trust and confidence reposed in them to diligently prosecute their clients' cases the moment they agreed to handle them, as is mandated of them under Canon 17 of the Code. They owe entire devotion to the interest of the client, warm zeal in the maintenance and the defense of the client's rights, and the exertion of their utmost learning and abilities to the end that nothing be taken or withheld from the client, save by the rules of law legally applied. Atty. Venida grossly failed to fulfil his mandate. The records definitively show that Atty. Venida was completely remiss and negligent in handling Ethelene's case, notwithstanding his receipt of the sum of Twenty-Nine Thousand Pesos (₱29,000) from her by way of his acceptance and filing fees. Instead of filing the petition, Atty. Venida gave his client a runaround and led her to believe that the petition had already been filed. When pressed for updates, Atty. Venida evaded Ethelene and refused to return her calls. Worse, the fees remain unaccounted for, which were entrusted to him for the filing of the petition. When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for that particular purpose. And if he or she does not use the money for the intended purpose, the lawyer must immediately return the money to the client. Consequently, Atty. Venida is duty-bound to return the ₱29,000 given to him by Ethelene. Failure to do so is a breach

of Rule 16.01 of the Code[.] x x x Atty. Venida's agreement to handle Ethelene's case, cemented by his receipt of his legal fees, is an assurance and representation to his client that he would be diligent and competent in handling her case. This includes constantly updating her, on his volition, of the status of her case. Thus, his actuations are contrary to Canon 18, and its Rules 18.03 and 18.04[.]

2. ID.; ID.; ID.; ULTIMATE PENALTY OF DISBARMENT FROM THE PRACTICE OF LAW IMPOSED IN VIEW OF THE LAWYER'S PENCHANT ATTITUDE IN VIOLATING NOT ONLY HIS OATH AND THE CODE BUT ORDERS FROM THE COURT AS WELL.— The question as to what disciplinary sanction should be meted out against a lawyer found guilty of misconduct requires consideration of a number of factors. When deciding upon the appropriate sanction, the Court must consider that the primary purposes of disciplinary proceedings are to protect the public; to foster public confidence in the Bar; to preserve the integrity of the profession; and to deter other lawyers from similar misconduct. It is for this reason that we take note of Atty. Venida's wanton disregard of the disbarment complaint against him, as well as the arrogance that he exhibited before the IBP-CBD in ignoring the notices sent to him to explain the matter. Clearly, Atty. Venida does not seem to consider that an administrative case against him, which could very well result in the revocation of his license and expulsion from the Roll of Attorneys, is neither pressing nor important enough to merit his attention. We also take note of the past disbarment complaints that had been filed against him that resulted in his suspension for one (1) year from the practice of law for each case. x x x Indubitably, Atty. Venida has a penchant for violating not only his oath as a lawyer and the Code, but orders from the Court as well. He had been repeatedly warned that a similar violation will merit a more severe penalty, and yet, his reprehensible conduct has, time and again, brought embarrassment and dishonour to the legal profession. The Court cannot allow his blatant disregard of the Code and his sworn duty to continue. In *CF Sharp Crew Management Incorporated v. Atty. Torres*, the Court disbarred the respondent for failing to account for and for misappropriating the various amounts he received from his client. Similarly in *Arellano University, Inc. v. Mijares III*,

the Court disbarred the lawyer for misappropriating the client's money intended for securing a certificate of title on the latter's behalf. With the aforementioned cases as guidelines, We deem it fit to impose the ultimate penalty of disbarment from the practice of law upon Atty. Venida, considering that this is the second disciplinary action against him for a case of a similar nature. Membership in the legal profession is a privilege, and whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of his clients and the public, it becomes not only the right but also the duty of the Court to withdraw the same.

D E C I S I O N

***PER CURIAM*:**

Before this Court is an administrative complaint filed by Ethelene W. San Juan (Ethelene) against respondent Atty. Freddie A. Venida (Atty. Venida) for violation of the Lawyer's Oath and the Code of Professional Responsibility.

Sometime in 2007, Ethelene required the services of a lawyer to handle the petition for the declaration of nullity of her marriage that she was considering to file. Ethelene's mother referred her to Atty. Venida, whom she engaged to file the case on her behalf. Atty. Venida agreed to handle the case for a consideration of Twenty-Five Thousand Pesos (₱25,000) by way of acceptance, filing, and docket fees. Atty. Venida personally collected the ₱25,000 from Ethelene's house on April 22, 2007, and required her to sign a verification to be attached to the petition.[1]

The following day, Atty. Venida required an additional Four Thousand Pesos (₱4,000) for the fees of the sheriff or process server in order to serve the summons. Ethelene paid the said amount on April 24, 2007, as evidenced by an Acknowledgment Receipt[2] dated April 22, 2007. Atty. Venida assured Ethelene

[1] *Rollo*, p. 2.

[2] *Id*. at 7.

that he will file the petition with the Regional Trial Court of Makati City (Makati RTC) as soon as possible.

After a month, Ethelene's mother called Atty. Venida to inquire if the case had already been filed, and the latter answered in the affirmative. Based on Atty. Venida's assurances, Ethelene's mother contacted him again to confirm if a hearing of the case had already been scheduled. Atty. Venida told Ethelene's mother to wait and that he will inform them if a hearing had already been set. Ethelene's mother persisted on inquiring when a hearing on the petition will be scheduled, and Atty. Venida repeatedly answered that it normally takes time before a hearing is scheduled, and they would just have to wait.[3]

In the meantime, Ethelene's mother asked for a copy of the petition that Atty. Venida filed in court. Upon examination of the copy of the petition that she received,[4] Ethelene discovered that it was not stamped "Received" by the Makati RTC Office of the Clerk of Court (OCC). Ethelene contacted Atty. Venida to clarify this matter, and the latter informed her that only the draft copy was given to them and that the file copy of the petition, duly acknowledged by the OCC, was left in his office.[5] Ethelene asked Atty. Venida for his office or residence address in order to secure a copy of the petition herself. However, Atty. Venida refused to reveal his address.

Beginning to suspect that something was amiss, Ethelene went to the OCC to verify and inquire about the status of the petition. To her great dismay and disappointment, the OCC informed her that no such petition was filed with its office.[6] Ethelene contacted Atty. Venida to clarify the matter, but the latter merely avoided her and told her he was busy. When Atty. Venida finally agreed to meet with Ethelene and her mom, he

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[3] *Id*. at 3.

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

[5] *Id*. at 3.

[6] *Id*. A Certification dated July 20, 2007 was issued by the OCC to attest to this fact, see *id*. at 11.

did not show up. Ethelene tried to contact him again, but he never returned her calls.[7]

Thus, on August 8, 2007, Ethelene filed a complaint for disbarment against Atty. Venida with the Integrated Bar of the Philippines (IBP). Acting on the complaint, the Commission on Bar Discipline (CBD) issued a Notice of Mandatory Conference on February 13, 2014 directing Ethelene and Atty. Venida to appear before the CBD for mandatory conference on April 8, 2014 and to submit their respective Mandatory Conference Brief three days prior to the scheduled date. Both parties, however, failed to appear despite notice. Thus, the CBD submitted the case for resolution.

In its Report and Recommendation[8] dated June 22, 2015, the CBD recommended the disbarment of Atty. Venida for exhibiting dubious character that affects the standing of lawyers. The CBD was convinced that Atty. Venida acted in bad faith, with a clear intent to deceive Ethelene when he furnished her a draft copy of the petition rather than a receiving copy to show that the petition had, indeed, been filed.

On June 30, 2015, the IBP Board of Governors issued Resolution No. XXI-2015-609,[9] adopting and approving the recommendation of the CBD. The Resolution reads:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, 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 to be fully supported by the evidence on record and applicable laws, and considering Respondent's rude disposition denigrating the legal profession and insolent and conceited manner before the Commission on Bar Discipline, Atty. Freddie A. Venida is hereby DISBARRED from the practice of law and his name stricken off from the Roll of Attorneys.

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[7] *Id.*

[8] *Id.* at 20-21.

[9] *Id.* at 18-19.

Given the foregoing finding, the only remaining question that begs resolution is whether Atty. Venida is guilty of misappropriating the total amount of ₱29,000 that Ethelene entrusted to him for filing the petition for the annulment of the latter's marriage.

We sustain the findings of the IBP that Atty. Venida acted in bad faith and deceived Ethelene, in violation of his sworn duties under the Lawyer's Oath and Code of Professional Responsibility (Code).

Lawyers are duty-bound to exhibit fidelity to their client's cause and to be mindful of the trust and confidence reposed in them to diligently prosecute their clients' cases the moment they agreed to handle them, as is mandated of them under Canon 17 of the Code. They owe entire devotion to the interest of the client, warm zeal in the maintenance and the defense of the client's rights, and the exertion of their utmost learning and abilities to the end that nothing be taken or withheld from the client, save by the rules of law legally applied.[10] Atty. Venida grossly failed to fulfil this mandate.

The records definitively show that Atty. Venida was completely remiss and negligent in handling Ethelene's case, notwithstanding his receipt of the sum of Twenty-Nine Thousand Pesos (₱29,000) from her by way of his acceptance and filing fees. Instead of filing the petition, Atty. Venida gave his client a runaround and led her to believe that the petition had already been filed. When pressed for updates, Atty. Venida evaded Ethelene and refused to return her calls. Worse, the fees remain unaccounted for, which were entrusted to him for the filing of the petition.

When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for that particular purpose. And if he or she does not use the money for the intended

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[10] See *Burbe v. Atty. Magulta*, A.C. No. 5713, June 10, 2001, 383 SCRA 277; citing *Tan v. Lapak*, G.R. No. 93707, January 23, 2001, 350 SCRA 74.

purpose, the lawyer must immediately return the money to the client.[11] Consequently, Atty. Venida is duty-bound to return the ₱29,000 given to him by Ethelene. Failure to do so is a breach of Rule 16.01 of the Code, which provides:

> Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

Atty. Venida's agreement to handle Ethelene's case, cemented by his receipt of his legal fees, is an assurance and representation to his client that he would be diligent and competent in handling her case. This includes constantly updating her, on his volition, of the status of her case. Thus, his actuations are contrary to Canon 18, and its Rules 18.03 and 18.04, which state:

> Canon 18 - A lawyer shall serve his client with competence and diligence;
>
> xxx xxx xxx
>
> Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.
>
> 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. x x x

Moreover, Rule 1.01 of the Code states that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Deceitful conduct involves moral turpitude and includes anything done contrary to justice, modesty or good morals. It is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to justice, honesty, modesty, or good morals.[12] As pronounced by this Court in *Belleza v. Atty. Macasa*,[13] a lawyer

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[11] *Dizon v. Atty. De Taza*, A.C. No. 7676, June 10, 2014, 726 SCRA 70; citing *Navarro v. Atty. Solidum, Jr.*, A.C. No. 9872, January 28, 2014.

[12] *Overgaard v. Atty. Valdez*, A.C. No. 7902, September 30, 2008, 567 SCRA 118. (citations omitted)

[13] A.C. No. 7815, July 23, 2009, 593 SCRA 549.

has the duty to deliver his client's funds or properties as they fall due or upon demand. His failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment.[14]

Atty. Venida's misappropriation of the funds, as well as avoidance to account for his actions when confronted of his falsities, constitutes dishonesty, abuse of trust and confidence, and betrayal of his client's interests. These acts undoubtedly speak of deceit. Such malfeasance is not only unacceptable, disgraceful, and dishonorable to the legal profession; it also reveals a basic moral flaw that makes him unfit to practice law.[15] Good moral character is not only a condition precedent relating to his admission into the practice of law, but is a continuing imposition in order for him to maintain his membership in the Philippine Bar.[16]

In this regard, Section 27, Rule 138 of the Revised Rules of Court mandates that a lawyer may be disbarred or suspended by this Court for any of the following acts: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) willful disobedience of any lawful order of a superior court; and (8) willfully appearing as an attorney for a party without authority to do so.[17] Thus, a

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[14] *Belleza v. Atty. Macasa*, A.C. No. 7815, July 23, 2009, 593 SCRA 549.

[15] *CF Sharp Crew Management Incorporated v. Atty. Torres*, A.C. No. 10438, September 23, 2014. (citations omitted)

[16] *Ong v. Atty. Delos Santos*, A.C. No. 10179, March 4, 2014; citing *Manaois v. Deciembre*, Adm. Case No. 5364, August 20, 2008, 562 SCRA 359.

[17] *Nazaria S. Hernandez, substituted by Luciano S. Hernandez, Jr. v. Atty. Go*, A.C. No. 1526, January 31, 2005, 450 SCRA 1.

lawyer may be disbarred or suspended for any violation of his oath, a patent disregard of his duties, or an odious deportment unbecoming of an attorney. A lawyer must at no time be wanting in probity and moral fiber, which are not only conditions precedent to his entrance to the Bar, but are likewise essential demands for his continued membership in it.[18]

The IBP Board of Governors resolved to adopt the recommendation of the IBP-CBD to disbar Atty. Venida from the practice of law for his infractions against Ethelene. However, jurisprudence advises that the power to disbar must be exercised with great caution, and may be imposed only in a clear case of misconduct that seriously affects the standing and the character of the lawyer as an officer of the Court and as a member of the bar. Disbarment should never be decreed where any lesser penalty could accomplish the end desired. Without doubt, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. However, the said penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair.[19]

The question as to what disciplinary' sanction should be meted out against a lawyer found guilty of misconduct requires consideration of a number of factors. When deciding upon the appropriate sanction, the Court must consider that the primary purposes of disciplinary proceedings are to protect the public; to foster public confidence in the Bar; to preserve the integrity of the profession; and to deter other lawyers from similar misconduct.[20]

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[18] *Penilla v. Atty. Alcid, Jr.*, A.C. No. 9149, September 4, 2013, 705 SCRA 1.

[19] *Francia v. Atty. Abdon*, A.C. No. 10031, July 23, 2014; citing *Alitagtag v. Atty. Garcia*, 451 Phil. 420, 426 (2003).

[20] *Advincula v. Atty. Macabata*, A.C. No. 7204, March 7, 2007, 517 SCRA 600. (citations omitted)

It is for this reason that we take note of Atty. Venida's wanton disregard of the disbarment complaint against him, as well as the arrogance that he exhibited before the IBP-CBD in ignoring the notices sent to him to explain the matter. Clearly, Atty. Venida does not seem to consider that an administrative case against him, which could very well result in the revocation of his license and expulsion from the Roll of Attorneys, is neither pressing nor important enough to merit his attention.

We also take note of the past disbarment complaints that had been filed against him that resulted in his suspension for one (1) year from the practice of law for each case. In G.R. No. 132826 entitled *Rolando Saa v. The Integrated Bar of the Philippines, Commission on Bar Discipline, Board of Governors, Pasig City, and Atty. Freddie A. Venida*, the complainant filed a disbarment case against Atty. Venida with this Court. We required Atty. Venida to comment on the complaint against him in a Resolution dated February 17, 1992. Instead of complying with the directive, he belatedly filed a partial comment and asked to be furnished with a copy of the complaint. Despite receipt of a copy of the complaint, Atty. Venida still did not file his complete comment within 10 days as required in the February 17, 1992 Resolution. He only filed a partial comment on January 26, 1993 or 11 months after being directed to do so in the February 17, 1992 resolution. Atty. Venida filed his full comment on September 4, 1995 which was a little over three years after due date. For his blatant disregard of the Court's order and unduly delaying the complaint against him, Atty. Venida was suspended by the Court for one (1) year from the practice of law.

In yet another disbarment case against Atty. Venida, docketed as A.C. No. 10043 and entitled *Aurora H. Cabauatan v. Atty. Freddie A. Venida,* the complainant alleged that she engaged the services of Atty. Venida to handle her case which was pending with the Court of Appeals. Complainant made several follow-ups on her case until she lost contact with him. Hearing nothing from Atty. Venida, complainant just found out that her appeal was deemed abandoned and dismissed when an Entry of

Judgment in the case was issued against her. Thus, she filed a complaint for disbarment against Atty. Venida for his gross, reckless, and inexcusable negligence in handling her appeal. We found Atty. Venida guilty of violating Canons 17 and 18, and Rules 18.03 to 18.04 and suspended him from the practice of law for one (1) year.

Indubitably, Atty. Venida has a penchant for violating not only his oath as a lawyer and the Code, but orders from the Court as well. He had been repeatedly warned that a similar violation will merit a more severe penalty, and yet, his reprehensible conduct has, time and again, brought embarrassment and dishonour to the legal profession. The Court cannot allow his blatant disregard of the Code and his sworn duty to continue.

In *CF Sharp Crew Management Incorporated v. Atty. Torres*,[21] the Court disbarred the respondent for failing to account for and for misappropriating the various amounts he received from his client. Similarly in *Arellano University, Inc. v. Mijares III*,[22] the Court disbarred the lawyer for misappropriating the client's money intended for securing a certificate of title on the latter's behalf.

With the aforementioned cases as guidelines, We deem it fit to impose the ultimate penalty of disbarment from the practice of law upon Atty. Venida, considering that this is the second disciplinary action against him for a case of a similar nature. Membership in the legal profession is a privilege, and whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of his clients and the public, it becomes not only the right but also the duty of the Court to withdraw the same.[23]

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[21] A.C. No. 10438, September 23, 2014.

[22] A.C. No. 8380, November 20, 2009, 605 SCRA 93.

[23] *CF Sharp Crew Management Incorporated v. Atty. Torres*, A.C. No. 10438, September 23, 2014.

WHEREFORE, respondent Atty. Freddie A. Venida is found **GUILTY** of violating Canons 16, 17, and 18, and Rules 1.01, 16.01, 18.03 and 18.04 of the Code of Professional Responsibility. Accordingly, he is hereby **DISBARRED** from the practice of law and his name is **ORDERED** stricken off from the Roll of Attorneys, effective immediately.

Atty. Venida is ordered to refund the amount of ₱29,000 to complainant Ethelene W. San Juan within thirty (30) days from notice. Otherwise, he may be held in contempt of court.

Let copies of this Decision be furnished all courts of the land, the Integrated Bar of the Philippines, and the Office of the Bar Confidant for their information and guidance, and let it be entered in Atty. Freddie A. Venida's record in this Court.

SO ORDERED.

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

Brion, J., on leave.

EN BANC

[A.M. No. P-13-3137. August 23, 2016]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **UMAIMA L. SILONGAN, ABIE M. AMILIL, and SALICK U. PANDA, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASE; ESSENCE OF ADMINISTRATIVE DUE PROCESS.—

The Revised Rules on Administrative Cases in the Civil Service, which govern the conduct of disciplinary and non-disciplinary proceedings in administrative cases, clearly provide that "[a]dministrative investigations shall be conducted without strict recourse to the technical rules of procedure and evidence applicable to judicial proceedings." Thus, administrative due process cannot be fully equated with due process in its strict judicial sense. In administrative proceedings, the essence of due process is simply an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. It is enough that the party is given the chance to be heard before the case is decided. Due process is not violated when a person is not heard because he or she has chosen, for whatever reason, not to be heard. If one opts to be silent when one has a right to speak, one cannot later be heard to complain that he or she was unduly silenced.

2. **ID.; ID.; ID.; MISCONDUCT; DEFINED.—** The Court defines misconduct as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. As distinguished from simple misconduct, the element of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.

3. **ID.; ID.; ID.; ID.; AUTHENTICATING AND CERTIFYING AS TRUE AND CORRECT SPURIOUS DECISIONS ISSUED BY A JUDGE CONSTITUTE GRAVE MISCONDUCT AS THOSE ACTS MANIFEST CLEAR INTENTION TO VIOLATE THE LAW OR TO FLAGRANTLY DISREGARD ESTABLISHED RULE.—** In the present case, both the OCA and the Investigating Justice found that Silongan and Amilil certified as true copies spurious annulment decisions issued by Judge Indar. There is no question as to their guilt as the records speak for itself. The records clearly show that the 27 cases, which were certified as true copies by Silongan, were not in the court dockets nor have they been filed before the trial court. Amilil also certified as true copies two decisions, which did not appear in the court dockets. As custodians of court records in RTC Branches 14 and 15, Silongan and Amilil should have known that there were no existing records that could have served as basis for the issuance of the certificates. A certificate is a written assurance, or official

representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with. To certify is to attest to the truthfulness of the document. Without the records to verify the truthfulness and authenticity of a document, no certification should be issued. Thus, Silongan and Amilil should not have attested to the truthfulness of the decisions issued by Judge Indar knowing that there were no records to verify its truthfulness, as the decisions were not even in the court dockets. Their acts of authenticating and certifying as true and correct spurious decisions issued by Judge Indar undoubtedly constitute grave misconduct as those acts manifest clear intention to violate the law or to flagrantly disregard established rule.

4. ID.; ID.; ID.; ID.; ID.; THOSE ACTS ALSO AMOUNT TO DISHONESTY AND BREACH OF CANON IV OF THE CODE OF CONDUCT FOR COURT PERSONNEL.— Their acts also amount to dishonesty, which is defined as "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Their acts further amount to a breach of Canon IV of the Code of Conduct for Court Personnel which states that: "Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours."

5. ID.; ID.; ID.; GROSS MISCONDUCT AND DISHONESTY ARE GRAVE OFFENSES PUNISHABLE WITH DISMISSAL EVEN FOR THE FIRST OFFENSE; SINCE DISMISSAL CAN NO LONGER BE IMPOSED, THE PENALTY OF FINE OF ₱40,000 WITH FORFEITURE OF ALL RETIREMENT BENEFITS AND DISQUALIFICATION FROM FUTURE GOVERNMENT EMPLOYMENT IMPOSED.— The Revised Rules on Administrative Cases in the Civil Service provide that gross misconduct and dishonesty are grave offenses punishable by dismissal even for the first offense. x x x Considering that the penalty of dismissal can no longer be imposed due to Silongan's retirement and Amilil's resignation, we find the recommendation of the Investigating Justice to be appropriate under the circumstances and impose on both Silongan and Amilil the penalty of fine in the amount

of ₱40,000 each with forfeiture of all benefits, except accrued leave credits, if any. They are further declared disqualified from any future government employment.

6. ID.; ID.; ID.; WHEN THE INVESTIGATION WAS CONDUCTED MORE THAN SIX (6) YEARS AFTER RESPONDENT LEFT THE JUDICIARY, THE ADMINISTRATIVE CASE AGAINST HIM SHOULD BE DISMISSED FOR LACK OF JURISDICTION.— It is well-settled that in order for the Court to acquire jurisdiction over an administrative case, the complaint must be filed during the incumbency of the respondent public official or employee. x x x In the present case, Panda's temporary appointment in the Judiciary expired on 5 April 2006, while the OCA submitted its Memorandum dated 29 October 2012 to the Court recommending his investigation on 7 January 2013 or more than six years after he left the Judiciary. Accordingly, we no longer have jurisdiction to impose an administrative penalty on him.

D E C I S I O N

CARPIO, *J.*:

The Case

This administrative case originated from the Decision of the Supreme Court in *Office of the Court Administrator, Complainant, v. Judge Cader P. Indar, Presiding Judge and Acting Presiding Judge of the Regional Trial Court, Branch 14, Cotabato City and Branch 15, Shariff Aguak, Maguindanao, respectively, Respondent*[1] docketed as A.M. No. RTJ-10-2232, ordering the Office of the Court Administrator (OCA) to investigate Atty. Umaima L. Silongan (Silongan) on her alleged authentication of decisions issued by Judge Cader P. Indar (Judge Indar).

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[1] 685 Phil. 272 (2012).

The Facts

The facts, as culled from the records, are as follows:

In *Office of the Court Administrator, Complainant, v. Judge Cader P. Indar, Presiding Judge and Acting Presiding Judge of the Regional Trial Court, Branch 14, Cotabato City and Branch 15, Shariff Aguak, Maguindanao, respectively, Respondent*,[2] this Court issued a Resolution dated 28 September 2010 directing Justice Angelita A. Gacutan (Justice Gacutan) to conduct a fact-finding investigation to determine the authenticity of decisions on numerous annulment of marriage cases rendered by Judge Indar and to ascertain who are the parties responsible for the issuance of the questioned decisions.

The fact-finding investigation revealed that the questioned decisions do not exist in the records of the Office of the Clerk of Court of the Regional Trial Court, Branch 14 in Cotabato City (RTC Branch 14) or the Regional Trial Court, Branch 15 in Shariff Aguak, Maguindanao (RTC Branch 15). These decisions were also accompanied by Certificates of Finality issued by Silongan and in one case, by Abie M. Amilil (Amilil), Officer-in-Charge (OIC) Branch Clerk of Court. At the time Justice Gacutan conducted the fact-finding investigation, Silongan and Amilil were employees of the Judiciary.

In a Decision dated 10 April 2012, this Court dismissed Judge Indar from the service for gross misconduct and dishonesty in issuing the spurious decisions on numerous annulment of marriage cases. The Court likewise directed the OCA to investigate Silongan, Acting Clerk of Court of RTC Branch 14, on her alleged participation in the authentication of the said decisions.

Upon investigation, the OCA found that:

(1) Silongan certified as true copy 27 decisions[3] issued by Judge Indar in RTC Branch 14. These cases cannot be found

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[2] *Id*.

[3] *Rollo*, pp. 27-28. (1) Spl. Proc. No. 08-793, entitled *Arden N. Ulangkaya v. Jocelyn M. Estrada;* (2) Spl. Proc. No. 05-1346, entitled *Michael Conrad*

in the docket books. Neither have these cases been filed before RTC Branch 14, per Certification[4] issued by Clerk of Court Atty. Janis Rohaniah G. Dumama-Kadatuan (Atty. Kadatuan).

Silongan also certified as true copy an Order in Special Proceeding Case No. 08-1163, entitled *Carmelita Balagtas v. The Local Civil Registrar of the City of Manila,* which is also non-existent in the dockets of RTC Branch 15.

On 3 January 2011, the Employees Welfare Benefit Division of the Office of Administrative Services (OAS) received from

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D. Yap v. Noreen May A. Elaydo-Yap; (3) Spl. Proc. No. 07-2270, entitled *Fritzie M. Cenit v. Arail V. Rojo;* (4) Civil Case No. 05-1352, entitled *Alma L. Pedarse v. Yoshifumi Kikuchi;* (5) Civil Case No. 08-1875, entitled *Gloria Elizabeth Velez v. Seymour Uy II;*(6) Civil Case No. 08-1936, entitled *Norvin T. Hernandez v. Ithel Marie P. Demesa;* (7) Civil Case No. 08-1950, entitled *Felinda Sanchez-Paraiso v. Eleazar Mariano Paraiso, Jr.;* (8) Spl. Proc. No. 08-2366, entitled *Jesse Yamson Faune, Jr. v. Roselle de Guzman-Faune;* (9) Civil Case No. 08-2308, entitled *Elizabeth P. Acha v. Errol V. Sardovia;* (10) Civil Case No. 07-2305, entitled *Dean R. Reyes v. Mae Mildred W. Matias;* (11) Civil Case No. 09-498, entitled *Kremersohn S. Rubio v. Arlyn Manuel-Rubio;* (12) Civil Case No. 09-504, entitled *Evelyn V. Cebuco-Choi v. In Guk Choi;* (13) Civil Case No. 08-2504, entitled *Eloisa Seroma Araneta v. Lloyd Diaz Celso;* (14) Civil Case No. 06-2028, entitled *Girly Redolosa Fernandez v. Edgardo Alvarez Quintong;* (15) Civil Case No. 08-2385, entitled *Felicitas C. Orido-Kuizon v. Kenneth R. Kuizon;* (16) Spl. Proc. No. 08-2388, entitled *Mario Jeffrey T. de Dios v. Jennifer C. Gabriel;* (17) Spl. Proc. No. 08-1892, entitled *Jocelyn R. Samson v. Ronn S. Samson;* (18) Civil Case No. 08-2285, entitled *Lor L. Monteal[e]gre v. Maria Carina Layug;*(19) Civil Case No. 09-470, entitled *Mervyn Hans P. Panela v. Gerinit F. Galvez;* (20) Civil Case No. 04-1940, entitled *Loren B. Castro v. Mario R. Esplana;* (21) Civil Case No. 09-750, entitled *Roselle Arevalo-Tarcena v. Frederick R. Tarcena;* (22) Spl. Proc. No. 08-2542, entitled *Erlita E. Fulgencio v. Errol Malinao Torres;* (23) Civil Case No. 07-898, entitled *Rex Borrega Liao v. Karen Lee Liao;* (24) Civil Case No. 08-1612, entitled *Eileen N. Peralta v. Arvin Peralta;* (25) Civil Case No. 07-1730, entitled *Arnold A. Suarez v. Bernadette Pintado;* (26) Civil Case No. 08-2277, entitled *Petition for Recognition of Foreign Judgment of Riza Columba Dulay Perez*; and (27) Spl. Proc. No. 09-351, entitled *Petition for Recognition of Foreign Judgment of Honeylette S. Recla*.

[4] *Id*. at 152-155.

Silongan an Application for Separation Benefit[5] effective 31 December 2010.

(2) On 24 January 2008, Amilil issued a Certificate of Finality[6] and certified as true copy Judge Indar's decision in Special Civil Case No. 508, entitled *Caroline Flor Buenafe v. Roberto R. Buenafe, Jr.*, which case does not appear in the court docket per letter of the current OIC Clerk of Court Atty. Dennis U. Relayson (Atty. Relayson).

Amilil also certified as true copy an Order issued by Judge Indar in Special Civil Case No. 1049, involving a petition for cancellation of certificates of live birth of two children, which case is not docketed in the trial court.

(3) On 15 April 2005, then RTC Branch 15 Clerk of Court Salick U. Panda, Jr. (Panda) issued a Certificate of Finality[7] for Civil Case No. 517, a case supposedly involving declaration of nullity of marriage. The docket of RTC Branch 15, however, reveals that Civil Case No. 517 is actually a case for foreclosure of mortgage.

Based on OAS's records, Panda was temporarily appointed as Clerk of Court VI on 11 April 2005 and his appointment expired on 5 April 2006.

Thus, in its Memorandum dated 29 October 2012 addressed to the Office of the Chief Justice,[8] the OCA recommended that Silongan, Amilil, and Panda be investigated.

In a Resolution dated 15 January 2013,[9] the Court *En Banc*, upon recommendation of the OCA, resolved to: (a) docket separately the matter involving Silongan, Amilil, and Panda as OCA IPI No. 13-4035-P; (b) refer the remaining matter to the Executive Justice of the Court of Appeals (CA), stationed in

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[5] *Id*. at 135.

[6] *Id*. at 142.

[7] *Id*. at 151.

[8] *Id*. at 26-30.

[9] *Id*. at 161-162.

Cagayan de Oro City, for raffle among the members of the said court; and (c) direct the CA Justice to whom this case will be assigned to investigate and submit his/her report and recommendation within 60 days from notice.

The case was raffled to Justice Henri Jean-Paul B. Inting (Investigating Justice) of the CA Cagayan de Oro City.

In an Order dated 22 March 2013,[10] the Investigating Justice set the hearing on 23, 24, and 25 April 2013, and required Silongan, Amilil, and Panda to appear and submit their counter-affidavit/s and affidavit/s of their witnesses, if any.

In a Return of Service dated 27 March 2013,[11] Atty. Kadatuan stated that Amilil and Panda received the notice of hearing as evidenced by their signatures in the Order, while Silongan's copy of the notice was forwarded to her brother, who refused to acknowledge its receipt.

Thereafter, Panda requested for a copy of the formal charge against him to enable him to prepare his counter-affidavit.

On 23 April 2013, Silongan and Amilil failed to appear before the Investigating Justice. Only Panda appeared during the hearing. Panda informed the Investigating Justice that he is no longer a Clerk of Court, but an administrative officer in the Provincial Prosecution Office of Maguindanao. He was then informed of the nature of the investigation against him, furnished a copy of the certificate of finality he issued, and given ten days to file his responsive pleading. The Investigating Justice then directed the Clerks of Court of RTC Branches 14 and 15 to submit the employment status of Silongan and Amilil.

In an Order dated 25 April 2013,[12] the Investigating Justice set the continuation of the hearing on 21 May 2013, considering that Silongan and Amilil failed to appear on the 24 and 25 April 2013 hearings.

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[10] *Id*. at 274-275.

[11] *Id*. at 282.

[12] *Id*. at 241-242.

In his Affidavit dated 2 May 2013,[13] Panda alleged that the copy of the certificate of finality he signed was one of the voluminous documents presented to him during the period of transition; he was barely a week in office when he signed the document. He alleged that he unceremoniously affixed his signature upon Silongan's assurance and based on the judgment attached. He further contended that he only performed his duties as Acting Clerk of Court and he did not act with malice when he signed the document.

In a Return of Service dated 17 May 2013,[14] Atty. Kadatuan stated that: (1) Panda affixed his signature on the Order dated 25 April 2013; (2) Amilil acknowledged the receipt of the Order and subpoena but refused to sign; and (3) Silongan's copy was again forwarded to her brother, who refused to sign in the subpoena. On 21 May 2013, Panda, Amilil, and Silongan failed to appear in the hearing.

In an Order dated 30 May 2013,[15] the Investigating Justice directed Silongan and Amilil to show cause why they should not be cited in contempt of court for their failure to attend the hearings. The Investigating Justice likewise directed the Clerks of Court of RTC Branches 14 and 15 to issue a certification regarding the employment status of Silongan and Amilil. Further hearings were set on 25 and 26 June 2013.

On 10 June 2013, the OIC Designate Sheriff of RTC Branch 14 filed a Return of Service[16] stating that the Order dated 30 May 2013 and subpoenas were duly served to: (1) Panda; (2) Atty. Lalaine T. Mastura (Atty. Mastura), Clerk of Court of RTC Branch 15; (3) Atty. Relayson, OIC Clerk of Court of RTC Branch 14; (4) Aileen M. Burahan of RTC Branch 14, who received Amili's subpoena; and (5) the brother of Silongan, who again refused to sign in the subpoena.

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[13] *Id*. at 249-250.

[14] *Id*. at 212.

[15] *Id*. at 230-233.

[16] *Id.* at 228.

In the meantime, Atty. Relayson filed a Certification stating that Amilil resigned as Sheriff IV effective 17 September 2012.[17] Atty. Mastura also filed a Certification stating that Silongan applied for early retirement, which is still pending due to the present administrative case.[18]

In an Order dated 11 July 2013,[19] the Investigating Justice stated that since they failed to appear during the 25 and 26 June 2013 hearings, Silongan's and Amilil's rights to be heard and defend themselves are deemed waived.

In his Report dated 19 August 2013,[20] the Investigating Justice found that Silongan and Amilil were given due process, since they were aware of the administrative matter against them and they chose not to attend the hearings and be heard.

The Investigating Justice held Silongan and Amilil liable for grave misconduct and dishonesty for certifying as true and correct bogus decisions in their capacity as court personnel. According to the Investigating Justice, their acts of certifying several bogus decisions indicate a pattern of willful intention to violate and disregard established rules. On the other hand, since Panda certified one decision only and acted without malice, the Investigating Justice held him liable for simple neglect of duty.

The Investigating Justice then recommended the imposition of fines, instead of dismissal and suspension from office, after finding that Silongan, Amilil, and Panda are no longer connected with the Judiciary, to wit:

WHEREFORE, the undersigned investigating justice respectfully recommends to the Honorable Supreme Court the following:

1. The case be Re-docketed as a regular administrative matter;

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[17] *Id*. at 206.

[18] *Id*. at 195.

[19] *Id*. at 188-191.

[20] *Id*. at 169-179.

2. Atty. Silongan and Mr. Amilil be held liable for Grave Misconduct and Dishonesty;

3. Mr. Panda be held liable for Simple [Neglect of Duty];

4. Considering that Atty. Silongan had already retired and Mr. Amilil resigned from Office, they be Fined in the amount of ₱40,000 with forfeiture of retirement benefits and perpetual disqualification [from] re-employment in any government service;

5. Considering that this is Mr. Panda's first administrative complaint and absent any showing that he acted with malice, he be Fined the amount of ₱5,000.

Respectfully submitted, August 19, 2013, Cagayan de Oro City.[21]

In a Resolution dated 19 November 2013,[22] the Court directed the Presiding Judge of RTC Branch 14 to furnish the Court with the present and correct address of Silongan, considering that a resolution addressed to Silongan was returned unserved with notation on the letter-envelope: "RTS-No Longer Connected." Both the Executive Judge of RTC Branch 13 and Acting Presiding Judge of RTC Branch 15 sent letters to the Court informing it of the present address of Silongan.[23] Thereafter, all court processes were delivered to Silongan's present address.

The Ruling of the Court

We adopt the recommendations of the Investigating Justice for Silongan and Amilil, but modify it for Panda.

The Revised Rules on Administrative Cases in the Civil Service, which govern the conduct of disciplinary and non-disciplinary proceedings in administrative cases, clearly provide that "[administrative investigations shall be conducted without strict recourse to the technical rules of procedure and evidence

[21] *Id*. at 179.

[22] *Id*. at 326-327.

[23] *Id*. at 344, 347.

applicable to judicial proceedings."[24] Thus, administrative due process cannot be fully equated with due process in its strict judicial sense.[25]

In administrative proceedings, the essence of due process is simply an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[26] It is enough that the party is given the chance to be heard before the case is decided.[27] Due process is not violated when a person is not heard because he or she has chosen, for whatever reason, not to be heard.[28] If one opts to be silent when one has a right to speak, one cannot later be heard to complain that he or she was unduly silenced.[29]

In the present case, the Investigating Justice set six hearings, and both Silongan and Amilil were duly notified of the hearings and the administrative case against them. As aptly found by the Investigating Justice:

> Silongan was furnished a copy of the Decision of the Supreme Court ordering the OCA to investigate her alleged participation in the authentication of questioned Decisions by the Judge Indar. Moreover, the benefits due her from her early retirement were put on hold because of the pending investigation. These notices in addition to the Subpoenas issued to her and received by her brother clearly show that she is aware of the pending investigation. Thus, there can be no doubt that Silongan is aware of the administrative matter against her. Yet she chose not to attend the hearings and to be heard.

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[24] Revised Rules on Administrative Cases in the Civil Service, Rule 1, Section 3.

[25] *Office of the Court Administrator v. Judge Cader P. Indar, supra* note 1; *Dela Cruz v. Malunao,* 684 Phil. 493 (2012).

[26] *Vivo v. Philippine Amusement and Gaming Corporation,* 721 Phil. 34 (2013); *Autencio v. Mañara,* 489 Phil. 752 (2005).

[27] *Office of the Court Administrator v. Judge Cader P. Indar, supra* note 1.

[28] *Stronghold Insurance Company, Inc. v. Court of Appeals,* G.R. No. 88050, 30 January 1992, 205 SCRA 605.

[29] *Id.*; *Pascual v. Court of Appeals,* 360 Phil. 403 (1998).

Amilil on the other hand resigned from office. Despite Subpoenas received by him, he did not attend the hearings and did not submit his counter-affidavit.[30]

Thus, Silongan and Amilil cannot feign ignorance of the administrative investigation against them. They were given ample opportunity to controvert the charges against them; yet, they chose not to appear in any of the hearings or file any explanation. Unlike Panda, both Silongan and Amilil chose not to be heard despite the opportunity given to them.

Having found that Silongan and Amilil were accorded due process, we resolve the issue of whether Silongan, Amilil, and Panda are administratively liable in this case.

The Court defines misconduct as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[31] As distinguished from simple misconduct, the element of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.[32]

In the present case, both the OCA and the Investigating Justice found that Silongan and Amilil certified as true copies spurious annulment decisions issued by Judge Indar. There is no question as to their guilt as the records speak for itself. The records clearly show that the 27 cases, which were certified as true copies by Silongan, were not in the court dockets nor have they been filed before the trial court. Amilil also certified as true copies two decisions, which did not appear in the court dockets. As custodians of court records in RTC Branches 14 and 15, Silongan and Amilil should have known that there were

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[30] *Rollo,* p. 174.

[31] *Executive Judge Rojas, Jr. v. Mina,* 688 Phil. 241 (2012); *Office of the Court Administrator v. Judge Cader P. Indar, supra* note 1; *Dela Cruz v. Malunao, supra* note 25.

[32] *Executive Judge Rojas, Jr. v. Mina,* 688 Phil. 241 (2012); *Office of the Court Administrator v. Judge Cader P. Indar, supra* note 1; *Dela Cruz v. Malunao, supra* note 25.

no existing records that could have served as basis for the issuance of the certificates.

A certificate is a written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with.[33] To certify is to attest to the truthfulness of the document.[34] Without the records to verify the truthfulness and authenticity of a document, no certification should be issued.[35]

Thus, Silongan and Amilil should not have attested to the truthfulness of the decisions issued by Judge Indar knowing that there were no records to verify its truthfulness, as the decisions were not even in the court dockets. Their acts of authenticating and certifying as true and correct spurious decisions issued by Judge Indar undoubtedly constitute grave misconduct as those acts manifest clear intention to violate the law or to flagrantly disregard established rule.

Their acts also amount to dishonesty, which is defined as "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[36] Their acts further amount to a breach of Canon IV of the Code of Conduct for Court Personnel which states that: "Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours."

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[33] *Atty. Alcantara-Aquino v. Dela Cruz,* 725 Phil. 123 (2014); *Atty. Francisco v. Galvez,* 622 Phil. 25 (2009).

[34] *Atty. Alcantara-Aquino v. Dela Cruz,* 725 Phil. 123 (2014); *Atty. Francisco v. Galvez,* 622 Phil. 25 (2009).

[35] *Atty. Alcantara-Aquino v. Dela Cruz,* 725 Phil. 123 (2014); *Atty. Francisco v. Galvez,* 622 Phil. 25 (2009).

[36] *Balanza v. Criste,* A.M. No. P-15-3321, 21 October 2015; *Executive Judge Rojas, Jr. v. Mina, supra* note 31; *Office of the Court Administrator v. Judge Cader P. Indar, supra* note 1; *Retired Employee v. Manubag,* 652 Phil. 491 (2010); *Judge Dela Cruz v. Luna,* 555 Phil. 742 (2007).

In *Atty. Alcantara-Aquino v. Dela Cruz,*[37] we held respondent therein liable for gross misconduct and dishonesty for authenticating documents despite lack of authority to do so and lack of records that could have served as basis for issuance of the certificate. In *Balanza v. Criste,*[38] we found respondent guilty of serious dishonesty for certifying a spurious decision and certificate of finality without authority.

No less than the Constitution mandates that all public officers and employees should serve with responsibility, integrity and efficiency, for public office is a public trust.[39] No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the Judiciary.[40] Thus, this Court has often stated that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the Judiciary.[41] The Court condemns any conduct, act, or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the faith of the people in the Judiciary.[42]

Silongan and Amilil should have known that when they certified the questioned decisions, they did so under the seal of the court. Thus, by their actions, they undoubtedly jeopardized the integrity of the court. Their acts betray their complicity, if not participation, in acts that were irregular and violative of ethics and procedure, causing damage not only to the complainant but also to the public.[43]

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[37] 725 Phil. 123 (2014).

[38] A.M. No. P-15-3321, 21 October 2015.

[39] *Atty. Francisco v. Galvez,* 622 Phil. 25 (2009).

[40] *Id.*

[41] *Id.*

[42] *Id*.

[43] *Id*.

The Revised Rules on Administrative Cases in the Civil Service provide that gross misconduct and dishonesty are grave offenses punishable by dismissal even for the first offense.[44] The Court notes that this is not Silongan's and Amilil's first offense. In A.M. No. P-06-2267,[45] the Court fined Silongan with ₱1,000 for neglect of duty because she failed to produce 303 cases for examination by the audit team, make a report on the actual status of these 303 cases, and take action on 22 civil cases. On the other hand, in A.M. No. RTJ-07-2069,[46] Amilil was found guilty of neglect of duty and was suspended for two months without pay because he: (1) failed to inform Judge Indar of the existence of Court decisions which nullified and set aside Judge Indar's Order; (2) failed to inform and send the parties notices and court orders; and (3) issued a Certificate of Finality without verifying if indeed a motion for reconsideration was filed in connection with the case.

Considering that the penalty of dismissal can no longer be imposed due to Silongan's retirement and Amilil's resignation, we find the recommendation of the Investigating Justice to be appropriate under the circumstances and impose on both Silongan and Amilil the penalty of fine in the amount of ₱40,000 each with forfeiture of all benefits, except accrued leave credits, if any. They are further declared disqualified from any future government employment.

As for Panda, we dismiss the administrative case against him.

It is well-settled that in order for the Court to acquire jurisdiction over an administrative case, the complaint must be filed during the incumbency of the respondent public official or employee.[47] In *Re: Missing Exhibits and Court Properties*

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[44] Revised Rules on Administrative Cases in the Civil Service, Rule 10, Section 46 (A)(l) and (3).

[45] 566 Phil. 149 (2008).

[46] 678 Phil. 609 (2011).

[47] *Office of the Court Administrator v. Grageda*, 706 Phil. 15 (2013); *Re: Missing Exhibits and Court Properties in Regional Trial Court, Branch 4, Panabo City, Davao del Norte*, 705 Phil. 8 (2013).

in Regional Trial Court, Branch 4, Panabo City, Davao del Norte,[48] we dismissed the complaint against a respondent judge since the Memorandum recommending the filing of an administrative case against the judge was submitted by the OCA to the Court on 10 July 2012, or more than two years after the judge retired. In the similar case of *Office of the Court Administrator v. Grageda*,[49] the Court held that the respondent judge's retirement effectively barred the Court from pursuing the administrative proceeding that was instituted after his tenure in office, and divested the Court of any jurisdiction to still subject him to administrative investigation and to penalize him administratively for the infractions committed while he was still in the service. In *Office of the Court Administrator v. Judge Andaya*,[50] we likewise dismissed the administrative case against the respondent judge upon finding that the administrative complaint was docketed only on 29 April 2009, or after his compulsory retirement on 27 March 2009. The Court also dismissed an administrative case filed against a retired court stenographer for having been initiated over a month after her retirement from the service.[51]

In the present case, Panda's temporary appointment in the Judiciary expired on 5 April 2006, while the OCA submitted its Memorandum dated 29 October 2012 to the Court recommending his investigation on 7 January 2013 or more than six years after he left the Judiciary. Accordingly, we no longer have jurisdiction to impose an administrative penalty on him.

WHEREFORE, we find respondent Umaima L. Silongan **GUILTY** of **GRAVE MISCONDUCT** and **DISHONESTY**. Since she had retired from the service, she is, instead of being

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[48] 705 Phil. 8 (2013).

[49] 706 Phil. 15 (2013).

[50] 712 Phil. 33 (2013).

[51] *Office of the Court Administrator v. Villanueva,* A.M. No. P-01-1509, 13 June 2007 (unsigned Resolution).

dismissed from the service, ordered to pay a **FINE** in the amount of **₱40,000** with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

We likewise find respondent Abie M. Amilil **GUILTY** of **GRAVE MISCONDUCT** and **DISHONESTY**. Since he had resigned from the service, he is, instead of being dismissed from the service, ordered to pay a **FINE** in the amount of **₱40,000** with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

We **DISMISS** the administrative case against respondent Salick U. Panda, Jr. for lack of jurisdiction.

Let a copy of this Decision be furnished the Office of the Ombudsman for whatever appropriate action the Ombudsman may wish to take with respect to the possible criminal liability of respondents Umaima L. Silongan and Abie M. Amilil.

SO ORDERED.

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

Brion, J., on leave.

FIRST DIVISION

[A.C. No. 9464. August 24, 2016]

INTERADENT ZAHNTECHNIK, PHIL., INC., REPRESENTED BY LUIS MARCO I. AVANCEÑA, *complainant, vs.* **ATTY. REBECCA S. FRANCISCO-SIMBILLO,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT; GROUNDS, ENUMERATED.— Under Section 27, Rule 138 of the *Rules of Court*, a lawyer may be disbarred on any of the following grounds, namely: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyers oath; (7) willful disobedience of any lawful order of a superior court; and (8) corruptly or willfully appearing as a lawyer for a party to a case without authority so to do.

2. ID.; ID.; ID.; COMMISSION OF A CRIME INVOLVING MORAL TURPITUDE AS A GROUND FOR DISBARMENT REQUIRES PROOF OF CONVICTION BY FINAL JUDGMENT; MERE PENDENCY OF THE CRIMINAL CHARGES IS NOT A GROUND FOR DISBARMENT.— [I]n order to hold the lawyer amenable to disbarment by reason of his or her having committed a crime involving moral turpitude, it is not enough to show that there is a pending case involving moral turpitude against him or her, because Section 27 of Rule 138 expressly requires that he or she must have been found by final judgment guilty of the crime involving moral turpitude. The complainant did not allege, much less prove, that the respondent had been convicted by final judgment of any criminal offense involving moral turpitude. On the contrary, the criminal cases that were the sole bases for the complaint for disbarment had already been dismissed after due proceedings. Although the complainant might have availed itself of the available remedies to review or reverse the dismissals, it behooves the Court to terminate this case against her now considering that, as indicated, the mere existence or pendency of the criminal charges for crimes involving moral turpitude is not a ground for disbarment or suspension of an attorney.

APPEARANCES OF COUNSEL

Roxas De los Reyes Laurel Rosario & Leagogo Law Offices for complainant.

R E S O L U T I O N

BERSAMIN, *J.*:

A complaint for disbarment based on the respondent attorney's alleged moral turpitude cannot prosper after the criminal cases charging him with offenses involving moral turpitude were dismissed by the competent trial courts. The rule regarding this ground for disbarment requires the respondent attorney's conviction of the offense involving moral turpitude by final judgment.

Antecedents

On March 12, 2012, the Office of the Bar Confidant (OBC) received a letter from the attorney for complainant Interadent Zahntechnik Philippines, Inc. informing about several criminal cases filed and pending against respondent Rebecca Francisco-Simbillo. The criminal cases had been filed by the complainant to charge the respondent with *estafa* and qualified theft in the Office of the City Prosecutor of Parañaque City (docketed as I.S. No. XV-12-INV-11-J-03189), and with violation of Article 291 of the *Revised Penal Code* in the Office of the City Prosecutor of Quezon City (docketed as I.S. No. XV-03-INV-11-J-08553). The complainant pointed out that the charges for *estafa* and qualified theft involved moral turpitude.[1]

At the time, the results of the 2011 Bar Examinations had just been released, and the respondent was among those who had passed. She was in due course formally notified by the OBC of the letter of the complainant, and thereby required to file her comment within 15 days from notice. The OBC also informed her that she could join the mass oath taking for the new lawyers, but she would not be allowed to enroll her name

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

in the Roll of Attorneys until the charges against her had been cleared.[2] Upon the advice of the OBC, she had the other option to sign the Roll of Attorneys subject to the condition that the letter of the complainant would be automatically converted to a disbarment complaint against her. Choosing the latter, she signed the Roll of Attorneys on May 3, 2012.[3]

In her comment, the respondent stated that she had been employed by the complainant for four years; that her employment had lasted until she was illegally dismissed; that she instituted a labor case against the complainant; that the criminal charges filed against her were intended to malign, inconvenience, and harass her, and to force her to desist from pursuing the labor case; and that at the time of the filing of her comment, the criminal complaints brought against her were still pending determination of probable cause by the respective Offices of the City Prosecutor.[4]

On June 8, 2012, the respondent filed a manifestation stating that the Office of the City Prosecutor of Parañaque City had already dismissed the criminal charge docketed as XV-12-INV-11-J-03189.[5]

The complainant immediately countered that although the Office of the City Prosecutor of Parañaque City had dismissed its complaint for *estafa* and qualified theft, it had timely brought an appeal to the Department of Justice (DOJ); and that the criminal case against the respondent should still be considered as pending.[6]

On February 18, 2015, the respondent filed a motion seeking the resolution of this disbarment case, alleging that the DOJ had denied the complainant's appeal in respect of XV-12-INV-11-J-03189; and that as to the criminal charge docketed as XV-03-INV-11-J-08553, the Office of the City Prosecutor of Quezon City had filed an information against her in the Metropolitan Trial Court in Quezon City, but Branch 33 of that court had

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[2] *Id*. at 295.

[3] *Id*. at 297.

[4] *Id*. at 296-301.

[5] *Id*. at 302-303.

[6] *Id*. at 310.

eventually dismissed the information upon the Prosecution's motion for the withdrawal of the information with leave of court.[7]

Issue

May the disbarment complaint against the respondent prosper?

Ruling of the Court

We rule in favor of the respondent.

We observe that this administrative case started as a complaint to prevent the respondent from being admitted to the Philippine Bar on the ground of the existence of criminal charges brought against her for crimes involving moral turpitude. Indeed, Section 2, Rule 138 of the *Rules of Court* requires that any applicant for admission to the Bar must show that no charges against him or her for crimes involving moral turpitude have been filed or are pending in any court in the Philippines. However, this administrative case has since been converted to one for disbarment, but without the complainant, which has all the while continued to actively participate herein, alleging any ground for finding the respondent administratively liable except those already averred in its letter to the OBC. The complainant has not also shown that there were other criminal cases involving moral turpitude filed against the respondent.

Under Section 27,[8] Rule 138 of the *Rules of Court*, a lawyer may be disbarred on any of the following grounds, namely:

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[7] *Id.* at 329-330.

[8] Section 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, **or by reason of his conviction of a crime involving moral turpitude**, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience 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.

The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinary agency in a foreign jurisdiction where he

(1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyers oath; (7) willful disobedience of any lawful order of a superior court; and (8) corruptly or willfully appearing as a lawyer for a party to a case without authority so to do. In fine, in order to hold the lawyer amenable to disbarment by reason of his or her having committed a crime involving moral turpitude, it is not enough to show that there is a pending case involving moral turpitude against him or her, because Section 27 of Rule 138 expressly requires that he or she must have been found by final judgment guilty of the crime involving moral turpitude.

The complainant did not allege, much less prove, that the respondent had been convicted by final judgment of any criminal offense involving moral turpitude. On the contrary, the criminal cases that were the sole bases for the complaint for disbarment had already been dismissed after due proceedings. Although the complainant might have availed itself of the available remedies to review or reverse the dismissals, it behooves the Court to terminate this case against her now considering that, as indicated, the mere existence or pendency of the criminal charges for crimes involving moral turpitude is not a ground for disbarment or suspension of an attorney.[9]

WHEREFORE, the Court **DISMISSES** this disbarment case against respondent Atty. Rebecca S. Francisco-Simbillo.

SO ORDERED.

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

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has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts hereinabove enumerated.

The judgment, resolution or order of the foreign court or disciplinary agency shall be *prima facie* evidence of the ground for disbarment or suspension. (As amended by SC Resolution dated February 13, 1992.)

[9] *Nuñez v. Astorga*, A.C. No. 6131, February 28, 2005, 452 SCRA 353, 361-362.

FIRST DIVISION

[G.R. No. 183173. August 24, 2016]

THE CHAIRMAN and EXECUTIVE DIRECTOR, PALAWAN COUNCIL FOR SUSTAINABLE DEVELOPMENT, and THE PALAWAN COUNCIL FOR SUSTAINABLE DEVELOPMENT, *petitioners, vs.* **EJERCITO LIM, DOING BUSINESS AS BONANZA AIR SERVICES, AS REPRESENTED BY HIS ATTORNEY-IN-FACT, CAPT. ERNESTO LIM,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; QUASI-LEGISLATIVE AND QUASI-JUDICIAL POWER OF AN ADMINISTRATIVE AGENCY, EXPLAINED.— Administrative agencies possess two kinds of powers, the quasi-legislative or rule-making power, and the quasi-judicial or administrative adjudicatory power. The first is the power to make rules and regulations that results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers. The issuance of the assailed A.O. No. 00-05, Resolution No. 03-211 and the other issuances by the PCSD was in the exercise of the agency's quasi-legislative powers. The second is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act that is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.

2. ID.; ID.; ID.; ID.; WHEN WHAT WAS BEING ASSAILED WAS THE VALIDITY OF A REGULATION ISSUED BY AN ADMINISTRATIVE AGENCY IN THE PERFORMANCE OF ITS QUASI-LEGISLATIVE FUNCTION, A MATTER INCAPABLE OF PECUNIARY ESTIMATION, JURISDICTION

OVER WHICH PERTAINED TO THE PROPER REGIONAL TRIAL COURT; THIS JUDICIAL RECOURSE SHOULD ADHERE TO THE DOCTRINE OF HIERARCHY OF COURTS.— The challenge being brought by the petitioners rests mainly on the theory that the CA should not have interpreted the functions of the PCSD, particularly those provided for in Sections 4, 6, 16, and 19 of R.A. No. 7611, as limitations on the power of the PCSD to promulgate A.O. No. 00-05. Clearly, what was assailed before the CA was the validity or constitutionality of a rule or regulation issued by the PCSD as an administrative agency in the performance of its quasi-legislative function. The question thus presented was a matter incapable of pecuniary estimation, and exclusively and originally pertained to the proper Regional Trial Court pursuant to Section 19(1) of *Batas Pambansa Blg*. 129. Indeed, Section 1, Rule 63 of the *Rules of Court* expressly states that any person "whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation" may bring an action in the appropriate Regional Trial Court "to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder." The judicial course to raise the issue against such validity should have adhered to the doctrine of hierarchy of courts except only if the respondent had sufficient justification to do otherwise. Yet, he utterly failed to show justification to merit the exception of bypassing the Regional Trial Court. Moreover, by virtue of Section 5, Article VIII of the Constitution, the Court's power to evaluate the validity of an implementing rule or regulation is generally appellate in nature.

3. ID.; ID.; ID.; ID.; PROHIBITION IS NOT THE PROPER REMEDY TO ASSAIL AN ADMINISTRATIVE ORDER ISSUED IN THE EXERCISE OF QUASI-LEGISLATIVE FUNCTION; BEING AN EXTRAORDINARY WRIT, PROHIBITION LIES AGAINST THE EXERCISE OF JUDICIAL OR MINISTERIAL FUNCTION.— We also need to remind that a petition for prohibition is not the proper remedy to assail an administrative order issued in the exercise of a quasi-legislative function. Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further

proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Its lies against the exercise of judicial or ministerial functions, not against the exercise of legislative or quasi-legislative functions. Generally, the purpose of the writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. In other words, prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained.

4. ID.; ID.; ID.; PALAWAN COUNCIL FOR SUSTAINABLE DEVELOPMENT (PCSD) HAS THE AUTHORITY TO CARRY OUT THE OBJECTIVES OF R.A. NO. 7611 IN PROTECTING AND ENHANCING PALAWAN'S NATURAL RESOURCES CONSISTENT WITH THE STRATEGIC ENVIRONMENT PLAN (SEP) FOR PALAWAN; HENCE, THE ASSAILED ADMINISTRATIVE ORDER NO. 00-95 AND RESOLUTION NO. 03-211 ARE WITHIN ITS AUTHORITY TO ISSUE.— R.A. No. No. 7611 has adopted the Strategic Environmental Plan (SEP) for Palawan consistent with the declared policy of the State to protect, develop, and conserve its natural resources. The SEP is a comprehensive framework for the sustainable development of Palawan to protect and enhance the Province's natural resources and endangered environment. Towards this end, the PCSD was established as the administrative machinery for the SEP's implementation. The creation of the PCSD has been set forth in Section 16 of R.A. No. 7611[.] x x x Accordingly, the PCSD had the explicit authority to fill in the details as to how to carry out the objectives of R.A. No. 7611 in protecting and enhancing Palawan's natural resources consistent with the SEP. In that task, the PCSD could establish a methodology for the effective implementation of the SEP. Moreover, the PCSD was expressly given the authority to impose penalties and sanctions in relation to the implementation of the SEP and the other provisions of R.A.

No. 7611. As such, the PCSD's issuance of A.O. No. 00-95 and Resolution No. 03-211 was well within its statutory authority.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Cortel Law Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This appeal seeks the reversal of the decision promulgated on May 28, 2008,[1] whereby the Court of Appeals (CA) granted the petition for prohibition of the respondent,[2] and enjoined the petitioners from enforcing Administrative Order (A.O.) No. 00-05, Series of 2002; Resolution No. 03-211; any and all of their revisions; and the Notice of Violation and Show Cause Order for being null and void.

Antecedents

Petitioners Executive Director and Chairman of the Palawan Council for Sustainable Development (PCSD), Messrs. Winston G. Arzaga and Vicente A. Sandoval, respectively, were the public officials tasked with the duty of executing and implementing A.O. No. 00-05 and the Notice of Violation and Show Cause Order, while the PCSD was the government agency responsible for the governance, implementation, and policy direction of the Strategic Environment Plan (SEP) for Palawan. On the other hand, the respondent was the operator of a domestic air carrier doing business under the name and style Bonanza Air Services, with authority to engage in non-scheduled air taxi transportation of passengers and cargo for the public. His business operation

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[1] *Rollo*, pp. 42-60; penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justice Josefina Guevara-Salonga (retired), and Associate Justice Magdangal M. De Leon.

[2] *Id*. at 201-222.

was primarily that of transporting live fish from Palawan to fish traders.[3]

The PCSD issued A.O. No. 00-05 on February 25, 2002 to ordain that the transport of live fish from Palawan would be allowed only through traders and carriers who had sought and secured accreditation from the PCSD. On September 4, 2002, the Air Transportation Office (ATO) sent to the PCSD its communication to the effect that ATO-authorized carriers were considered common carriers, and, as such, should be exempt from the PCSD accreditation requirement. It attached to the communication a list of its authorized carriers, which included the respondent's air transport service.[4]

The respondent asserted that he had continued his trade without securing the PCSD-required accreditation; that the PCSD Chairman had started harassing his clients by issuing Memorandum Circular No. 02, Series of 2002, which contained a penal clause imposing sanctions on the availment of transfer services by unaccredited aircraft carriers such as cancellation of the PCSD accreditation and perpetual disqualification from engaging in live fish trading in Palawan; that due to the serious effects of the memorandum, the respondent had sent a grievance letter to the Office of the President; and that the PCSD Chairman had nonetheless maintained that the respondent's business was not a common carrier, and should comply with the requirement for PCSD accreditation.

In disregard of the prohibition, the respondent continued his business operation in Palawan until a customer showed him the Notice of Violation and Show Cause Order issued by the PCSD to the effect that he had still made 19 flights in October 2002 despite his failure to secure accreditation from the PCSD; and that he should explain his actuations within 15 days, otherwise, he would be sanctioned with a fine of ₱50,000.00.[5]

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[3] *Id*. at 43-44.

[4] *Id*. at 44.

[5] *Id*. at 45.

According to the respondent, he had not received the Notice of Violation and Show Cause Order.[6]

The respondent filed a petition for prohibition in the CA, which issued a temporary restraining order (TRO) upon his application after finding that there were sufficient grounds to issue the TRO.[7] After the petitioners did not file their comment despite notice, the CA issued the writ of preliminary injunction upon his posting of the injunction bond for ₱50,000.00.[8]

The petitioners countered that the petition for prohibition should have been dismissed because A.O. No. 00-05 was in accord with the mandate of the Constitution and of Republic Act No. 7611 (*Strategic Environmental Plan for Palawan Act*);[9] that Resolution No. 03-211 had meanwhile amended or repealed portions of A.O. No. 00-05, thereby rendering the issues raised by the petition for prohibition moot and academic;[10] that by virtue of such developments, the PCSD accreditation was now required for all carriers, except those belonging to the Government; that on August 18, 2003, the respondent had received another notice regarding the enactment of Resolution No. 03-211; and that they had subsequently dispatched to the respondent on September 9, 2003 another show cause order in view of his continued non-compliance with Resolution No. 03-211.[11]

The salient portions of Resolution No 03-211 read:

SECTION 3. A new *Paragraph 1.5* is hereby added to *Section 1* of Administrative Order No. 00-05, as amended, as follows:

> **"CARRIER** – any natural or juridical person or entity, except the Government, that is engaged or involved in the transportation of live fish or any other aquatic fresh or saltwater products,

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[6] *Id*.

[7] *Id*. at 47.

[8] *Id*.

[9] Approved on June 19, 1992.

[10] *Rollo*, p. 47.

[11] *Id*. at 49.

whether or not on a daily or regular manner or schedule and whether or not for compensation, from any point within or out of the Province of Palawan under a contract or transportation, whether or not in writing, through the use of aircrafts, seacrafts, land vehicles or any other mode of transportation, whether or not registered, mechanical or motorized in nature, and whether or not such persons or entities are common carriers or not as defined by law and regardless of the place of registration of such persons or entities as well as the crafts and vehicles used or employed by them."

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SECTION 5. The *new section 2* for Administrative Order No. 00-05, as amended, shall **read as follows**:

"Section 2. Accreditation. Before it can proceed with the transport or carriage of live fish or any other aquatic fresh or saltwater products within or out of the Province of Palawan, a CARRIER must secure a CERTIFICATE OF ACCREDITATION from the PCSD."[12]

The respondent then filed a supplemental petition alleging that due to the implementation of Resolution No. 03-211, his carriers were forbidden to transport or deliver fish from Palawan to his clients resulting in loss of income amounting to ₱132,000.00; and that such supervening event was a mere scheme to circumvent the TRO and the writ of preliminary injunction issued by the CA.

As stated, the CA promulgated its assailed decision on May 28, 2008, disposing as follows:

WHEREFORE, the instant petition is **GRANTED.** ***Administrative Order No. 00-05, Series of 2002, Resolution No. 03-211,*** and any and all of its revisions, and the ***Notice of Violation*** and ***Show-Cause Order*** are declared **NULL** and **VOID.** The injunctive writ previously issued by this Court prohibiting the Respondents from implementing or enforcing the said issuance(s) is declared **PERMANENT.** Costs against the Respondents.

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[12] *Id*. at 245.

SO ORDERED.[13]

Hence, this appeal by the petitioners.

Issues

The sole issue for determination is whether or not the CA erred in declaring A.O. No. 00-05, Series of 2002; Resolution No. 03-211; and the the Notice of Violation and Show Cause Order null and void for having been issued in excess of the PCSD's authority.

The petitioners submit the following grounds for consideration, to wit:

I.

THE COURT OF APPEALS ERRED IN INTERPRETING SECTIONS 4, 6, 16, AND 19 OF RA 7611 AS LIMITATIONS TO THE POWER OF THE PCSD TO PROMULGATE ADMINISTRATIVE ORDER NO 00-05.

II.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE PCSD'S ISSUANCE OF ADMINISTRATIVE ORDER NO. 05 (sic) IS AN ENCROACHMENT OF THE LEGISLATIVE FUNCTION OF THE SANGGUNIANG PANLALAWIGAN OF PALAWAN.

A. ADMINISTRATIVE ORDER NO. 00-05 AND ITS REVISIONS WERE PROMULGATED PURSUANT TO THE RULE-MAKING POWER OF THE PCSD.

B. ADMINISTRATIVE ORDER NO. 00-05 AND ITS REVISIONS POSSESS ALL THE REQUISITES OF A VALID ADMINISTRATIVE REGULATION.

III

THE COURT OF APPEALS ERRED IN RULING THAT THE PROMULGATION OF ADMINISTRATIVE ORDER NO. 00-05 AND ITS REVISIONS IS VESTED SOLELY IN THE SANGGUNIANG PANLALAWIGAN OF PALAWAN.[14]

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[13] *Id.* at 60.

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

Ruling of the Court

We grant the petition for review on *certiorari*, and reverse the decision of the CA.

1.
Procedural Matters

We first deal with the propriety of the petition for prohibition for the purpose of annulling the challenged administrative issuances.

Administrative agencies possess two kinds of powers, the quasi-legislative or rule-making power, and the quasi-judicial or administrative adjudicatory power. The first is the power to make rules and regulations that results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers.[15] The issuance of the assailed A.O. No. 00-05, Resolution No. 03-211 and the other issuances by the PCSD was in the exercise of the agency's quasi-legislative powers. The second is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act that is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.[16]

The challenge being brought by the petitioners rests mainly on the theory that the CA should not have interpreted the functions of the PCSD, particularly those provided for in Sections 4, 6, 16, and 19 of R.A. No. 7611, as limitations on the power of the PCSD to promulgate A.O. No. 00-05. Clearly, what was assailed

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[15] *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*, G.R. No. 151908 and G.R. No. 152063, August 12, 2003, 408 SCRA 678, 686.

[16] *Id*. at 687.

before the CA was the validity or constitutionality of a rule or regulation issued by the PCSD as an administrative agency in the performance of its quasi-legislative function. The question thus presented was a matter incapable of pecuniary estimation, and exclusively and originally pertained to the proper Regional Trial Court pursuant to Section 19(1) of *Batas Pambansa Blg*. 129. Indeed, Section 1, Rule 63 of the *Rules of Court* expressly states that any person "whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation" may bring an action in the appropriate Regional Trial Court "to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder." The judicial course to raise the issue against such validity should have adhered to the doctrine of hierarchy of courts except only if the respondent had sufficient justification to do otherwise. Yet, he utterly failed to show justification to merit the exception of bypassing the Regional Trial Court. Moreover, by virtue of Section 5, Article VIII of the Constitution,[17] the Court's power to evaluate the validity of an implementing rule or regulation is generally appellate in nature.

In this regard, the Court has categorically observed in *Smart Communications, Inc. v. National Telecommunications Commission*[18] that if what is being assailed is the validity or constitutionality of a rule or regulation issued by an administrative agency in the performance of its quasi-legislative functions, then the Regional Trial Court has jurisdiction to pass upon the same. The determination of whether a specific rule or set of

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[17] The Supreme Court shall have the following powers:

xxx xxx xxx

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decrees, proclamation, order, instruction, ordinance, or regulation is in question. x x x

[18] *Supra* note 15.

rules issued by an administrative agency contravenes the law or the Constitution is within the jurisdiction of the Regional Trial Court.[19]

To accord with the doctrine of hierarchy of courts, therefore, the petition for prohibition should have been originally brought in the proper Regional Trial Court as a petition for declaratory relief.

We also need to remind that a petition for prohibition is not the proper remedy to assail an administrative order issued in the exercise of a quasi-legislative function. Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.[20] Its lies against the exercise of judicial or ministerial functions, not against the exercise of legislative or quasi-legislative functions. Generally, the purpose of the writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels.[21] In other words, prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained.[22]

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[19] *Id*. at 689.

[20] Section 2, Rule 65 of the *Rules of Court*.

[21] *Holy Spirit Homeowners Association, Inc. v. Defensor*, G.R. No. 163980, August 3, 2006, 497 SCRA 581, 595.

[22] *Id*., citing *David v. Rivera*, G.R. Nos. 129913 and 140159, January 16, 2004, 420 SCRA 90, 100.

Nevertheless, the Court will not shirk from its duty to rule on this case on the merits if only to facilitate its speedy resolution. In proper cases, indeed, the rigidity of procedural rules may be relaxed or suspended in the interest of substantial justice. The power of the Court to except a particular case from its rules whenever the purposes of justice so require cannot be questioned.[23]

2.
Substantive Matters

Were A.O. No. 00-05, Series of 2002; Resolution No. 03-211; and the the Notice of Violation and Show Cause Order null and void for having been issued in excess of the PCSD's authority?

We answer the query in the negative.

R.A. No. No. 7611 has adopted the Strategic Environmental Plan (SEP) for Palawan consistent with the declared policy of the State to protect, develop, and conserve its natural resources. The SEP is a comprehensive framework for the sustainable development of Palawan to protect and enhance the Province's natural resources and endangered environment.

Towards this end, the PCSD was established as the administrative machinery for the SEP's implementation. The creation of the PCSD has been set forth in Section 16 of R.A. No. 7611, to wit:

> SEC. 16. **Palawan Council for Sustainable Development.** — The governance, implementation and policy direction of the Strategic Environmental Plan shall be exercised by the herein created Palawan Council for Sustainable Development (PCSD), hereinafter referred to as the Council, which shall be under the Office of the President.
> x x x

The functions of the PCSD are specifically enumerated in Section 19 of R.A. No. 7611, which relevantly provides:

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[23] *Id*. at 596.

SEC. 19. **Powers and Functions.** — In order to successfully implement the provisions of this Act, the Council is hereby vested with the following powers and functions:

1. Formulate plans and policies as may be necessary to carry out the provisions of this Act;
2. Coordinate with the local governments to ensure that the latter's plans, programs and projects are aligned with the plans, programs and policies of the SEP;
3. Call on any department, bureau, office, agency or instrumentality of the Government, and on private entities and organizations for cooperation and assistance in the performance of its functions;
4. Arrange, negotiate for, and accept donations, grants, gifts, loans, and other funding from domestic and foreign sources to carry out the activities and purposes of the SEP;
5. Recommend to the Congress of the Philippines such matters that may require legislation in support of the objectives of the SEP;
6. Delegate any or all of its powers and functions to its support staffs, as hereinafter provided, except those which by provisions of law cannot be delegated;
7. Establish policies and guidelines for employment on the basis of merit, technical competence and moral character and prescribe a compensation and staffing pattern;
8. **Adopt, amend and rescind such rules and regulations and impose penalties** therefor for the effective implementation of the SEP and the other provisions of this Act;
9. Enforce the provisions of this Act and other existing laws, rules and regulations similar to or complementary with this Act;
10. Perform related functions which shall promote the development, conservation, management, protection, and utilization of the natural resources of Palawan; and

11. Perform such other powers and functions as may be necessary in carrying out its functions, powers, and the provisions of this Act. (Emphasis supplied)

Accordingly, the PCSD had the explicit authority to fill in the details as to how to carry out the objectives of R.A. No. 7611 in protecting and enhancing Palawan's natural resources consistent with the SEP. In that task, the PCSD could establish a methodology for the effective implementation of the SEP. Moreover, the PCSD was expressly given the authority to impose penalties and sanctions in relation to the implementation of the SEP and the other provisions of R.A. No. 7611. As such, the PCSD's issuance of A.O. No. 00-95 and Resolution No. 03-211 was well within its statutory authority.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **ANNULS** and **SETS ASIDE** the decision promulgated on May 28, 2008; **DECLARES VALID** and **EFFECTIVE** Administrative Order No. 00-05, Series of 2002; Resolution No. 03-211; and all their revisions, as well as the Notice of Violation and Show Cause Order issued to the respondent**; LIFTS** the permanent injunction issued by the Court of Appeals enjoining petitioner Palawan Council for Sustainable Development from enforcing Administrative Order No. 00-05, Series of 2002; Resolution No. 03-211; and all their revisions, as well as the Notice of Violation and Show Cause Order issued to the respondent; and **ORDERS** the respondent to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 195138. August 24, 2016]

NATIONAL TRANSMISSION CORPORATION, *petitioner, vs.* **MISAMIS ORIENTAL I ELECTRIC COOPERATIVE, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE ENERGY REGULATORY COMMISSION (ERC) AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— It is a well-entrenched rule that "by reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus their findings of fact in that regard are generally accorded great respect, if not finality, by the courts." This rule holds true especially in this case, in which the findings are supported by substantial evidence, and even more after these have been affirmed by the CA. The conclusion was not without supporting substantial evidence. Part of the records was the Meter Test Report, which readily confirmed that there was no inaccurate meter. That report shows that the device was calibrated in the presence of representatives of both parties to this Petition; that three trials were conducted to determine the accuracy of the new device; and that the average accuracy of the device was 100.1%. Also crucial to the ERC's conclusion, which was subsequently affirmed by the CA, was the testimony of petitioner's witness, Mr. Edgardo Orencia. He expounded on the meaning of "error due to inaccurate meter"; that is, it is one that cannot be readily detected, but can only be shown using certain tools, instruments and/or historical or statistical data. He hastily pointed, however, that the meter-reading error could readily be observed by just looking at the meter-reading report attached to every billing furnished by petitioner to respondent. This fact bolsters the inevitable conclusion that in order to detect a billing error, no special instrument or tool was necessary — a tool otherwise required when the error is due to an inaccurate meter. We therefore see no reason to depart from the assailed ruling.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Lerios-Amboy & Delos Reyes Law Offices for respondent.

D E C I S I O N

SERENO,[*] *C.J.*:

This is a Petition[1] for Review on Certiorari dated 1 February 2011 seeking to set aside the Decision[2] dated 20 April 2010 and Resolution[3] dated 3 January 2011 rendered by the Court of Appeals (CA), Eighth Division, in CA-G.R. SP No. 108322. The assailed rulings affirmed the Energy Regulatory Commission (ERC) Decision[4] dated 30 June 2008 and Order[5] dated 16 March 2009 in ERC Case No. 2004-463.

THE ANTECEDENT FACTS

The facts as summarized by the CA are as follows:

Petitioner National Transmission Corporation (hereafter Transco) is a government-owned and controlled corporation located in Iligan City and is engaged in the business of transmitting electric power. It transmits to its consumers electricity generated by Mindanao Generation Corporation (hereafter Genco). By virtue of Republic Act No. 9136,[6] Transco assumed the electrical transmission function,

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[*] Chairperson.

[1] *Rollo*, pp. 3-24.

[2] *Id*. at 27-41; penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Amelita G. Tolentino and Normandie B. Pizarro.

[3] *Id*. at 42-44.

[4] *Id*. at 45-56; composed of Chairman Rodolfo B. Albano, Jr. and Commissioners Rauf A. Tan, Maria Teresa A.R. Castañeda, Alejandro Z. Barin and Jose C. Reyes.

[5] *Id*. at 134-137; composed of Chairman Zenaida G. Cruz-Ducut and Commissioners Rauf A. Tan, Maria Teresa A.R. Castañeda, Alejandro Z. Barin and Jose C. Reyes.

[6] AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES or the Electric Power Industry Reform Act of 2001.

while Genco, the electricity generation function, of the National Power Corporation (hereafter NPC).

Respondent Misamis Oriental I Electric Cooperative, Inc. (hereafter MORESCO I) is an electric cooperative engaged in the business of distributing electric power to its members-consumers in the western part of Misamis Oriental.

Sometime in May 2002, NPC and MORESCO I signed a Transition Contract for the Supply of Electricity, otherwise known as Transition Supply Contract (hereafter TSC) whereby the former obligated itself to supply and sell electricity to the latter. Attached to the TSC as Annex C is a document entitled Charges and Adjustments, Section 25 of which provides:

> ADJUSTMENT DUE TO INACCURATE METERS AND ERRONEOUS BILLINGS WITHIN A BILLING PERIOD
>
> **25. In the event that a billing is found erroneous due to a wrong reading, arithmetical mistakes or omissions, SUPPLIER shall send CUSTOMER a debit/credit memo within ninety (90) days from the date of bill's receipt to correct the error.** SUPPLIER shall also be deemed to waive any claim on any billing error if it fails to send notice for such billing error to CUSTOMER within ninety (90) days from billing date. Provided, that if the error is due to an inaccurate meter, said error may be corrected anytime. (*Emphasis supplied*)
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> xxx xxx xxx

Pursuant to the contract, Transco and Genco began supplying electricity to MORESCO I. For billing purposes, Transco installed a kilowatt hour (kWh) billing meter device at Metering Point No. 6 in Opol Substation, Misamis Oriental to determine the amount of electricity used by MORESCO I. The computation of the actual consumption of electricity by the said billing meter device required the factoring in of a multiplier to the meter reading. The value of the multiplier is the product of the values of the internal multiplier and the external multiplier peculiar to the billing meter device. The multiplier in the meter device used at the time was 1,000. Accordingly, this value was used in the computation of the bill of MORESCO I. The billing date appears to be the 25th of each month as this was the cut-off date of each monthly billing period.

On July 30, 2003, Transco replaced the billing meter device of MORESCO I in the presence of MORESCO I personnel, including its Meter Calibrator, Mr. Ernie C. Janobas. As the multiplier is inherent in the meter device, the change in the said device brought a corresponding change in the multiplier. The old billing meter device had a multiplier of 1,000 and the new one had a multiplier of 3,500. This necessarily affected the electricity reading inasmuch as the higher multiplier value would result to a higher electricity consumption reading. Transco then conducted a Meter Test thereon and Mr. Ernie C. Janobas, as witness to the Meter Test, signed the Meter Test Report prepared by Transco. The meter test showed that the newly installed billing meter device was calibrated and found to be accurate. It was Transco which indicated on the face of the Report that the multiplier was 5,250, notwithstanding that the actual multiplier was 3,500. Mr. Janobas did not verify the 5,250 multiplier value of the new billing meter device.

Then, Transco conducted electricity consumption readings on the new meter and billed MORESCO I every billing period beginning on the 26th of a given month and ending on the 25th of the next month. It later discovered that it inadvertently used an incorrect multiplier of 3,500 instead of 5,250 for the billing periods starting from August 26, 2003 up to June 25, 2004. The use of the incorrect multiplier resulted to an underbilling.

Hence, Transco sent MORESCO I on July 13, 2004 an adjustment bill or a debit/credit memo dated July 9, 2004 in the amount of six million four hundred sixty-two thousand seven hundred ninety-nine and eighty-one centavos (₱6,462,797.81) (sic) covering the ten (10) billing periods from August 26, 2003 up to June 25, 2004.

On July 23, 2004 Genco, through NPC, sent MORESCO I another adjustment bill dated July 20, 2004 in the amount of eleven million four hundred sixty-three thousand nine hundred eight pesos and eighty-five centavos (₱11,463,908.85). This separate bill covered the following billing periods, which were the same periods used by Transco:

1st	July 26, 2003	-	August 25, 2003
2nd	August 26, 2003	-	September 25, 2003
3rd	September 26, 2003	-	October 25, 2003
4th	October 26, 2003	-	November 25, 2003
5th	November 26, 2003	-	December 25, 2003

6th	December 26, 2003	-	January 25, 2004
7th	January 26, 2004	-	February 25, 2004
8th	February 26, 2004	-	March 25, 2004
9th	March 26, 2004	-	April 25, 2004
10th	April 26, 2004	-	May 25, 2004
11th	May 26, 2004	-	June 25, 2004

The two adjustment bills or debit/credit memos reflected the total amount of seventeen million nine hundred twenty-six thousand seven hundred six pesos and sixty-six centavos (₱17,926,706.66) allegedly due Transco and Genco.

However, MORESCO I believed that it was liable for the total amount of only four million two hundred twenty thousand forty-seven pesos and seventeen centavos (₱4,220,047.17) covering the 9th, 10th and 11th billing periods adverted to above instead of ₱17,926,706.66 pursuant to Section 25 of Annex C to the TSC.

On October 11, 2004, MORESCO I formally offered to pay Transco and Genco ₱4,220,047.17. It claimed that since the omission or failure of Transco and Genco to apply the right multiplier is considered a "wrong reading, omission or arithmetical mistake," under Section 25 of Annex C to the TSC, Transco and Genco should have sent the adjustment bill, debit/credit memo or a notice of such billing error within ninety (90) days from the bill's receipt, which is presumably every 25th of the month as this was the last day of each billing period. Otherwise, Transco and Genco shall be deemed to have waived the payment of the amount thereof. Since Transco and Genco sent the adjustment bills or debit/credit memos for the billing periods referred to above only on July 4 and 20, 2004, the right to collect on the amount on the adjusted bill representing the 1st to 8th billing periods had already prescribed because the billings with respect to these periods were made beyond the 90-day prescriptive period. On the other hand, the adjustment bills covering the 9th, 10th and 11th billing periods remained due and payable because these were the bills covered within the 90-day prescriptive period reckoned from July 4 and 20, 2004, the dates of the adjustment bills.

Transco and Genco rejected MORESCO's offer to pay.[7]

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[7] *Rollo*, pp. 28-32.

THE RULING OF THE ERC

A petition[8] dated 23 November 2004 was filed before the ERC by Moresco I against petitioner Transco, along with Mindanao Generation Corporation (Genco) and National Power Corporation (NPC).

After both parties submitted the required pleadings and participated in the hearings, the ERC concluded that Moresco I must not be held liable to pay the amount claimed by the NPC and Transco. Rather, it was deemed liable only for the amount representing the corrected billings made within the 90-day prescriptive period reckoned from the time the adjustments were made.[9] The ERC also held that MORESCO I should be allowed to avail itself of the Prompt Payment Discount, considering that the latter was willing to pay its arrearages, but the NPC and Transco refused.[10] Finally, the ERC ruled that Moresco I was not remiss in the latter's obligations and could not be declared to be at fault.[11]

The ERC rendered its Decision dated 30 June 2008, the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, the Commission finds that Misamis Oriental I Electric Cooperative, Inc. (MORESCO I) is liable to pay only the total amount of Four Million Two Hundred Twenty Thousand Forty-Seven Pesos and Seventeen Centavos (PhP4,220,047.17) representing the amount equivalent to three (3) months billing counted from the time of notice.

SO ORDERED.[12]

A Motion for Reconsideration dated 1 September 2008 was filed by petitioner[13] and another one, dated 3 September 2008

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[8] *Id*. at 141-144; docketed as ERC Case No. 2004-463.

[9] *Id*. at 54.

[10] *Id*. at 55.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 134.

by the NPC,[14] both asking that the Decision be set aside.[15] In the Order dated 16 March 2009, however, the ERC denied both motions for lack of merit.[16]

THE RULING OF THE CA

Of the three respondents in the ERC case, only petitioner filed an appeal[17] before the CA to which Moresco I filed a Comment.[18]

Unconvinced, the appellate court denied the Petition for lack of merit.

Transco filed its Motion for Reconsideration[19] further arguing as follows:

> Respondent was well aware of the correct multiplier to be applied to their billing consumptions. More importantly, Respondent was likewise aware that the billings it received for the period August 26, 2003 to June 25, 2004 applied an incorrect meter multiplier. However, despite knowledge thereof, Respondent did not bother to inform Petitioner and NPC of the error and enjoyed the benefits of the lower power bills for ten (10) billing periods.
>
> For this reason, equity dictates that Respondent should be held liable to Petitioner and NPC for the amount equivalent to what it received having been unjustly enriched at the expense of the latter.[20]

The motion was denied.

Hence, this petition imputing reversible error to the CA in its affirmation of the ERC ruling. Respondent filed its Comment[21] dated 13 February 2013.

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[14] *Id*.

[15] *Id*.

[16] *Id*. at 137.

[17] *Id*. at 100-118.

[18] *Id*. at 261-275.

[19] *Id*. at 203-213.

[20] *Id*. at 203-204.

[21] *Id*. at 312-333.

THE ISSUE

The sole issue to be resolved by this Court is whether the CA committed reversible error in affirming the ERC's ruling that Transco's failure to install the correct device that was reflective of the multiplier used in the billing indeed constituted an omission under Section 25 of Annex "C" of the Transition Contract, which should thus be rectified within 90 days from receipt of the bill.

OUR RULING

The present controversy calls for the application of Section 25 of the Transition Supply Contract, to wit:

> 25. In the event that a billing is found erroneous due to a wrong reading, arithmetical mistakes or omissions, SUPPLIER shall send CUSTOMER a debit/credit memo within ninety (90) days from the date of bill's receipt to correct the error. SUPPLIER shall also be deemed to waive any claim on any billing error if it fails to send notice for such billing error to CUSTOMER within ninety (90) days from billing date. Provided, that if the error is due to an inaccurate meter, said error may be corrected anytime.[22]

Two categories of error in billing are evidently envisioned by the provision: (1) error due to a wrong reading, or an arithmetical mistake or omission, which may be corrected only within 90 days from the date of customer's receipt of the bill, else, the claim shall be deemed waived; and (2) error due to an inaccurate meter, which may be corrected any time.

Invoking the second category of error, petitioner, along with Genco, sent Debit/Credit Memos dated 9 and 20 July 2004 to respondent, asking payment of ₱6,462,797.81[23] and ₱11,463,908.85,[24] or a total amount of ₱17,926,706.66.

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[22] *Id*. at 180.

[23] *Id*. at 97.

[24] *Id*. at 98; the Summary of Revised Power Bill of MORESCO I M6 & M7, is presented as follows:

Arguing that the situation called instead for the application of the first category of error, respondent promptly offered to pay ₱4,220,047.17.[25] This amount corresponded to the 9th, 10th, and 11th billing periods covered by the 90 days within which to rectify the error.[26]

The ERC decided in favor of respondent, and the CA affirmed the judgment.

We find no reversible error in the CA's affirmance of the ERC ruling.

Billing Period	AS BILLED (Peso) A	AS REVISED (Peso) B	TOTAL AMOUNT DUE (Peso) C=B-A
Jul 26-Aug 25, 2003	7,467,274.10	8,219,938.33	752,664.23
Aug 26-Sep 25, 2003	7,299,752.00	8,320,258.68	1,020,506.68
Sep 26-Oct 25, 2003	7,261,105.74	8,283,612.32	1,022,506.58
Oct 26-Nov 25, 2003	7,292,453.16	8,425,539.57	1,133,086.41
Nov 26-Dec 25, 2003	7,102,578.91	8,362,964.51	1,260,385.60
Dec 26-Jan 25, 2004	7,027,655.32	8,245,448.34	1,217,793.02
Jan 26-Feb 25, 2004	8,023,428.96	9,159,591.09	1,136,162.13
Feb 26-Mar 25, 2004	7,332,711.51	8,411,841.23	1,079,129.72
Mar26-Apr 25, 2004	7,733,558.42	8,910,881.11	1,177,322.69
Apr 26-May 25, 2004	8,379,560.08	10,156,502.42	1,776,942.34
May 26-Jun 25, 2004	13,262,078.14	13,149,487.59	(112,590.55)
		TOTAL	11,463,908.85

[25] *Id*. at 189; the Summary is as follows:

Billing Period	**NPC**	**TRANSCO**	**TOTAL**
March 26-April 25, 2004 (received July 23, 2004)	1,177,322.69	681,082.68	1,858,405.37
April 26-May 25, 2004 (received July 13, 2004)	1,776,942.34	697,290.01	2,474,232.35
May 26-June 25, 2004	(112,590.55)	(error already corrected)	(112,590.55)
TOTAL	**2,841,674.48**	**1,378,372.69**	**4,220,047.17**

[26] *Id*.

The ERC concluded that Transco failed to provide the correct meter multiplier when it installed the new meter — a clear omission that resulted in an erroneous billing.[27] This finding was affirmed in the CA ruling which we quote in full and with approval:

> We hold that the error in the billing due to an application of an incorrect meter is an ***omission*** within the ambit of the first sentence of Section 25, Annex C to the TSC. x x x.
>
> xxx xxx xxx
>
> The error committed by petitioner Transco was an omission because it failed to use the correct meter device, that is, one with a multiplier of 5,250, notwithstanding its admission in the Meter Test Report that it used the said multiplier. When Transco and Genco computed the billings for respondent MORESCO I for the months following the installation of the new meter device, they belatedly discovered that the new device had a multiplier of 3,500 instead of 5,250. This explained the under-billings. We note that when Transco installed the new meter device, it believed that the multiplier of which was 5,250 when, in reality, it was 3,500. The error was caused by Transco's own act of installing a meter device with a multiplier of 3,500 which was different from what it was supposed to install, that is, one with a multiplier of 5,250. Stated differently, Transco's omission consists in failing to install a device with a 5,250 multiplier. If there was any error in the present case, it was only in Transco's belief that the internal multiplier of the new meter device was 5,250 instead of 3,500. Considering that a multiplier is an inherent component of every meter device, as Transco expressly so stated, the correct meter device with a multiplier of 5,250 could have been available to it or, if not, within its means to obtain, had it only exercised ordinary diligence.[28]

It is a well-entrenched rule that "by reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus their findings of fact in that regard are generally accorded great respect, if not finality, by the courts."[29]

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[27] *Rollo*, p. 137.

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

[29] *Solmayor v. Arroyo*, 520 Phil. 854, 875 (2006); *Bulilan v. COA*, 360 Phil. 626 (1998); *Villaflor v. CA*, 345 Phil. 524 (1997).

This rule holds true especially in this case, in which the findings are supported by substantial evidence,[30] and even more after these have been affirmed by the CA.[31]

The conclusion was not without supporting substantial evidence. Part of the records was the Meter Test Report, which readily confirmed that there was no inaccurate meter. That report shows that the device was calibrated in the presence of representatives of both parties to this Petition; that three trials were conducted to determine the accuracy of the new device; and that the average accuracy of the device was 100.1%.[32]

Also crucial to the ERC's conclusion, which was subsequently affirmed by the CA, was the testimony of petitioner's witness, Mr. Edgardo Orencia. He expounded on the meaning of "error due to inaccurate meter"; that is, it is one that cannot be readily detected, but can only be shown using certain tools, instruments and/or historical or statistical data.[33] He hastily pointed, however, that the meter-reading error could readily be observed by just looking at the meter-reading report attached to every billing furnished by petitioner to respondent.[34] This fact bolsters the inevitable conclusion that in order to detect a billing error, no special instrument or tool was necessary — a tool otherwise required when the error is due to an inaccurate meter.

We therefore see no reason to depart from the assailed ruling.

The claim that Moresco I was unjustly enriched at the expense of petitioner is equally untenable for a simple reason. Because a contract exists between the parties, the obligations arising therefrom have the force of law between the parties and must be complied with in good faith.[35]

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[30] *Santos v. Manalili*, 512 Phil. 324 (2005).

[31] *Public Estates Authority v. Uy*, 423 Phil. 407 (2001).

[32] *Id.* at 37.

[33] *Id.*

[34] *Id.*

[35] Article 1159 of the Civil Code.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 197356. August 24, 2016]

EMILIO A. AQUINO, *petitioner, vs.* **CARMELITA TANGKENGKO, MORRIS TANGKENGKO and RANILLO TANGKENGKO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR ANNULMENT OF JUDGMENT; NATURE.— [A] petition for annulment of judgment initiated under Rule 47 of the *Rules of Court* is a remedy granted only under exceptional circumstances provided the petitioner has failed to avail himself of the ordinary or other appropriate remedies provided by law without fault on his part. It has often been stressed that such action is never resorted to as a substitute for the petitioner's own neglect in not promptly availing himself of the ordinary or other appropriate remedies. Owing to the exceptional character of the remedy of annulment of judgment, the limitations and guidelines set forth by Rule 47 should be strictly complied with.

2. ID.; ID.; ID.; A PETITION FOR ANNULMENT OF JUDGMENT IS NOT ALLOWED WHERE PETITIONER PREVIOUSLY AVAILED HIMSELF OF A PETITION FOR RELIEF FROM JUDGMENT UNDER RULE 38 BASED ON THE SAME GROUNDS.— The CA did not fail to stress

in its assailed resolution of March 10, 2011 that Section 1 of Rule 47 postulated that the petition for annulment of judgment was available only when the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies were no longer available through no fault of the petitioner. It consequently pronounced that the petitioner could no longer avail himself of the remedy simply because he had already brought the petition for relief from judgment pursuant to Rule 38. He had thereby foreclosed his recourse to the remedy of annulment of the judgment under Rule 47. x x x [T]he ground of extrinsic fraud that the petitioner relied upon to support his petition for annulment of judgment was available to him when he initiated the petition for relief from judgment in the RTC. If he did not raise it then, he was justifiably precluded from raising it in the CA to advocate the annulment of the ruling of the RTC reposing the custody of his minor son in the respondents instead of in him.

APPEARANCES OF COUNSEL

Ma. Theresa Dimazana-Wu for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

A litigant who brought a petition for relief from judgment under Rule 38 of the *Rules of Court* cannot anymore avail himself of an action for annulment of judgment under Rule 47 of the *Rules of Court* based on the same grounds available to him for the prior remedy.

The Case

The petitioner seeks to reverse and set aside the resolutions promulgated March 10, 2011[1] and June 21, 2011,[2] whereby

[1] *Rollo*, pp. 78-81; penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justice Rosmari D. Carandang and Associate Justice Manuel M. Barrios.

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

the Court of Appeals (CA) respectively dismissed his petition for annulment of judgment and denied his ensuing motion for reconsideration.

Antecedents

The petitioner filed a petition for the issuance of the writ of habeas corpus in the Regional Trial Court (RTC) in Malolos City, Bulacan in order to recover parental custody of his minor child, Azilimson Gabriel T. Aquino (Azilimson), from his mother-in-law, herein respondent Carmelita Tangkengko, and his brothers-in-law, herein respondents Morris Tangkengko and Ranillo Tangkengko. The petition was docketed as Special Proceeding No. 211-M-2005.[3]

In his petition, the petitioner alleged that he had been married to the late Lovely Tangkengko-Aquino (Lovely) in 1997, and their marital union had borne the minor Azilimson; that they had initially resided in Malabon but had subsequently moved to Bulacan in July 2001to live with her family; that by 2004, their marital bliss had started to fade following their constant quarrels arising from the conflict between him and some members of the family of Lovely, particularly his mother-in-law and his brother-in-law, respondent Ranillo, the latter having physically hit him at one point; that the conflict had forced him to leave the conjugal dwelling in Bulacan in order to live in his sister's Quezon City residence; that even so, he had continued to give support to Azilimson, and, in turn, Lovely had allowed their son to stay with him in Quezon City on weekends; that his access to Azilimson had become scarce since the death of Lovely on April 22, 2005; that the respondents had refused to inform him of the whereabouts of Azilimson despite his continuous demands; and that the respondents had thus deprived him of the rightful custody of his son.

The respondents denied that they had not deprived the petitioner of the lawful custody of his son, and countered that Azilimson's stay with them in Bulacan had been with the petitioner's consent because he had abandoned his son with

[3] *Id.* at 135-137.

them since the death of Lovely; and that they had then assumed the responsibility of raising and taking care of Azilimson.[4]

On February 19, 2007, after due proceedings, the RTC dismissed the petition, observing that it was for the best interest of Azilimson that his custody remained with the respondents in Bulacan.[5]

The petitioner's motion for reconsideration was denied on April 26, 2007, with the RTC declaring that the ruling had attained finality because the petitioner had filed the motion for reconsideration out of time. The RTC further declared that it found no cogent reasons to disturb its ruling.[6]

The certificate of finality was issued by the RTC in due course.[7]

The petitioner brought the petition for relief from judgment to seek the nullification of RTC's aforesaid rulings, contending that his motion for reconsideration had been filed on time. He submitted in support of his contention the certification secured from the Philippine Postal Corporation.

On September 26, 2007, the RTC denied the petition for relief from judgment, opining that the petition was in the nature of a second motion for reconsideration and was, therefore, prohibited by the *Rules of Court*.[8]

Undeterred, the petitioner assailed the dismissal of his petition for habeas corpus in the CA via the petition for annulment of judgment on the grounds of extrinsic fraud and denial of due process.[9]

As mentioned, the CA dismissed the petition for annulment of judgment on March 10, 2011,[10] pointing out that the petition

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[4] *Id*. at 142-150.

[5] *Id*. at 209-221.

[6] *Id*. at 231-232.

[7] *Id*. at 233.

[8] *Id*. at 241-244.

[9] *Id*. at 245-291.

[10] *Supra* note 1.

did not comply with the conditions set for the remedy by Section 1 and Section 2, Rule 47 of the *Rules of Court*; and that the petition suffered from other infirmities, like the certified true copy of the assailed order of February 19, 2007 not being clearly legible; and the failure of the petitioner to indicate material dates (*i.e.*, date of receipt of the order of April 26, 2007 denying his motion for reconsideration vis-à-vis the order of February 19, 2007; and the date of receipt of the order dated September 26, 2007 issued by the RTC denying his petition for relief from judgment).

On June 21, 2011, the CA denied the petitioner's motion for reconsideration because his discussion and arguments therein had been "judiciously evaluated and passed upon," and that, accordingly, there was no compelling or cogent reason to deviate from the ruling under consideration.[11]

Hence, this appeal.

Issues

In his petition for review on *certiorari*, the petitioner formulates and presents the following issues for consideration and resolution, to wit:

1. Whether or not the Honorable Court of Appeals erred in dismissing the petition filed before it for Annulment of Judgment based on **purely technical grounds** without even touching on the merits of the case?
2. Whether or not the Order (Decision) dated February 19, 2007 of respondent judge should be annulled under Rule 47 of the Rules of Court based on **extrinsic fraud and denial of due process**;
3. Whether or not the trial court erred in concluding that petitioner abandoned his wife and son and is therefore rendered unfit to be awarded custody of his minor son;
4. Whether or not the respondent judge correctly awarded custody over petitioner's minor son to the **maternal**

[11] *Supra* note 2.

> **grandmother**, respondent CARMELITA in violation of Article 212 of the Family Code which provides that "In case of absence or death of either parent, the parent present shall continue exercising parental authority. x x x"[12]

In their comment filed on December 14, 2011,[13] the respondents maintain that the dismissal by the CA of the petition for annulment of judgment was entirely valid; that the denial of the petition for relief from judgment by the RTC had been based on the law and evidence with a view to serving the best interest of the child; and that the order dismissing the petition for habeas corpus had been a just decision under the pertinent law and supporting evidence.

Ruling of the Court

The appeal lacks merit.

Before anything more, the Court clarifies that the third issue, which refers to the abandonment by the petitioner of his wife and minor son, thereby rendering himself unfit to claim the custody of the son; and the fourth, which relates to whether the trial court "correctly awarded custody over petitioner's minor son to the maternal grandmother," being factual, would require the Court to thoroughly review the records of the trial court. Such a thorough review would unravel the circumstances backstopping the conclusion and finding by the trial judge that the petitioner had abandoned his son and his wife; the circumstances warranting the declaration of his unfitness to have the custody of the son; and the factual justifications why the trial judge preferred the maternal grandmother to him on the issue of custody despite the express language of Article 212 of the *Family Code* explicitly favoring him. But the Court is not a trier of facts, and is limited in this mode of appeal to the resolution of questions of law. As such, it cannot embark into such thorough review of the records. It now declines to deal with the third and fourth issues posed by the petitioner.

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[12] *Rollo*, pp. 32-33.

[13] *Id*. at 296-304.

The first and second issues, supra, focus on the bases for the CA's dismissal of the petition for annulment of judgment without touching on the merits of case, and on whether or not the petitioner had sufficient grounds to seek the annulment of the order of the RTC issued on February 19, 2007.

We sustain the CA, and opine that the CA correctly and justly dismissed the petition for annulment of judgment and deemed the case closed and terminated.

First of all, a petition for annulment of judgment initiated under Rule 47 of the *Rules of Court* is a remedy granted only under exceptional circumstances provided the petitioner has failed to avail himself of the ordinary or other appropriate remedies provided by law without fault on his part. It has often been stressed that such action is never resorted to as a substitute for the petitioner's own neglect in not promptly availing himself of the ordinary or other appropriate remedies.[14]

Owing to the exceptional character of the remedy of annulment of judgment, the limitations and guidelines set forth by Rule 47 should be strictly complied with. Time and again, the Court has emphatically reminded litigants on this stricture, and on the dire consequences of ignoring the limitations and guidelines. The Court has explained why in *Dare Adventure Farm Corporation v. Court of Appeals*:[15]

> A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in

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[14] *Republic v. De Castro*, G.R. No. 189724, February 7, 2011, 641 SCRA 584, 590.

[15] G.R. No. 161122, September 24, 2012, 681 SCRA 580, 586-587.

Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. **A petition for annulment that ignores or disregards any of the safeguards cannot prosper**.

The CA did not fail to stress in its assailed resolution of March 10, 2011 that Section 1 of Rule 47 postulated that the petition for annulment of judgment was available only when the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies were no longer available through no fault of the petitioner. It consequently pronounced that the petitioner could no longer avail himself of the remedy simply because he had already brought the petition for relief from judgment pursuant to Rule 38. He had thereby foreclosed his recourse to the remedy of annulment of the judgment under Rule 47.

Secondly, the ground of extrinsic fraud that the petitioner relied upon to support his petition for annulment of judgment was available to him when he initiated the petition for relief from judgment in the RTC.[16] If he did not raise it then, he was justifiably precluded from raising it in the CA to advocate the annulment of the ruling of the RTC reposing the custody of his minor son in the respondents instead of in him.

Thirdly, anent lack of due process as a ground for the annulment of judgment, the records contradicted the petitioner's averment thereof. Indeed, the petitioner had fully participated in every stage of the proceedings taken in the RTC, presenting his own evidence and having been given the reasonable opportunity and time to refute all the adverse allegations of the respondents. Under the circumstances, he could not validly aver denial of due process as a basis for seeking the annulment of judgment.

And lastly, the Court cannot dwell on the supposed merits of the petitioner's judicial quest for the custody of his minor son. His pleas were those of a father already found and declared

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[16] *See* Section 2, Rule 47 of the *Rules of Court*.

unfit by the trial court with jurisdiction over the matter of custody. Also, the merits of the son's custody are not the question elevated to the Court in this appeal, but the propriety of the dismissal of his petition for annulment of judgment by the CA. We have really to resist the temptation to reopen the matter of custody of the minor son, attractive though it may be for most of us, because if we did not we would here be involving ourselves in reopening a dispute that the RTC had already settled with finality. We would thereby disregard the immutability of such final disposition, and traverse territory forbidden to all courts, including ours.

It remains for us to advise the petitioner to accept the unwanted outcome with humility, and just try to make amends for his many omissions that the RTC carefully noted and listed in its ruling dismissing the petition for custody. By so doing, he could still rekindle someday the ties with his son that were wittingly or unwittingly cut since the death of his wife.

WHEREFORE, the Court **AFFIRMS** the assailed resolutions of the Court of Appeals; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 199239. August 24, 2016]

PERCY MALONESIO, in his capacity as General Manager of AIR TRANSPORTATION OFFICE (ATO), *petitioner, vs.* **ARTURO M. JIZMUNDO,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; AIR TRANSPORTATION OFFICE (NOW THE CIVIL AVIATION AUTHORITY OF THE PHILIPPINES); DOES NOT ENJOY IMMUNITY FROM SUIT.—** [T]he ATO may not claim immunity from suit such that there would be a need to implead the Republic of the Philippines as the real party-in-interest. Indeed, in *Air Transportation Office v. Ramos*, the Court definitively ruled on this issue in this wise: "In our view, the [Court of Appeals] thereby correctly appreciated the juridical character of the ATO as an agency of the Government *not performing a purely governmental or sovereign function* x x x. **Hence, the ATO had no claim to the State's immunity from suit."** x x x Moreover, the Court also held in the above case that the issue of whether the ATO could be sued without the State's consent had been rendered moot by the passage of the Civil Aviation Authority Act of 2008, which abolished the ATO and transferred all its powers, duties and rights to the CAAP. Under Section 23(a) of Republic Act No. 9497, one of the corporate powers vested in the CAAP was the power to sue and be sued. x x x Therefore, by virtue of the express provision of Section 23(a) of Republic Act No. 9497, the CAAP also does not enjoy immunity from suit.

2. **CIVIL LAW; LAND REGISTRATION; TORRENS SYSTEM; THE OWNER OF A REGISTERED LAND DOES NOT LOSE HIS RIGHTS OVER THE PROPERTY ON THE GROUND OF LACHES AS LONG AS THE OPPOSING CLAIMANT'S POSSESSION WAS MERELY TOLERATED BY THE OWNER.—** Time and again, we have held that the owner of registered land does not lose his rights over the property on the ground of laches as long as the opposing claimant's possession was merely tolerated by the owner. x x x We find no reason to disturb the MTC's factual finding, which was affirmed by the Court of Appeals, that the ATO's possession of the subject property was, and continues to be, by mere tolerance of the heirs of the registered owner.

3. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; EJECTMENT; DOES NOT LIE TO RECOVER A PROPERTY OCCUPIED BY ANOTHER BY MERE TOLERANCE FOR PUBLIC USE, BUT THE OWNER HAS**

THE RIGHT TO BE COMPENSATED FOR THE REASONABLE VALUE OF THE PROPERTY.— Jizmundo no longer has the right to recover the possession of the subject property, through an action for ejectment, given that the same is now devoted to public use as it forms part of the Kalibo, Aklan Domestic and International Airport. Instead, Jizmundo and his co-heirs, as lawful owners, have the right to be compensated for the value thereof. x x x [S]ince 1985, the ATO occupied and possessed the subject property as an airport parking area without any formal agreement or the payment of rentals to Jizmundo or his co-heirs. Jizmundo and his co-heirs tolerated the ATO's possession in view of the latter's promise that the heirs would be paid the value of their property. x x x Clearly, the ATO occupied and possessed the subject property from 1985 up to present without first undertaking the process of expropriating the same or entering into a similar agreement with its rightful owners. In the very case relied upon by petitioner, *Forfom Development Corporation v. Philippine National Railways,* the Court cited cases that involved the taking of private property without the benefit of expropriation proceedings, the conversion thereof of public use, the failure of the landowner to question the taking after such conversion, and the remedy of the landowner in such a situation. x x x In the instant case, it had been more or less thirty-one (31) years since the ATO occupied and possessed the subject property without first expropriating the same. Jizmundo and his co-heirs were well aware of this fact for, as the courts *a quo* found, it is the nonpayment of the value of the subject property that caused them to file ejectment proceedings. As things now stand, the property still forms part of the Kalibo, Aklan Domestic and International Airport. x x x Under the circumstances, an action for ejectment would not be proper. Verily, it is not farfetched to presume that the grant of the unlawful detainer case against the CAAP and the transfer of the possession of the subject property in favor of Jizmundo would result in the interruption of the services provided by the CAAP and would lead to the inconvenience of the passengers and personnel that makes use of the said airport. In accordance with *Forfom*, the recovery of possession of Jizmundo can no longer be allowed so as not to hamper the said airport's services to the public. The remedy left to Jizmundo and his co-heirs is the right to be compensated the reasonable value of the subject property, which the CAAP

admittedly still uses for what it deems to be a vital public purpose. The CAAP must now institute the required action for expropriation over the subject property for the proper determination of the just compensation due to the owners thereof.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Inocencio-Calizo Law Office for respondent.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks to set aside the Decision[2] dated November 30, 2010 and the Resolution[3] dated October 7, 2011 of the Court of Appeals in CA-G.R. CEB-SP. No. 02831.

On July 4, 2006, respondent Arturo M. Jizmundo (Jizmundo) filed an action for **Unlawful Detainer with Preliminary Injunction** against petitioner Percy Malonesio, in the latter's capacity as General Manager of the Air Transportation Office (ATO). The case was docketed as Civil Case No. 2735 in the Municipal Trial Court (MTC) of Kalibo, Aklan.

The property subject of the case is a parcel of land designated as Lot 4857-B of the Kalibo Cadastre situated in Barangay Pook, Kalibo, Aklan and covered by Transfer Certificate of Title (TCT) No. T-18445.

In a **Decision**[4] **dated September 11, 2006**, the MTC made the following findings of fact:

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[1] *Rollo*, pp. 19-51.

[2] *Id*. at 53-65; penned by Associate Justice Pampio A. Abarintos with Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez concurring.

[3] *Id*. at 66-68; penned by Associate Justice Pampio A. Abarintos with Associate Justices Myra V. Garcia-Fernandez and Ramon Paul L. Hernando concurring.

[4] *Id*. at 69-71; penned by Acting Presiding Judge Eva Vita V. Ta-ay Tejada.

[T]here is no question that the subject property is registered and declared for taxation purposes in the name of the heirs of the late Bartola Marquez, one of whom is [Jizmundo] in his capacity as one of the grandchildren of the said deceased. It is shown that since1985 up to the present, defendant Air Transportation Office has been, and is still occupying and utilizing the land as airport parking area without any formal agreement or payment of rentals to [Jizmundo] or any of his co-heirs. [Jizmundo] and his co-owners appear to have tolerated [the ATO's] long occupation of the lot in question because of its promise to them that they will be paid the reasonable value of their land. Taking this fact into account, it appears that when [the ATO] occupied [Jizmundo's] subject property sometime in 1985, [Jizmundo] was already aware that the [ATO] intended to acquire not only the physical possession of the land but also the legal right to possess and ultimately to own the subject property, shown by its promise to pay the just compensation therefor. Disconsolately, said promise was not made good by the [ATO].

[Jizmundo], for himself and in behalf of his other co-owners, now seeks to eject the [ATO] from the land, alleging that the [ATO] has become a deforciant illegally withholding from [Jizmundo] the possession thereof when it refused to vacate the premises after [Jizmundo's] last demand (Annex "C"), which it received on June 5, 2006 (Annex "D"). [Jizmundo] filed the instant case on July 4, 2006, very well within one year from the date he made the last demand to vacate.[5]

The ATO belatedly filed its answer to the complaint, raising special and affirmative defenses such as the failure to implead the Republic of the Philippines as an indispensable party and the doctrine of estoppel by laches. Jizmundo, thereafter, filed a Motion to Render Judgment, which the MTC granted in its Order dated August 23, 2006.

In the above-quoted Decision dated September 11, 2006, the MTC, however, dismissed Jizmundo's complaint. The MTC ruled that the named defendant was Malonesio, who was sued in his capacity as the General Manager of the ATO. As such, any claim against him or the ATO is in reality a claim against the Republic of the Philippines as it is the public in general who has a direct interest over the subject matter of this case.

[5] *Id*. at 70.

Thus, the Republic of the Philippines is an indispensable party and Jizmundo's failure to implead it as a party defendant in the complaint gave the MTC no authority to validly and effectively grant the reliefs prayed for.

Jizmundo appealed the MTC ruling to the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 4, which appeal was docketed as Civil Case No. 7925. Jizmundo argued that the failure to implead an indispensable party is not a ground for the dismissal of the complaint. In such a case, it is the duty of the MTC to stop the trial and order the inclusion of the indispensable party. Jizmundo also averred that the ATO is not immune from suit as it is performing proprietary functions.

In a **Decision**[6] **dated April 17, 2007**, the RTC affirmed the judgment of the MTC. The trial court brushed aside the argument of Jizmundo on non-joinder of parties, ruling that the same was inapplicable under the Rule on Summary Procedure given that there is a limited period of time for such proceedings. The RTC also ruled that the ATO is immune from suit as it is an instrumentality of the Republic of the Philippines.

Jizmundo sought the reversal of the above RTC ruling in a Petition for Review under Rule 42 of the Rules of Court filed before the Court of Appeals. The petition was docketed as CA-G.R. CEB-SP. No. 02831.

While the petition was pending before the appellate court, the Civil Aviation Authority Act of 2008[7] was passed on March 4, 2008. In accordance therewith, the ATO was abolished and all its powers were transferred to the Civil Aviation Authority of the Philippines (CAAP).

On November 30, 2010, the Court of Appeals rendered its assailed decision, which decreed:

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The Decision dated 17 April 2007 of

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[6] *Id*. at 73-75; penned by Judge Narciso M. Aguilar.

[7] Republic Act No. 9497.

the Regional Trial Court, Branch 4, Kalibo, Aklan in Civil Case No. 7925, affirming *in toto* the Decision dated 11 September 2006 of the Municipal Trial Court of Kalibo, Aklan in Civil Case No.2735 for Unlawful Detainer With Preliminary Injunction, is hereby **REVERSED** and **SET ASIDE**.

The respondent is ordered to restore to petitioner possession of the property.

No pronouncement as to costs.[8]

The appellate court cited the ruling of the Court in *Civil Aeronautics Administration v. Court of Appeals*,[9] which declared that "as the CAA was created to undertake the management of airport operations which primarily involve proprietary functions, it cannot avail of the immunity from suit accorded to government agencies performing strictly governmental functions." Being the successor-in-interest of the CAA, thus inheriting its functions, the Court of Appeals ruled that the ATO was also not immune from suit. Thus, there was no reason to hold that the Republic of the Philippines was an indispensable party in the case at bar.

The Court of Appeals further ruled that if possession is by tolerance, such possession becomes illegal upon demand to vacate should the possessor refuse to comply with such demand. When Jizmundo made a demand on the ATO to vacate the subject property, the forbearance ceased and the occupancy of ATO became unlawful. Jizmundo's act of filing the ejectment suit was, thus, a proper remedy against the ATO. The Court of Appeals also denied for being uncorroborated the claim of Jizmundo of ₱20,000.00 per month as rental or reasonable compensation for the use and occupation of the subject property.

Malonesio filed a motion for reconsideration but the same was denied in the assailed Resolution dated October 7, 2011.

Malonesio, thus, filed this **petition for review on *certiorari***, arguing that the Court of Appeals erred: (1) in ordering the

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

[9] 249 Phil. 27, 35 (1988).

ATO to surrender possession of the subject property that is presently used for the operation of the Kalibo, Aklan Domestic and International Airport; and (2) in reversing the dismissal of the case, which dismissal was grounded on the fact that the Republic of the Philippines was not impleaded as an indispensable party.

Malonesio insists that the ATO (now CAAP) is an institution without a personality that is separate and distinct from the government such that any action against the ATO must be brought against the government and not the ATO alone. Thus, the action should have been brought against the real party-in-interest – the Republic of the Philippines. Malonesio posits that the joinder of indispensable parties is mandatory and a complaint may be dismissed if an indispensable party is not impleaded in the complaint.

Malonesio further avers that the Court of Appeals judgment of ordering the restoration of the possession of the subject property to Jizmundo is contrary to public policy and existing jurisprudence as the property is where the ATO's (now CAAP) existing facilities and structures are located. Said facilities and structures are vital to the country's civil aviation and airport operation as they are used by the public for international and domestic travel, which is a public purpose.

Lastly, Jizmundo was arguably estopped from questioning the CAAP's occupation and possession over the subject property since for more than 20 years, Jizmundo neither bothered to question the said possession nor did he raise his objections when the ATO constructed clearly visible permanent improvements.

In his comment to the petition, Jizmundo pointed out that the courts *a quo* found that the ATO's possession of the subject property was by mere tolerance and had never been adverse. Jizmundo claims that Malonesio failed to present any evidence to prove that Jizmundo was guilty of laches. Jizmundo also argues that he cannot be deprived of his property for the sake of public convenience. He insists that in *Air Transportation*

Office v. Ramos,[10] the Court ruled that the ATO could be sued without the State's consent.

Finally, Jizmundo pleads that the continued occupation of the subject property by the ATO without the payment of rental or just compensation despite the income derived therefrom is unjustly causing grave and irreparable damage to the lawful owners of the subject property. Thus, it is necessary that the Court of Appeals' order to restore the possession of the subject property be immediately executed.

The Court grants the petition.

Firstly, the Court agrees with Jizmundo that the ATO may not claim immunity from suit such that there would be a need to implead the Republic of the Philippines as the real party-in-interest. Indeed, in *Air Transportation Office v. Ramos*,[11] the Court definitively ruled on this issue in this wise:

> In our view, the [Court of Appeals] thereby correctly appreciated the juridical character of the ATO as an agency of the Government *not performing a purely governmental or sovereign function*, but was instead involved in the management and maintenance of the Loakan Airport, an activity that was not the exclusive prerogative of the State in its sovereign capacity. **Hence, the ATO had no claim to the State's immunity from suit**. x x x. (Emphasis supplied.)

Moreover, the Court also held in the above case that the issue of whether the ATO could be sued without the State's consent had been rendered moot by the passage of the Civil Aviation Authority Act of 2008,[12] which abolished the ATO and transferred all its powers, duties and rights to the CAAP. Under Section 23(a) of Republic Act No. 9497,[13] one of the

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[10] 659 Phil. 104, 115-116 (2011).

[11] *Id*. at 114.

[12] Republic Act No. 9497.

[13] Section 23 of Republic Act No. 9497 pertinently reads:

SECTION 23. Corporate Powers. — The Authority, acting through the Board, shall have the following corporate powers:

corporate powers vested in the CAAP was the power to sue and be sued.

In *Deutsche Gesellschaft Für Technische Zusammenarbeit v. Court of Appeals*,[14] we declared that:

> State immunity from suit may be waived by general or special law. The special law can take the form of the original charter of the incorporated government agency. Jurisprudence is replete with examples of incorporated government agencies which were ruled not entitled to invoke immunity from suit, owing to provisions in their charters manifesting their consent to be sued. These include the National Irrigation Administration, the former Central Bank, and the National Power Corporation. In *SSS v. Court of Appeals,* the Court through Justice Melencio-Herrera explained that by virtue of an express provision in its charter allowing it to sue and be sued, the Social Security System did not enjoy immunity from suit x x x. (Citations omitted.)

Therefore, by virtue of the express provision of Section 23(a) of Republic Act No. 9497, the CAAP also does not enjoy immunity from suit.

Secondly, we cannot uphold Malonesio's contention that Jizmundo and his co-heirs may no longer question the ATO's ownership or possession of the subject property on the ground of laches or estoppel. Time and again, we have held that the owner of registered land does not lose his rights over the property on the ground of laches as long as the opposing claimant's possession was merely tolerated by the owner. In *Ocampo v. Heirs of Bernardino Dionisio*, we explained:

> Equally untenable is the petitioners' claim that the respondents' right to recover the possession of the subject property is already barred by laches. As owners of the subject property, the respondents have the right to recover the possession thereof from any person illegally occupying their property. This right is imprescriptible.

(a) To succeed in its corporate name, to sue and be sued in such corporate name, and to adopt, use and alter its corporate seal, which shall be judicially noticed[.]

[14] 603 Phil. 150, 167 (2009).

Assuming arguendo that the petitioners indeed have been occupying the subject property for a considerable length of time, the respondents, as lawful owners, have the right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all.

Jurisprudence consistently holds that "prescription and laches can not apply to registered land covered by the Torrens system" because "under the Property Registration Decree, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession."[15]

We find no reason to disturb the MTC's factual finding, which was affirmed by the Court of Appeals, that the ATO's possession of the subject property was, and continues to be, by mere tolerance of the heirs of the registered owner.

Be that as it may, we find that, contrary to the ruling of the Court of Appeals, Jizmundo no longer has the right to recover the possession of the subject property, through an action for ejectment, given that the same is now devoted to public use as it forms part of the Kalibo, Aklan Domestic and International Airport. Instead, Jizmundo and his co-heirs, as lawful owners, have the right to be compensated for the value thereof.

To recall, the courts *a quo* found that since 1985, the ATO occupied and possessed the subject property as an airport parking area without any formal agreement or the payment of rentals to Jizmundo or his co-heirs. Jizmundo and his co-heirs tolerated the ATO's possession in view of the latter's promise that the heirs would be paid the value of their property. However, said promise was not fulfilled. Demands were made for the ATO to vacate the subject property, but the same went unheeded. After Jizmundo's final demand for the ATO to vacate the subject property in June 2006, he filed the case for unlawful detainer.

Clearly, the ATO occupied and possessed the subject property from 1985 up to present without first undertaking the process

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[15] G.R. No. 191101, October 1, 2014, 737 SCRA 381, 394.

of expropriating the same or entering into a similar agreement with its rightful owners.

In the very case relied upon by petitioner, *Forfom Development Corporation v. Philippine National Railways*,[16] the Court cited cases that involved the taking of private property without the benefit of expropriation proceedings, the conversion thereof to public use, the failure of the landowner to question the taking after such conversion, and the remedy of the landowner in such a situation. Thus –

> In *Manila Railroad Co. v. Paredes*, the first case in this jurisdiction in which there was an attempt to compel a public service corporation, endowed with the power of eminent domain, to vacate the property it had occupied without first acquiring title thereto by amicable purchase or expropriation proceedings, we said:
>
> > x x x whether the railroad company has the capacity to acquire the land in dispute by virtue of its delegated power of eminent domain, and, if so, whether the company occupied the land with the express or implied consent or acquiescence of the owner. **If these questions of fact be decided in the affirmative, it is uniformly held that an action of ejectment or trespass or injunction will not lie against the railroad company, but only an action for damages, that is, recovery of the value of the land taken, and the consequential damages, if any**. The primary reason for thus denying to the owner the remedies usually afforded to him against usurpers is the irremedial injury which would result to the railroad company and to the public in general. **It will readily be seen that the interruption of the transportation service at any point on the right of way impedes the entire service of the company and causes loss and inconvenience to all passengers and shippers using the line. Under these circumstances, public policy, if not public necessity, demands that the owner of the land be denied the ordinarily remedies of ejectment and injunction** x x x. There is also something akin to equitable estoppel in the conduct of one who stands idly by and watches the construction of the railroad without protest. x x x But the real strength of the rule lies in the fact that it is against public policy to permit a property

[16] 594 Phil. 10, 28-30 (2008).

> owner, under such circumstances, to interfere with the service rendered to the public by the railroad company. x x x (I)f a landowner, knowing that a railroad company has entered upon his land and is engaged in constructing its road without having complied with a statute requiring either payment by agreement or proceedings to condemn, remains inactive and permits it to go on and expend large sums in the work, he is estopped from maintaining either trespass or ejectment for the entry, and will be regarded as having acquiesced therein, and will be restricted to a suit for damages.

Further, in *De Ynchausti v. Manila Electric Railroad & Light Co.*, we ruled:

> The owner of land, who stands by, without objection, and sees a public railroad constructed over it, can not, after the road is completed, or large expenditures have been made thereon upon the faith of his apparent acquiescence, reclaim the land, or enjoin its use by the railroad company. In such a case *there can only remain to the owner a right of compensation.*
>
> xxx xxx xxx
>
> One who permits a railroad company to occupy and use his land and construct its roads thereon without remonstrance or complaint, cannot afterwards reclaim it free from the servitude he has permitted to be imposed upon it. His acquiescence in the company's taking possession and constructing its works under circumstances which made imperative his resistance, if he ever intended to set up illegality, will be considered a waiver. But while this presumed waiver is a bar to his action to dispossess the company, he is not deprived of his action for damages for the value of the land, or for injuries done him by the construction or operation of the road.
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> xxx xxx xxx
>
> We conclude that x x x the complaint in this action praying for possession and for damages for the alleged unlawful detention of the land in question, should be dismissed x x x but that such dismissal x x x should be without prejudice to the right of the plaintiff to institute the appropriate proceedings to recover the value of the lands actually taken, or to compel the railroad corporation to take the necessary steps to secure the condemnation

of the land and to pay the amount of the compensation and damages assessed in the condemnation proceedings.

In *Ansaldo v. Tantuico, Jr.*, a case involving the takeover by the Government of two private lots to be used for the widening of a road without the benefit of an action for expropriation or agreement with its owners, we held that the owners therein, having been silent for more than two decades, were deemed to have consented to such taking — although they knew that there had been no expropriation case commenced — and therefore had no reason to impugn the existence of the power to expropriate or the public purpose for which that power had been exercised. **In said case, we directed the expropriator to forthwith institute the appropriate expropriation action over the land, so that just compensation due the owners may be determined in accordance with the Rules of Court**. (Citations omitted; emphasis supplied.)

In the instant case, it had been more or less thirty-one (31) years since the ATO occupied and possessed the subject property without first expropriating the same. Jizmundo and his co-heirs were well aware of this fact for, as the courts *a quo* found, it is the nonpayment of the value of the subject property that caused them to file ejectment proceedings.

As things now stand, the property still forms part of the Kalibo, Aklan Domestic and International Airport. In the instant petition, Malonesio states that:

It bears stressing that the property sought to be restored to Jizmundo is exactly where the ATO's (now CAAP) existing facilities and structures are presently located. These facilities and structures are vital to the country's civil aviation and airport operation as they are used by the public for international and domestic travel and transportation, undoubtedly a public purpose.

As the country's premier agency in charge of implementing policies on civil aviation, air safety and promotion of air travel in the Philippines and abroad, [the] ATO has the right to remain in peaceful possession over the property, not only by reason of public policy, but by public necessity as well.[17]

[17] *Rollo*, p. 28.

Under the circumstances, an action for ejectment would not be proper. Verily, it is not farfetched to presume that the grant of the unlawful detainer case against the CAAP and the transfer of the possession of the subject property in favor of Jizmundo would result in the interruption of the services provided by the CAAP and would lead to the inconvenience of the passengers and personnel that makes use of the said airport.

In accordance with *Forfom*, the recovery of possession of Jizmundo can no longer be allowed so as not to hamper the said airport's services to the public. The remedy left to Jizmundo and his co-heirs is the right to be compensated the reasonable value of the subject property, which the CAAP admittedly still uses for what it deems to be a vital public purpose. The CAAP must now institute the required action for expropriation over the subject property for the proper determination of the just compensation due to the owners thereof.[18]

WHEREFORE, the Decision dated November 30, 2010 and the Resolution dated October 7, 2011 of the Court of Appeals in CA-G.R. CEB-SP. No. 02831 are hereby **SET ASIDE**. The Civil Aviation Authority of the Philippines is **DIRECTED** to institute the appropriate expropriation action over the property subject of this case within fifteen (15) days from finality of this Decision, in order that the just compensation due to its proper owners may be determined. No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[18] See also *Eusebio v. Luis*, 618 Phil. 586 (2009).

FIRST DIVISION

[G.R. No. 199497. August 24, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DELIA CAMANNONG,** *accused-appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; ILLEGAL RECRUITMENT IN LARGE SCALE; ESSENTIAL ELEMENTS, ESTABLISHED IN CASE AT BAR.— The essential elements of illegal recruitment committed in large scale are: (1) that the accused engaged in acts of recruitment and placement of workers as defined under Article 13(b) of the *Labor Code*, or in any prohibited activities listed under Article 34 of the *Labor Code*; (2) that she had not complied with the guidelines issued by the Secretary of Labor and Employment with respect to the requirement to secure a license or authority to recruit and deploy workers; and (3) that she committed the unlawful acts against three or more persons. x x x Both the courts below unanimously found that the accused-appellant had misrepresented to the complainants her capacity to send workers abroad for employment. Believing her misrepresentation, they parted with their money for her to process their deployment papers. It was established that she did not have the necessary license or authority to engage in recruitment in the Province of Pangasinan, including the Cities of Dagupan, San Carlos and Urdaneta, a fact duly attested to by a competent employee of the Department of Labor and Employment. In this connection, the Prosecution did not even need to establish that she had not been issued any license or authority to lawfully engage in the recruitment and placement of workers. Under the law, even a licensee or holder of the authority to engage in recruitment who failed to reimburse the amounts received as placement or related fees upon her failure to deploy the victim could be criminally liable for the crime. x x x The State fully discharged its burden of proof by establishing the concurrence of the aforestated elements of the crime charged with moral certainty.

2. ID.; ID.; ID.; CIVIL LIABILITY; PAYMENT OF ACTUAL DAMAGES AND LEGAL INTEREST UPHELD DESPITE ABSENCE OF RECEIPTS TO SHOW PAYMENTS.— We uphold the payment of actual damages in that amount and legal interest. It is true that actual damages, to be recoverable, must not only be capable of proof, but must also be proved with a reasonable degree of certainty, for the courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. The courts have thus generally required competent proof of the actual amount of loss, and for this reason have denied claims of actual damages not supported by receipts. Such policy has eliminated the fabrication of claims for actual damages, or deterred judges from indulging in speculation, conjecture or guesswork. Yet, in this case, despite the complainants uniformly testifying that they had parted with their money without asking for receipts, there seemed to be no dispute about each of them having actually paid to the accused-appellant that amount for their processing and passport fees and other expenses including the amount necessary to open their bank accounts. To still deny them their right to recover actual damages only because they had no receipts to show for their payments would be a travesty of justice. For, if we are now affirming her conviction for illegal recruitment in large scale for collecting the sums of money from them, it would really be beyond understanding to reverse the assessment of actual damages by the trial judge just to serve the general policy of limiting proof of actual damages to receipts. One of the constant lessons from our experience as judges is that the non-issuance of receipts by the illegal recruiters was also essential to the scheme to defraud the victims. By all means, then, should the lack of receipts not hinder the courts from vindicating the victims of the fraud. Moreover, the negation of the right to recover on that rigid basis would mock the *Rules of Court*, which has enshrined testimonial evidence as one of the means sanctioned by it of ascertaining in a judicial proceeding the truth respecting a matter of fact. Confining the proof of actual damages to documentary evidence would definitely trench on the institutional wisdom of the Court in erecting the triumvirate of evidence admissible in court. Notwithstanding their failure to get receipts from the accused-appellant, therefore, the RTC rightly fixed actual damages of ₱6,500.00 for each of the complainants, and the CA justifiably agreed with the RTC.

Finally, imposing on the actual damages legal interest reckoned from the filing of the information was in accord with jurisprudence. The rate of legal interest is 12% *per annum* from the filing of the information until June 30, 2013, and 6% *per annum* from July 1, 2013 until full payment of the actual damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

On appeal is the judgment promulgated on April 14, 2011 in CA-G.R. CR-H.C. No. 03529,[1] whereby the Court of Appeals (CA) affirmed the conviction of the accused-appellant for the crime of illegal recruitment in large scale penalized under Article 38(b), in relation to Article 39(a), of the *Labor Code* but increased the fine from ₱100,000.00 to ₱500,000.00. She had been found guilty under the decision rendered on August 19, 2008 in Criminal Case No. V-1013 by the Regional Trial Court (RTC), Branch 50, in Villasis, Pangasinan.[2]

Antecedents

The information for illegal recruitment in large scale, to which the accused-appellant pleaded *not guilty*, alleged:

That sometime on the 3rd week of July, 2000 at Mangampang, Pogo, Bautista, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously recruit JOEL G. SALVA, MARVIN ALBANO, REYNALDO SALVA, JR., ROLLY

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[1] *Rollo*, pp. 2-11; penned by Associate Justice Josefina Guevara-Salonga (retired), with Associate Justice Ramon R. Garcia and Associate Justice Florito S. Macalino concurring.

[2] CA *rollo*, pp. 37-43; penned by Judge Manuel F. Pastor, Jr.

CALIXTRO and ROGER CABAEL for employment abroad, without first securing the requisite license or authority from the Department of Labor and Employment.

Contrary to Art. 38, par. (a) in relation to Art. 39, par. (B), Labor Code of the Philippines (P.D. No. 442), as amended by PD No. 2018.[3]

At the trial, the Prosecution presented the complainants as witnesses, namely: Joel Salva, Marvin Albano, Rolly Calixtro, and Reynaldo Salva, Jr. Also presented as a witness for the Prosecution was Remedios Mercado, Labor and Employment Officer III of the District Office in Dagupan City of the Department of Labor and Employment (DOLE).[4] On the other hand, the accused-appellant testified for the Defense along with Rogelio Maniquez.[5]

The CA summarized the versions of the parties as follows:

x x x [T]he prosecution endeavored to prove that on the 3rd week of July 2000, DELIA met with MARVIN, ROLLY, REYNALDO, JR. and Joseph Cabael *[JOSEPH]* and introduced herself as a recruiter of workers for deployment to Israel as apple pickers. She told them that she needed their birth certificates and ₱500.00 for authentication, ₱1,500.00 for their medical examination and ₱6,500.00 to cover their processing fee and passports including the amount necessary to open a bank account for them. On the 2nd week of the following month, private complainants again met with DELIA and each of them handed her the amount of ₱6,500.00 in Alcala, Pangasinan. Because of their trust on and assurances of DELIA, they parted with their money without asking for receipts. According to them, DELIA promised that they would be able to leave for Israel sometime in the 3rd week of September 2000 but none of them was able to leave as promised. On February 2001, private complainants together with JOSEPH, SONNY, Betty Cabael and Susan Cabael went to DELIA's house to demand the return of their money and papers but she asked for time to withdraw the amount and retrieve the papers from their office. When DELIA defaulted again on her promise, they returned to her house but DELIA told them that the Philippine Overseas Employment Agency (POEA)

[3] *Id.* at 37.

[4] *Id.* at 37-40.

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

will sue them if they insist on backing-out. Thus, they agreed among themselves to seek assistance from and file a complaint with the National Bureau of Investigation *[NBI]* of Dagupan.

On further questioning, JOEL recalled that DELIA was introduced to him and to MARVIN, REYNALDO, JR., ROLLY, JOSEPH and ROGER by a certain SONNY BRILLO *[SONNY]*. He claimed that he signed a contract for a monthly salary of ₱35,000.00 upon his deployment to Java, Israel. However, he was not furnished a copy of this contract. MARVIN, on the other hand, maintained that he had spoken with DELIA numerous times before he parted with his ₱6,500.00 upon the supposition that the same will be used for the procurement of his passport and payment of other processing fees. According to him, he gave a total of ₱7,000.00 to DELIA since he gave an additional ₱500.00 in the house of Susan Cabael. Meanwhile, ROLLY testified on cross-examination that it was SONNY who introduced him to DELIA when the latter went to their barangay in Bautista, Pangasinan to convince people to work abroad. When questioned by the trial judge, he asserted that aside from the ₱6,500.00, he gave DELIA an additional ₱500.00 for "authentication purposes" while at SONNY's bakery. Lastly, REYNALDO, JR. maintained during his cross-examination that he gave the money to DELIA and not to SONNY. On further questioning, the witness averred that "Pastor Sonny" and DELIA were then at the canteen of JOEL and that when he and his companions went there, they learned that DELIA and "Pastor Sonny" were recruiting workers for jobs abroad.

To prove DELIA's lack of authority to recruit workers for employment abroad, Remedios Mercado, Labor Employment Officer III of the Department of Labor and Employment *[DOLE]* of Dagupan City District, testified that DELIA had no certificate or license to recruit nor was she issued any special recruitment authority by the POEA.

For her part, DELIA, a sales supervisor of Rhine Marketing Corporation, denied knowing private complainants prior to her apprehension or that she recruited them for overseas employment. She insisted that it was SONNY, cousin of her friend Celedonia Cabael, who sends workers to Israel and that he approached her to inquire whether she knew some persons who were seeking employment abroad. According to her, NBI agent Rolly Lomboy *[LOMBOY]* went to her house and demanded ₱5,000.00 from her. When she did not accede, LOMBOY left and called her to go to the van parked along the road.

When she got there, she saw five (5) unknown men seated inside the van and that she later learned that they were the applicants of SONNY. LOMBOY then took her mobile number and soon called her to meet him at Bayambang market. She sought the assistance of NBI agents who eventually apprehended LOMBOY in an entrapment operation at Cindy's Camiling. On cross-examination, she asserted that while detained at the Urdaneta District Jail, two persons, whom she later learned to be some of the private complainants, approached her to sign an affidavit to withdraw her complaint against LOMBOY.[6]

After trial, the RTC rendered its decision on August 19, 2008 pronouncing the accused-appellant guilty as charged, and disposed:

> WHEREFORE, judgment is hereby rendered finding accused Delia Camannong GUILTY beyond reasonable doubt of the crime of Illegal Recruitment in Large Scale, penalized under Art. 38 par. (b), in relation to Art. 39 par. (a), of the Labor Code, and is hereby sentenced to suffer the penalty of *life imprisonment* and to pay a fine of ₱100,000.00.
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> The accused is likewise ordered to pay the private complainants actual damages of ₱6,500.00 each with legal interest from the time of the filing of the Information until fully paid.
>
> SO ORDERED.[7]

The accused-appellant appealed to the CA, which promulgated the assailed judgment on April 14, 2011 affirming the conviction with modification of the fine, to wit:

> **WHEREFORE,** the foregoing considered, the appeal is hereby **DENIED** and the assailed judgment of conviction is hereby **AFFIRMED with the MODIFICATION** that the amount of the fine imposed is **INCREASED** to Five Hundred Thousand Pesos (₱500,000.00).
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> **SO ORDERED.**[8]

Hence, this appeal.

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[6] *Rollo,* pp. 4-6.

[7] CA *rollo,* p. 43.

[8] *Rollo,* p. 11.

Issue

The issue is whether or not the CA correctly affirmed the conviction of the accused-appellant for the illegal recruitment in large scale and properly imposed the penalty provided by law.

Ruling of the Court

The appeal lacks merit.

The essential elements of illegal recruitment committed in large scale are: (1) that the accused engaged in acts of recruitment and placement of workers as defined under Article 13(b)[9] of the *Labor Code*, or in any prohibited activities listed under Article 34[10] of the *Labor Code*; (2) that she had not

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[9] Article 13. *Definitions.* – x x x

(b) *"Recruitment and placement"* **refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee, employment to two or more persons shall be deemed engaged in recruitment and placement.**

xxx xxx xxx

[10] Article 34. *Prohibited practices.* - **It shall be unlawful for any individual, entity, licensee, or holder of authority**:

(a) To charge or accept, directly or indirectly, any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under this Code.

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him to another unless the transfer is designed to liberate the worker from oppressive terms and conditions of employment;

(e) To influence or to attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

complied with the guidelines issued by the Secretary of Labor and Employment with respect to the requirement to secure a license or authority to recruit and deploy workers;[11] and (3) that she committed the unlawful acts against three or more persons.[12]

In the assailed judgment, the CA affirmed the findings of facts of the RTC, observing that:

First. DELIA made misrepresentations pertaining to her capacity to send workers abroad for employment, for which reason JOEL, MARVIN, REYNALDO, JR. and ROLLY, parted with their money

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(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor or by his duly authorized representatives;

(h) To fail to file reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor.

(i) To substitute or alter employment contracts approved and verified by the Department of Labor from the time of actual signing thereof by the parties up to and including the periods of expiration of the same without the approval of the Secretary of Labor;

(j) To become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency; and

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under this Code and its implementing rules and regulations.

[11] *Nasi-Villar v. People*, G.R. No. 176169, November 14, 2008, 571 SCRA 202, 208; *People v. Ortiz-Miyake*, G.R. Nos. 115338-39, September 16, 1997, 279 SCRA 180, 193.

[12] Under Section 6 (m) (Definitions) of Republic Act No. 8042, illegal recruitment "when committed by a syndicate or in large scale shall be considered as offense involving economic sabotage;" and illegal recruitment "is deemed committed by a syndicate carried out by a group of three (3) or more persons conspiring or confederating with one another. **It is deemed committed in large scale if committed against three (3) or more persons individually or as a group**." See *People v. Fernandez*, G.R. No. 199211, June 4, 2014, 725 SCRA 152, 156-157.

believing that the same will be utilized to process their papers. Second. As testified to by an employee of the DOLE, one Remedios Mercado, DELIA had no authority to conduct any recruitment activity for overseas employment in the province of Pangasinan, including the cities of Dagupan, San Carlos and Urdaneta. Third. DELIA recruited for overseas employment, JOEL, MARVIN, REYNALDO, JR., and ROLLY.

Verily, DELIA is culpable for the crime of large scale illegal recruitment, having promised overseas employment to JOEL, MARVIN, REYNALDO, JR. and ROLLY as apple pickers in Israel. Her actions in requiring them to undergo medical examinations, opening bank accounts, procurement of passports and such other documents necessary for travel abroad, showed her alleged capacity to recruit private complainants for foreign employment when in truth she had no authority to do so. It must also be stressed that the failure of private complainants to show the covering receipts to prove payment to DELIA will not hinder her conviction for the crimes committed since the absence of receipts to evidence payment to the recruiter would not warrant an acquittal of the accused, and it is not necessarily fatal to the prosecution's cause.

Moreover, it is worthy to note that LOMBOY was never mentioned during the presentation of the prosecution's evidence either during the direct or cross-examination of its witnesses. When JOEL and MARVIN testified, only the name of Atty. Reynaldo Pangan was mentioned as the person before whom their respective affidavits were executed while the others did not mention any other names specifically that of LOMBOY. Curiously, not one of the private complainants were asked regarding their alleged connection to LOMBOY with respect to this case when they were cross-examined by the defense counsel. Truth be told, the extortion charge against LOMBOY is merely being utilized by DELIA to lend some credence to her defense of frame-up. To Our mind however, the complaint filed against DELIA cannot be taken as a mere act of retaliation on the part of JOEL, MARVIN, ROLLY and REYNALDO, JR. since it is apparent that the extortion case against LOMBOY came only after private complainants charged her with illegal recruitment. Verily, the lack of any connection between LOMBOY and private complainants is a tell-tale sign that the concept of frame-up was but an eleventh-hour defense of DELIA.

For another, LOMBOY's actuations must be taken as a distinct event from which the extortion which DELIA claims, was rooted. Without any strong evidence to connect private complainants to LOMBOY's alleged act of extortion, this Court cannot simply brush aside the evidence presented for the crime of illegal recruitment in large scale during the trial on the sole ground that the arresting officer was involved in extortion. This is especially true since each private complainant narrated with particularity the details of their recruitment with respect to what was promised by and the amounts paid to DELIA thereby placing beyond doubt that the latter was indeed engaged in recruiting them for overseas work without any lawful authority to do so.

Trite to state, when the credibility of the witness is in issue, the trial court's assessment is accorded great weight unless it is shown that it has overlooked a certain fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case. Here, We find no reason to deviate from the findings of the trial court since the totality of the evidence supports DELIA's conviction for the crime charged.[13]

We affirm the findings by the CA. It is settled that the factual findings of the trial court, including its assessment of the witnesses' credibility, are entitled to great weight and respect by the Court, particularly when the CA affirmed such findings. This is because the trial court is in the best position to determine the value and weight of the testimonies of witnesses by observing their demeanor at the time they testify. The absence of any showing by the accused that the trial court had overlooked certain facts of substance and value that, if considered, could alter the result of the case, or that the assessment by the trial court had been arbitrary, now impels the Court to give due deference to the trial court's determination of the credibility of the witnesses and other evidence.[14]

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[13] *Rollo,* pp. 8-10.

[14] *People v. Ocden,* G.R. No. 173198, June 1, 2011, 650 SCRA 124, 145-146.

In her defense, the accused-appellant tendered denial and frame up.[15] Such defenses contrasted with the positive and firm assertions of the complainants pointing to her as the person who had induced them to part with their money in exchange for their being employed abroad. Denial and frame up were negative by nature, and, as such, did not prevail over the affirmative assertions of fact by the Prosecution's witnesses. Indeed, such defenses are usually regarded by the courts as inherently weak by virtue of their being essentially self-serving and easy to contrive. Their being the usual recourse of persons like the accused-appellant who are haled in court to answer for criminal charges of illegal recruitment further diminishes their worthiness and credit.

Both the courts below unanimously found that the accused-appellant had misrepresented to the complainants her capacity to send workers abroad for employment. Believing her misrepresentation, they parted with their money for her to process their deployment papers. It was established that she did not have the necessary license or authority to engage in recruitment in the Province of Pangasinan, including the Cities of Dagupan, San Carlos and Urdaneta, a fact duly attested to by a competent employee of the Department of Labor and Employment. In this connection, the Prosecution did not even need to establish that she had not been issued any license or authority to lawfully engage in the recruitment and placement of workers. Under the law, even a licensee or holder of the authority to engage in recruitment who failed to reimburse the amounts received as placement or related fees upon her failure to deploy the victim could be criminally liable for the crime. It was observed in *People v. Ocden*:[16]

> x x x Section 6 of Republic Act No. 8042 enumerates particular acts which would constitute illegal recruitment whether committed by any person, whether a non-licensee, non-holder, licensee **or holder of authority**. Among such acts, under Section 6(m) of Republic Act

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[15] CA *rollo*, pp. 31-33.

[16] *Supra* note 14, at 142-143.

No. 8042, is the [f]ailure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the workers fault.

Since illegal recruitment under Section 6(m) can be committed by any person, even by a licensed recruiter, a certification on whether Ocden had a license to recruit or not, is inconsequential. x x x.

The State fully discharged its burden of proof by establishing the concurrence of the aforestated elements of the crime charged with moral certainty. Consequently, the proof of guilt of the accused was beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty, for only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.[17]

The judgment of the RTC, as affirmed by the CA, ordered the accused-appellant to pay the complainants actual damages of ₱6,500.00 each with legal interest from the filing of the information until fully paid.

We uphold the payment of actual damages in that amount and legal interest. It is true that actual damages, to be recoverable, must not only be capable of proof, but must also be proved with a reasonable degree of certainty, for the courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. The courts have thus generally required competent proof of the actual amount of loss, and for this reason have denied claims of actual damages not supported by receipts.[18] Such policy has eliminated the fabrication of claims for actual damages, or deterred judges from indulging in speculation, conjecture or guesswork. Yet, in this case, despite the complainants uniformly testifying that

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[17] Section 2, Rule 133 of the *Rules of Court*.

[18] *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, January 12, 2011, 639 SCRA 471, 481, citing *Viron Transportation Co., Inc. v. Delos Santos*, G.R. No. 138296, November 22, 2000, 345 SCRA 509, 519.

they had parted with their money without asking for receipts,[19] there seemed to be no dispute about each of them having actually paid to the accused-appellant that amount for their processing and passport fees and other expenses including the amount necessary to open their bank accounts. To still deny them their right to recover actual damages only because they had no receipts to show for their payments would be a travesty of justice. For, if we are now affirming her conviction for illegal recruitment in large scale for collecting the sums of money from them, it would really be beyond understanding to reverse the assessment of actual damages by the trial judge just to serve the general policy of limiting proof of actual damages to receipts.

One of the constant lessons from our experience as judges is that the non-issuance of receipts by the illegal recruiters was also essential to the scheme to defraud the victims. By all means, then, should the lack of receipts not hinder the courts from vindicating the victims of the fraud. Moreover, the negation of the right to recover on that rigid basis would mock the *Rules of Court*, which has enshrined testimonial evidence as one of the means sanctioned by it of ascertaining in a judicial proceeding the truth respecting a matter of fact. Confining the proof of actual damages to documentary evidence would definitely trench on the institutional wisdom of the Court in erecting the triumvirate of evidence admissible in court.

Notwithstanding their failure to get receipts from the accused-appellant, therefore, the RTC rightly fixed actual damages of ₱6,500.00 for each of the complainants, and the CA justifiably agreed with the RTC.

Finally, imposing on the actual damages legal interest reckoned from the filing of the information was in accord with jurisprudence.[20] The rate of legal interest is 12% *per annum* from the filing of the information until June 30, 2013, and 6%

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[19] *Rollo*, p. 4.

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

per annum from July 1, 2013 until full payment of the actual damages.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on April 14, 2011 by the Court of Appeals in CA-G.R. CR-H.C. No. 03529 subject to the **MODIFICATION** that accused-appellant Delia Camannong is ordered to pay to each of the complainants, namely: Joel G. Salva, Marvin Albano, Reynaldo Salva, Jr., Rolly Calixtro, and Roger Cabael, the amount of ₱6,500.00 as actual damages, plus interest thereon of 12% *per annum* from the filing of the information until June 30, 2013, and 6% *per annum* from July 1, 2013 until fully paid, and the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 202808. August 24, 2016]

EDUARDO C. SILAGAN, *petitioner, vs.* **SOUTHFIELD AGENCIES, INC., VICTORIANO A. BASCO and/or HYUNDAI MERCHANT MARITIME, CO., LTD.,**[*] *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; ELEMENTS THAT MUST CONCUR FOR DISABILITY

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[*] Respondent's name is stated as Hyundai Merchant Marine Co., Ltd. in the other parts of the records.

TO BE COMPENSABLE; "WORK-RELATED INJURY" AND "WORK-RELATED ILLNESS", DEFINED.— For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted. The 2000 POEA-SEC defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

2. ID.; ID.; DISABILITY BENEFITS; FINDINGS OF COMPANY DESIGNATED PHYSICIAN, UPHELD.— Dr. Almeda's assessment was merely based on the physical examination he conducted on the petitioner and on the medical records brought by the latter on the occasion of his consultation. No diagnostic tests or any medical procedure was conducted by Dr. Almeda to support his disability grade finding. As aptly observed by the appellate court, Dr. Almeda examined the petitioner only once and could not possibly form a reliable opinion of petitioner's fitness to work based on a single consultation. In contrast, Dr. Alegre was able to closely monitor the condition of petitioner's injury from the day after he was repatriated on 2 February 2004 up to the time that he underwent surgery and rehabilitation and until his disability rating was issued on 4 June 2004. On the basis of the recession of symptoms, the progress of which the company designated physician has observed for four months, he has a reasonable basis to arrive at the conclusion that the petitioner is already fit to render work of similar nature as he was previously engaged. This is not the first time that the Court upheld the findings of the company designated physician who has an unfettered opportunity to track the physical condition of the seaman in prolonged period of time versus the medical report of the seafarer's personal doctor who only examined him once and who based his assessment solely on the medical records adduced by his patient.

3. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE MANDATORY PROCEDURE IN CASE OF CONFLICT BETWEEN THE FINDINGS OF SEAFARER'S PERSONAL DOCTOR AND COMPANY-DESIGNATED PHYSICIAN MAY RESULT IN THE DENIAL OF CLAIM.— [P]etitioner failed to comply with the procedure laid down under Section 20 (B) (3) of the 2000 POEA-SEC with regard to the joint appointment by the parties of a third doctor whose decision shall be final and binding on them in case the seafarer's personal doctor disagrees with the company-designated physician's fit-to-work assessment. This referral to a third doctor has been held by this Court to be a **mandatory procedure** as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, the company can insist on its disability rating even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. x x x In fine, given that petitioner's permanent disability was not established through substantial evidence for the reasons above-stated, the Court of Appeals did not err in reversing the NLRC ruling for having been rendered with grave abuse of discretion. Verily, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, when the evidence presented negates compensability, the claim for disability benefits must necessarily fail, as in this case.

APPEARANCES OF COUNSEL

Romulo P. Valmores for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PEREZ, *J.*:

For resolution of the Court is this Petition for Review on *Certiorari*[1] filed by petitioner Eduardo C. Silagan (petitioner),

[1] *Rollo*, pp. 8-32.

seeking to reverse and set aside the Decision[2] dated 27 December 2011 and Resolution[3] dated 24 July 2012 of the Court of Appeals (CA) in CA-G.R. SP. No. 101549. The assailed decision and resolution reversed the National Labor Relations Commission (NLRC) Decision[4] dated 15 June 2007 and its Resolution[5] dated 9 October 2007 which ordered respondents Hyundai Merchant Maritime Co., Ltd. and Southfield Agencies, Inc. to pay petitioner the amount of US$50,000.00 representing his disability benefits.

The Facts

Respondent Hyundai Merchant Maritime Co., Ltd. is a foreign juridical entity engaged in maritime business. It is represented in the Philippines by its manning agent, and co-respondent herein, Southfield Agencies, Inc., a corporation organized and existing under Philippine laws. Southfield Agencies, Inc., in turn, is represented in this action by its co-respondent Victoriano A. Basco.

On 16 October 2003, petitioner was hired by Hyundai Merchant Maritime Co., Ltd. thru its manning agent, Southfield Agencies, Inc. as Third Mate on board ocean-going vessel, M/V "Eternal Clipper". His employment was to run for a period of ten (10) months and he was to receive, *inter alia*, a basic monthly salary of US$679.00 with an overtime pay of US$461.00, as evidenced by his Contract of Employment.[6] Under this contract, petitioner is covered by the Collective Bargaining Agreement[7] (CBA) between the Federation of Korean Seafarer's Union/ Associated Marine Officers' and Seamen's Union of the Philippines and herein respondents.

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[2] *Id*. at 280-297; penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Jose C. Reyes, Jr. and Agnes Reyes-Carpio, concurring.

[3] *Id*. at 310-311.

[4] *Id*. at 197-202.

[5] *Id*. at 203-204.

[6] *Id*. at 33.

[7] *Id*. at 34-42.

Prior to the execution of the contract, petitioner underwent a thorough Pre-Employment Medical Examination (PEME) and after compliance therewith, he was certified as *"fit to work"* by the company designated physician.

On 28 October 2003, petitioner joined the ship M/V "Eternal Clipper" and commenced his work on board the sea going vessel. While the ship was *en route* to Japan from Mexico on 4 January 2004, petitioner's right hand was slammed by a wooden door while he was performing his duties. As a result thereof, petitioner suffered a wrist injury causing him extreme physical pain on the right hand area of his body. The incident was immediately reported to petitioner's superior who gave him medication and advised him to perform light duties while his condition was being treated.

Upon arrival of the vessel in Pyeongtaek, Korea on 29 January 2004, petitioner was brought to the hospital upon complaints of persistent pain where he was diagnosed with *"fracture, closed, distal third radius and comminuted, with ulna head dislocation."* To alleviate the pain, an oral medication was prescribed for petitioner and he was advised to undergo surgery. Due to the progression of his condition's symptoms, petitioner was repatriated back to the Philippines on 2 February 2004.

Upon arrival in Manila, petitioner was immediately seen by Dr. Natalio G. Alegre, II (Dr. Alegre), the company designated physician, who initially assessed petitioner's physical condition. Dr. Alegre came out with the diagnosis that petitioner suffered "fracture, closed, distal third, radius comminuted, with ulna head dislocation." A surgery to correct his condition was recommended.

On 13 February 2004, petitioner underwent *"Open Reduction, Plating with Bone Grafting (Synthetic Bone Graft-Osteopore, Right) and Application of External Fixator Right"* at St. Lukes Medical Center with Dr. Antonio Tanchuling, Jr. (Dr. Tanchuling) as his surgeon. The surgery proved to be successful and he was discharged from confinement on 18 February 2004. On 1 April 2004, petitioner underwent another surgery for the

removal of the external fixator and was discharged the following day. After the second surgery, petitioner underwent physical therapy to facilitate for the complete rehabilitation of his injured hand.

On 1 June 2004, petitioner was declared *"fit to resume former work"* by Dr. Alegre.[8]

For failure of the company designated physician to assess his disability grading, petitioner sought an independent orthopedic surgeon, Dr. Marciano F. Almeda, Jr. (Dr. Almeda), to evaluate the condition of his injury. In a Medical Report dated 3 August 2004, Dr. Almeda found that petitioner was "partially and permanently disabled with Grade II (14.93%) impediment." The pertinent portion of the Medical Report[9] reads:

"xxx xxx xxx

On physical examination, there was note of slight atrophy of the right forearm muscles. Scars from pin tracts were likewise noted. There is an 8-9 cm[.] longitudinal surgical scar along the volar aspect of the right wrist extending proximally. Wrist motion in flexion and extension is also limited. Manual muscle testing is 4-5/5 on the right with weak grip strength.

Official results of his x-rays are not available.

Impression:

Fracture, closed, comminuted, distal third, radius, right with ulnar head dislocation.

S/p open reduction, plating with bone grafting (synthetic bone graft- osteopore) and application of external fixator.

Presently, [petitioner] continue to have pain and restricted motion of his right wrist. The forearm has lost it's (sic) usual strength from months of immobilization. He has lost his pre[-]injury capacity, and is not fit to work back to his previous work as a Seaman. He is ***partially and permanently disable*** with ***Grade II Impediment*** based on the POEA Contract."

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[8] *Id*. at 75.

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

Armed with the foregoing Medical Report, petitioner sought for the payment of disability benefits under the CBA by filing a claim against the respondents.[10] He averred that under the terms of the said agreement between the Federation of Korean Seafarer's Union/Associated Marine Officers' and Seamen's Union of the Philippines and herein respondents, a seafarer with an assessed disability of less than 50% but certified as permanently unfit is entitled to 100% compensation.[11] For failure of the respondents to acknowledge their purported obligation under the CBA, petitioner initiated an action for the recovery of disability benefits, sickness allowance, reimbursement of medical expenses and damages before the Labor Arbiter.[12]

For their part, respondents disavowed liability under the CBA by claiming that petitioner was successfully treated of his condition from the moment he was repatriated to the Philippines until he was certified to go back to work by the company designated physician.[13] During this interval, petitioner was under extensive medical treatment wherein he underwent surgery twice and several sessions of physical therapy to facilitate his complete recovery from his injury. The costs for the medical treatment were defrayed by the respondents in full and petitioner received sickness allowance during the period of his medical treatment.[14] Respondents also claimed that petitioner previously initiated similar action before the Labor Arbiter but decided to withdraw the same after the case was amicably settled by the parties and petitioner released respondents from liability by signing a Release, Waiver and Quitclaim.[15] Respondents thus claimed

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

[11] *Id*. at 110-120.

[12] *Id*.

[13] *Id*. at 81-109.

[14] *Id*.

[15] *Id*. at 87.

that petitioner is barred by *res judicata* from filing the instant case against the respondents.[16]

For lack of merit, the Labor Arbiter dismissed the complaint of the petitioner in a Decision[17] dated 22 September 2005. The Labor Arbiter held that the certification issued by the company designated physician that petitioner is *"fit to work"* negates his claim for the entitlement of disability benefits. He dismissed the Medical Report of Dr. Almeda as not binding because the physician only saw the patient during a lone consultation and "he was not subjected to the same examination treatment and monitoring as that undertaken by the company-designated physician."

On appeal, the NLRC reversed the ruling of the Labor Arbiter in a Decision dated 15 June 2007 thereby ordering respondents to pay the amount of US$50,000.00 as disability compensation.[18] The Commission held that petitioner's failure to go back to work for 147 days is conclusive of permanent total disability that warrants the payment of compensation following the ruling of the Court in *Crystal Shipping, Inc. v. Natividad*[19] which states that a seaman's inability to perform his usual work for more than 120 days constitutes permanent total disability. The *fallo* of the NLRC Decision reads:

"**WHEREFORE**, the decision appealed from is hereby **REVERSED**. The respondents are hereby ordered to pay the complainant disability compensation amounting to US$50,000.00, or its equivalent in Philippine currency at the time of payment, plus attorney's fee equivalent to ten percent (10%) of the said amount.

SO ORDERED."[20]

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[16] *Id.* at 88.

[17] *Id.* at 171-177.

[18] *Id.* at 201.

[19] 510 Phil. 332, 340 (2005).

[20] *Rollo*, p. 202.

For lack of merit, the Motion for Reconsideration of the respondents was denied by the NLRC in a Resolution.[21]

Finding that the NLRC gravely abused its discretion in adjudging respondents liable for disability benefits, the CA reversed its findings in a Decision.[22] According to the appellate court, the company designated physician's finding on petitioner's health condition is "the final determination of the latter's fitness to return to work." For one, it was Dr. Silagan who closely monitored the physical condition of the petitioner from the time he was repatriated until the time that he underwent surgeries and physical therapy thereby acquiring familiarity with the progression or improvement of petitioner's injury symptoms. In contrast, Dr. Almeda only examined the petitioner once and his conclusion was based on the medical records brought by petitioner to him. Aside from the Medical Report issued by Dr. Almeda, no other proof was adduced by petitioner to substantiate his claim. In addition, the appellate court adjudged that the invocation of the ruling of the Court in *Crystal Shipping v. Natividad* is misplaced because it was explicitly provided in the text of the decision that "[t]his declaration of a permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations." In conclusion, the CA held, "[e]ven if WE apply the 120-day rule relied upon by the NLRC, [petitioner] still cannot claim disability benefits because he was declared fit to return to work 147 days after the injury, which is within the 240-day period provided by law." The disquisition of the CA Decision reads:

"**WHEREFORE**, the instant petition is **GRANTED**. The June 15, 2007 Decision and October 9, 2007 Resolution of the National Labor Relations Commission (NLRC), Second Division, finding

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[21] *Supra* note 5.

[22] *Supra* note 2.

petitioners Southfield Agencies, Inc., Hyundai Merchant Maritime Co. Ltd., and Victoriano A. Basco liable for disability compensation and attorney's fees to Eduardo C. Silagan are hereby **REVERSED and SET ASIDE**. The Decision of the Labor Arbiter dated September 22, 2005 is hereby **REINSTATED**.

SO ORDERED."[23]

Similarly ill-fated was petitioner's Motion for Reconsideration which was denied by the appellate court in a Resolution.[24]

The Issue

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

I.

THE COURT OF APPEALS COMMITTED A SERIOUS FACTUAL ERROR WHEN IT SUSTAINED THE FIT TO WORK CERTIFICATION BY THE COMPANY- DESIGNATED PHYSICIAN[;]

II.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN NOT APPLYING THE APPROPRIATE JURISPRUDENCE AND LAW REGARDING TOTAL AND PERMANENT DISABILITY AND IN NOT AWARDING HIM ATTORNEY'S FEES.[25]

The Court's Ruling

The Court resolves to deny the petition.

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations

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[23] *Id.* at 297.

[24] *Supra* note 3.

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

Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, Series of 2000 of the Department of Labor and Employment, and the parties' CBA bind the seaman and his employer to each other.[26]

Section 20 (B), paragraphs (2), (3) and (6) of the 2000 POEA-SEC[27] reads:

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

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

xxx xxx xxx

[2. . . . .]

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is **declared fit or the degree of his disability has been established by the company-designated physician**.

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

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

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the

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[26] *Magsaysay Maritime Corp., et al. v. NLRC (2nd Division), et al*., 630 Phil. 352, 363-364 & 362 (2010).

[27] Department Order No. 4, series of 2000 is entitled Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels.

Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.[28] (Emphasis supplied)

xxx xxx xxx

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.[29]

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[30]

The 2000 POEA-SEC defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[31]

The ultimate question that needs to be addressed in the case at bar is whether or not the petitioner is entitled to disability benefits under the circumstances.

In insisting that he is entitled to disability benefits, petitioner faults the appellate court in dismissing the medical findings of

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[28] *Supra* note 26 at 363-364.

[29] *Id*. at 362.

[30] *Id*. at 362-363.

[31] *Id*. at 363.

Dr. Almeda who is an orthopedic surgeon and in lending credence to the opinion of the company designated physician. It was Dr. Almeda who opined that because of the intra-ventricular involvement of petitioner's fracture, there is a limitation in the joint motion of his right hand and he is suffering from residual pain which incapacitates him from lifting heavy objects and operating machines on the ship. Citing the ruling of the Court in *Remigio v. NLRC*,[32] petitioner argues that disability should not be understood more on its medical significance but on the loss of work of similar nature that he was trained for or accustomed to perform. Since petitioner has lost its capacity to perform his customary duty on board the vessel because of the injury he sustained on the occasion of his job, he insists that he is entitled to the payment of disability benefits.

We do not agree.

First, Dr. Almeda's assessment was merely based on the physical examination he conducted on the petitioner and on the medical records brought by the latter on the occasion of his consultation. No diagnostic tests or any medical procedure was conducted by Dr. Almeda to support his disability grade finding. As aptly observed by the appellate court, Dr. Almeda examined the petitioner only once and could not possibly form a reliable opinion of petitioner's fitness to work based on a single consultation. In contrast, Dr. Alegre was able to closely monitor the condition of petitioner's injury from the day after he was repatriated on 2 February 2004 up to the time that he underwent surgery and rehabilitation and until his disability rating was issued on 4 June 2004. On the basis of the recession of symptoms, the progress of which the company designated physician has observed for four months, he has a reasonable basis to arrive at the conclusion that the petitioner is already fit to render work of similar nature as he was previously engaged.

This is not the first time that the Court upheld the findings of the company designated physician who has an unfettered opportunity to track the physical condition of the seaman in

[32] 521 Phil. 330, 347 (2006).

prolonged period of time versus the medical report of the seafarer's personal doctor who only examined him once and who based his assessment solely on the medical records adduced by his patient. Thus in *Formerly INC Shipmanagement, Incorporated v. Rosales*,[33] we ruled:

> "Even granting that the complaint should be given due course, we hold that the company-designated physician's assessment should prevail over that of the private physician. The company-designated physician had thoroughly examined and treated Rosales from the time of his repatriation until his disability grading was issued, which was from February 20, 2006 until October 10, 2006. In contrast, the private physician only attended to Rosales once, on November 9, 2006. This is not the first time that this Court met this situation. Under these circumstances, the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records." (Emphasis omitted)

Second, petitioner failed to comply with the procedure laid down under Section 20 (B) (3) of the 2000 POEA-SEC with regard to the joint appointment by the parties of a third doctor whose decision shall be final and binding on them in case the seafarer's personal doctor disagrees with the company-designated physician's fit-to-work assessment. This referral to a third doctor has been held by this Court to be a **mandatory procedure** as a consequence of the provision that it is the company-designated doctor whose assessment should prevail.[34] In other words, the company can insist on its disability rating even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties.[35]

> "xxx xxx xxx

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[33] 737 SCRA 438, 453 (2014).

[34] *Id.* at 450.

[35] *Id.* at 452.

We are thus compelled to dismiss the present complaint, as we had similarly done in *Philippine Hammonia,* to impress upon the public the significance of a binding obligation. This pronouncement shall not only speed up the processing of maritime disability claims and decongest court dockets; more importantly, our ruling would restore faith and confidence in obligations that have voluntarily been entered upon. As an institution tasked to uphold and respect the law, it is our primary duty to ensure faithful compliance with the law whether the dispute affects strictly private interests or one imbued with public interest. We shall not hesitate to dismiss a petition wrongfully filed, or to hold any persons liable for its malicious initiation."[36] (Citation omitted)

In fine, given that petitioner's permanent disability was not established through substantial evidence for the reasons above-stated, the Court of Appeals did not err in reversing the NLRC ruling for having been rendered with grave abuse of discretion. Verily, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, when the evidence presented negates compensability, the claim for disability benefits must necessarily fail,[37] as in this case.

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

SO ORDERED.

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

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[36] *Id*. at 454.

[37] *Belmonte, Jr. v. C.F. Sharp Crew Management, Inc.*, G.R. No. 209202, November 19, 2014, 741 SCRA 395, 407.

THIRD DIVISION

[G.R. No. 208758. August 24, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOVEN GERON *y* YEMA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS, ESTABLISHED IN CASE AT BAR; TREACHERY ATTENDED THE KILLING.— The elements of murder that the prosecution must establish are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide. The prosecution was able to prove that it was appellant who shot and killed Willy. Diomedes, the lone eyewitness, gave a clear and categorical testimony in identifying appellant as the perpetrator[.] x x x The element of treachery attended the shooting against Willy. Joven suddenly alighted from the motorcycle, pointed his gun at Willy and immediately shot him. The attack was sudden and unexpected. Willy, who was unarmed, had no inkling that he would be shot such that he did not have any real chance to defend himself.

2. ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY.— 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. Appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346. The awards of civil indemnity, moral damages and exemplary damages must however be increased to ₱100,000.00 each in line with prevailing jurisprudence. 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 Decision until fully paid.

3. ID.; ID.; ATTEMPTED HOMICIDE; PENALTY.— The penalty for attempted homicide is *prision correccional*. It is two degrees lower than *reclusion temporal*, the penalty for homicide. The maximum of the indeterminate penalty shall be taken from the imposable penalty of *prision correccional*, taking into account the modifying circumstances, if any. There being no mitigating or aggravating circumstances, the maximum penalty should be imposed in its medium period. To determine the minimum of the indeterminate penalty, the penalty of *prision correccional* has to be reduced by one degree, which is *arresto mayor*. The minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor* in any of its periods. Appellant, therefore, was correctly sentenced to suffer an indeterminate penalty from four (4) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

For resolution is the appeal from the 25 February 2013 Decision[1] of the Court of Appeals in CA-G.R. CR HC No. 04890 affirming the conviction of appellant Joven Geron y Yema for the crime of murder by the Regional Trial Court (RTC) of Lucena City.

Appellant, together with his brothers Jerry and Juancho Geron were charged with murder and frustrated murder in two separate Informations, which read:

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[1] *Rollo*, pp. 2-11; Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon concurring.

Criminal Case No. 2004-947 for Murder

That on or about the 9th day of March 2004, at Barangay Bignay I, in the Municipality of Sariaya, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .45 pistol, conspiring and confederating together and mutually helping with one another, with intent to kill, qualified by treachery, did then and there willfully, unlawfully and feloniously attacked [sic], assault and shot [sic] with the said firearm one WILLY SISON y PADERON, thereby inflicting upon the latter multiple gunshot wounds on his body, which directly caused his death.[2]

Criminal Case No. 2004-916 for Frustrated Murder

That on or about the 9th day of March 2004, at Barangay Bignay I, in the Municipality of Sariaya, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .45 pistol, conspiring and confederating together and mutually helping with one another, with intent to kill, qualified by treachery, did then and there willfully, unlawfully and feloniously attack, assault and shoot with said firearm one DIOMEDES SISON Y PADERON, thereby inflicting upon the latter gunshot wounds on vital parts of his body, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical attendance rendered to said DIOMEDES SISON Y PADERON, which prevented his death.[3]

Appellant and his co-accused pleaded not guilty to the charges.

The facts, as narrated by the prosecution, follow:

On 9 March 2004, Diomedes Sison (Diomedes) was tending their sari-sari store while his brother, Willy Sison (Willy), was counting their sales when the group of appellant, Jerry Geron and Juancho Geron came on board a motorcycle. Appellant alighted from the motorcycle. He was followed by Juancho while Jerry stayed behind. Appellant suddenly pulled out a gun and shot Willie several times. He then turned to Diomedes

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[2] Records, pp. 2-3.

[3] *Id*. at 237-238.

and fired three (3) shots. The latter was able to evade the shots and he retreated to the rest room. Thereat, Diomedes heard appellant fire two more shots before the group sped away. Willy was brought to the hospital where he expired. Meanwhile, Diomedes was treated for three (3) abrasions in a separate hospital. Thereafter, Diomedes went straight to the police station to give his statement. He returned on the following day to give another statement.[4]

A post-mortem examination was conducted on Willy by Dr. Cecilio R. Macaraeg (Dr. Macaraeg) who found five (5) gunshot wounds in Willy's body. Dr. Macaraeg's findings are encapsulated as follow:

1. Gunshot wound: Entrance is oblong in shape, 3 cm. long, 2 cm. wide, located at the right shoulder at the area of the anterior aspect of the right shoulder joint. Exit is irregular in shape, 2cm. long, 2 cm. wide, located at the area between the right anterior axillary line and right midclavicular line just below the clavicle.
2. Gunshot wound: Entrance is circular in shape, 1.5cm in diameter at the right midclavicular line, just above the clavicle. Exist is 2 cm. long, 2 cm. wide at the area of the lateral angle of the left scapula of the posterior chest.
3. Gunshot wound: Entrance is oblong in shape, 2.5 cm long, 1 cm. wide, located at the lateral aspect of the right elbow of the upper extremity. Exit is none.
4. Entrance is circular I shape, 1 cm. in diameter, located at the lateral aspect, proximal third of the right leg, just below the knee. Exit is irregular in shape, 1.5 cm. long, 1.5 cm. wide at the medical aspect distal third of the right leg.
5. Entrance is circular in shape, 1.5 cm. in diameter at the right posterior superior iliac spine of the pelvis. Exit none.[5]

Appellant, for his defense, alleged that he was driving a tricycle in Mandaluyong City on the date of the alleged killing. Appellant

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[4] TSN, 3 August 2006, pp. 7-24.

[5] Exhibit folder (No correct pagination).

claimed that he only came to know of the charges against him on the following day. Appellant did not surrender but instead chose to stay in Manila.[6]

Emelito Paderon (Paderon), a rebuttal witness, testified that he saw appellant and Gerry at Sitio Aplaya in Sariaya, Quezon on the date of the shooting at around 5:00 p.m.[7]

On 18 August 2010, the RTC rendered a Decision[8] finding appellant guilty beyond reasonable doubt of murder and attempted homicide. The *fallo* of the Decision reads:

> WHEREFORE, accused **JUANCHO GERON and [J]ERRY GERON** of Sariaya, Quezon, on the ground of reasonable doubt, are hereby **ACQUITTED** of the crime charged in both cases, and accused **JOVEN GERON**, also of Sariaya , Quezon is found **GUILTY** beyond reasonable doubt of the crime of Murder, defined and punished under Article 248 of the Revised Penal Code, in Criminal Case No. 2004-947, and he is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA**, and to pay the heirs of the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages, and ₱35,000.00 as actual damages.
>
> And in Criminal Case No. 2004-916, Joven Geron is hereby found **GUILTY** beyond reasonable doubt of the crime of Attempted Homicide, and he is sentenced, applying the Indeterminate Sentence Law, to suffer the penalty of **FOUR (4) MONTHS** of arresto mayor as minimum, to **FOUR (4) YEARS AND TWO (2) MONTHS** of prision correccional as maximum, and to pay the victim the amount of ₱2,000.00 as actual damages and ₱3,000.00 as moral damages.
>
> Accused Juancho Geron and [J]erry Geron are ordered released from custody, unless they are being detained for any other lawful cause or causes.[9]

The RTC found appellant guilty of murder and attempted homicide. The trial court gave credence to the testimony of

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[6] TSN, 11 December 2008, pp. 5-9.

[7] TSN, 17 September 2009, p. 7.

[8] Records, pp. 237-247; Presided by Judge Adolfo V. Encomienda.

[9] *Id*. at 246-247.

Diomedes considering that it jived with the physical evidence presented by the prosecution. The trial court also found the presence of treachery to qualify the crime to murder. The trial court dismissed appellant's alibi as weak in view of Diomedes' positive identification. However, the trial court acquitted co-accused Juancho and Gerry for failure of the prosecution to prove that they conspired to commit the crime.

Appellant elevated the case to the Court of Appeals. The appellate court affirmed *in toto* the ruling of the trial court.

Aggrieved by the appellate court's ruling, appellant filed a Notice of Appeal.[10]

Appellant argues that Diomedes is a biased witness because he is a brother of the victim. Appellant also challenges the testimony of Paderon to discredit his alibi. Appellant claims that the rebuttal witness only executed a statement the day before he testified in court. Appellant maintains his alibi and proffers that it was physically impossible for him to be in Mandaluyong City and Sariaya, Quezon at the same time if time and distance were to be taken into consideration.

The appeal is bereft of merit.

The elements of murder that the prosecution must establish are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide.[11]

The prosecution was able to prove that it was appellant who shot and killed Willy. Diomedes, the lone eyewitness, gave a clear and categorical testimony in identifying appellant as the perpetrator, thus:

Q: Now Mr. Witness, why did you file a complaint against the accused, to wit: [J]erry alias Epong, Joven and Juancho?

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[10] *Rollo*, p. 12.

[11] *People v. Lagman*, 685 Phil. 733, 743 (2012).

A: Because of the frustrated murder for (sic) me and murder for my brother Willy Sison, sir.

Q: Now when did these two incident[s] happened?

A: It happened on March 9, 2004 at about 7:00 o'clock in the evening, sir.

ATTY. TALABONG

Q: Where did it happen?

A: In our store at Bignay I, Sariaya, Quezon, sir.

xxx xxx xxx

Q: What were you exactly doing at that particular time in front of your house or in your store?

A: I was standing near the door while smoking at the same time and I was also watching my brother who was counting money at that time, sir, because were about to close the store, sir.

xxx xxx xxx

COURT

Q: What time was it?

A: 7:00 o'clock in the evening, Your Honor.

xxx xxx xxx

ATTY. TALABONG

Q: Now, while your brother was counting money and as you have stated that you were watching your brother on that particular store, what happened next, Mr. Witness?

A: A motorcycle suddenly arrived and parked in our store with three persons on board, sir.

ATTY. TALABONG

Q: For clarification, how far was the distance between your store and the motorcycle when it was parked?

A: About three arm stretches, sir.

xxx xxx xxx

ATTY. TALABONG

Q: You stated a while ago that you mentioned that there are three persons on board on such motorcycle, did you recognize [those] persons?

xxx xxx xxx

Witness

A: Yes, sir.

ATTY. TALABONG

Q: What are the names or identities of these persons?

A: Joven Geron, [J]erry Geron and Juancho Geron, sir.

Q: After that motorcycle parked just in front of your store what happened next?

A: First thing, Joven alighted from the motorcycle and approached our store, sir.

Q: How about the two?

A: Juancho followed Joven and Epong was left on the motorcycle while the engine is still on, sir.

Q: Then what happened next?

A: Joven Geron pulled out his gun and "patraydor na…

xxx xxx xxx

Witness

A: "Noong malapit na si Joven sa aking kapatid bigla siyang bumunot ng baril na pistol mabilis po itong pinaputukan ang aking kapatid ng patraydor", sir.

xxx xxx xxx

ATTY. TALABONG

Q: Now Mr. Witness, when Joven shot your brother, what happened next?

A: When my brother was shot by Joven, Juancho was behind acting as a back-up, sir.

Q: How about you, what happened to you, if any?

A: After my brother was shot. . .

ATTY. ZABALLEA

It is already a narration, Your Honor.

WITNESS

A: . . . pinaputukan po ako ng tatlong beses, sir, by Joven.

ATTY. TALABONG

Q: By the way, you stated a while ago that Joven shot your brother Willy Sison. My question is: what happened to your brother when he was shot by Joven?

A: He was not able to move from the place where he was sitting, sir.

Q: Now you stated that you witnessed when Joven shot your brother Willy what was your brother doing when he was shot by Joven?

A: He was counting the money, sir.

Q: Are you sure of that?

A: Yes, sir.

Q: And you stated that your brother was shot by Joven was he hit?

A: Yes, sir.

Q: And do you know how many times Joven shot your brother Willy?

A: The first one was 3 times, sir.

Q: Now you stated that after Joven shot your brother he also shot you 3 times, am I correct?

Q: And what did you do after you were shot 3 times by Joven also?

A: "Una po umiwas po ako", first, I tried to evade the shot by jumping and going to our house and tried to go to the comfort room, sir.

COURT

Q: Are you telling that you were hit by those three shots of accused Joven?

A: I was hit two times, Your Honor.

COURT

Continue, counsel.

ATTY. TALABONG

Q: Where were you hit?

A: At my stomach and thigh, sir.[12]

The Court of Appeals found that Diomedes' testimony is consistent with his sworn affidavits and the narration he gave during the joint preliminary investigation, thus:

During his direct examination, Diomedes categorically testified that it was accused-appellant who shot at him and his brother at the time of the incident. He was consistent in this declaration as manifested in his first and second affidavits executed before the police investigators who separately interviewed him on the night of the incident and the following day. In his Sinumpaang Salaysay executed on March 9, 2004, he answered thusly to PO3 Enrico Perez:

xxx xxx xxx

[PO3 Perez]:

T- Kailan at saan kayo binaril.

[Diomedes]:

S- Mga alas siete po ng gabi, ika-9 ng Marso 2004, doon sa aming lugar sa Barangay Bignay I, Sariaya, Quezon.

T- Paano kayo nabaril ng iyong kapatid.

S- Nasa pinto ako ng tindahan naming, bigla na lang my dumating na motorsiklo bumaba ho ang isang sakay si JOVEN GERON, at binunot ang kalibre 45, sa baywang niya, binaril na si Willie Boy, na nasa loob ng tindahan at nagkukuwenta

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[12] TSN, 3 August 2006, pp. 7-16.

ng pera, nakaupo, tatlong putok sa kanya, tapos ako na ang binaril nito at tinamaan ako sa tiyan daplis at isa ay sa kanang pigi, nakalukso ako, at tumakbo ako sa loob ng aming bahay at nakatago sa kubeta.

xxx xxx xxx

He reiterated the same narration during the joint preliminary examination on April 14, 2004, to wit:

Q: So, while you were there [in the store], what were you doing at that time, 7:00 o'clock in the evening?

A: I was about to go out and when I was already at the door, the assailant arrived, sir.

Q: Who is that assailant?

A: Joven Geron, sir.

Q: Upon his arrival, what happened?

A: He suddenly drew his gun and shot my brother thrice, sir.

Q: What weapon?

A: Cal. 45, sir.

Q: Then, what did you do?

A: I ran away, sir.

Consistently, he made the same statement during the taking of his testimonial evidence on August 3, 2006, viz:

[ATTY. TALABONG]:

Q: Now, while your brother was counting money and as you have stated that you were watching your brother on that particular store, what happened next, Mr. Witness?

[DIOMEDES]:

A: A motorcycle suddenly arrive and parked in our store with three persons on board, sir.

xxx xxx xxx

Q: What are the name or identities of these persons?
A: Joven Geron, Gerry Geron and Juancho Geron, sir.

Q: After that motorcycle parked just in front of your store what happened next?
A: First thing, Joven alighted from the motorcycle and approached our store, sir.

Q: How about the two?
A: Juancho followed Joven and Epong was left on the motorcycle while the engine is still on, sir.

Q: Then what happened next?
A: Joven Geron pulled out his gun and patraydor na. . .

xxx xxx xxx

A: Noong malapit na si Joven sa aking kapatid bigla siyang bumunot ng baril na pistol mabilis po nitong pinaputukan ang aking kapatid ng patraydor sir.[13]

Positive identification when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[14]

In this case, Diomedes had no motive to falsely accuse appellant. In fact, he would naturally be interested to find and pinpoint the real perpetrator in order to achieve justice for the death of his brother.

The element of treachery attended the shooting against Willy. Joven suddenly alighted from the motorcycle, pointed his gun at Willy and immediately shot him. The attack was sudden and unexpected. Willy, who was unarmed, had no inkling that he would be shot such that he did not have any real chance to defend himself.

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[13] *Rollo*, pp. 7-8.

[14] *People v. Gani*, 710 Phil. 466, 474 (2013).

With respect to appellant's alibi, the Court of Appeals correctly disregarded it because of the statement of the rebuttal witness to the contrary, *i.e.*, appellant was in Sitio Aplaya, Sariaya, Quezon on the date and around the time of the commission of the crime.

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.[15] Appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346.

The awards of civil indemnity, moral damages and exemplary damages must however be increased to ₱100,000.00 each in line with prevailing jurisprudence.[16] 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 Decision until fully paid.

The trial court correctly convicted appellant of attempted homicide of Diomedes. We find the following *ratio decidendi* of the Court of Appeals on this point tenable:

> This Court likewise agrees with the trial court in finding accused-appellant guilty of the attempted homicide of Diomedes.
>
> Unlike in the case of his brother, Diomedes was obviously not unable to evade the attacks of accused-appellant since he saw him from the moment he alighted from their motorcycle and was sufficiently warned that he was bearing arms. More importantly, he was actually able to escape the scene by jumping towards their house. Hence, the attendant circumstance which would have qualified the crime charged to murder is not present in his case.

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

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

Moreover, by definition, a felony is "attempted" when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In the present case, shots were fired by accused-appellant towards Diomedes but none of the injuries he sustained, as a result – by testimony of Dr. Catarroja – were fatal. In addition, accused-appellant was prevented from further attacking Diomedes by the simple expedient of the latter's escape. Ergo, this case is clearly still within the attempted stage of the execution of the crime of homicide.[17]

The penalty for attempted homicide is *prision correccional*. It is two degrees lower than *reclusion temporal*, the penalty for homicide. The maximum of the indeterminate penalty shall be taken from the imposable penalty of *prision correccional*, taking into account the modifying circumstances, if any. There being no mitigating or aggravating circumstances, the maximum penalty should be imposed in its medium period. To determine the minimum of the indeterminate penalty, the penalty of *prision correccional* has to be reduced by one degree, which is *arresto mayor*. The minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor* in any of its periods. Appellant, therefore, was correctly sentenced to suffer an indeterminate penalty from four (4) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.[18]

WHEREFORE, the assailed 25 February 2013 Decision of the Court of Appeals in CA-G.R. CR HC No. 04890 finding appellant Joven Geron y Yema guilty beyond reasonable doubt of the crime of murder and attempted homicide is **AFFIRMED** with the following **MODIFICATIONS**:

1. The awards of civil indemnity, moral damages and exemplary damages are increased to ₱100,000.00 each;

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[17] *Rollo*, p. 10.

[18] *Cabildo v. People*, 642 Phil. 737, 746-747 (2010).

2. That appellant is not eligible for parole; and
3. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 211724. August 24, 2016]

IN THE MATTER OF THE PETITION FOR CORRECTION OF ENTRY (CHANGE OF FAMILY NAME IN THE BIRTH CERTIFICATE OF FELIPE C. ALMOJUELA AS APPEARING IN THE RECORDS OF THE NATIONAL STATISTICS OFFICE), FELIPE C. ALMOJUELA, *petitioner, vs*. **REPUBLIC OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CORRECTION OF ENTRIES IN CIVIL REGISTRY; NATURE.— Rule 108 of the Rules of Court provides the procedure for the correction of substantial changes in the civil registry through an appropriate adversary proceeding. An adversary proceeding is defined as one "having opposing parties; contested, as distinguished from an *ex parte* application, one of which the party seeking relief

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* Additional Member per Raffle dated 22 August 2016.

has given legal warning to the other party, and afforded the latter an opportunity to contest it."

2. **ID.; ID.; ID.; TWO SETS OF NOTICES TO POTENTIAL OPPOSITORS, REQUIRED.—** A reading of Sections 4 and 5 shows that the Rule mandates two (2) sets of notices to potential oppositors: one given to persons named in the petition, and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties. Consequently, the petition for a substantial correction of an entry in the civil registry should implead as respondents the civil registrar, as well as *all other persons who have or claim to have any interest that would be affected thereby*.

3. **ID.; ID.; ID.; ID.; FAILURE TO COMPLY STRICTLY WITH THE NOTICE REQUIREMENT RENDERS THE PROCEEDINGS NULL AND VOID.—** In this case, the CA correctly found that petitioner failed to implead both the Local Civil Registrar and his half-siblings. Although he claims that his half-siblings have acknowledged and accepted him, the procedural rules nonetheless mandate compliance with the requirements in the interest of fair play and due process and to afford the person concerned the opportunity to protect his interest if he so chooses. x x x In sum, the failure to strictly comply with the above-discussed requirements of Rule 108 of the Rules of Court for correction of an entry in the civil registrar involving substantial and controversial alterations renders the entire proceedings therein null and void. In *Republic v. CA*, the Court held that the proceedings of the trial court were null and void for lack of jurisdiction as the petitioners therein failed to implead the civil registrar, an indispensable party, in the petition for correction of entry[.]

APPEARANCES OF COUNSEL

Francis S. Del Valle for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated February 27, 2014 rendered by the Court of Appeals (CA) in CA-G.R. CV. No. 98082, which reversed and set aside the Decision[3] dated October 6, 2011 and the Order[4] dated November 14, 2011 of the Regional Trial Court of Virac, Catanduanes, Branch 43 (RTC) in Spec. Proc. No. 1345 granting the Petition for Correction of Entry in the Certificate of Live Birth filed by petitioner Felipe C. Almojuela (petitioner).

The Facts

For almost sixty (60) years, petitioner has been using the surname "Almojuela." However, when he requested for a copy of his birth certificate from the National Statistics Office (NSO), he was surprised to discover that he was registered as "Felipe Condeno," instead of "Felipe Almojuela." Thus, he filed a Petition for Correction of Entry[5] in his NSO birth certificate before the RTC,[6] docketed as Spec. Proc. No. 1345.[7]

Petitioner alleged that he was born on February 25, 1950 in Pandan, Catanduanes and is the acknowledged natural child of Jorge V. Almojuela (Jorge), former governor of the said province, and Francisca B. Condeno (Francisca), both deceased. He averred that while his parents did not marry each other, he has been known to his family and friends as "Felipe Almojuela" and has been using the said surname in all of his official and legal

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[1] *Rollo*, pp. 9-19.

[2] *Id*. at 21-34. Penned by Associate Justice Stephen C. Cruz with Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr. concurring.

[3] *Id*. at 46-52. Penned by Presiding Judge Lelu P. Contreras.

[4] *Id*. at 53-54.

[5] Not attached to the *rollo*. Filed on December 17, 2010; see *id*. at 22.

[6] See *id*. at 10-11.

[7] See *id*. at 46.

documents, including his school records from elementary to college, certificate of Government Service Insurance System (GSIS) membership, government service records, appointment as Provincial General Services Officer, report of rating in the First Grade Entrance Examination of the Civil Service Commission, Philippine Passport, Marriage Contract, and Certificate of Compensation Payment/Tax Withheld. In support of his petition, he also presented a copy of his birth certificate issued by the Local Civil Registrar of the Municipality of Pandan, Catanduanes showing that "Felipe Almojuela" appears as his registered full name.[8]

In an Order[9] dated January 10, 2011, the RTC initially dismissed the petition on the ground that petitioner's recourse to Rule 108 of the Rules of Court was improper, as the petition did not involve mere correction of clerical errors but a matter of filiation which should, thus, be filed in accordance with Rule 103 of the same Rules. Moreover, it found that a similar petition docketed as Spec. Proc. No. 1229 had already been ruled upon and dismissed by the court.[10]

Petitioner moved for reconsideration, maintaining that the issue of filiation is immaterial since he was only seeking a correction of entry by including the surname "Almojuela" to "Felipe Condeno," his first and middle names appearing on his birth certificate with the NSO. He likewise insisted that the name "Jorge V. Almojuela" was clearly indicated thereon as the name of his father. Finding merit in petitioner's arguments, the RTC, in an Order[11] dated February 9, 2011, reconsidered its earlier disposition and allowed petitioner to present his evidence.[12]

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[8] See *id*. at 22-23 and 47-50.

[9] Not attached to the *rollo*.

[10] See *rollo*, pp. 23-24.

[11] Not attached to the *rollo*.

[12] See *rollo*, p. 24.

During the proceedings, it was discovered that petitioner's name as registered in the Book of Births in the custody of the Municipal Civil Registar of Pandan, Catanduanes is "Felipe Condeno" and not "Felipe C. Almojuela," contrary to petitioner's allegation.[13]

The RTC Ruling

In a Decision[14] dated October 6, 2011, the RTC granted the petition and accordingly, directed the Municipal Civil Registrar of Pandan, Catanduanes to cause the correction of entry of the facts of petitioner's birth by changing his surname from "Condeno" to "Almojuela" and to furnish the Civil Registrar General with a copy of the corrected birth certificate.[15]

In so ruling, the RTC found that the change in petitioner's surname would cause no prejudice to the Almojuela family nor would they be the object of future mischief. Instead, petitioner has shown that he was accepted and acknowledged by his half-siblings. Moreover, allowing petitioner to retain the surname that he has been using for over sixty (60) years, *i.e.*, "Almojuela," would avoid confusion in his personal undertakings, as well as in the community.[16]

However, considering that the Book of Births of the Municipal Civil Registrar of Pandan, Catanduanes reflects the name "Felipe Condeno" as petitioner's registered name, the RTC ordered that the same be first corrected before the correction of entry in the records of the NSO could be had.[17]

The Republic of the Philippines, through the Office of the Solicitor General (OSG), moved for reconsideration,[18] citing lack of jurisdiction due to defective publication and contending

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[13] *Id.* at 51.

[14] *Id.* at 46-52.

[15] *Id.* at 52.

[16] *Id.*

[17] See *id.* at 51.

[18] Not attached to the *rollo*.

that the caption or title of a petition for change of name should state: (*a*) the *alias* or other name of petitioner; (*b*) the name he seeks to adopt; and (*c*) the cause for the change of name, all of which were lacking in the petition filed before the RTC.[19]

In an Order[20] dated November 14, 2011, the RTC denied the OSG's motion and reiterated its stance that based on the allegations thereon, the petition was only for the correction of entry in the records of the NSO. As petitioner had established compliance with the jurisdictional requirements therefor, the RTC had thus acquired jurisdiction.[21] Dissatisfied, the OSG appealed[22] to the CA.

The CA Ruling

In a Decision[23] dated February 27, 2014, the CA reversed and set aside the assailed RTC Decision and Order, and nullified the RTC's order for the correction of entry in petitioner's birth certificate.[24] It held that although petitioner correctly invoked Rule 108 of the Rules of Court in filing his petition,[25] he, however, failed to strictly comply with the requirements thereunder when he omitted to implead the Local Civil Registrar and his half-siblings, who stand to be affected by the corrections prayed for, as parties.[26] Sections 4[27] and 5[28] of Rule 108 of the Rules

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[19] See *id*. at 53.

[20] *Id*. at 53-54.

[21] See *id*.

[22] Not attached to the *rollo*.

[23] *Id*. at 21-34.

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

[25] *Id*. at 31.

[26] *Id*. at 32.

[27] SEC. 4. *Notice and publication.* – Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

[28] SEC. 5. *Opposition.* – The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is

of Court require that notice be sent to persons named in the petition, as well as to those not named thereon but nonetheless may be considered interested or affected parties. In petitioner's case, his failure to implead and notify the Local Civil Registrar and his half-siblings as mandated by the rules precluded the RTC from acquiring jurisdiction over the case.[29]

Moreover, the CA also found that the correction of entry sought by petitioner was not merely clerical in nature, but necessarily involved a determination of his filiation. As petitioner failed to show that his putative father, Jorge, recognized him as his child through any of the means allowed under Article 176 of the Family Code, as amended by Republic Act No. 9255,[30] petitioner, therefore, cannot use "Almojuela" as his surname.[31]

Aggrieved, petitioner elevated the matter before the Court through the instant petition.

The Issue Before the Court

The sole issue to be resolved by the Court is whether or not the CA erred in nullifying the correction of entry on petitioner's birth certificate on the ground of lack of jurisdiction.

The Court's Ruling

The petition is bereft of merit.

Rule 108 of the Rules of Court provides the procedure for the correction of substantial changes in the civil registry through an appropriate adversary proceeding.[32] An adversary proceeding

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sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

[29] See *id.* at 32-33.

[30] Entitled "AN ACT ALLOWING ILLEGITIMATE CHILDREN TO USE THE SURNAME OF THEIR FATHER, AMENDING FOR THE PURPOSE ARTICLE 176 OF EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE "FAMILY CODE OF THE PHILIPPINES," approved on February 24, 2004.

[31] See *rollo*, p. 32.

[32] See *Republic v. Mercadera*, 652 Phil. 195, 210-211 (2010).

is defined as one "having opposing parties; contested, as distinguished from an *ex parte* application, one of which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it."[33]

Sections 3, 4, and 5, Rule 108 of the Rules of Court state:

SEC. 3. *Parties.* – When cancellation or correction of an entry in the civil register is sought, the **civil registrar and all persons who have or claim any interest** which would be affected thereby shall be **made parties** to the proceeding.

SEC. 4. *Notice and publication.* – Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the **persons named in the petition**. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SEC. 5. *Opposition.* – The **civil registrar and any person having or claiming any interest under the entry** whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto. (Emphases supplied)

A reading of Sections 4 and 5 shows that the Rule mandates two (2) sets of notices to potential oppositors: one given to persons named in the petition, and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties.[34] Consequently, the petition for a substantial correction of an entry in the civil registry should implead as respondents the civil registrar, as well as *all other persons who have or claim to have any interest that would be affected thereby*.[35]

In *Republic v. Coseteng-Magpayo*,[36] the Court emphasized that in a petition for a substantial correction or change of entry

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[33] *Republic v. Uy*, 716 Phil. 254, 261 (2013); citation omitted.

[34] *Republic v. Coseteng-Magpayo*, 656 Phil. 550, 560 (2011).

[35] *Id*. at 558; citation omitted.

[36] *Id.*

in the civil registry under Rule 108, it is **mandatory** that the civil registrar, as well as all other persons who have or claim to have any interest that would be affected thereby be made respondents for the reason that they are indispensable parties.[37] Thus, the Court nullified the order to effect the necessary changes for respondent's failure to strictly comply with the foregoing procedure laid down in Rule 108 of the Rules of Court. Citing *Labayo-Rowe v. Republic*,[38] the Court held therein:

> Aside from the Office of the Solicitor General, **all other indispensable parties should have been made respondents**. They include not only the declared father of the child but the child as well, together with the paternal grandparents, if any, as their hereditary rights would be adversely affected thereby. **All other persons who may be affected by the change should be notified or represented.** The truth is best ascertained under an adversary system of justice.
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> The right of the child Victoria to inherit from her parents would be substantially impaired if her status would be changed from "legitimate" to "illegitimate." Moreover, she would be exposed to humiliation and embarrassment resulting from the stigma of an illegitimate filiation that she will bear thereafter. The fact that the notice of hearing of the petition was published in a newspaper of general circulation and notice thereof was served upon the State will *not* change the nature of the proceedings taken. Rule 108, like all the other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule-making authority under Section 13, Article VIII of the 1973 Constitution, which directs that such rules shall not diminish, increase or modify substantive rights. If Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, without observing the proper proceedings as earlier mentioned, said rule would thereby become an unconstitutional exercise which would tend to increase or modify substantive rights. This situation is not contemplated under Article 412 of the Civil Code.[39] (Emphases, italics and underscoring supplied)

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[37] See *id*. at 558 and 562-563; citations omitted.

[38] 250 Phil. 300 (1988).

[39] *Republic v. Coseteng-Magpayo*, *supra* note 34, at 559, citing *Labayo-Rowe v. Republic*, *id*. at 308-309.

Similarly, in *Republic v. Uy*,[40] the Court nullified the trial court's order to correct respondent's entry for the latter's failure to implead and notify not only the Local Civil Registrar, but also her parents and siblings as the persons who have interest and are affected by the changes or corrections sought.[41]

In this case, the CA correctly found that petitioner failed to implead both the Local Civil Registrar and his half-siblings.[42] Although he claims that his half-siblings have acknowledged and accepted him, the procedural rules nonetheless mandate compliance with the requirements in the interest of fair play and due process and to afford the person concerned the opportunity to protect his interest if he so chooses.[43]

Moreover, although it is true that in certain instances, the Court has allowed the subsequent publication of a notice of hearing to cure the petition's lack/failure to implead and notify the affected or interested parties, such as when: (*a*) earnest efforts were made by petitioners in bringing to court all possible interested parties; (*b*) the parties themselves initiated the corrections proceedings; (*c*) there is no actual or presumptive awareness of the existence of the interested parties; or, (*d*) when a party is inadvertently left out,[44] these exceptions are, unfortunately, unavailing in this case.

In sum, the failure to strictly comply with the above-discussed requirements of Rule 108 of the Rules of Court for correction of an entry in the civil registrar involving substantial and controversial alterations renders the entire proceedings therein null and void. In *Republic v. CA*,[45] the Court held that the proceedings of the trial court were null and void for lack of jurisdiction as the petitioners therein failed to implead the civil

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[40] *Republic v. Uy*, *supra* note 33.

[41] See *id.* at 265-266.

[42] See *rollo*, p. 32.

[43] See *Republic v. Uy*, *supra* note 33, at 265-266.

[44] See *id*.

[45] 325 Phil. 361 (1996).

registrar, an indispensable party, in the petition for correction of entry, *viz.*:

> The local civil registrar is thus required to be made a party to the proceeding. He is an indispensable party, without whom no final determination of the case can be had. As he was not impleaded in this case much less given notice of the proceeding, the decision of the trial court, insofar as it granted the prayer for the correction of entry, is void. **The absence of an indispensable party in a case renders ineffectual all proceedings subsequent to the filing of the complaint including the judgment.**
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> **The necessary consequence of the failure to implead the civil registrar as an indispensable party and to give notice by publication of the petition for correction of entry was to render the proceeding of the trial court, so far as the corrction of entry was concerned, null and void for lack of jurisdiction both as to party and as to the subject matter**.[46] (Emphases and underscoring supplied)

Consequently, the petition for correction of entry filed by petitioner must perforce be dismissed.

WHEREFORE, the petition is **DENIED**. The Decision dated February 27, 2014 of the Court of Appeals in CA-G.R. CV. No. 98082 is hereby **AFFIRMED.** Consequently, the Decision dated October 6, 2011 of the Regional Trial Court of Virac, Catanduanes, Branch 43 in Spec. Proc. No. 1345 granting the Petition for Correction of Entry in the Certificate of Live Birth is **NULLIFIED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.*, concur.

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[46] *Id*. at 369-370.

2. That appellant is not eligible for parole; and
3. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 211724. August 24, 2016]

IN THE MATTER OF THE PETITION FOR CORRECTION OF ENTRY (CHANGE OF FAMILY NAME IN THE BIRTH CERTIFICATE OF FELIPE C. ALMOJUELA AS APPEARING IN THE RECORDS OF THE NATIONAL STATISTICS OFFICE), FELIPE C. ALMOJUELA, *petitioner, vs*. **REPUBLIC OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CORRECTION OF ENTRIES IN CIVIL REGISTRY; NATURE.— Rule 108 of the Rules of Court provides the procedure for the correction of substantial changes in the civil registry through an appropriate adversary proceeding. An adversary proceeding is defined as one "having opposing parties; contested, as distinguished from an *ex parte* application, one of which the party seeking relief

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* Additional Member per Raffle dated 22 August 2016.

has given legal warning to the other party, and afforded the latter an opportunity to contest it."

2. **ID.; ID.; ID.; TWO SETS OF NOTICES TO POTENTIAL OPPOSITORS, REQUIRED.—** A reading of Sections 4 and 5 shows that the Rule mandates two (2) sets of notices to potential oppositors: one given to persons named in the petition, and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties. Consequently, the petition for a substantial correction of an entry in the civil registry should implead as respondents the civil registrar, as well as *all other persons who have or claim to have any interest that would be affected thereby*.

3. **ID.; ID.; ID.; ID.; FAILURE TO COMPLY STRICTLY WITH THE NOTICE REQUIREMENT RENDERS THE PROCEEDINGS NULL AND VOID.—** In this case, the CA correctly found that petitioner failed to implead both the Local Civil Registrar and his half-siblings. Although he claims that his half-siblings have acknowledged and accepted him, the procedural rules nonetheless mandate compliance with the requirements in the interest of fair play and due process and to afford the person concerned the opportunity to protect his interest if he so chooses. x x x In sum, the failure to strictly comply with the above-discussed requirements of Rule 108 of the Rules of Court for correction of an entry in the civil registrar involving substantial and controversial alterations renders the entire proceedings therein null and void. In *Republic v. CA*, the Court held that the proceedings of the trial court were null and void for lack of jurisdiction as the petitioners therein failed to implead the civil registrar, an indispensable party, in the petition for correction of entry[.]

APPEARANCES OF COUNSEL

Francis S. Del Valle for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated February 27, 2014 rendered by the Court of Appeals (CA) in CA-G.R. CV. No. 98082, which reversed and set aside the Decision[3] dated October 6, 2011 and the Order[4] dated November 14, 2011 of the Regional Trial Court of Virac, Catanduanes, Branch 43 (RTC) in Spec. Proc. No. 1345 granting the Petition for Correction of Entry in the Certificate of Live Birth filed by petitioner Felipe C. Almojuela (petitioner).

The Facts

For almost sixty (60) years, petitioner has been using the surname "Almojuela." However, when he requested for a copy of his birth certificate from the National Statistics Office (NSO), he was surprised to discover that he was registered as "Felipe Condeno," instead of "Felipe Almojuela." Thus, he filed a Petition for Correction of Entry[5] in his NSO birth certificate before the RTC,[6] docketed as Spec. Proc. No. 1345.[7]

Petitioner alleged that he was born on February 25, 1950 in Pandan, Catanduanes and is the acknowledged natural child of Jorge V. Almojuela (Jorge), former governor of the said province, and Francisca B. Condeno (Francisca), both deceased. He averred that while his parents did not marry each other, he has been known to his family and friends as "Felipe Almojuela" and has been using the said surname in all of his official and legal

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[1] *Rollo*, pp. 9-19.

[2] *Id*. at 21-34. Penned by Associate Justice Stephen C. Cruz with Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr. concurring.

[3] *Id*. at 46-52. Penned by Presiding Judge Lelu P. Contreras.

[4] *Id*. at 53-54.

[5] Not attached to the *rollo*. Filed on December 17, 2010; see *id*. at 22.

[6] See *id*. at 10-11.

[7] See *id*. at 46.

documents, including his school records from elementary to college, certificate of Government Service Insurance System (GSIS) membership, government service records, appointment as Provincial General Services Officer, report of rating in the First Grade Entrance Examination of the Civil Service Commission, Philippine Passport, Marriage Contract, and Certificate of Compensation Payment/Tax Withheld. In support of his petition, he also presented a copy of his birth certificate issued by the Local Civil Registrar of the Municipality of Pandan, Catanduanes showing that "Felipe Almojuela" appears as his registered full name.[8]

In an Order[9] dated January 10, 2011, the RTC initially dismissed the petition on the ground that petitioner's recourse to Rule 108 of the Rules of Court was improper, as the petition did not involve mere correction of clerical errors but a matter of filiation which should, thus, be filed in accordance with Rule 103 of the same Rules. Moreover, it found that a similar petition docketed as Spec. Proc. No. 1229 had already been ruled upon and dismissed by the court.[10]

Petitioner moved for reconsideration, maintaining that the issue of filiation is immaterial since he was only seeking a correction of entry by including the surname "Almojuela" to "Felipe Condeno," his first and middle names appearing on his birth certificate with the NSO. He likewise insisted that the name "Jorge V. Almojuela" was clearly indicated thereon as the name of his father. Finding merit in petitioner's arguments, the RTC, in an Order[11] dated February 9, 2011, reconsidered its earlier disposition and allowed petitioner to present his evidence.[12]

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[8] See *id*. at 22-23 and 47-50.

[9] Not attached to the *rollo*.

[10] See *rollo*, pp. 23-24.

[11] Not attached to the *rollo*.

[12] See *rollo*, p. 24.

During the proceedings, it was discovered that petitioner's name as registered in the Book of Births in the custody of the Municipal Civil Registar of Pandan, Catanduanes is "Felipe Condeno" and not "Felipe C. Almojuela," contrary to petitioner's allegation.[13]

The RTC Ruling

In a Decision[14] dated October 6, 2011, the RTC granted the petition and accordingly, directed the Municipal Civil Registrar of Pandan, Catanduanes to cause the correction of entry of the facts of petitioner's birth by changing his surname from "Condeno" to "Almojuela" and to furnish the Civil Registrar General with a copy of the corrected birth certificate.[15]

In so ruling, the RTC found that the change in petitioner's surname would cause no prejudice to the Almojuela family nor would they be the object of future mischief. Instead, petitioner has shown that he was accepted and acknowledged by his half-siblings. Moreover, allowing petitioner to retain the surname that he has been using for over sixty (60) years, *i.e.*, "Almojuela," would avoid confusion in his personal undertakings, as well as in the community.[16]

However, considering that the Book of Births of the Municipal Civil Registrar of Pandan, Catanduanes reflects the name "Felipe Condeno" as petitioner's registered name, the RTC ordered that the same be first corrected before the correction of entry in the records of the NSO could be had.[17]

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that the caption or title of a petition for change of name should state: (*a*) the *alias* or other name of petitioner; (*b*) the name he seeks to adopt; and (*c*) the cause for the change of name, all of which were lacking in the petition filed before the RTC.[19]

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Moreover, the CA also found that the correction of entry sought by petitioner was not merely clerical in nature, but necessarily involved a determination of his filiation. As petitioner failed to show that his putative father, Jorge, recognized him as his child through any of the means allowed under Article 176 of the Family Code, as amended by Republic Act No. 9255,[30] petitioner, therefore, cannot use "Almojuela" as his surname.[31]

Aggrieved, petitioner elevated the matter before the Court through the instant petition.

The Issue Before the Court

The sole issue to be resolved by the Court is whether or not the CA erred in nullifying the correction of entry on petitioner's birth certificate on the ground of lack of jurisdiction.

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Rule 108 of the Rules of Court provides the procedure for the correction of substantial changes in the civil registry through an appropriate adversary proceeding.[32] An adversary proceeding

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sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

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is defined as one "having opposing parties; contested, as distinguished from an *ex parte* application, one of which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it."[33]

Sections 3, 4, and 5, Rule 108 of the Rules of Court state:

SEC. 3. *Parties.* – When cancellation or correction of an entry in the civil register is sought, the **civil registrar and all persons who have or claim any interest** which would be affected thereby shall be **made parties** to the proceeding.

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A reading of Sections 4 and 5 shows that the Rule mandates two (2) sets of notices to potential oppositors: one given to persons named in the petition, and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties.[34] Consequently, the petition for a substantial correction of an entry in the civil registry should implead as respondents the civil registrar, as well as *all other persons who have or claim to have any interest that would be affected thereby*.[35]

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Moreover, although it is true that in certain instances, the Court has allowed the subsequent publication of a notice of hearing to cure the petition's lack/failure to implead and notify the affected or interested parties, such as when: (*a*) earnest efforts were made by petitioners in bringing to court all possible interested parties; (*b*) the parties themselves initiated the corrections proceedings; (*c*) there is no actual or presumptive awareness of the existence of the interested parties; or, (*d*) when a party is inadvertently left out,[44] these exceptions are, unfortunately, unavailing in this case.

In sum, the failure to strictly comply with the above-discussed requirements of Rule 108 of the Rules of Court for correction of an entry in the civil registrar involving substantial and controversial alterations renders the entire proceedings therein null and void. In *Republic v. CA*,[45] the Court held that the proceedings of the trial court were null and void for lack of jurisdiction as the petitioners therein failed to implead the civil

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registrar, an indispensable party, in the petition for correction of entry, *viz.*:

> The local civil registrar is thus required to be made a party to the proceeding. He is an indispensable party, without whom no final determination of the case can be had. As he was not impleaded in this case much less given notice of the proceeding, the decision of the trial court, insofar as it granted the prayer for the correction of entry, is void. **The absence of an indispensable party in a case renders ineffectual all proceedings subsequent to the filing of the complaint including the judgment.**
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> **The necessary consequence of the failure to implead the civil registrar as an indispensable party and to give notice by publication of the petition for correction of entry was to render the proceeding of the trial court, so far as the corrction of entry was concerned, null and void for lack of jurisdiction both as to party and as to the subject matter**.[46] (Emphases and underscoring supplied)

Consequently, the petition for correction of entry filed by petitioner must perforce be dismissed.

WHEREFORE, the petition is **DENIED**. The Decision dated February 27, 2014 of the Court of Appeals in CA-G.R. CV. No. 98082 is hereby **AFFIRMED.** Consequently, the Decision dated October 6, 2011 of the Regional Trial Court of Virac, Catanduanes, Branch 43 in Spec. Proc. No. 1345 granting the Petition for Correction of Entry in the Certificate of Live Birth is **NULLIFIED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.*, concur.

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[46] *Id*. at 369-370.

THIRD DIVISION

[G.R. No. 212632. August 24, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DEN ANDO *y* SADULLAH and SARAH ANDO *y* BERNAL,** *accused-appellants*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED WEIGHT.— We find no reason to reverse the RTC's findings, as affirmed by the CA. Similarly, we give full credit to the positive, unequivocal, spontaneous and straightforward testimonies of the police officers pointing to accused-appellants as the seller of the confiscated *shabu*. We have consistently held that trial courts have the distinct advantage of observing the demeanor and conduct of witnesses during trial. Hence, their factual findings are accorded weight, absent any showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. This is with more reason on prosecutions involving illegal drugs, which depend largely on the credibility of the police officers who conducted the arrest or buy-bust operation.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165): ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, SUFFICIENTLY ESTABLISHED.— To secure a conviction for illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

Here, all the aforesaid elements necessary for accused-appellants' prosecution have been sufficiently established, clearly showing that they indeed committed the offense charged. PO1 Vargas, the designated poseur-buyer, testified during trial how she was able to purchase from accused-appellants ₱500.00 worth of *shabu*. The prosecution was able to duly establish that the sale between PO1 Vargas and accused-appellants actually took place. The item seized, which tested positive for the presence of Methamphetamine Hydrochloride, was likewise positively and categorically identified during trial.

3. **ID.; ID.; ID.; NON-COMPLIANCE WITH SECTION 21 WAS NOT FATAL WHEN THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DRUGS WERE PRESERVED.—** The alleged non-compliance with Section 21 of R.A. No. 9165 was not fatal to the prosecution's case because the apprehending team properly preserved the integrity and evidentiary value of the seized drugs. In *People v. Ganguso*, this Court held that prior surveillance is not a prerequisite for the validity of an entrapment operation especially when the buy-bust team members were accompanied to the scene by their informant. Further, there is nothing in the Rules which say that the arrest is invalid and the seized item inadmissible in evidence, if the physical inventory and marking was not done at the place of arrest. In fact, in *People v. Sanchez*, the Court instructs that in case of warrantless seizures such as a buy-bust operation, the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable. x x x This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirements under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

4. **ID.; ID.; ID; PENALTY.—** We affirm the penalties imposed as they are well within the ranges provided by law. Section 5, Article II of R.A. No. 9165 prescribes a penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00 for the sale of any dangerous drug, regardless of the quantity or purity involved.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.

D E C I S I O N

PEREZ, ***J.*:**

For our resolution is the appeal filed by accused-appellants Den Ando y Sabdullah (Den) and Sarah Ando y Bernal (Sarah) assailing the 10 December 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 05679.

Culled from the records[2] were the following counter-statement of facts:

On 3 October 2006, an informant went at the Quezon City Anti-Drug Abuse Council (QADAC) to inform Police Officer 3 (PO3) Leonardo Ramos (PO3 Ramos) that a certain Ben was selling *shabu* at Maguindanao Street, Salam Mosque, *Barangay* Culiat, Quezon City. Thereafter, an entrapment team was formed consisting of PO1 Alexander Jimenez (PO1 Jimenez), PO1 Teresita Reyes (PO1 Reyes), PO2 Joseph Ortiz (PO2 Ortiz), and PO1 Peggy Lyn Vargas (PO1 Vargas). PO1 Vargas was designated as poseur-buyer and was provided with a ₱500.00 bill marked money.

The following day at about 4:00 a.m., the buy-bust team together with the informant proceeded to the designated area. PO1 Vargas and the informant went to the house of alias Ben along Maguindanao Street, Salam Mosque, Quezon City. The informant introduced alias Ben to PO1 Vargas who asked how much *shabu* she needed. The latter responded "*Limang piso po*" and handed over the ₱500.00 buy-bust money. Alias Ben called his wife and told her to give PO1 Vargas ₱500.00 worth of *shabu*. The wife took out from her bra a small plastic sachet

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[1] *Rollo*, pp. 2-10; Penned by Associate Justice Socorro B. Inting with Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez concurring.

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

containing a white crystalline substance and handed it to PO1 Vargas. Thereafter, PO1 Vargas threw her cigarette, which was the pre-arranged signal that the sale was already consummated. The other operatives responded and introduced themselves as police officers. PO2 Ortiz frisked alias Ben who was identified as accused-appellant Den and recovered from him the buy-bust money. PO1 Reyes apprehended the wife identified as accused-appellant Sarah. The sachet containing the white crystalline substance was marked with "PV-10-04-06" and sent to the crime laboratory for examination. The examination showed that the contents of the plastic sachet weighed 0.15 gram and are positive for methylamphetamine hydrochloride or *shabu*.

Accused-appellants denied the charges against them. Accused-appellants claimed that at around 4:30 in the morning of 4 October 2006, they were at home with their children when police officers knocked and pushed their door. The police officers ordered them to bring "it" out but they did not know what to bring out. The officers then searched their house. After thirty (30) minutes, they were brought to QADAC where they were detained. Accused-appellants further claimed that during their detention, police officer Leonardo Ramos demanded ₱50,000.00 from them in exchange for their release. However, they were unable to put up the amount. They were presented for inquest on 9 October 2006 for violation of the anti-drugs law.

Rulings of the Lower Courts

In a Decision dated 6 June 2012,[3] the Regional Trial Court (RTC), Branch 82, Quezon City, found the accused-appellants guilty beyond reasonable doubt of violating Sections 5, Article II of Republic Act (R.A.) No. 9165[4] and sentenced them to suffer the penalty life imprisonment and to each pay a fine in the amount of ₱500,000.00.

The RTC gave full credence to the testimonies of PO1 Vargas and PO2 Ortiz who conducted the buy-bust operation against

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[3] Records, pp. 193-199.

[4] Otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

the accused-appellants, and rejected the self-serving defenses of denial and alibi of accused-appellants. The RTC noted that other than their claim that a demand for money was made by the police officers in exchange for their release, no convincing and credible evidence was presented by the defense. It held that there is absence of any evidence that could belittle or otherwise overcome the presumption in favor of the police officers.[5]

On intermediate appellate review, the CA affirmed the RTC's ruling. It held that the elements necessary for the conviction for illegal sale of dangerous drugs are present in the instant case. The CA agreed with the RTC in giving weight to the testimonies of the prosecution witnesses, and held that the arresting officers have preserved the integrity and evidentiary value of the seized items.

Our Ruling

We find the appeal bereft of merit. Thus, we affirm the accused-appellants' guilt.

We find no reason to reverse the RTC's findings, as affirmed by the CA. Similarly, we give full credit to the positive, unequivocal, spontaneous and straightforward testimonies of the police officers pointing to accused-appellants as the seller of the confiscated *shabu*. We have consistently held that trial courts have the distinct advantage of observing the demeanor and conduct of witnesses during trial. Hence, their factual findings are accorded weight, absent any showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.[6] This is with more reason on prosecutions involving illegal drugs, which depend largely on the credibility of the police officers who conducted the arrest or buy-bust operation.[7]

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[5] Records, p. 199.

[6] *People v. Jubail*, 472 Phil. 527, 546 (2004).

[7] *People v. Chang*, 382 Phil. 669, 672 (2000).

To secure a conviction for illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.[8] Here, all the aforesaid elements necessary for accused-appellants' prosecution have been sufficiently established, clearly showing that they indeed committed the offense charged. PO1 Vargas, the designated poseur-buyer, testified during trial how she was able to purchase from accused-appellants ₱500.00 worth of *shabu*. The prosecution was able to duly establish that the sale between PO1 Vargas and accused-appellants actually took place. The item seized, which tested positive for the presence of Methamphetamine Hydrochloride, was likewise positively and categorically identified during trial.

Indeed, what is important in prosecutions for illegal sale of prohibited drugs is that the prohibited drug sold and delivered by the accused-appellants be presented before the court and that the accused-appellants be identified as the offender by the prosecution witnesses.[9] We note that in the instant case these were successfully done by the prosecution.

We agree with the lower courts that in the absence of any intent or ill-motive on the part of the police officers to falsely impute commission of a crime against the accused-appellants, the presumption of regularity in the performance of official duty is entitled to great respect and deserves to prevail over the bare, uncorroborated denial and self-serving claim of the accused of frame-up.[10] This presumption in favor of the

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[8] *People v. Midenilla*, 645 Phil. 587, 601 (2010) citing *People v. Guiara*, 616 Phil. 290, 302 (2009) further citing *People v. Gonzales*, 430 Phil. 504, 513 (2002).

[9] *People v. Jubail, supra* note 6 at 550.

[10] *People v. Dumlao*, 584 Phil. 732, 740 (2008).

apprehending officers can be rebutted only if clear and convincing evidence is presented to prove either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.[11] None of these were presented to overturn the presumption.

Accused-appellants contended that the police officers failed to comply with the provisions of Section 21, paragraph 1 of R.A. No. 9165,[12] which provides for the procedure in the custody and disposition of seized drugs. They claimed that no prior surveillance was made on them prior to the buy-bust operation. Likewise, they alleged that no justifiable reason was given for the absence of a representative from the media, the Department of Justice, any elective public official or a counsel/representative of the accused-appellants, who must sign the inventory of the seized items; and that the marking was not made at the scene of the crime.

We find these arguments untenable. The alleged non-compliance with Section 21 of R.A. No. 9165 was not fatal to the prosecution's case because the apprehending team properly preserved the integrity and evidentiary value of the seized drugs.[13]

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[11] *People v. Padasin*, 445 Phil. 448, 455-456 (2003).

[12] Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — x x x

(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 [.]

[13] In *People v. Sanchez* (590 Phil. 214, 234 [2008]), we held that "non-compliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; [but these lapses] must be recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have been preserved."

In *People v. Ganguso*,[14] this Court held that prior surveillance is not a prerequisite for the validity of an entrapment operation especially when the buy-bust team members were accompanied to the scene by their informant. Further, there is nothing in the Rules which say that the arrest is invalid and the seized item inadmissible in evidence, if the physical inventory and marking was not done at the place of arrest. In fact, in *People v. Sanchez*,[15] the Court instructs that in case of warrantless seizures such as a buy-bust operation, the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable.

Anent the absence of the enumerated representatives during the inventory, the explanation was made by PO1 Vargas when she testified that the police officers tried to secure the coordination of the *barangay* officials but they refused to sign any document. At any rate, the accused-appellants were present during the inventory.[16]

In view of the foregoing, we agree with the CA that the prosecution had established the unbroken chain of custody over the seized drugs. Besides, we note the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

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

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[14] 320 Phil. 324, 340 (1995).

[15] *Supra* note 13 at 240.

[16] TSN, 6 October 2009, pp. 16-18.

in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

The last part of the aforequoted issuance provided the exception to the strict compliance with the requirements of Section 21 of R.A. No. 9165. Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the seized item" is sufficient.[17] This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirements under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence.[18] What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[19] In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 were not faithfully observed, the guilt of the accused will not be affected.[20]

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[17] *People v. Cortez*, 611 Phil. 360, 381 (2009).

[18] *People v. Almodiel*, 694 Phil. 449, 467 (2012); *People v. Campos*, 643 Phil. 668, 673 (2008) citing *People v. Concepcion*, 578 Phil. 957, 971 (2008).

[19] *People v. Magundayao*, 683 Phil. 295, 321 (2012); *People v. Le*, 636 Phil. 586, 598 (2010) citing *People v. De Leon*, 624 Phil. 786, 801 (2010) further citing *People v. Naquita*, 582 Phil. 422, 442 (2008); *People v. Concepcion*, 578 Phil. 957, 971 (2008).

[20] *People v. Manlangit*, 654 Phil. 427, 440-441 (2011) citing *People v. Rosialda*, 643 Phil. 712, 726 (2010) further citing *People v. Rivera*, 590 Phil. 894, 912-913 (2008).

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Accused-appellants bear the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.[21] Accused-appellants insist that they were victims of a frame-up. They, however, failed to present any plausible reason why the police officers would single them out as their object of frame-up. It is settled that where there is no evidence to indicate that a prosecution witness was actuated by improper motive, the presumption is that he was not so actuated and that he would not prevaricate and cause damnation to one who brought him no harm or injury; hence his testimony is entitled to full faith and credit.[22]

We affirm the penalties imposed as they are well within the ranges provided by law. Section 5, Article II of R.A. No. 9165 prescribes a penalty of life imprisonment to death[23] and a fine ranging from ₱500,000.00 to ₱10,000,000.00 for the sale of any dangerous drug, regardless of the quantity or purity involved.

WHEREFORE, the 10 December 2013 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 05679 is hereby **AFFIRMED.**

SO ORDERED.

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

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[21] *People v. Miranda*, 560 Phil. 795, 810 (2007).

[22] *People v. Ang Chun Kit*, 321 Phil. 1049, 1057 (1995).

[23] The imposition of the death penalty has been proscribed with the effectivity of R.A. No. 9346, otherwise known as "An Act Prohibiting the imposition of Death Penalty in the Philippines."

[*] Additional Member per Raffle dated 22 August 2016.

THIRD DIVISION

[G.R. No. 213187. August 24, 2016]

HAIDE BULALACAO-SORIANO, *petitioner, vs.* **ERNESTO PAPINA, represented by ROSEMARY PAPINA-ZABALA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; AN ACTION TO RECOVER POSSESSION OF REAL PROPERTY FROM ONE WHO ILLEGALLY WITHHOLDS POSSESSION DUE TO THE TERMINATION OR EXPIRATION OF THE RIGHT TO POSSESS.—** Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession by the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. The only issue involved in unlawful detainer proceedings is as to who between the parties is entitled to physical or material possession of the premises. Nevertheless, where the question of possession in ejectment proceedings cannot be resolved without deciding the issue of ownership, the courts have the power to provisionally resolve the issue of ownership but only for determining the issue of possession.

2. **CIVIL LAW; CIVIL CODE; CO-OWNERSHIP; WHERE THE FULL PAYMENT OF THE PURCHASE PRICE WAS SUPPORTED BY EVIDENCE, THE VENDOR CEASED TO BE THE CO-OWNER AT THE TIME THE SALE WAS MADE AND COULD NO LONGER PARTICIPATE IN THE PARTITION OF THE PROPERTY; THE RIGHT TO ENTER INTO THE PARTITION AGREEMENT BELONGS TO THE BUYER.—** In the case at bar, petitioner raised the issue of ownership, arguing that it was already she, not Manuel, who was respondent's co-owner at the time the disputed Agreement was entered into. She claims that she acquired ownership of Manuel's share upon payment of the purchase

price. Consequently, the Agreement entered into by Manuel, the former co-owner, is invalid. Her postulation finds basis under Article 494 of the New Civil Code, which provides that "*each **co-owner** may demand at any time the partition of the thing owned in common, insofar as his share is concerned*." The provision reveals that only co-owners have the capacity to enter into a subdivision/partition agreement, dissolving the co-ownership in the process. Thus, for a partition agreement to be valid, it should be entered into by the co-owners of the property. Any partition agreement entered into by one who is not a co-owner or one who was not authorized by a co-owner is null and void. In consonance therewith, the Court, in *Del Campo v. CA*, held that **the buyer of an undivided share became a co-owner at the time the sale was made in his or her favor**. **Upon conveyance, the fully-paid seller**, who had lost all rights and interests in the property by alienating his entire undivided share, **could no longer participate in the partition of the property**. Instead, it is the vendee who steps into the shoes of the vendor as co-owner and acquires the latter's right over the property, including the right to enter into a partition agreement, by virtue of the consummated sale.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THOUGH A CASE FOR UNLAWFUL DETAINER IS CONCERNED MAINLY WITH THE DETERMINATION OF THE PARTIES' RIGHT TO POSSESSION, THE COURT MAY PROVISIONALLY RULE ON THE ISSUE OF OWNERSHIP TO RESOLVE THE ISSUE OF POSSESSION; CASE AT BAR.— [T]he pivotal issue to resolve herein then is whether or not petitioner has fully paid the contract price under the *Kasunduan*, which would render the subdivision agreement void, and uphold her right to stay in the subject property. As earlier discussed, though a case for unlawful detainer is concerned mainly with the determination of the parties' right to possess the subject property, the Court is not precluded from provisionally ruling on the issue of ownership to resolve the issue of possession. x x x There is preponderant evidence that petitioner paid the said amount. She submitted in evidence receipts of the amounts that she paid in having the Tax Declaration of half of the property in her name. x x x The payments, duly supported by receipts, deserve greater weight over Manuel's bare denial that he

instructed her to settle the unpaid taxes over the lot. It is elementary that bare allegations, unsubstantiated by evidence, are not equivalent to proof. The foregoing circumstances, taken together with Manuel's omission to make any demand from petitioner for her to settle the unpaid portion of the purchase price, convince Us that herein petitioner's payment of said taxes due on the property was with Manuel's knowledge and consent. This being the case, and as a matter of equity, We find it proper to provisionally uphold petitioner's claim that the amount paid for taxes due on the subject property be credited to her balance in the purchase price. As such, at the time Manuel entered into the Agreement, he no longer had the right to do so, having been divested of any right or interest in the co-owned property by virtue of the consummation of the sale. The subdivision agreement between Ernesto and Manuel is, therefore, defective, if not invalid, and cannot defeat petitioner's right to acquire Manuel's share in the property, his right to enter into the partition agreement, and the right to use the property owned in common in accordance with the purpose to which it is intended, i.e., as a residential property.

4. ID.; ID.; ID.; ID.; WHILE PETITIONER'S CLAIM OF OWNERSHIP WAS PROVISIONALLY UPHELD, THE ISSUE OF OWNERSHIP IS SUBJECT TO SUBSEQUENT DEFINITIVE RESOLUTION IN A MORE APPROPRIATE PROCEEDING; CASE AT BAR.— [I]t is well to remind the parties herein that the Court is merely provisionally resolving the issue of ownership as it is so closely intertwined with the issue of possession. Hence, We are not precluding the subsequent definitive resolution of the issues surrounding the property's ownership—including whether or not petitioner has indeed fully paid her obligation under the *Kasunduan*, whether or not she can validly offset her expenses against her indebtedness to Manuel, and whether or not the partition agreement is fraudulent—in a more appropriate proceeding, with Manuel impleaded as a party, and where the conflicting claims are best ventilated and the issues threshed out.

APPEARANCES OF COUNSEL

Miriam O. Dipasupil-Gestiada for petitioner.
Fernando Dialogo for respondent.

D E C I S I O N

VELASCO, JR.,* ***J.*:**

Nature of the Case

For resolution is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Court of Appeals (CA) Decision[1] and Resolution, dated October 30, 2013 and May 29, 2014, respectively, in CA-G.R. SP No. 113098 upholding the eviction of petitioner from the lot over which the latter claims part ownership.

The Facts

Involved herein is a 201-sq.m. parcel of residential land situated in Barangay VII, Daet, Camarines Norte, originally owned by a certain Tomas de Jesus (De Jesus), covered by Tax Declaration (TD) No. 2172.[2] The subject property was sold by the heirs of De Jesus to respondent Ernesto Papina (Ernesto) and his brother, Manuel Papina (Manuel), for ₱15,000, as evidenced by a document denominated as "Extrajudicial Settlement of Estate with Sale."[3] The tax declarations covering the property, however, remained in the name of De Jesus.

Thereafter, respondent's father allowed petitioner Haide Bulalacao-Soriano (Haide) to stay and build a house on the lot, on the condition that she would surrender possession thereof

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* Chairperson.

[1] Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes.

[2] *Rollo*, p. 58. The property is particularly described as follows: *"A parcel of residential land without improvements, containing an area of 250 square meters, more or less, situated in Vinzons Avenue (Mercedes Road), Barangay 7, Daet, Camarines Norte. Bounded on the N. by the property of Angel Racoma, on the E. by the property of Fructoso Suzara, on the S. by Mercedes Road and on the W. by Rosario vda de Lukban with visible limits indicated by the concrete stone monument on the corners then declared under Tax. Dec. no. 2172 Tomas de Jesus, assessed at ₱3,380.00 with market value of ₱11,250.00."*

[3] *Id*. at 25.

to the co-owners should the latter need the property. In the meantime, Ernesto and Manuel agreed not to partition the property and remain as co-owners thereof.[4]

In 1993, Ernesto and Manuel mortgaged the property to Haide to secure a ₱25,000 loan, payable within five (5) years, for which they executed a *Sanglaan ng Lupa na may Karapatan sa Nag Mamay-ari (Sanglaan)*.[5] By virtue of the *Sanglaan*,[6] petitioner's possession of the subject property remained undisturbed.

Thereafter, sometime in 1998, Ernesto gave Manuel the amount necessary to pay the mortgage loan. The latter, however, appropriated the money, resulting in their failure to pay the loaned amount in full within the five-year period. Petitioner, nevertheless, did not foreclose the mortgage on the property, but remained in possession thereof.

To rectify the situation, Manuel, on August 22, 2000, without Ernesto's knowledge, sold his share in the subject property to Haide for ₱100,000, payable on installment, with the understanding that she would continue to occupy the premises.[7] This agreement is embodied in the *Kasunduan sa Bilihan ng Lupa*[8] *(Kasunduan)* executed by petitioner and Manuel. The provisions of the contract pertinently read:[9]

1. Sa paglagda ng kasunduang ito, ang halagang DALAWAMPUNG LIBONG PISO (₱20,000.00) at ang natitirang halagang WALUMPUNG LIBONG PISO (₱80,000.00) ay babayaran sa pamamagitan ng hulugan.

2. Na kung mabayaran na ng IKALAWANG PANIG ang kabuoang halagang napagkasunduan dito ang UNANG PANIG ay obligadong magsagawa ng kasulatang bilihing tuluyan na pabor sa IKALAWANG PANIG.

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[4] *Id*. at 118.

[5] *Id*. at 118.

[6] *Id*. at 27.

[7] *Id*. at 118.

[8] CA *rollo*, p. 130.

[9] *Rollo*, p. 28.

3. **Na ang magbabayad sa kaukulang buwis ng lupa ay ang UNANG PANIG bago mailipat sa IKALAWANG PANIG.**

4. **Na ang IKALAWANG PANIG ang siyang may karapatan na mamosesyon at makinabang sa lugar na nasasaad sa itaas.**(emphasis added)

Pursuant to the *Kasunduan*, Manuel received from petitioner the total amount of ₱91,500, including the ₱25,000 consideration of the loan, leaving a balance of ₱8,500,[10] with the last installment made on June 27, 2001.[11]

Anent the balance, Haide alleges that per their contract, it was Manuel's obligation to pay for the taxes due on the property and to transfer the property in her name. Manuel, however, refused to comply with his contractual obligation and instructed her instead to handle the transfers and that any and all amounts to be paid by her in effecting such shall be deemed as payment of the ₱8,500 balance.[12]

Acting on Manuel's alleged instruction, petitioner claims that she shelled out ₱20,780 beginning on April 7, 2005 to defray real property and estate taxes as well as other assessments due the Estate of De Jesus that were due since 1983.[13] Said unpaid taxes, according to her, were not settled by the Papina brothers after they purchased the subject property from De Jesus. This amount of ₱20,780, according to petitioner, is more than enough to cover the balance.

Meanwhile, respondent counters that said instruction pertaining to the balance is a mere concoction, and maintains that the balance remains unpaid. There is no evidence, however, that Manuel demanded payment of any unpaid balance.

In March 2002, intending to finally dissolve the co-ownership, the Papina brothers caused the survey of the property. Three

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[10] CA *rollo*, p. 161.

[11] *Rollo*, p. 4

[12] *Id.* at 11.

[13] *Id.* at 106.

years later, or on October 27, 2005, they entered into a Subdivision Agreement[14] (Agreement) to partition the property into two (2) lots: respondent Ernesto's lot, Lot 1, with an aggregate area of 80 sq.m.; and Manuel's property, Lot 2, a 121-sq.m. tract.[15] Per the Agreement, the portion that became Lot 1, respondent Ernesto's lot, was where petitioner Haide's house was located. The Papina brothers, thus, informed petitioner of said agreement and its effect on her possession.

On March 19, 2006, respondent made a formal demand for petitioner to vacate the premises and surrender possession thereof to him, which demand was left unheeded. Two (2) months later, or on May 29, 2006, and because of petitioner's refusal to vacate the property, respondent sought judicial recourse via a Complaint for Ejectment before the Municipal Trial Court (MTC) of Daet, Camarines Norte, docketed as Civil Case No. 2777.

Ruling of the Municipal Trial Court

On March 10, 2009, the MTC, in a Judgment,[16] dismissed the complaint for lack of jurisdiction, holding that an element of unlawful detainer is not present since respondent's demand to vacate was grounded on petitioner's occupation of the portion that was not sold to her, and not on the termination of her right to hold possession by virtue of a contract or for non-payment of rent.[17] The MTC likewise ruled "*[t]he title to the land in question has been put in issue in a manner necessarily affecting the cause of action of the plaintiff. It is necessary, in order to settle the issue, that a determination of who between plaintiff and defendant, has the better right and title to the land in question, which matter is beyond the authority of this court to settle*."[18] It then suggested that the proper remedy for respondent is either an *accion publiciana* or *accion reivindicatoria*.

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[14] *Id.* at 57.

[15] *Id.* at 12.

[16] CA *rollo*, pp. 300-302. Penned By Judge Ramon A. Arejola.

[17] *Id.* at 301.

[18] *Rollo*, p. 60.

The dispositive portion of the MTC's Decision provides:

WHEREFORE, for lack of jurisdiction of this court, the complaint in this case is ordered to be as it is hereby DISMISSED.

No pronouncement as to costs.

SO ORDERED.[19]

Ruling of the Regional Trial Court

Upon elevation of the case, the Regional Trial Court, Branch 38 in Daet, Camarines Norte (RTC) rendered a Decision[20] on September 30, 2009 reversing the MTC's ruling. The RTC disagreed with the MTC and held that the elements for an action for unlawful detainer are present in the instant case. Thus:

xxx the Complaint sufficiently alleges *unlawful withholding of possession* of Lot 1 by [petitioner]. Although he initially never knew about Manuel allowing [petitioner] to stay in the premises, [respondent] did not do anything until the relocation survey and partition on the property. This is *tolerance*, which lasted until [respondent], verbally and in writing, demanded [petitioner] to vacate Lot 1. With these demands to vacate, [petitioner's] possession changed from tolerated occupancy to unlawful dispossession. The formal demand to vacate was made on March 19, 2006 and the Complaint was filed on May 29, 2006. Clear enough, these allegations comprise the jurisdictional requisites for unlawful detainer as laid down in Sections 1 and 2, Rule 70 of the Revised Rules of Court: (1) The defendant unlawfully withholds the possession of a certain land and building; (2) The withholding of possession must be after termination of the right of possession; and (3) The action should be brought within one (1) year from the date of demand.[21] xxx

The trial court likewise held that petitioner's right to possess the portion she occupies naturally expired when respondent and his brother executed the Subdivision Agreement.[22] As a

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[19] CA *rollo*, p. 302.

[20] *Id*. at 160-168. Penned by Judge Roberto A. Escaro.

[21] *Rollo*, pp. 78-79.

[22] CA *rollo*, p. 168.

consequence, petitioner's right to possess had been confined to the area delineated and apportioned as Lot 2 for Manuel. To the RTC, the sale between petitioner and Manuel is of no moment, since, fully paid or not, the effect of the [petitioner's] contract can only be limited to the portion to be adjudicated to her predecessor-in-interest upon termination of the co-ownership.[23]

The *fallo* of the RTC Decision reads:

> WHEREFORE, the judgment of the Municipal Trial Court dated March 10, 2009 in Civil Case No. 2777 is hereby REVERSED and SET ASIDE. Appellee Haide Bulalacao-Soriano is ordered to vacate the subject property, Lot 1, and surrender possession thereof to appellant Ernesto Papina. No pronouncement as to costs.
>
> SO ORDERED.[24]

Reconsideration of the above Decision was denied by the RTC in its December 28, 2009 Order.[25]

Ruling of the Court of Appeals

Ruling on petitioner's appeal, the CA, in the assailed Decision of October 30, 2013, found the petition to be bereft of merit and affirmed ruling of the RTC, thus:

> **WHEREFORE**, premises considered, the instant Petition is **DENIED**. The challenged Decision dated 30 September 2009 of the Regional Trial Court in Daet, Camarines Norte is **AFFIRMED**.
>
> **SO ORDERED.**[26]

Agreeing with the RTC, the CA ruled that: (1) Civil Case No. 2777 is clearly, an unlawful detainer suit; (2) that petitioner, as co-owner of the property by virtue of Manuel's sale of his undivided share in the co-ownership in her favor, only acquired a proportionate share in the lot, not a definite portion thereof;

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[23] *Id*. at 123.

[24] *Id*. at 168.

[25] *Rollo*, pp. 201-207.

[26] *Id*. at 128.

and (3) a co-owner of an undivided interest cannot alienate or sell a specific or determinate part of the thing owned in common, because such right over the thing is represented by a mere aliquot or ideal portion thereof without any physical division.[27]

Aggrieved, petitioner filed a motion for reconsideration of the assailed CA Decision, which motion was denied by the appellate court in its assailed Resolution[28] of May 29, 2014.

The Issues

The decisive issue in the case at bar is whether or not respondent has a case for unlawful detainer.

Petitioner, in the main, argues that the unlawful detainer action will not lie against her by virtue of the sale in her favor of Manuel's share, making her the new co-owner thereof, vesting in her the right to possess the co-owned property subject of the instant dispute. She maintains that participation in the subdivision of the property is properly the right of the buyer of the aliquot share and not the seller thereof and that she was deprived of the said right when the Papina brothers entered into the Agreement without her knowledge, consent, authorization, or participation.

To counter respondent's assertion that ownership over Manuel's share has not yet been transferred to her for her failure to pay the full purchase price, she contends that the ₱8,500 balance had already been covered by the expenses she incurred in the transfer of the Tax Declaration of the *pro indiviso* share in her name, as per Manuel's instruction, totalling ₱20,780. And so, insisting that it is she who should have entered into the subdivision agreement with respondent and not Manuel after acquiring the latter's rights over his aliquot share in the co-ownership, petitioner refuses to vacate Lot 1 and seeks the adjudication thereof in her favor.

Respondent, for his part, insists that petitioner's right to possess the property ceased after respondent and Manuel entered

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[27] *Id*. at 126-128.

[28] *Id*. at 138-139.

into the Agreement. According to him, this Agreement which terminated the co-ownership ended petitioner's right to possess said portion, and gave him the right to have petitioner ejected from Lot 1. He maintains that the Subdivision Agreement is valid since at the time that they entered into such, petitioner has yet to complete the payment for Manuel's share. Noting that the *Kasunduan* is a Contract to Sell, Manuel remained to be the owner of his share in the co-ownership during the period material. He likewise posits that petitioner was duly informed of the planned partition, to which no objection was raised by the latter.

The Court's Ruling

The petition is impressed with merit.

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession by the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[29]

The only issue involved in unlawful detainer proceedings is as to who between the parties is entitled to physical or material possession of the premises. Nevertheless, where the question of possession in ejectment proceedings cannot be resolved without deciding the issue of ownership, the courts have the power to provisionally resolve the issue of ownership but only for determining the issue of possession.[30]

In the case at bar, petitioner raised the issue of ownership, arguing that it was already she, not Manuel, who was respondent's co-owner at the time the disputed Agreement was entered into. She claims that she acquired ownership of Manuel's share upon payment of the purchase price. Consequently, the Agreement entered into by Manuel, the former co-owner, is invalid.

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[29] *Republic v. Sunvar Realty Development Corporation*, G.R. No. 194880, June 20, 2012, 674 SCRA 320, 341, citing *Delos Reyes v. Spouses Odenes*, G.R. No. 178096, March 23, 2011.

[30] B.P. 129, Sec. 33(2).

Her postulation finds basis under Article 494 of the New Civil Code, which provides that "*each **co-owner** may demand at any time the partition of the thing owned in common, insofar as his share is concerned*." The provision reveals that only co-owners have the capacity to enter into a subdivision/partition agreement, dissolving the co-ownership in the process. Thus, for a partition agreement to be valid, it should be entered into by the co-owners of the property. Any partition agreement entered into by one who is not a co-owner or one who was not authorized by a co-owner is null and void.[31]

In consonance therewith, the Court, in *Del Campo v. CA*, held that **the buyer of an undivided share became a co-owner at the time the sale was made in his or her favor**.[32] **Upon conveyance, the fully-paid seller**, who had lost all rights and interests in the property by alienating his entire undivided share, **could no longer participate in the partition of the property**.[33] Instead, it is the vendee who steps into the shoes of the vendor as co-owner and acquires the latter's right over the property, including the right to enter into a partition agreement, by virtue of the consummated sale.

Thus, the pivotal issue to resolve herein then is whether or not petitioner has fully paid the contract price under the *Kasunduan*, which would render the subdivision agreement void, and uphold her right to stay in the subject property. As earlier discussed, though a case for unlawful detainer is concerned mainly with the determination of the parties' right to possess the subject property, the Court is not precluded from provisionally ruling on the issue of ownership to resolve the issue of possession.

Here, petitioner insists that while it is clear from the third paragraph of the *Kasunduan* that the obligation to pay the taxes on the property is borne by Manuel, the latter eventually instructed her to perform the obligation in his stead and credit

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[31] See *Heirs of Sevilla v. Sevilla*, G.R. No. 150179, April 30, 2003, 402 SCRA 501, 511-512.

[32] G.R. No. 108228, February 1, 2001, 351 SCRA 1, 8.

[33] See *Lopez v. Ilustre*, 5 Phil. 567 (1906).

the same to her unpaid balance of ₱8,500. In compliance with the new covenant, petitioner spent ₱20,780, which is more than enough to cover the balance, rendering the sale fully paid.

We agree with petitioner.

There is preponderant evidence that petitioner paid the said amount. She submitted in evidence receipts of the amounts that she paid in having the Tax Declaration of half of the property in her name.[34]

On the other hand, respondent failed to present any evidence that Manuel complied with his obligation to fully settle the taxes due on the property. Too, it is well to note that petitioner began paying the amount of ₱20,780 on April 7, 2005—six months prior to the execution by Manuel and Ernesto of the questioned subdivision agreement on October 27, 2005. Also, the fact of petitioner's payment of said amount was not contested by either Manuel or Ernesto.

The payments, duly supported by receipts, deserve greater weight over Manuel's bare denial that he instructed her to settle the unpaid taxes over the lot. It is elementary that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[35]

The foregoing circumstances, taken together with Manuel's omission to make any demand from petitioner for her to settle the unpaid portion of the purchase price, convince Us that herein petitioner's payment of said taxes due on the property was with Manuel's knowledge and consent.

This being the case, and as a matter of equity, We find it proper to provisionally uphold petitioner's claim that the amount paid for taxes due on the subject property be credited to her balance in the purchase price. As such, at the time Manuel entered into the Agreement, he no longer had the right to do so, having been divested of any right or interest in the co-owned property by virtue of the consummation of the sale. The subdivision

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[34] *Rollo*, pp. 48-55.

[35] *Manaloto v. Veloso III*, G.R. No. 171365, October 6, 2010, 632 SCRA 347, 367.

agreement between Ernesto and Manuel is, therefore, defective, if not invalid, and cannot defeat petitioner's right to acquire Manuel's share in the property, his right to enter into the partition agreement, and the right to use the property owned in common in accordance with the purpose to which it is intended, i.e., as a residential property.

To rule differently in this case would result in injustice to petitioner who graciously loaned money to herein respondent and his brother, and who even did not exercise her right to foreclose the mortgage and obtain absolute ownership over the entire property, only to be later deceived by Manuel and deprived of her real rights over the subject property.

Be that as it may, it is well to remind the parties herein that the Court is merely provisionally resolving the issue of ownership as it is so closely intertwined with the issue of possession. Hence, We are not precluding the subsequent definitive resolution of the issues surrounding the property's ownership—including whether or not petitioner has indeed fully paid her obligation under the *Kasunduan*, whether or not she can validly offset her expenses against her indebtedness to Manuel, and whether or not the partition agreement is fraudulent—in a more appropriate proceeding, with Manuel impleaded as a party, and where the conflicting claims are best ventilated and the issues threshed out.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the Decision dated October 30, 2013 and Resolution dated May 29, 2014 of the Court of Appeals in CA-G.R. SP No. 113098 are hereby **REVERSED** and **SET ASIDE**. The Decision of the Municipal Trial Court of Daet, Camarines Norte in Civil Case No. 2777 dated March 10, 2009 is hereby **REINSTATED**. The Complaint for Unlawful Detainer is **DISMISSED**.

SO ORDERED.

Peralta, Perez, Reyes, and *Jardeleza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 216146. August 24, 2016]

ALFREDO L. CHUA, TOMAS L. CHUA and MERCEDES P. DIAZ, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; FORUM SHOPPING; RULES ON VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING SUMMARIZED IN THE CASE OF *FUJI TELEVISION NETWORK, INC. V. ESPIRITU*.— *Fuji Television Network, Inc. v. Espiritu* summarizes the rules on verification against forum shopping, *viz.*: 1) A distinction must be made between non[-]compliance with the requirement on or submission of defective verification, and non[-]compliance with the requirement on or submission of defective certification against forum shopping. 2) As to verification, non[-]compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby. 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstance or compelling reasons." 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the

signature of only one of them in the certification against forum shopping substantially complies with the Rule.

2. ID.; CRIMINAL PROCEDURE; AFFIDAVIT OF DESISTANCE EXECUTED AFTER AN ACTION HAS ALREADY BEEN INSTITUTED IN COURT IS NOT A GROUND FOR DISMISSAL OF ACTION.— "By itself, an affidavit of desistance or pardon is not a ground for the dismissal of an action, once the action has been instituted in court." In the case at bench, Rosario's affidavit, which was executed during the pendency of the petition for review before the CA, did not abate the proceedings. This properly springs from the rule that in a criminal action already filed in court, the private complainant loses the right or absolute privilege to decide whether the charge should proceed.

3. COMMERCIAL LAW; CORPORATION LAW; DISSOLUTION OF CORPORATION; CONTINUATION OF BODY CORPORATE FOR THREE YEARS AFTER DISSOLUTION; STOCKHOLDER'S RIGHT TO INSPECT CORPORATE RECORDS SUBSISTS DURING THE PERIOD OF LIQUIDATION.— *Yu, et al. v. Yukayguan, et al.* instructs that: [T]he corporation continues to be a body corporate for three (3) years after its dissolution for purposes of prosecuting and defending suits by and against it and for enabling it to settle and close its affairs, culminating in the disposition and distribution of its remaining assets. x x x The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights and liabilities of such entity x x x nor those of its owners and creditors. x x x Sections 122 and 145 of the Corporation Code explicitly provide for the continuation of the body corporate for three years after dissolution. The rights and remedies against, or liabilities of, the officers shall not be removed or impaired by reason of the dissolution of the corporation. Corollarily then, a stockholder's right to inspect corporate records subsists during the period of liquidation. Hence, Joselyn, as a stockholder, had the right to demand for the inspection of records. Lodged upon the corporation is the corresponding duty to allow the said inspection.

4. ID.; ID.; SECTION 74 IN RELATION TO SECTION 144 OF THE CORPORATION CODE ON THE RIGHT OF STOCKHOLDER TO INSPECT CORPORATE RECORDS;

VIOLATION WARRANTED THE PENALTY OF ₱10,000.00 FINE INSTEAD OF 30 DAYS IMPRISONMENT.— While a cloud of doubt is cast upon the existence of criminal intent on the part of the petitioners, it is jurisprudentially settled that proof of malice or deliberate intent (*mens rea*) is not essential in offenses punishable by special laws, which are *mala prohibita.* In the case at bar, the petitioners were charged with violations of Section 74, in relation to Section 144, of the Corporation Code, a special law. Accordingly, since Joselyn was deprived of the exercise of an effective right of inspection, offenses had in fact been committed, regardless of the petitioners' intent. The Corporation Code provides for penalties relative to the commission of offenses, which cannot be trivialized, lest the public purpose for which they are crafted be defeated and put to naught. x x x In lieu of the penalty of thirty (30) days of imprisonment, a **FINE** of **TEN THOUSAND PESOS** (₱10,000.00) each is imposed upon the petitioners.

APPEARANCES OF COUNSEL

Cruz Neria & Carpio Law Offices for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] challenging the Resolutions dated September 23, 2014[2] and January 6, 2015[3] of the Court of Appeals (CA) in CA-G.R. CR No. 36764. The assailed resolutions affirmed the Decision[4] dated March 27, 2014 of the Regional Trial Court (RTC)

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[1] *Rollo,* pp. 7-22.

[2] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela concurring; *id*. at 25-26.

[3] *Id*. at 27.

[4] Rendered by Presiding Judge Reynaldo B. Daway; *id*. at 76-83.

of Quezon City, Branch 90, in Criminal Case No. 107079 and Judgment[5] dated November 23, 2012 of the Metropolitan Trial Court (MeTC) of Quezon City, Branch 43, which sentenced herein petitioners Alfredo L. Chua (Alfredo), Tomas L. Chua (Tomas) and Mercedes P. Diaz (Mercedes) (collectively referred to as the petitioners) to suffer the penalty of thirty (30) days of imprisonment for violation of Section 74,[6] in relation to Section 144,[7] of the Corporation Code.

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[5] Rendered by Presiding Judge Manuel B. Sta. Cruz, Jr.; *id*. at 58-63.

[6] **Sec. 74.** ***Books to be kept; stock transfer agent***. x x x.

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

xxx xxx xxx (Underscoring ours)

[7] **Sec. 144.** ***Violations of the Code***. - Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation:

Antecedent Facts

The Office of the Solicitor General (OSG) aptly summed up the antecedents leading to the filing of the Complaint-Affidavit[8] of Joselyn Chua (Joselyn) against the petitioners:

> [Joselyn] was a stockholder of Chua Tee Corporation of Manila. x x x [Alfredo] was the president and chairman of the board, while [Tomas] was the corporate secretary and also a member of the board of the same corporation. x x x [Mercedes] was the accountant/ bookkeeper tasked with the physical custody of the corporate records.
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> On or about August 24, 2000, Joselyn invoked her right as a stockholder pursuant to Section 74 of the Corporation Code to inspect the records of the books of the business transactions of the corporation, the minutes of the meetings of the board of directors and stockholders, as well as the financial statement[s] of the corporation. She hired a lawyer to send demand letters to each of the petitioners for her right to inspect to be heeded. However, she was denied of such right to inspect.
>
> Joselyn likewise hired the services of Mr. Abednego Velayo (Mr. Velayo) from the accounting firm of Guzman Bocaling and Company to assist her in examining the books of the corporation. Armed with a letter request[,] together with the list of schedules of audit materials, Mr. Velayo and his group visited the corporation's premises for the supposed examination of the accounts. However, the books of accounts were not formally presented to them and there was no list of schedules[,] which would allow them to pursue their inspection. Mr. Velayo testified that they failed to complete their objective of inspecting the books of accounts and examine the recorded documents.[9] (Citations omitted)

In the Complaint-Affidavit filed before the Quezon City Prosecutors' Office, Joselyn alleged that despite written demands, the petitioners conspired in refusing without valid cause the

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Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code. x x x. (Underscoring ours)

[8] *Rollo*, pp. 29-32.

[9] *Id*. at 124-125.

exercise of her right to inspect Chua Tee Corporation of Manila's (CTCM) business transactions records, financial statements and minutes of the meetings of both the board of directors and stockholders.[10]

In their Counter Affidavits,[11] the petitioners denied liability. They argued that the custody of the records sought to be inspected by Joselyn did not pertain to them. Besides, the physical records were merely kept inside the cabinets in the corporate office. Further, they did not prevent Joselyn from inspecting the records. What happened was that Mercedes was severely occupied with winding up the affairs of CTCM after it ceased operations. Joselyn and her lawyers then failed to set up an appointment with Mercedes. Joselyn, through counsel, then sent demand letters to inspect the records. Not long after, Joselyn filed two cases, one of which was civil and the other, criminal, against the petitioners.

On July 4, 2001, an Information[12] indicting the petitioners for alleged violation of Section 74, in relation to Section 144, of the Corporation Code was filed before the MeTC of Quezon City. The case was docketed as Criminal Case No. 107079, raffled to Branch 43.

The Proceedings before the MeTC and the RTC

On January 30, 2002, the petitioners filed before the MeTC a Motion to Quash[13] the Information filed against them. They argued that CTCM had ceased to exist as a corporate entity since May 26, 1999. Consequently, when the acts complained of by Joselyn were allegedly committed in August of 2000, the petitioners cannot be considered anymore as responsible officers of CTCM. Thus, assuming for argument's sake that the petitioners actually refused to let Joselyn inspect corporate records, no criminal liability can attach to an omission to perform

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[10] *Id*. at 31.

[11] *Id*. at 37-39, 40-42, 43-45.

[12] *Id*. at 46-47.

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

a duty, which no longer existed. The MeTC, however, denied the petitioners' Motion to Quash.

Arraignment, pre-trial and trial then ensued. The prosecution offered the testimonies of Joselyn and Abednego Velayo (Velayo). On the other hand, the petitioners neither presented witnesses, nor filed any documentary evidence.[14]

On November 23, 2012, the MeTC rendered its Judgment[15] convicting the petitioners as charged, sentencing them to suffer the penalty of 30 days of imprisonment, and directing them to pay the costs of suit. The MeTC cited *Ang-Abaya, et al. v. Ang*[16] to stress that in the instant case, the prosecution had amply established the presence of the elements of the offense under Section 74 of the Corporation Code, to wit: (a) a stockholder's prior demand in writing for the inspection of corporate records; (b) refusal by corporate officers to allow the inspection; and (c) proofs adduced by the corporate officers of the stockholder's prior improper or malicious use of the records in the event that the same is raised as a defense for the refusal to allow the inspection.[17] Further invoking *Gokongwei, Jr. v. Securities and Exchange Commission*,[18] the MeTC explained that a stockholder's right to inspect corporate records is based upon the necessity of self-protection.[19] Thus, the exercise of the right at reasonable hours during business days should be allowed.

In the Order[20] dated March 26, 2013, the MeTC denied the petitioners' Motion for Reconsideration.[21]

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[14] *Id*. at 59.

[15] *Id*. at 58-63.

[16] 593 Phil. 530 (2008).

[17] *Rollo*, p. 61.

[18] 178 Phil. 266 (1979).

[19] *Rollo*, p. 62.

[20] *Id*. at 74-75.

[21] *Id*. at 64-73.

The petitioners filed an appeal, which the RTC denied in the Decision[22] rendered on March 27, 2014. The RTC agreed with the MeTC's ruling and stated that the petitioners should have presented their evidence to contradict or rebut the evidence presented by the prosecution that has overcome their constitutional right to be presumed innocent, before the lower court.[23]

In its Order[24] dated July 4, 2014, the RTC denied the petitioners' motion for reconsideration.[25]

The Proceedings before the CA

The petitioners filed before the CA a petition for review under Rule 42 of the Rules of Court. On September 23, 2014, the CA outrightly dismissed the petition on technical grounds, *i.e.*, failure to submit (a) true copies or duplicate originals of the MeTC's Judgment dated November 23, 2012 and Order dated March 26, 2013, and (b) a Special Power of Attorney (SPA) authorizing Alfredo to file the petition and sign the verification and certification of non-forum shopping in behalf of Tomas and Mercedes.[26]

On October 15, 2014, the petitioners filed a Motion for Reconsideration,[27] to which they appended their belated compliance with the formal requirements pointed out by the CA. Pending resolution of the motion, Rosario Sui Lian Chua (Rosario), mother of the now deceased Joselyn, filed an Affidavit of Desistance[28] dated December 11, 2014, which in part stated that:

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[22] *Id*. at 76-83.

[23] *Id*. at 83.

[24] *Id*. at 92.

[25] *Id*. at 84-90.

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

[27] *Id*. at 93-97.

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

3. After taking stock of the situation of the [petitioners] in the above-captioned case, and considering moreover that [Alfredo and Tomas] are both uncles of [Joselyn], and are brothers of my now also-deceased husband, I and the rest of my family, have decided to condone any and all possible criminal wrongdoings attributable to [the petitioners], and to absolve the latter of both civil and criminal liabilities in connection with the above-captioned case;

4. In any event, we have reason to believe that the filing of the instant criminal case was merely the result of serious misunderstanding anent the management and operation of [CTCM], which had long ceased to exist as a corporate entity even prior to the alleged commission of the crime in question, rather than by reason of any criminal intent or actuation on the part of the [petitioners].[29]

On January 6, 2015, the CA issued the second assailed Resolution[30] denying the petitioners' motion for reconsideration.

Issue

Unfazed, the petitioners filed before this Court the instant petition for review on *certiorari* raising the sole issue of the propriety of their conviction for alleged violation of Section 74, in relation to Section 144, of the Corporation Code.[31]

The petitioners reiterate their stance that since CTCM had ceased business operations prior to Joselyn's filing of her complaint before the MeTC, there was no longer any duty pertaining to corporate officers to allow a stockholder to inspect the records.[32] The petitioners also aver that the prosecution failed to prove by competent evidence that they had actually prevented Joselyn from exercising her right of inspection. They point out that when Joselyn was cross-examined, she admitted that the petitioners had allowed her to see the records. However, since

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[29] *Id*. at 107.

[30] *Id*. at 27.

[31] *Id*. at 10-11.

[32] *Id*. at 14.

she had designated her accountant to conduct the inspection, she was not able to physically view the records. Hence, she had no personal knowledge as to whether or not the inspection of the specific records she requested was allowed or denied.[33] Further, Velayo himself stated during the trial that the letters demanding for inspection of the records were addressed to CTCM and not to the petitioners. Velayo also declared that he had no personal dealings with the petitioners.[34] Besides, Rosario's Affidavit of Desistance proves the frivolous nature of Joselyn's complaint and the unjustness of the petitioners' conviction by the courts *a quo*.[35]

In its Comment,[36] the OSG points out that under Section 122 of the Corporation Code, a corporate entity, "*whose charter expires by its own limitation*" shall continue as "*a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs*." It follows then that CTCM continued as a body corporate until May of 2002.[37] Moreover, the board of directors is not rendered *functus officio* by reason of the corporation's dissolution.[38] Liabilities incurred by officers shall not be removed or impaired by the subsequent dissolution of the corporation.[39] It follows therefore that a stockholder's right to inspect corporate records subsists during the period of liquidation.[40]

The OSG also emphasizes Velayo's testimony that upon his visit to CTCM's corporate office, the books of accounts were

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

[34] *Id*. at 17.

[35] *Id*. at 19.

[36] *Id*. at 122-132.

[37] *Id*. at 129.

[38] *Id*., citing *Aguirre II, et al. v. FQB+7, Inc., et al.*, 701 Phil. 216, 229 (2013).

[39] *Rollo*, p. 130.

[40] *Id*.

not formally presented and no schedule was offered as to when the requested inspection can be conducted.[41]

Ruling of the Court

The Court affirms the conviction but directs the payment of fine, in lieu of the penalty of imprisonment imposed by the courts *a quo*.

Procedural Matters

The CA's outright dismissal of the petition for review filed before it

The CA outrightly dismissed on technical grounds the petition for review filed before it under Rule 42 of the Rules of Court. Thereafter, the petitioners filed their belated compliance to correct the procedural flaws referred to by the CA. They explained that their failure to immediately submit the requisite SPA authorizing Alfredo to sign the verification and certification against non-forum shopping, and act in behalf of Tomas and Mercedes was due to the fact that the latter two were out of the country when the petition was filed. Anent the petitioners' non-submission of true copies or duplicate originals of the MeTC judgment and order, they admitted their negligence, and prayed for the court's indulgence.[42]

Fuji Television Network, Inc. v. Espiritu[43] summarizes the rules on verification and certification against forum shopping, *viz*.:

1) A distinction must be made between non[-]compliance with the requirement on or submission of defective verification, and non[-] compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non[-]compliance therewith or a defect therein does not necessarily render the pleading fatally

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[41] *Id*. at 125.

[42] *Id*. at 94.

[43] G.R. Nos. 204944-45, December 3, 2014, 744 SCRA 31.

defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

xxx xxx xxx[44] (Italics and underscoring deleted)

In the case at bar, the petitioners complied with the procedural requirements belatedly, defectively, or substantially. They explained the reasons for their lapses and begged for the court's understanding. It likewise bears noting that the petitioners share common interests and causes of action as regards the petition for review filed before the CA.

Tible & Tible Company, Inc., et al. v. Royal Savings and Loan Association, et al.[45] is emphatic that:

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[44] *Id.* at 54-55, citing *Altres, et al. v. Empleo, et al.*, 594 Phil. 246, 261-262 (2008).

[45] 574 Phil. 20 (2008).

Courts are not slaves or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on balance, technicalities take a backseat against substantive rights, and not the other way around.[46] (Italics in the original)

Prescinding therefrom, the Court finds that the CA had committed reversible error in outrightly dismissing the petition filed before it. The Court does not perceive intentional disregard of procedures on the part of the petitioners. The circumstances, thus, call for a relaxation of the rules in the interest of substantial justice.

The effect of an Affidavit of Desistance executed after an action has already been instituted in court

"By itself, an affidavit of desistance or pardon is not a ground for the dismissal of an action, once the action has been instituted in court."[47]

In the case at bench, Rosario's affidavit, which was executed during the pendency of the petition for review before the CA, did not abate the proceedings. This properly springs from the rule that in a criminal action already filed in court, the private complainant loses the right or absolute privilege to decide whether the charge should proceed.

On Substantive Matters

Despite the expiration of CTCM's corporate term in 1999, duties as corporate officers still pertained to the petitioners when Joselyn's complaint was filed in 2000.

Yu, et al. v. Yukayguan, et al.[48] instructs that:

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[46] *Id*. at 37, citing *Grand Placement and General Services Corporation v. CA*, 516 Phil. 541, 552 (2006).

[47] *Spouses Cabico v. Judge Dimaculangan-Querijero,* 550 Phil. 460, 473 (2007).

[48] 607 Phil. 581 (2009).

[T]he corporation continues to be a body corporate for three (3) years after its dissolution for purposes of prosecuting and defending suits by and against it and for enabling it to settle and close its affairs, culminating in the disposition and distribution of its remaining assets. x x x The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights and liabilities of such entity x x x nor those of its owners and creditors. x x x.[49]

Further, as correctly pointed out by the OSG, Sections 122 and 145 of the Corporation Code explicitly provide for the continuation of the body corporate for three years after dissolution. The rights and remedies against, or liabilities of, the officers shall not be removed or impaired by reason of the dissolution of the corporation. Corollarily then, a stockholder's right to inspect corporate records subsists during the period of liquidation. Hence, Joselyn, as a stockholder, had the right to demand for the inspection of records. Lodged upon the corporation is the corresponding duty to allow the said inspection.

It is beyond the ambit of a petition filed under Rule 45 of the Rules of Court to recalibrate the evidence considered in the proceedings below. However, the Court notes circumstances justifying the modification of the assailed resolutions.

The Court notes that in the course of the trial, the petitioners presented neither testimonial nor documentary evidence to prove their innocence.[50] The MeTC rendered a judgment of conviction, which the RTC and the CA affirmed *in toto*.

It is settled that "a re-examination of factual findings is outside the province of a petition for review on *certiorari*,"[51] especially

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[49] *Id.* at 602.

[50] *Rollo,* p. 59.

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

in the instant petition where the MeTC, RTC and CA concurred in convicting the petitioners of the charges against them.

Be that as it may, the Court takes exception and notes the following circumstances: (a) during cross-examination, Joselyn admitted that permission was granted for her to see the documents, but she was unable to actually view them as she was represented by her accountant; (b) Joselyn lacked personal knowledge as to whether or not the petitioners in fact allowed or denied the checking of the records she had requested; (c) Velayo stated that the letter requesting for the examination of CTCM's records was addressed to the Accounting Department, and he and his colleagues did not have personal dealings with the petitioners.[52]

From the foregoing, it is apparent that a complete examination of CTCM's records did not occur resulting to an effective deprivation of Joselyn's right as a stockholder. However, from Joselyn and Velayo's testimonies, it can be inferred that permission to view the records was granted, albeit not fully effected. The petitioners, on their part, explained in the Counter-Affidavit filed before the Quezon City Prosecution Office that they never prevented Joselyn from exercising her right of inspection, but when the latter made her request, Mercedes was too occupied in winding up the affairs of CTCM.[53]

While a cloud of doubt is cast upon the existence of criminal intent on the part of the petitioners, it is jurisprudentially settled that proof of malice or deliberate intent (*mens rea*) is not essential in offenses punishable by special laws, which are *mala prohibita*.[54]

In the case at bar, the petitioners were charged with violations of Section 74, in relation to Section 144, of the Corporation Code, a special law. Accordingly, since Joselyn was deprived of the exercise of an effective right of inspection, offenses

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[52] *Rollo*, pp. 59-60.

[53] *Id*. at 38, 41, 44.

[54] *Zuño, Sr. v. Dizon*, A.M. No. RTJ-91-752, June 23, 1993, 223 SCRA 584, 604.

had in fact been committed, regardless of the petitioners' intent. The Corporation Code provides for penalties relative to the commission of offenses, which cannot be trivialized, lest the public purpose for which they are crafted be defeated and put to naught.

No exceptional grounds exist justifying the reversal of the conviction previously rendered by the MeTC, RTC and CA. However, in lieu of the penalty of 30 days of imprisonment, the Court finds it more just to impose upon each of the petitioners a fine of Ten Thousand Pesos (₱10,000.00) considering the reasons below. ***First***. Malicious intent was seemingly wanting. Permission to check the records was granted, albeit not effected. ***Second***. Joselyn had predeceased Alfredo and Tomas, her uncles, who are in their twilight years. ***Third***. Joselyn's mother, Rosario, had executed an Affidavit of Desistance stating that the filing of the complaint before was *"merely the result of [a] serious misunderstanding anent the management and operation of [CTCM], which had long ceased to exist as a corporate entity even prior to the alleged commission of the crime in question, rather than by reason of any criminal intent or actuation on the part of the [petitioners]."*[55]

WHEREFORE, IN VIEW OF THE FOREGOING, the conviction of Alfredo L. Chua, Tomas L. Chua and Mercedes P. Diaz for violations of Section 74, in relation to Section 144, of the Corporation Code is **AFFIRMED**, but **MODIFIED** to the extent that in lieu of the penalty of thirty (30) days of imprisonment, a **FINE** of **TEN THOUSAND PESOS** (₱10,000.00) each is imposed upon the petitioners.

SO ORDERED.

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

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[55] *Rollo,* p. 107.

SECOND DIVISION

[G.R. No. 217872. August 24, 2016]

ALLIANCE FOR THE FAMILY FOUNDATION, PHILIPPINES, INC. (ALFI) and ATTY. MARIA CONCEPCION S. NOCHE, in her own behalf and as President of ALFI, JOSE S. SANDEJAS, ROSIE B. LUISTRO, ELENITA S.A. SANDEJAS, EMILY R. LAWS, EILEEN Z. ARANETA, SALVACION C. MONTIERO, MARIETTA C. GORREZ, ROLANDO M. BAUTISTA, RUBEN T. UMALI and MILDRED C. CASTOR, *petitioners, vs.* **HON. JANETTE L. GARIN, Secretary-Designate of the Department of Health, NICOLAS B. LUTERO III, Assistant Secretary of Health, Officer-in-Charge, Food and Drug Administration, and MARIA LOURDES C. SANTIAGO, Officer-in-Charge, Center for Drug Regulation and Research,** *respondents.*

[G.R No. 221866. August 24, 2016]

MARIA CONCEPCION S. NOCHE, in her own behalf and as counsel of Petitioners, JOSE S. SANDEJAS, ROSIE B. LUISTRO, ELENITA S.A. SANDEJAS, EMILY R. LAWS, EILEEN Z. ARANETA, SALVACION C. MONTIERO, MARIETTA C. GORREZ, ROLANDO M. BAUTISTA, RUBEN T. UMALI and MILDRED C. CASTOR, *petitioners, vs.* **HON. JANETTE L. GARIN, Secretary-Designate of the Department of Health, NICOLAS B. LUTERO III, Assistant Secretary of Health, Officer-in-Charge, Food and Drug Administration, and MARIA LOURDES C. SANTIAGO, Officer-in-Charge, Center for Drug Regulation and Research,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; *LOCUS STANDI*; PETITIONERS HAVE *LOCUS STANDI* AS

CITIZENS AND TAXPAYERS TO FILE THE PRESENT PETITIONS.— Considering that the Court in *Imbong* already declared that the issues of contraception and reproductive health in relation to the right to life of the unborn child were indeed of transcendental importance, and considering also that the petitioners averred that the respondents unjustly caused the allocation of public funds for the purchase of alleged abortifacients which would deprive the unborn of its the right to life, the Court finds that the petitioners have *locus standi* to file these petitions.

2. **ID.; ID.; BILL OF RIGHTS; DUE PROCESS CLAUSE; TWO ASPECTS, EXPLAINED AND DISTINIGUISHED.—** [O]ne of the guarantees sacrosanct in this jurisdiction is that no person shall be deprived of life, liberty or property without due process of law. An essential component of the Bill of Rights, the Due Process Clause, undoubtedly occupies a position of primacy in the fundamental law. Due process of law has two aspects: substantive and procedural due process. In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both the substantive and the procedural requirements thereof. Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property. Procedural due process, on the other hand, means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it. Although administrative procedural rules are less stringent and often applied more liberally, administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings.

3. **ID.; ID.; ID.; ID.; THE FOOD AND DRUG ADMINISTRATION (FDA) CERTIFIED, PROCURED AND ADMINISTERED SUCH CONTRACEPTIVE DRUGS AND DEVICES WITHOUT OBSERVANCE OF THE BASIC TENETS OF DUE PROCESS.—** After an assessment of the undisputed facts, the Court finds that the FDA certified, procured and administered such contraceptive drugs and devices, **without the observance of the basic tenets of due process, without notice and without public hearing,** despite the constant opposition from the petitioners. From the records, it appears

that other than the notice inviting stakeholders to apply for certification/re-certification of their reproductive health products, there was no showing that the respondents notified the oppositors and conducted a hearing on the applications and oppositions submitted. Rather than provide concrete evidence to meet the petitioners' opposition, the respondents simply relied on their challenge questioning the propriety of the subject petition on technical and procedural grounds. The Court notes that even the letters submitted by the petitioners to the FDA and the DOH seeking information on the actions taken by the agencies regarding their opposition were left unanswered as if they did not exist at all. The mere fact that the RH Law was declared as not unconstitutional does not permit the respondents to run roughshod over the constitutional rights, substantive and procedural, of the petitioners. Indeed, although the law tasks the FDA as the primary agency to determine whether a contraceptive drug or certain device has no abortifacient effects, its findings and conclusion should be allowed to be questioned and those who oppose the same must be given a genuine opportunity to be heard in their stance. After all, under Section 4 (k) of R.A. No. 3720, as amended by R.A. No. 9711, the FDA is mandated to order the ban, recall and/or withdrawal of any health product found to have caused death, serious illness or serious injury to a consumer or patient, or found to be imminently injurious, unsafe, dangerous, or grossly deceptive, after due process.

4. ID.; ID.; ID.; ID.; DECISIONS RENDERED IN DISREGARD OF THE RIGHT TO DUE PROCESS IS VOID FOR LACK OF JURISDICTION.— Due to the failure of the respondents to observe and comply with the basic requirements of due process, the Court is of the view that the certifications/re-certifications and the distribution of the questioned contraceptive drugs by the respondents should be struck down as **violative of the constitutional right to due process.** Verily, it is a cardinal precept that where there is a violation of basic constitutional rights, the courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right to due process is apparent, **a decision rendered in disregard of that right is void for lack of jurisdiction.** This rule is equally true in quasi-judicial

and administrative proceedings, for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where he stands to lose the same.

5. REMEDIAL LAW; APPEALS; THE DECISION OF THE FDA IS APPEALABLE TO THE COURT OF APPEALS THRU A PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT; THE FACT THAT THE FDA IS NOT AMONG THE AGENCIES ENUMERATED IN RULE 43 IS OF NO CONSEQUENCE.— The Court notes that Section 32 of R.A. No. 3720, as amended by R.A. No. 9711, and its implementing rules provide that a party aggrieved by the orders, rulings or decision (or inaction) of the Director-General of the FDA has the remedy of appealing the same to the Secretary of Health. The Court likewise notes that under Section 9 of E.O. No. 247, the decisions of the Secretary of Health would first have to be appealed to the Office of the President, in conformity with the doctrine of exhaustion of administrative remedies. Notwithstanding, considering that the Secretary of Health is the principal respondent in these petitions, any decision by the FDA in this particular case should be directly appealable to the Court of Appeals (*CA*) through a petition for review under Rule 43 of the Rules of Court. Verily, procedural rules, whether issued by quasi-judicial agencies or embodied in statutes enacted by the Congress, are subject to alteration or modification by the Court in the exercise of its constitutional rule-making power. x x x The fact that the FDA is not among the agencies enumerated in Rule 43 as subject of a petition for review to the CA is of no consequence. In *Cayao-Lasam v. Ramolete*, the Court disagreed with the opinion of the CA that the enumeration of the agencies mentioned in Section 1 of Rule 43 was exclusive.

APPEARANCES OF COUNSEL

Office of the Solicitor General for public respondents.

Maria Concepcion S. Noche for petitioners in G.R. Nos. 217872 & 221866.

D E C I S I O N

MENDOZA, *J.*:

Subjects of this disposition are the: [1] Petition for *Certiorari*, Prohibition, Mandamus - with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Prohibitory and Mandatory Injunction (G.R. No. 217872); and the [2] Petition for Contempt of Court (G.R. No. 221866).

The subject petitions sprouted from *Imbong v. Ochoa* and other cases[1] *(Imbong)* where the Court declared Republic Act No. 10354 *(RH Law)* and its Implementing Rules and Regulations *(RH-IRR)* as not unconstitutional, save for several provisions which were declared as violative of the Constitution. The decretal portion of *Imbong* reads:

WHEREFORE, the petitions are PARTIALLY GRANTED. Accordingly, the Court declares R.A. No. 10354 as NOT UNCONSTITUTIONAL except with respect to the following provisions which are declared UNCONSTITUTIONAL:

1] Section 7 and the corresponding provision in the RH-IRR insofar as they: a) require private health facilities and non-maternity specialty hospitals and hospitals owned and operated by a religious group to refer patients, not in an emergency or life-threatening case, as defined under Republic Act No. 8344, to another health facility which is conveniently accessible; and b) allow minor-parents or minors who have suffered a miscarriage access to modem methods of family planning without written consent from their parents or guardian/s;

2) Section 23(a)(l) and the corresponding provision in the RH-IRR, particularly Section 5.24 thereof, insofar as they punish any healthcare service provider who fails and or refuses to disseminate information regarding programs and services on reproductive health regardless of his or her religious beliefs;

3) Section 23(a)(2)(i) and the corresponding provision in the RH-IRR insofar as they allow a married individual, not in an emergency

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[1] G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 & 207563, April 8, 2014, 721 SCRA 146.

or life-threatening case, as defined under Republic Act No. 8344, to undergo reproductive health procedures without the consent of the spouse;

4) Section 23(a)(2)(ii) and the corresponding provision in the RH-IRR insofar as they limit the requirement of parental consent only to elective surgical procedures;

5] Section 23(a)(3) and the corresponding provision in the RH-IRR, particularly Section 5.24 thereof, insofar as they punish any healthcare service provider who fails and/or refuses to refer a patient not in an emergency or life-threatening case, as defined under Republic Act No. 8344, to another health care service provider within the same facility or one which is conveniently accessible regardless of his or her religious beliefs;

6] Section 23(b) and the corresponding provision in the RH-IRR, particularly Section 5.24 thereof, insofar as they punish any public officer who refuses to support reproductive health programs or shall do any act that hinders the full implementation of a reproductive health program, regardless of his or her religious beliefs;

7] Section 17 and the corresponding provision in the RH-IRR regarding the rendering of pro bona reproductive health service in so far as they affect the conscientious objector in securing PhilHealth accreditation; and 8] Section 3.01(a) and Section 3.01(g) of the RH-IRR, which added the qualifier "primarily" in defining abortifacients and contraceptives, as they are *ultra vires* and, therefore, null and void for contravening Section 4(a) of the RH Law and violating Section 12, Article II of the Constitution.

The Status Quo Ante Order issued by the Court on March 19, 2013 as extended by its Order, dated July 16, 2013, is hereby LIFTED, insofar as the provisions of R.A. No. 10354 which have been herein declared as constitutional.

G.R. No. 217872

On May 28, 2014, barely two (2) months after the promulgation of the Court's decision in *Imbong*, the petitioners, who were among those against the constitutionality of the RH Law, wrote a letter[2] addressed to the Food and Drug

[2] *Rollo* (G.R. No. 217872), pp. 112-114.

Administration *(FDA)*, inquiring about the steps that the agency might have taken to carry out the decision of the Court. In reply[3] to this letter, the Office of the Solicitor General *(OSG)* assured the petitioners that both the Department of Health *(DOH)* and the FDA were taking steps to comply with the decision of the Court and that it would inform them of any developments. The petitioners claimed that, as of the date of filing, they had not heard anything anymore from the OSG.

Controversy began in September 2014, when petitioner Rosie B. Luistro chanced upon the FDA's Notice[4] inviting Marketing Authorization Holders *(MAH)* of fifty (50) contraceptive drugs to apply for re-evaluation/re-certification of their contraceptive products and directed "all concerned to give their written comments to said applications on or before October 8, 2014."

Petitioner Alliance for the Family Foundation, Inc. *(ALFI)* believed that the contraceptives enumerated in the Notice fell within the definition of "abortifacient" under Section 4(a) of the RH Law because of their "secondary mechanism of action which induces abortion or destruction of the fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb."[5] For said reason, ALFI, through its president, Maria Concepcion S. Noche *(Noche)*, filed its preliminary opposition, dated October 8, 2014,[6] to all 50 applications with the FDA. The same opposition also questioned some twenty-seven (27) other contraceptive drugs and devices that had existing FDA registrations that were not subjects of any application for re-evaluation/re-certification.[7]

On November 24, 2014, ALFI filed its main opposition to all seventy-seven (77) contraceptive drugs.[8]

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[3] *Id*. at 116.

[4] *Id*. at 119-122.

[5] *Id*. at 18.

[6] *Id*. at 17-18; See also *rollo* (G.R. No. 217872), p. 123.

[7] *Id*. at 19.

[8] *Id*. at 20.

On November 27, 2014, notwithstanding the pending opposition of the petitioners to the re-evaluation/re-certification of these contraceptive products, the FDA issued two (2) certificates of product registration[9] for the hormonal contraceptives, "Implanon" and "Implanon NXT."[10]

On March 19, 2015, ALFI wrote another letter[11] to the DOH and the FDA, reiterating its opposition to the applications for re-evaluation/re-certification. It requested, among others, that the agencies shed light on the status of their earlier opposition and that it schedule hearings and consultations regarding the applications for re-evaluation/re-certification.

The petitioners claimed that their requests had remained unanswered.

Hence, the petitioners instituted the subject petition for *certiorari*, contending that the FDA committed grave abuse of discretion, not only for violating the Court's pronouncements in *Imbong*, but also for failing to act on their opposition.

The petitioners also contend that due to lack of any procedure, rules and regulations and consultations for re-evaluation/re-certification of contraceptive drugs and devices, the FDA had also violated the rudimentary requirements of due process. [12] Invoking the Court's power under Section 5(5), Article VIII of the Constitution,[13] they seek that the Court "promulgate rules and/or disapprove (or approve) rules of procedure in order to

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[9] *Id*. at 127-128.

[10] *Id*.

[11] *Id*. at 135-138.

[12] *Id*. at 45-46.

[13] Section 5. The Supreme Court shall have the following powers:

xxx xxx xxx

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts

adequately protect and enforce the constitutional right to life of the unborn."[14]

As for the certificates of product registration for the hormonal contraceptives, "Implanon" and "Implanon NXT," the petitioners contend that these certificates of product registration were issued *in haste* because they were released just three (3) days after the Senate Committee on Finance required FDA certifications for contraceptives as conditions for government funding for family planning commodities.[15]

The petitioners further aver that even before the issuance of these certificates, the DOH, as early as February 2015, had been administering Implanon in Cebu City. Pointing to a news article in the Panay News,[16] they claim that respondent Health Secretary Janette L. Garin *(Secretary Garin)* even defended the decisions of the DOH to administer these contraceptives. The petitioners add that photographs of several tarpaulins[17] show that the DOH has undertaken the distribution of contraceptives as early as March 25, 2015.

The petitioners allege that despite the Court's declaration that several portions of the RH Law and the RH-IRR are unconstitutional, the DOH has not effected any amendment in the RH-IRR to conform with the Court's judgment. They claim that the RH-IRR posted on the DOH website still contain the provisions which were declared by the Court to be unconstitutional.[18]

Thus, the petitioners assert that absent any compliant rule of procedure issued by the FDA, or consultation regarding its re-evaluation/re-certification, or consideration of their

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of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[14] *Rollo* (G.R. No. 217872), pp. 80-92.

[15] *Id*. at 46-50.

[16] *Id*. at 132-133.

[17] *Id*. at 134.

[18] *Id*. at 62-66.

opposition, the approval, procurement, distribution, administration, advertisement, and promotion of contraceptive use by the FDA and the DOH should be enjoined as they are tainted with grave abuse of discretion.[19]

In support of their prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Prohibitory and Mandatory Injunction, the petitioners assert that the actions of the FDA and the DOH violate the right to life of the unborn and, thus, must be restrained to ensure their protection.[20]

On June 17, 2015, the Court issued the Temporary Restraining Order *(TRO)*[21] enjoining the respondents from: [1] granting any and all pending applications for reproductive products and supplies, including contraceptive drugs and devices; and [2] procuring, selling, distributing, dispensing or administering, advertising, and promoting the hormonal contraceptives, "Implanon" and "Implanon NXT."

Comment of the Respondents

In their Comment,[22] the respondents, through the OSG, argued that petitioners failed to establish not only the direct injury that they had suffered, or would suffer, but also the transcendental importance of the issues raised as a result of [1] the issuance of certificates of registration and the re-certification of contraceptive drugs and devices; and [2] the purchase of Implanon and Implanon NXT.

The OSG also contended that the petitioners violated the doctrine of hierarchy of courts for failing to allege any special and compelling reasons to justify their direct resort to the Court. For the OSG, the Court's concurrent jurisdiction with the lower courts to issue writs of *certiorari*, prohibition and mandamus

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[19] *Id*. at 92-98.

[20] *Id*. at 99-103.

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

[22] *Id*. at 185-203.

did not give the petitioners the unrestrained freedom to file a Rule 65 petition directly before the Court.

The OSG further argued that the re-certification of contraceptive drugs and devices involved the scientific determination of fact and that it was conducted by the FDA in the exercise of its regulatory power. Thus, the OSG explained that the re-certification process conducted and the conclusions arrived at by the FDA [1] lay outside the ambit of a Rule 65 petition; [2] did not require any notice and hearing; and [3] need not comply with the standard of substantial evidence required in quasi-judicial proceedings. For the OSG, the FDA might even use extraneous and credible scientific data and was not limited by the evidence submitted by those seeking re-certification considering that Republic Act *(R.A.)* No. 3720[23] mandated that the FDA utilize "the latest medical knowledge."[24]

Finally, the OSG dismissed the petitioners' call for the Court to promulgate the necessary rules of procedure for re-certification, arguing that the rule-making power of the Court was confined to promulgating, approving or disapproving rules of procedure of courts and quasi-judicial bodies, and not to bodies like the FDA. The OSG asserted that the re-certification process undertaken by the FDA was not without basis, as the FDA was guided not only by the RH-IRR Law, but also by Bureau Circular *(BC)* No. 5, series of 1997, Administrative Order *(AO)* No. 2013-0021, AO No. 67, series of 1989, AO No. 2006-2021, AO No. 2005-0030, BC No. 2006-005, BC No. 2006-007, among many others.

In their Reply,[25] the petitioners pointed out that the Court sanitized the RH-IRR, dated March 15, 2013, by declaring Section 3.01(a) and Section 3.01(j) thereof as unconstitutional. For this reason and the acknowledged constitutional right to

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[23] Entitled "An Act to Ensure the Safety and Purity of Foods, Drugs, and Cosmetics Being Made Available to the Public by Creating the Food and Drug Administration Which Shall Administer and Enforce the Laws Pertaining Thereto."

[24] *Rollo* (G.R. No. 217872), pp. 191-198.

[25] *Id*. at 223-246.

life of the unborn from fertilization, the mandate of the FDA was understood to necessarily include the duty to re-certify certain contraceptives that had already been approved and registered and had been made available to the public, but this time using the constitutional yardsticks and standards expounded by the Court in its decision. In this process of registration and/or re-certification, the FDA had to ensure that only contraceptives that were non-abortifacient and safe would be purchased and distributed to the public.

The petitioners stated that the re-certification was not automatic and that there had to be an actual re-examination and re-testing of all contraceptives to ensure that they were compliant, not with the old standards utilized by the DOH and the FDA which, the Court had determined could open the floodgates to abortion, but with the new standards it laid out that aimed to ensure protection of the life of the unborn from injury or death starting from fertilization to implantation in the mother's womb.

The registration and/or re-certification of drugs are in the exercise of the quasi-judicial functions of the FDA. By registering and/or re-certifying the drugs listed in the Table and shown in the DOH list, the FDA has adjudicated in favor of the applications for re-certification of the pharmaceutical companies and against the oppositions of the petitioners.

The applications for registration and/or re-certification were granted by the FDA *without observing the basic tenets of due process - without due notice, without public hearing and without any supporting evidence in the face of clear and irrefutable evidence* of the abortifacient character of the registered/re-certified drugs.

The petitioners claim that viewed within the broad power of the Court to issue rules for the protection and enforcement of constitutional rights, the power to disapprove the rules of procedure of quasi-judicial bodies necessarily includes the power of the Court to look into the sufficiency of the rules of procedure of the FDA insofar as they adequately protect and enforce the constitutional right of the unborn from conception/fertilization.

Also, this power to disapprove the said rules of procedure necessarily includes the power to modify them by requiring that such rules of procedure incorporate safeguards such as the rudimentary requirements of due process to meaningfully and sufficiently protect and enforce the constitutional right to life.

For the petitioners, both the principle of prudence and the precautionary principle are relevant and applicable in matters affecting and related to the right to life of the unborn. Thus, any uncertainty as to the adverse effects of making contraceptives universally accessible should be resolved in a way that will preserve and promote life and health. And the burden is on the proponent to prove that a contraceptive is non-abortifacient. Any doubt should always be resolved in favor of life and against anything that threatens or poses a risk to it.

Accordingly, the petitioners pray that the TRO be maintained.

G.R. No. 221866

The petitioners in this case, with the exception of ALFI, are the same as those in G.R. No. 217872. In their subject petition for contempt, the petitioners averred that notwithstanding the receipt of the TRO, respondent FDA continued to grant applications for registration and re-certification of reproductive products and supplies. According to them, the FDA website[26] showed that on November 13, 2015, several reproductive products and supplies, including the contraceptives "Implanon and Implanon NXT," had been granted certification and/or re-certification. This was confirmed by the Certification of Product Registration[27] of the FDA allowing the marketing of Implanon NXT until November 19, 2015.

The petitioners also mentioned the November 16, 2015 Letter[28] of DOH Undersecretary Lilibeth C. David *(USEC David)*, addressed to Senator Vicente C. Sotto III *(Senator Sotto)*, informing him that the DOH granted the certification of several

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[26] *Rollo* (G.R. No. 221866), pp. 40, 42-47.

[27] *Id.* at 41.

[28] *Id.* at 52.

contraceptive drugs and family planning supplies and was submitting to the Senate a list of contraceptives and family planning supplies for its approval in the 2016 budget. Citing the Senate deliberations, the petitioners claimed that the DOH *deceived* the Senate so it would provide the necessary funding for these products by convincing the said body that the TRO only applied to the new applications for reproductive products and supplies, contraceptive drugs and devices and not to existing ones, which could be re-certified.

For the petitioners, by granting registration and/or re-certification of reproductive products and supplies, contraceptive drugs and devices, and by advertising that these products were available to the public through their website, the respondents have violated the TRO of the Court.

Additionally, in their Supplement to (Petition for Contempt of Court),[29] the petitioners averred that on December 21, 2015, the Philippine Health Insurance Corporation *(Philhealth)* issued Philhealth Circular No. 038-2015 which was about the "Subdermal Contraceptive Implant Package" to be offered by it in order "to increase access to long acting reversible family planning methods;" that the Chairperson of the Board of Directors of Philhealth was Secretary Garin; that Philhealth fell within the category of "respondents, their representatives, agents or other persons acting on their behalf that are enjoined from [2] procuring, selling, distributing, dispensing or administering, advertising and promoting the hormonal contraceptive 'Implanon' and 'Implanon NXT.'"; that Implanon is a subdermal implant; and that the circular is a clear attempt to go around the TRO.[30]

Thus, the petitioners pray that the respondents be held guilty of contempt of Court for disobeying the June 17, 2015 TRO issued by the Court.[31]

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[29] *Id*. at 59-68.

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

[31] *Id*. at 67.

Comment of the Respondents

In its Comment,[32] the OSG denies petitioners' claim that the FDA continued to grant applications for registration and/or re-certification of a contraceptive drug or device despite the issuance of the Court's TRO on June 17, 2015. According to the OSG, the attached certified true copies of Certificates of Product Registration (CPR) of various contraceptive drugs and devices showed that the dates of registration and/or recertification of the questioned contraceptive drugs and devices, including the drug "Implanon" and "Implanon NXT," were all granted *prior to* the Court's issuance of its TRO on June 17, 2015.[33]

As to the registration of the drug Medrogest on September 23, 2015, the OSG, citing its own medical research, argues that the same is not a contraceptive drug and, therefore, not covered by the Court's TRO.[34]

Regarding the November 16, 2015 Letter of USEC David, the OSG contends that a reading of the letter would simply show that it was just to inform Senator Sotto of the status of recertification of contraceptive drugs *as of* November 13, 2015. For said reason, the OSG asserts that petitioners were in error in claiming that intra-uterine devices were granted re-certification on November 13, 2015.[35]

The OSG further argues that the FDA's act of posting of the product information on "Implanon" and "Implanon NXT" in its website was not made with the objective of advertising the questioned contraceptive drug but, rather, made by the FDA pursuant to its ministerial duty under Section 7.08,

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[32] *Rollo* (G.R. No. 217872), pp. 267-313.

[33] *Id*. at 272-274.

[34] *Id*. at 276-277.

[35] *Id*. at 274-276.

Rule 7, Chapter 2[36] of the Implementing Rules and Regulations of the RH Law.[37]

Finally, the OSG asserts that respondents should not be cited in contempt with respect to the implementation of Philhealth Circular No. 038-2015, not only because Philhealth is a separate entity not being administered by the Secretary of Health, but also because Philhealth was never impleaded as a party in G.R. Nos. 217872 and 221866. For the OSG, the Court's TRO only prohibits respondents from procuring, selling, distributing, dispensing, administering, advertising, and promoting "Implanon" and "Implanon NXT." It does not cover the public procurement, sale, distribution and availment of other registered and recertified intra-uterine devices *prior* to the FDA's receipt of the Court's TRO on June 29, 2015.[38]

Reply to the Comment

Petitioners once more insist that respondent were guilty of contempt, stating in their Reply[39] that despite the June 17, 2015 TRO of the Court, the Certificate of Product Registration for "Implanon NXT" submitted by respondents themselves not only showed that the "marketing authorization" of the contraceptive drug remained to be valid until November 19, 2015, but was also re-certified and extended after the June 17, 2015 TRO of the Court until May 29, 2020. Petitioners explain that "marketing authorization" as defined by the World Health Organization, is "[a]n official document issued by the competent drug regulatory

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[36] Section 7.08 Provision of Product Information. The FDA shall provide the public access to information regarding a registered reproductive health product. **Among others, the FDA shall post in its website all approved reproductive health products (generic and branded)** with all relevant information relevant to proper use, safety and effectiveness of the product, including possible side effects and adverse reactions or events. As appropriate, the FDA shall issue an advisory to inform the consumers about relevant developments regarding these products.

[37] *Rollo* (G.R. No. 217872), p. 276.

[38] *Id*. at 277-278.

[39] *Id*. at 366-376.

authority for the purpose of marketing or free distribution of a product after evaluation safety, efficacy and quality. x x x"[40]

Regarding the implementation of PhilHealth Circular No. 038-2015, petitioners argue that PhilHealth is covered by the June 17, 2015 TRO of the Court even if it is not impleaded as a party because it is considered within the terms "respondents, their representatives, agents or other persons acting on their behalf" in Court's order. Citing Article IV, Section 14 of Republic Act No. 7875,[41] petitioners points out that PhilHealth is a government corporation attached to the Department of Health for policy coordination and guidance. They likewise point out that respondent Secretary Garin cannot disclaim liability considering that she is also the Chairperson of PhilHealth, and that other secretaries and other heads of the departments and agencies of government are members of the Board of PhilHealth.[42]

Consolidation

On February 3, 2016, the Court ordered the consolidation of these two cases.[43]

The Court's Ruling

In resolving the foregoing petitions, it behooves the Court to first address the issues on whether the petitioners have the *locus standi* to file the subject petitions and whether their resort to the subject recourse is proper.

Petitioners have Locus Standi

As stated above, the OSG questioned the legal standing of the petitioners to file the subject petition as citizens and taxpayers,

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[40] *Id*. at 370-371.

[41] SEC. 14. *Creation and Nature of the Corporation*. - There is hereby created a Philippine Health Insurance Corporation, which shall have the status of a tax-exempt government corporation attached to the Department of Health for policy coordination and guidance.

[42] *Rollo* (G.R. No. 217872), pp. 373-374.

[43] *Id*. at 255-256.

not only because of their failure to establish any direct injury, but also because of their failure to show that the issues raised were of transcendental importance.

In *Imbong*, it was already stated that "(from) the declared policy of the RH Law, it is clear that Congress intended that the public be given only those medicines that are proven medically safe, legal, non-abortifacient, and effective in accordance with scientific and evidence-based medical research standards." Thus, the public, including the petitioners in these cases, have the right to question any approval or disapproval by the FDA of any drugs or devices which they suspect to be abortifacient on the ground that they were not properly tested or were done in haste or secrecy.

As early as *David v. Arroyo*,[44] the Court has already ruled that "[t]axpayers, voters, concerned citizens, xxx may be accorded standing to sue, provided that xxx for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional xxx for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early. xxx"

Considering that the Court in *Imbong* already declared that the issues of contraception and reproductive health in relation to the right to life of the unborn child were indeed of transcendental importance,[45] and considering also that the petitioners averred that the respondents unjustly caused the allocation of public funds for the purchase of alleged abortifacients which would deprive the unborn of its the right to life, the Court finds that the petitioners have *locus standi* to file these petitions.

Certiorari proper to challenge acts of the FDA

As to the contention that the subject recourse is improper as it involves the FDA's exercise of its regulatory powers, suffice

[44] 522 Phil. 705, 760 (2006).

[45] *Supra* note 1, at 285-286.

it to say that the Court has unequivocally declared that *certiorari*, prohibition and *mandamus* are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials as there is no other plain, speedy or adequate remedy in the ordinary course of law.[46]

Consequently, the Court dismisses the notion that the re-certification of contraceptive drugs and devices by the FDA in exercise of its regulatory function is beyond judicial review. After all, the Constitution mandates that judicial power include the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[47]

Thus, *certiorari* is proper.

Violation of Due Process

It is on record that sometime in September 2014, the FDA issued a Notice[48] inviting MAH of fifty (50) contraceptive drugs to apply for re-evaluation/re-certification of their contraceptive products and directed "all concerned to give their written comments to said applications on or before October 8, 2014."

ALFI, in the belief that the contraceptives enumerated in the Notice fell within the definition of "abortifacient," filed its preliminary opposition, dated October 8, 2014, to all 50 applications with the FDA. The same opposition also questioned twenty-seven (27) other contraceptive drugs and devices that

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[46] *Imbong v. Ochoa*, G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 & 207563, April 8, 2014, 721 SCRA 146, 277-278; *Tanada v. Angara*, 338 Phil. 546, 575 (1997); *Macalintal v. COMELEC*, 453 Phil. 586 (2003); *Aldaba v. COMELEC*, 624 Phil. 805 (2010); *Magallona v. Ermita*, G.R. No. 187167, July 16, 2011, 655 SCRA 476.

[47] Article VIII, Section 1, 1987 Constitution.

[48] *Rollo* (G.R. No. 217872), pp. 119-122.

had existing FDA registrations which were not subjects of any application for re-evaluation/re-certification.

On November 24, 2014, ALFI formally filed its opposition to all the seventy-seven (77) contraceptive drugs, but despite the pending opposition to the re-evaluation/re-certification of these contraceptive products, the FDA issued two (2) certificates of product registration for the hormonal contraceptives, "Implanon" and "Implanon NXT."

On March 19, 2015, ALFI wrote another letter[49] to the DOH and the FDA, reiterating its opposition to the applications for re-evaluation/re-certification and requesting, among others, that the agencies shed light on the status of their earlier opposition and schedule hearings and consultations regarding the applications for re-evaluation/re-certification.

The petitioners' oppositions were all ignored.

Now, one of the guarantees sacrosanct in this jurisdiction is that no person shall be deprived of life, liberty or property without due process of law. An essential component of the Bill of Rights, the Due Process Clause, undoubtedly occupies a position of primacy in the fundamental law.

Due process of law has two aspects: substantive and procedural due process. In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both the substantive and the procedural requirements thereof.[50]

Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property.[51] Procedural due process, on the other hand, means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it.[52]

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[49] *Id*. at 135-138.

[50] *Republic v. Sandiganbayan*, 461 Phil. 598 (2003).

[51] *Ynot v. Intermediate Appellate Court*, G.R. No. 74457, March 20, 1987, 148 SCRA 659.

[52] *Tatad v. Sandiganbayan*, 242 Phil. 563, 575-576 (1988).

Although administrative procedural rules are less stringent and often applied more liberally, administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings.[53]

In *Ang Tibay v. CIR*,[54] the Court laid down the cardinal rights of parties in administrative proceedings, as follows:

1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof;

2) The tribunal must consider the evidence presented;

3) The decision must have something to support itself;

4) The evidence must be substantial;

5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;

6) The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision; and

7) The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.[55]

After an assessment of the undisputed facts, the Court finds that the FDA certified, procured and administered such contraceptive drugs and devices, **without the observance of the basic tenets of due process, without notice and without public hearing**, despite the constant opposition from the petitioners. From the records, it appears that other than the notice inviting stakeholders to apply for certification/re-certification

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[53] *Montoya v. Varilla*, 595 Phil. 507, 520 (2008); *Civil Service Commission v. Lucas*, 361 Phil. 486, 491 (1999).

[54] 69 Phil. 635 (1940).

[55] As cited and paraphrased in *Solid Homes v. Laserna*, 574 Phil. 69, 83 (2008).

of their reproductive health products, there was no showing that the respondents notified the oppositors and conducted a hearing on the applications and oppositions submitted.

Rather than provide concrete evidence to meet the petitioners' opposition, the respondents simply relied on their challenge questioning the propriety of the subject petition on technical and procedural grounds. The Court notes that even the letters submitted by the petitioners to the FDA and the DOH seeking information on the actions taken by the agencies regarding their opposition were left unanswered as if they did not exist at all. The mere fact that the RH Law was declared as not unconstitutional does not permit the respondents to run roughshod over the constitutional rights, substantive and procedural, of the petitioners.

Indeed, although the law tasks the FDA as the primary agency to determine whether a contraceptive drug or certain device has no abortifacient effects, its findings and conclusion should be allowed to be questioned and those who oppose the same must be given a genuine opportunity to be heard in their stance. After all, under Section 4(k)[56] of R.A. No. 3720, as amended by R.A. No. 9711, the FDA is mandated to order the ban, recall and/or withdrawal of any health product found to have caused death, serious illness or serious injury to a consumer or patient, or found to be imminently injurious, unsafe, dangerous, or grossly deceptive, after due process.

Due to the failure of the respondents to observe and comply with the basic requirements of due process, the Court is of the view that the certifications/re-certifications and the distribution of the questioned contraceptive drugs by the respondents should be struck down as **violative of the constitutional right to due process.**

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[56] After due process, to order the ban, recall, and/or withdrawal of any health product found to have caused the death, illness or serious injury to a consumer or patient, or is found to be imminently injurious, unsafe, dangerously deceptive, and to require all concerned to implement the risk management plan which is a requirement for the issuance of the appropriate authorization.

Verily, it is a cardinal precept that where there is a violation of basic constitutional rights, the courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right to due process is apparent, **a decision rendered in disregard of that right is void for lack of jurisdiction**. This rule is equally true in quasi-judicial and administrative proceedings, for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where he stands to lose the same.[57]

In re: Motion to Lift the Temporary Restraining Order

Supplementing their Comment,[58] the OSG sought to have the June 17, 2015 TRO of the Court lifted, arguing that given the expiry date of these contraceptive drugs, the continued effectivity of the June 17, 2015 TRO of the Court would result in the waste of vast quantities of "Implanon" and "Implanon NXT" which remain in government warehouses. In addition to insisting on the safety of these contraceptive drugs, respondents added that the continued effectivity of the June 17, 2015 TRO of the Court would also result in the depleted supply of contraceptive drugs and devices in both accredited public health facilities and in the commercial market.

This was opposed by petitioners[59] who asserted that in light of the lack of any clear and transparent procedure and rules for the determination of the safety and non-abortifacient character of the contraceptive drugs, the June 17, 2015 TRO should be maintained. In support of their argument, petitioners cited the Principle of Prudence espoused by the Framers of the Constitution, that is, "should there be the slightest iota of doubt

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[57] *Montoya v. Varilla*, *supra* note 53, at 520-521.

[58] *Rollo* (G.R. No. 217872), pp. 316-326; *rollo* (G.R. No. 221866), pp. 96-103.

[59] *Rollo* (G.R. No. 217872), pp. 326-340.

regarding questions of life and respect for human life, one must try to be on the safe side."[60]

In view of the foregoing, the Court denies the motion to lift the TRO issued by this Court at this time. The public respondents, their representatives, agents or other persons acting on their behalf are still enjoined from distributing and administering the certified and re-certified drugs and devices, considering that the FDA will still be conducting a hearing on the opposition of the petitioners. **To lift the TRO at this time is to grant a motion for execution before a trial.**

Nothing in this resolution, however, should be construed as restraining or stopping the FDA from carrying on its mandate and duty to test, analyze, scrutinize, and inspect drugs and devices. What are being enjoined are the grant of certifications/ re-certifications of contraceptive drugs without affording the petitioners due process, and the distribution and administration of the questioned contraceptive drugs and devices including Implanon and Implanon NXT until they are determined to be safe and non-abortifacient.

Any decision of the FDA is appealable to the Court of Appeals thru a Petition for Review under Rule 43 of the Rules of Court

The Court notes that Section 32 of R.A. No. 3720, as amended by R.A. No. 9711,[61] and its implementing rules provide that a party aggrieved by the orders, rulings or decision (or inaction) of the Director-General of the FDA has the remedy of appealing the same to the Secretary of Health. The Court likewise notes

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[60] *Id*. at 329-330.

[61] SEC. 32. *The orders, rulings or decisions of the FDA shall be appealable to the Secretary of Health*. An appeal shall be deemed perfected upon filing of the notice of appeal and posting of the corresponding appeal bond.

An appeal shall not stay the decision appealed from unless an order from the Secretary of Health is issued to stay the execution thereof.

that under Section 9[62] of E.O. No. 247,[63] the decisions of the Secretary of Health would first have to be appealed to the Office of the President, in conformity with the doctrine of exhaustion of administrative remedies.

Notwithstanding, considering that the Secretary of Health is the principal respondent in these petitions, any decision by the FDA in this particular case should be directly appealable to the Court of Appeals *(CA)* through a petition for review under Rule 43 of the Rules of Court. Verily, procedural rules, whether issued by quasi-judicial agencies or embodied in statutes enacted by the Congress, are subject to alteration or modification by the Court in the exercise of its constitutional rule-making power.

In *First Lepanto Ceramics, Inc. v. Court of Appeals*,[64] the Court, on the strength of Circular No. 1-91 (now Rule 43 of the Rules of Court), allowed an appeal from the decision of the Board of Investment to the CA, notwithstanding the express provision of Section 82 of the Omnibus Investment Code of 1987[65] that any appeal from a decision of the Board of Investment should be directly taken to this Court within thirty (30) days from receipt of the order or decision, *viz:*

> x x x [T]his Court, pursuant to its Constitutional power under Section 5(5), Article VIII of the 1987 Constitution to promulgate rules concerning pleading, practice and procedure in all courts, and by way of implementation of B.P. 129, issued Circular 1-91 prescribing the rules governing appeals to the Court of Appeals from final orders or decisions of the Court of Tax Appeals and quasi-judicial agencies to eliminate unnecessary contradictions and confusing rules of procedure.

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[62] Sec. 9. *Appeals*. Decisions of the Secretary (DENR, DA, DOH or DOST) may be appealed to the Office of the President. Recourse to the courts shall be allowed after exhaustion of all administrative remedies.

[63] Entitled "Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, their By-Products and Derivatives, for Scientific and Commercial Purposes; and for Other Purposes;" dated May 18, 1995.

[64] G.R. No. 110571 March 10, 1994, 231 SCRA 30.

[65] Otherwise known as Executive Order 226.

Contrary to petitioner's contention, although a circular is not strictly a statute or law, it has, however, the force and effect of law according to settled jurisprudence. In *Inciong v. de Guia*, a circular of this Court was treated as law. In adopting the recommendation of the Investigating Judge to impose a sanction on a judge who violated Circular No. 7 of this Court dated September 23, 1974, as amended by Circular No. 3 dated April 24, 1975 and Circular No. 20 dated October 4, 1979, requiring raffling of cases, this Court quoted the ratiocination of the Investigating Judge, brushing aside the contention of respondent judge that assigning cases instead of raffling is a common practice and holding that respondent could not go against the circular of this Court until it is repealed or otherwise modified, as "(L)aws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or customs or practice to the contrary."

The argument that Article 82 of E.O. 226 cannot be validly repealed by Circular 1-91 because the former grants a substantive right which, under the Constitution cannot be modified, diminished or increased by this Court in the exercise of its rule-making powers is not entirely defensible as it seems. Respondent correctly argued that Article 82 of E.O. 226 grants the right of appeal from decisions or final orders of the BOI and in granting such right, it also provided where and in what manner such appeal can be brought. These latter portions simply deal with procedural aspects which this Court has the power to regulate by virtue of its constitutional rule-making powers.

The case of *Bustos v. Lucero* distinguished between rights created by a substantive law and those arising from procedural law:

> Substantive law creates substantive rights . . . . Substantive rights is a term which includes those rights which one enjoys under the legal system prior to the disturbance of normal relations (60 C.J., 980). Substantive law is that part of the law which creates, defines and regulates rights, or which regulates rights and duties which give rise to a cause of action, as oppossed to adjective or remedial law, which prescribes the method of enforcing rights or obtains a redress for their invasion.

Indeed, the question of where and in what manner appeals from decisions of the BOI should be brought pertains only to procedure or the method of enforcing the substantive right to appeal granted by E.O. 226. In other words, the right to appeal from decisions or final orders of the BOI under E.O. 226 remains and continues to be

respected. Circular 1-91 simply transferred the venue of appeals from decisions of this agency to respondent Court of Appeals and provided a different period of appeal, i.e., fifteen (15) days from notice. It did not make an incursion into the substantive right to appeal.[66]

The fact that the FDA is not among the agencies enumerated in Rule 43 as subject of a petition for review to the CA is of no consequence. In *Cayao-Lasam v. Ramolete*,[67] the Court disagreed with the opinion of the CA that the enumeration of the agencies mentioned in Section 1 of Rule 43 was exclusive. Thus:

> Indeed, the PRC is not expressly mentioned as one of the agencies which are expressly enumerated under Section 1, Rule 43 of the Rules of Court. However, its absence from the enumeration does not, by this fact alone, imply its exclusion from the coverage of said Rule. The Rule expressly provides that it should be applied to appeals from awards, judgments, final orders or resolutions of any quasi-judicial agency in the exercise of its quasi-judicial functions. The phrase "among these agencies" confirms that the enumeration made in the Rule is not exclusive to the agencies therein listed.[68]

More importantly, to require the petitioners to first challenge any adverse decision of the FDA before the Secretary of Health and then to the Office of the President, will **unduly delay the final resolution of the current controversies.** It should be remembered that in *Ginete v. Court of Appeals*,[69] it was held:

> Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already

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[66] *First Lepanto Ceramics, Inc. v. Court of Appeals*, *supra* note 64, at 38-39.

[67] 595 Phil. 56 (2008).

[68] *Id*. at 71.

[69] 357 Phil. 36 (1998).

declared to be final, as we are now constrained to do in the instant case.

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The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.[70] [Emphasis Included]

Considering that in the case at bench, what is mainly involved is the protection of the constitutionally protected right to life of the unborn, this Court finds that any controversy involving it should be resolved in the most expeditious manner possible.

Petition for Contempt

In the absence of a clear contumacious act committed against the Court with respect to the TRO, contempt is not warranted. It has been shown that the questioned acts were performed or done *prior* to the issuance of the TRO. Moreover, the charge that the respondents are continuing to engage in the distribution of the contraceptive drugs Implanon and Implanon NXT has not been substantiated. The mere fact that the subject drugs were re-certified up to May 29, 2020 is not proof that they continue to violate the TRO. In fact, the respondents are praying that it be lifted which is an indication that they are respecting and observing it.

At any rate, this controversy would not have been brought about if only the public respondents acted in accordance with the mandate of the Court in *Imbong*. Despite the Court's pronouncements in *Imbong*, they have not amended the RH-IRR to conform to the said pronouncements. Several provisions were struck down by the Court as unconstitutional, but they remain in the RH-IRR. Positive steps should have been taken by the concerned agencies.

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[70] *Id*. at 51-53.

Moreover, the Court notes that the RH-IRR has failed to provide the procedural mechanism by which oppositors may challenge the safety and the non-abortifacient character of contraceptive drugs and devices. The FDA should address this glaring omission.

To be sure, and to avoid any dispute in the future, the Court will adopt and embody in the dispositive portion the studied instructions of one of their esteemed colleagues, Hon. Mariano C. Castillo, in his Concurring Opinion in *Imbong.* Due to the inaction of the public respondents, the Court will adopt them as part of this resolution to serve as guidelines for all concerned.

In line with pronouncements made herein and in the decision of the Court in *Imbong*, the FDA should afford the petitioners their constitutional right to due process by conducting a summary hearing on the applications and oppositions, guided by the cardinal rights of parties laid down in *Ang Tibay* as stated above, within thirty (30) days from receipt of this disposition.

WHEREFORE, the case docketed as G.R No. 217872 is hereby **REMANDED** to the Food and Drugs Administration which is hereby ordered to observe the basic requirements of due process by conducting a hearing, and allowing the petitioners to be heard, on the re-certified, procured and administered contraceptive drugs and devices, including Implanon and Implanon NXT, and to determine whether they are abortifacients or non-abortifacients.

Pursuant to the expanded jurisdiction of this Court and its power to issue rules for the protection and enforcement of constitutional rights, the Court hereby:

1. DIRECTS the Food and Drug Administration to formulate the rules of procedure in the screening, evaluation and approval of all contraceptive drugs and devices that will be used under Republic Act No. 10354. The rules of procedure shall contain the following minimum requirements of due process: (a) publication, notice and hearing, (b) interested parties shall be allowed to intervene, (c) the standard laid down in the Constitution, as adopted under Republic Act No. 10354, as to what constitutes allowable contraceptives shall

be strictly followed, that is, those which do not harm or destroy the life of the unborn from conception/fertilization, (d) in weighing the evidence, all reasonable doubts shall be resolved in favor of the protection and preservation of the right to life of the unborn from conception/fertilization, and (e) the other requirements of administrative due process, as summarized in *Ang Tibay v. CIR*, shall be complied with.

2. DIRECTS the Department of Health in coordination with other concerned agencies to formulate the rules and regulations or guidelines which will govern the purchase and distribution/dispensation of the products or supplies under Section 9 of Republic Act No. 10354 covered by the certification from the Food and Drug Administration that said product and supply is made available on the condition that it will not be used as an abortifacient subject to the following minimum due process requirements: (a) publication, notice and hearing, and (b) interested parties shall be allowed to intervene. The rules and regulations or guidelines shall provide sufficient detail as to the manner by which said product and supply shall be strictly regulated in order that they will not be used as an abortifacient and in order to sufficiently safeguard the right to life of the unborn.

3. DIRECTS the Department of Health to generate the complete and correct list of the government's reproductive health programs and services under Republic Act No. 10354 which will serve as the template for the complete and correct information standard and, hence, the duty to inform under Section 23(a)(l) of Republic Act No. 10354. The Department of Health is DIRECTED to distribute copies of this template to all health care service providers covered by Republic Act No. 10354.

The respondents are hereby also ordered to amend the Implementing Rules and Regulations to conform to the rulings and guidelines in G.R. No. 204819 and related cases.

The above foregoing directives notwithstanding, within 30 days from receipt of this disposition, the Food and Drugs Administration should commence to conduct the necessary hearing guided by the cardinal rights of the parties laid down in *CIR v. Ang Tibay*.[71]

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[71] *Supra* note 54.

Pending the resolution of the controversy, the motion to lift the Temporary Restraining Order is **DENIED.**

With respect to the contempt petition, docketed as G.R No. 221866, it is hereby **DENIED f**or lack of concrete basis.

SO ORDERED.

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

Brion, J., on leave.

FIRST DIVISION

[G.R. No. 219071. August 24, 2016]

SPOUSES CHARITO M. REYES and ROBERTO REYES, and SPOUSES VILMA M. MARAVILLO and DOMINGO MARAVILLO, JR., *petitioners, vs.* **HEIRS OF BENJAMIN MALANCE,[*] namely: ROSALINA M. MALANCE, BERNABE M. MALANCE, BIENVENIDO M. MALANCE, and DOMINGA[**] M. MALANCE, represented by BIENVENIDO M. MALANCE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; EVIDENTIARY WEIGHT OF A NOTARIZED DOCUMENT; A DEFECTIVE NOTARIZATION WILL STRIP THE DOCUMENT OF ITS PUBLIC CHARACTER AND REDUCE IT TO A PRIVATE DOCUMENT.— [A] notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents

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[*] "Malanse" in some parts of the records.

[**] "Domingo" in some parts of the records.

acknowledged before a notary public have in their favor the presumption of regularity which may only be rebutted by clear and convincing evidence. However, the presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. **A defective notarization will strip the document of its public character and reduce it to a private document**. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.

2. ID.; ID.; ID.; ID.; THE EVIDENCE IN CASE AT BAR AS TO THE GENUINENESS AND DUE EXECUTION OF THE SUBJECT *KASULATAN* PREPONDERATE IN FAVOR OF PETITIONERS.— [T]he Court observes that the *Kasulatan* was irregularly notarized since it did not reflect any competent evidence of Benjamin's identity, such as an identification card (ID) issued by an official agency bearing his photograph and signature, but merely indicated his Community Tax Certificate Number despite the express requirement of the 2004 Rules on Notarial Practice. Consequently, having failed to sufficiently establish the regularity in the execution of the *Kasulatan*, the presumption accorded by law to notarized documents does not apply and, therefore, the said document should be examined under the parameters of Section 20, Rule 132 of the Rules of Court which provides that "[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (*a*) [by] anyone who saw the document executed or written; or (*b*) [by] evidence of the genuineness of the signature or handwriting of the maker." The burden falls upon petitioners to prove the authenticity and due execution of the *Kasulatan*, which they were, nonetheless, able to discharge. Records show that while the notary public, Atty. Cenon Navarro (Atty. Navarro), did not require an ID when he notarized the *Kasulatan*, when confronted with Benjamin's ID issued by the Office of Senior Citizens Affairs of Pulilan, Bulacan (Senior Citizen ID), he identified the person in the picture as the person who signed the *Kasulatan*, and received money from the Magtalas sisters in his presence. On the other hand, respondent Bienvenido Malance's self-serving and uncorroborated testimony that Benjamin's signature on the *Kasulatan* was forged purportedly because he does not know how to write was contradicted by the

Malance heirs' own manifestation that Benjamin has a Senior Citizen ID and that the signature affixed thereon is different from his signature appearing on the *Kasulatan*. The said ID, however, was not offered in evidence as to enable the RTC, the CA, and the Court to make an examination of the signature thereon vis-à-vis that on the *Kasulatan*. It is important to note that a finding of forgery does not depend exclusively on the testimonies of expert witnesses and that judges must use their own judgment, through an independent examination of the questioned signature, in determining the authenticity of the handwriting. Hence, the evidence as to the genuineness of Benjamin's signature, and the consequent due execution and authenticity of the *Kasulatan* preponderate in favor of petitioners, who were likewise able to prove Benjamin's receipt of the amount of ₱600,000.00 reflected in the *Kasulatan*.

3. CIVIL LAW; CONTRACT; ANTICHRESIS; ELEMENTS.— [A]ntichresis involves an express agreement between parties whereby: (***a***) the **creditor will have possession of the debtor's real property** given as security; (***b***) such creditor **will apply the fruits of the said property to the interest owed by the debtor, *if any*, then to the principal amount**; (***c***) **the creditor retains enjoyment of such property until the debtor has totally paid what he owes**; and (***d***) **should the obligation be duly paid, then the contract is automatically extinguished proceeding from the accessory character of the agreement**.

4. ID.; ID.; ID.; THE CONTEMPORANEOUS AND SUBSEQUENT ACTS OF THE PARTIES SHOW THAT THEY INTENDED TO ENTER INTO A CONTRACT OF ANTICHRESIS.— [T]he evidence on record shows that the parties intended to enter into a contract of antichresis. x x x While the *Kasulatan* did not provide for the transfer of possession of the subject land, the contemporaneous and subsequent acts of the parties show that such possession was intended to be transferred. Atty. Navarro testified that while the *Kasulatan* only shows that the harvest and the fruits shall answer for Benjamin's indebtedness, the parties agreed among themselves that the lenders would be the one to take possession of the subject land in order for them to get the harvest. Indeed, such arrangement would be the most reasonable under the premises since at that time, Benjamin's medical condition necessitated hospitalization, hence, his physical inability to cultivate and harvest the fruits thereon. As antichretic

creditors, the Magtalas sisters are entitled to retain enjoyment of the subject land until the debt has been totally paid.

APPEARANCES OF COUNSEL

Nenita D.C. Tuazon Law Office for petitioners.
Gumatay Bernardino Gaela Allam Law Offices for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated July 23, 2013 and the Resolution[3] dated June 18, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 95984, which directed petitioners Charito M. Reyes and Vilma M. Maravillo (the Magtalas sisters) to surrender and turn-over the physical possession of the subject land to respondents Heirs of Benjamin Malance, namely: Rosalina M. Malance, Bernabe M. Malance, Bienvenido M. Malance, and Dominga M. Malance, represented by Bienvenido M. Malance (the Malance heirs) upon payment of the amount of ₱4,320.84.

The Facts

Benjamin Malance (Benjamin) was the owner of a 1.4017-hectare parcel of agricultural land covered by Emancipation Patent No. (EP) 615124[4] situated at Dulong Malabon, Pulilan, Bulacan[5] (subject land). During his lifetime, Benjamin obtained

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[1] *Rollo*, pp. 9-15.

[2] *Id*. at 30-54. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Ricardo R. Rosario and Stephen C. Cruz concurring.

[3] *Id*. at 21-A.

[4] Erroneously referred to as "1.407" hectare agricultural parcel of land covered by EP "3424" in the CA's July 23, 2013 Decision (see *id*. at 30-A).

[5] See Certification issued by the Department of Agrarian Reform - Municipal Agrarian Reform Office dated October 9, 2006; records, Vol. I, p. 29. See also Survey Subdivision Plan of Lot 1-11-6741; *id*. at 28.

from the Magtalas sisters, who are distant relatives,[6] a loan in the amount of ₱600,000.00, as evidenced by a *Kasulatan Ng Ukol sa Utang*[7] dated June 26, 2006 (*Kasulatan*). Under the *Kasulatan*, the Magtalas sisters shall have the right to the fruits of the subject land for six (6) years or until the loan is fully paid.[8]

After Benjamin passed away on September 29, 2006,[9] his siblings, the Malance heirs, inspected the subject land and discovered that the Magtalas sisters, their respective husbands, Roberto Reyes and Domingo Maravillo, Jr. (petitioners), and their father, Fidel G. Magtalas (Fidel),[10] were cultivating the same on the basis of the *Kasulatan*.[11] Doubting the authenticity of the said *Kasulatan*, the Malance heirs filed a Complaint for Recovery of Possession, Declaration of Nullity of the *Kasulatan* and Damages with Prayer for Writ of Preliminary Injunction and Temporary Restraining Order[12] against petitioners, before the Regional Trial Court of Malolos City, Bulacan (RTC), Branch 84, docketed as Civil Case No. 748-M-2006, which the Malance heirs subsequently amended.[13] They claimed that: (*a*) during his lifetime, Benjamin accumulated enough wealth to sustain himself, was unmarried and had no children to support;[14] (*b*) the *Kasulatan* was executed during the time when Benjamin was seriously ill and mentally incapacitated due to his illness and advanced age; and (*c*) the *Kasulatan* was simulated as the signature of Benjamin appearing thereon was not his signature.[15]

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[6] See *rollo*, p. 31.

[7] Records, Vol. I, p. 32.

[8] *Id*.

[9] See Certificate of Death; *id*. at 29.

[10] Fidel R. Magtalas, who was included as party-respondent in the complaint, passed away on August 3, 2007 (see Certificate of Death; *id*. at 196).

[11] *Rollo*, p. 31.

[12] Dated December 1, 2006. Records, Vol. I, pp. 3-8.

[13] See Amended Complaint dated December 16, 2006; records, Vol. I, pp. 102-106.

[14] *Id*. at 103.

[15] *Id*. at 104.

In their answer,[16] petitioners denied that Benjamin had accumulated enough wealth to sustain himself as his only source of income was his farm, and averred, *inter alia*, that: (*a*) when Benjamin became sickly in 2000, he leased the subject land to different people who cultivated the same with their (petitioners') help;[17] (*b*) the *Kasulatan* was executed before a notary public at the time when Benjamin was of sound mind, though sickly; (*c*) they were cultivating the subject land in accordance with the said *Kasulatan*;[18] (*d*) the case involved an agrarian conflict within the jurisdiction of the Department of Agrarian Reform Adjudication Board; and (*e*) the Malance heirs must pay Benjamin's indebtedness prior to recovery of possession.[19]

The complaint was initially dismissed for lack of jurisdiction,[20] but was subsequently reinstated[21] and re-raffled to Branch 9 of the same RTC.[22]

The RTC Ruling

In a Decision[23] dated August 31, 2010, the RTC dismissed the complaint for failure of the Malance heirs to substantiate their claim that Benjamin's signature was forged, and upheld the validity of the *Kasulatan* on the ground that it is a notarized document which enjoys the presumption of regularity in its execution. It declared the *Kasulatan* as a contract of antichresis binding upon Benjamin's heirs – the Malance heirs – and

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[16] Dated January 3, 2007. *Id*. at 115-120.

[17] *Id*. at 115.

[18] *Id*. at 116.

[19] *Id*. at 117-118.

[20] See Order dated May 15, 2007 issued by Presiding Judge Wilfredo T. Nieves; *id*. at 172-174.

[21] See Order dated October 8, 2007 issued by Presiding Judge Veronica A. Vicente-De Guzman; *id*. at 206-209.

[22] See Notice dated July 17, 2007 issued by Officer-in-Charge Danibell G. Lalisan; *id*. at 193.

[23] *Rollo*, pp. 73-81. Penned by Presiding Judge Veronica A. Vicente-De Guzman.

conferring on the Magtalas sisters the right to retain the subject land until the debt is paid.[24]

Aggrieved, the Malance heirs appealed to the CA.[25]

The CA Ruling

In a Decision[26] dated July 23, 2013, the CA upheld the RTC's findings and declared that: (*a*) the mere allegation of forgery will not suffice to overcome the positive value of the *Kasulatan*, a notarized document which has in its favor the presumption of regularity and is conclusive as to the truthfulness of its contents;[27] and (*b*) the contract between the parties was a contract of antichresis.[28] However, it ruled that only the amount of ₱218,106.84 was actually received by Benjamin as expenses for his medical treatment and the cost of his funeral service/ memorial lot,[29] while the rest was kept in the custody of the Magtalas sisters' father, Fidel.[30] Considering petitioners' evidence that the subject land has an average annual production of 107 cavans of *palay* valued at ₱600.00/cavan, with half of the income expended for costs, and that they had been cultivating the subject land for 6.66 years, the CA ruled that the outstanding amount of the loan is only ₱4,320.84.[31] Consequently, it directed the Magtalas sisters to surrender and turn-over the physical

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[24] See *id*. at 79-81.

[25] See Notice of Appeal dated October 4, 2010; records, Vol. II, pp. 452-453.

[26] *Rollo*, pp. 30-54.

[27] *Id*. at 45-46.

[28] *Id*. at 49.

[29] See *id*. at 50-51. Computed as follows:

Hospitalization/medicines	₱58,106.84
Casket/funeral service	60,000.00
Memorial lot	100,000.00
Total	₱218,106.84

[30] *Id*. at 51.

[31] See *id*. at 51-52. Computed as follows:

possession of the subject land to the Malance heirs upon payment of the latter of the outstanding loan.[32]

Dissatisfied, petitioners moved for reconsideration,[33] contending that: (*a*) the CA should have imposed interest on Benjamin's loan despite the absence of express stipulation, and applied the fruits from the subject land thereto, and thereafter, to the principal;[34] and (*b*) the available receipts for Benjamin's hospitalization were adduced for the purpose of proving that he had valid reason to obtain a loan for his personal use, and should not have been considered as the only proceeds received by him.[35] The same was, however, denied in a Resolution[36] dated June 18, 2015; hence, this petition.

The Issues Before the Court

The essential issues for the Court's resolution are whether or not: (*a*) the CA committed reversible error in ruling that the amount of ₱218,106.84, representing the duly receipted expenses for Benjamin's medical treatment and the cost of the funeral service/memorial lot, was the only proceeds received from the ₱600,000.00 loan obligation; and (*b*) legal interest is due despite the absence of express stipulation.

Loan			₱218,106.84
Less: Annual Net Income/Payment			
Annual Gross Income	107 cavans x 600.00	₱64,200.00	
Expenses	₱64,200.00 x 50%	(32,100.00)	
		32,100.00	
Years of Cultivation		x 6.66	
			(213,786.00)
Outstanding Loan			₱ 4,320.84

[32] See *id*. at 53-54.

[33] See motion for reconsideration dated August 27, 2013; *id*. at 55-65.

[34] See *id*. at 59-60.

[35] See *id*. at 62-63.

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

The Court's Ruling

Prefatorily, it should be mentioned that the remedy of appeal by *certiorari* under Rule 45 of the Rules of Court contemplates only questions of law, not of fact. While it is not the function of the Court to re-examine, winnow and weigh anew the respective sets of evidence of the parties,[37] there are, however, recognized exceptions,[38] among which is when the inference drawn from the facts was manifestly mistaken, as in this case.

Here, the CA upheld the validity of the *Kasulatan* between Benjamin and the Magtalas sisters for failure of the Malance heirs to prove their challenge against its due execution and authenticity, ruling further that being a notarized document, it has in its favor the presumption of regularity and is conclusive as to the truthfulness of its contents.[39]

Generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity which may only be rebutted by clear and convincing evidence. However, the presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. **A defective**

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[37] *Almagro v. Sps. Amaya, Sr.*, 711 Phil. 493, 503 (2013).

[38] Recognized exceptions to the rule are: (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 misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (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; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. See *id.* at 503-504; citations omitted.

[39] *Rollo*, pp. 45-46.

notarization will strip the document of its public character and reduce it to a private document. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.[40]

In this case, the Court observes that the *Kasulatan* was irregularly notarized since it did not reflect any competent evidence of Benjamin's identity, such as an identification card (ID) issued by an official agency bearing his photograph and signature, but merely indicated his Community Tax Certificate Number despite the express requirement[41] of the 2004 Rules on Notarial Practice.[42] Consequently, having failed to sufficiently establish the regularity in the execution of the *Kasulatan*, the presumption accorded by law to notarized documents does not apply and, therefore, the said document should be examined under the parameters of Section 20, Rule 132 of the Rules of Court which provides that "[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (*a*) [by] anyone who saw the document executed or written; or (*b*) [by] evidence of the genuineness of the signature or handwriting of the maker."

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[40] *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap*, G.R. No. 178451, July 30, 2014, 731 SCRA 244, 255-256.

[41] Section 12, Rule II of the 2004 Rules on Notarial Practice, which was in effect at the time of the notarization of the *Kasulatan*, provides:

Section 12. *Competent Evidence of Identity*. – The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

[42] A.M. No. 02-8-13-SC (August 1, 2004).

The burden falls upon petitioners to prove the authenticity and due execution of the *Kasulatan*,[43] which they were, nonetheless, able to discharge. Records show that while the notary public, Atty. Cenon Navarro (Atty. Navarro),[44] did not require an ID when he notarized the *Kasulatan*, when confronted with Benjamin's ID issued by the Office of Senior Citizens Affairs of Pulilan, Bulacan (Senior Citizen ID), he identified the person in the picture as the person who signed the *Kasulatan*, and received money from the Magtalas sisters in his presence.[45]

On the other hand, respondent Bienvenido Malance's self-serving and uncorroborated testimony that Benjamin's signature on the *Kasulatan* was forged purportedly because he does not know how to write[46] was contradicted by the Malance heirs' own manifestation that Benjamin has a Senior Citizen ID and that the signature affixed thereon is different from his signature appearing on the *Kasulatan*.[47] The said ID, however, was not offered in evidence[48] as to enable the RTC, the CA, and the Court to make an examination of the signature thereon vis-à-vis that on the *Kasulatan*. It is important to note that a finding of forgery does not depend exclusively on the testimonies of expert witnesses and that judges must use their own judgment, through an independent examination of the questioned signature, in determining the authenticity of the handwriting.[49]

Hence, the evidence as to the genuineness of Benjamin's signature, and the consequent due execution and authenticity of the *Kasulatan* preponderate in favor of petitioners, who were likewise able to prove Benjamin's receipt of the amount of

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[43] See *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap*, *supra* note 40, at 257.

[44] See TSN, October 5, 2009, pp. 3-5; records, Vol. II, pp. 282-284.

[45] See TSN, October 5, 2009, pp. 28-35; records, Vol. II, pp. 306-313.

[46] TSN, October 13, 2008, p. 30; records, Vol. I, p. 283.

[47] TSN, October 5, 2009, p. 36; records, Vol. II, p. 314.

[48] See *rollo*, p. 45.

[49] See *Belgica v. Belgica*, 558 Phil. 67, 75 (2007).

₱600,000.00 reflected in the *Kasulatan*. Atty. Navarro testified having prepared the *Kasulatan* according to the agreement of the parties,[50] and that he witnessed the exchange of money between the parties to the *Kasulatan*.[51] As such, it was erroneous for the CA to conclude that the amount of ₱218,106.84, representing the duly receipted expenses for Benjamin's medical treatment and the cost of the funeral service/memorial lot, was the only proceeds received from the ₱600,000.00 loan obligation. Notably, the purpose indicated for the Malance heirs' formal offer of the records and receipts of hospitalization, medicines, and burial expenses of Benjamin was merely "to show proof of expenses incurred by x x x Benjamin x x x relative to his sickness and x x x where he spent the loan he obtained"[52] from the Magtalas sisters.

The Court, however, concurs with the RTC's finding, as affirmed by the CA, that the *Kasulatan* is a contract of antichresis. Article 2132 of the Civil Code provides:

> Art. 2132. By the contract of antichresis the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit.

Thus, antichresis involves an express agreement between parties whereby : (***a***) the **creditor will have possession of the debtor's real property** given as security; (***b***) such creditor **will apply the fruits of the said property to the interest owed by the debtor, *if any*, then to the principal amount**;[53] (***c***) **the creditor retains enjoyment of such property until the debtor has totally paid what he owes**;[54] and (***d***) **should the obligation**

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[50] See TSN, October 5, 2009, pp. 16-17 and 23-25; records, Vol. II, pp. 295-295-A and 301-303.

[51] See TSN, October 5, 2009, pp. 11, 25, and 29-30; records, Vol. II, pp. 290, 303, and 307-308.

[52] See Formal Offer of Exhibits dated October 6, 2009; *id.* at 380.

[53] *Cotoner-Zacarias v. Revilla*, G.R. No. 190901, November 12, 2014, 740 SCRA 51, 70.

[54] See Article 2136 of the Civil Code.

be duly paid, then the contract is automatically extinguished proceeding from the accessory character of the agreement.[55]

Bearing these elements in mind, the evidence on record shows that the parties intended to enter into a contract of antichresis. In the *Kasulatan*, Benjamin declared:

Na, ako ay tumanggap ng halagang ANIMNARAANG LIBONG PISO (₱600,000.00) *salaping* Pilipino *buhat kina* CHARITO M. REYES *kasal kay* Roberto Reyes *at* VILMA MARAVILLO *kasal kay* Domingo Maravillo, Jr., *pawang mga sapat na gulang*, Pilipino *at nagsisipanirahan sa Dulong Malabon, Pulilan, Bulacan, bilang UTANG*;

Na, ako ay nangangakong babayaran ang halagang aking inutang sa nasabing sina CHARITO M. REYES *at* VILMA MARAVILLO, *sa kanilang tagapagmana, makakahalili at paglilipatan sa loob ng anim (6) na taon*;

Na, upang mapanagutan ang matapat na pagbabayad sa aking pagkakautang ay aking IPINANAGOT ang aking ani ng lupa na matatagpuan sa Dulong Malabon, Pulilan, Bulacan, may sukat na 1 *ektarya at kalahati* (1½) *humigi't kumulang*;

Na, kung sa loob ng taning na panahon na nabanggit ay mabayaran na ang halaga ng aking inutang sa nasabing sina CHARITO M. REYES *at* VILMA MARAVILLO *at sa kanilang mga tagapagmana, makakahalili at paglilipatan, ang kasulatang ito ay kusang mawawalan ng bisa, tibay at lakas, ngunit kung hindi mabayaran ang halaga ng aking inutang ang kasulatang ito ay mananatiling mabisa, matibay at maaaring ipatupad ayon sa umiiral na batas*.[56]

As aptly observed by the CA:

The language of the *Kasulatan* leaves no doubt that the [₱]600,00.00 was a loan secured by the fruits or *ani* of the landholding beneficially owned by Benjamin. The document specifically authorizes [the Magtalas sisters] to receive the fruits of the subject landholding with the obligation to apply them as payment to his [₱]600,000.00 principal loan for a period of six (6) years. The instrument provides no accessory

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[55] *Acme Shoe, Rubber & Plastic Corporation v. CA*, 329 Phil. 531, 539 (1996).

[56] Records, Vol. I, p. 32.

stipulation as to interest due or owing the creditors, x x x. No mention of interest was ever made by the creditors when they testified in court. This could only be interpreted that the [Magtalas sisters] have no intention whatsoever to charge Benjamin of interest for his loan. We note also that the *Kasulatan* is silent as to the transfer of possession of the subject property. However, [the Magtalas sisters] admitted taking possession of Benjamin's landholding after his death on September 29, 2006 and that they have been cultivating it since then. They rationalize that their action is in accord with their agreement with Benjamin when the latter was still alive. They assure the return of the subject property upon full payment of Benjamin's loan by [the Malance heirs], the successors-in-interest of Benjamin.[57]

While the *Kasulatan* did not provide for the transfer of possession of the subject land, the contemporaneous and subsequent acts of the parties show that such possession was intended to be transferred. Atty. Navarro testified that while the *Kasulatan* only shows that the harvest and the fruits shall answer for Benjamin's indebtedness, the parties agreed among themselves that the lenders would be the one to take possession of the subject land in order for them to get the harvest.[58] Indeed, such arrangement would be the most reasonable under the premises since at that time, Benjamin's medical condition necessitated hospitalization, hence, his physical inability to cultivate and harvest the fruits thereon.[59]

As antichretic creditors, the Magtalas sisters are entitled to retain enjoyment of the subject land until the debt has been totally paid. Article 2136 of the Civil Code reads:

> Art. 2136. The debtor cannot reacquire the enjoyment of the immovable without first having totally paid what he owes the creditor.

In the present case, the CA deemed the amount of ₱600.00 as reasonable cost of a cavan of *palay* from the subject land, which yields an annual harvest of 107 cavans, or a gross income

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

[58] TSN, October 5, 2009, pp. 14-15; records, Vol. II, pp. 293-294.

[59] TSN, October 5, 2009, p. 7; records, Vol. II, p. 286.

of ₱64,200.00;[60] half of the income is expended for expenses, resulting to an annual net income of ₱32,100.00.[61] This, both parties failed to refute. Thus, from June 2006 up to the date of this Decision, only the amount of ₱326,351.07 is deemed to have been paid on Benjamin's loan, leaving an unpaid amount of ₱273,648.93, computed as follows:

Amount of indebtedness		₱600,000.00
Less: Amount deemed paid		
Annual net income	₱32,100.00	
From June 2006 to August 2016	x 10.1667	326,351.07
Outstanding balance		₱273,648.93

The debt not having been totally paid, petitioners are entitled to retain enjoyment of the subject land. Consequently, the Malance heirs' complaint for recovery of possession, declaration of nullity of the *Kasulatan,* and damages against petitioners must be dismissed.

As a final matter for resolution, the Court likewise dismisses petitioners' counterclaim for the payment of Benjamin's principal debt, including interest, considering that the same was not yet due and demandable at the time the claim therefor was filed. Particularly, petitioners' counterclaim was prematurely filed on January 4, 2007,[62] which was well within the six-year payment period under the *Kasulatan,* and hence, should be dismissed. Nonetheless, it should be noted that the dismissal of petitioners' counterclaim is without prejudice to the proper exercise of the Magtalas sisters' rights under Article 2137 of the Civil Code[63]

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[60] See *rollo*, pp. 51-52.

[61] *Id.* at 52.

[62] See answer dated January 3, 2007; records, Vol. I, p. 118.

[63] Art. 2137. The creditor does not acquire the ownership of the real estate for non-payment of the debt within the period agreed upon.

Every stipulation to the contrary shall be void. But **the creditor may petition the court for the payment of the debt or the sale of the real property**. In this case, the Rules of Court on the foreclosure of mortgages shall apply. (Emphasis supplied)

now that Benjamin's debt is due and demandable. In the meantime, the Magtalas sisters, as antichretic creditors, are directed to henceforth render an annual accounting[64] to the Malance heirs, as represented by Bienvenido Malance, of the annual net yield from the subject land, until such time that they have completely collected the outstanding balance of said debt.

WHEREFORE, the Decision dated July 23, 2013 and the Resolution dated June 18, 2015 of the Court of Appeals in CA-G.R. CV No. 95984 are hereby **MODIFIED**: (*a*) declaring that the unpaid loan balance of Benjamin Malance's (Benjamin) to petitioners Charito M. Reyes and Vilma M. Maravillo (the Magtalas sisters) is ₱273,648.93 as herein computed; (*b*) dismissing the counterclaim of petitioners the Magtalas sisters and their respective husbands, Roberto Reyes and Domingo Maravillo, Jr., on the ground of prematurity, without prejudice; and (*c*) directing the Magtalas sisters, as antichretic creditors, to henceforth render an annual accounting to respondents Heirs of Benjamin Malance, namely: Rosalina M. Malance, Bernabe M. Malance, Bienvenido M. Malance, and Dominga M. Malance, as represented by Bienvenido Malance, of the annual net yield from the subject land, until such time that they have completely collected the outstanding loan balance of Benjamin's debt.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.*, concur.

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[64] See *Cosio v. Palileo*, 121 Phil. 959, 972-973 (1965), citing *Macapinlac v. Repide*, 43 Phil. 770, 786-787 (1955).

THIRD DIVISION

[G.R. No. 220461. August 24, 2016]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SPOUSES PRIMO C. YBAÑEZ AND NILA S. YBAÑEZ, MARIS Q. REYOS, and MICHELLE T. HUAT,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (RA 9208); TRAFFICKING IN PERSONS, DEFINED; THE OFFENSE IS QUALIFIED WHEN THE TRAFFICKED PERSON IS A CHILD.— Trafficking in Persons refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. When, the trafficked person is a child, a person below 18 years of age or one who is over 18 but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition, the offense becomes qualified.

2. ID.; ID.; QUALIFIED TRAFFICKING IN PERSONS, COMMITTED IN CASE AT BAR.— As supported by their birth certificates, Bonete was merely 15 years old and Antonio was 16 when they were hired in 2006. Although Turado was more than 18 years old when she started at Kiray, she was found to be functioning within a mildly retarded level, and therefore, incapable of protecting herself from abuse and exploitation. The complainants categorically testified that they were hired as GROs and tasked to entertain customers to the extent of

even having sexual intercourse with them, and being paid commissions for said services. The bar was likewise designed with a stage where the GROs were made to dance in provocative outfits. It had a VIP room where the customers could caress and grope the girls, and a Super VIP room where they could completely satisfy their lust. Even if the claims regarding the rules prohibiting flirting and lascivious conduct between the GROs and the customers were true, the same would still not absolve accused-appellants from any liability. Said rules were merely posted as meaningless warnings and were never really intended to be implemented, as evidenced by the fact that said prohibited acts had actually been committed, tolerated, and perpetuated at Kiray. Even assuming that their main task was to serve as waitresses, the evidence would show that Reyos and Huat did more than just serve food and beverages to the customers. As Baso claimed, they even offered to bring him and his team to the Super VIP room and they actually received the amount paid for the "additional service." Therefore, the courts below aptly found that there was sufficient evidence that accused-appellants were indeed engaged in the recruitment of young women for the purpose of prostitution or sexual exploitation.

3. **ID.; ID.; ID.; PROPER PENALTY IS LIFE IMPRISONMENT AND FINE OF ₱2,000,000.00.—** The Court finds them guilty beyond reasonable doubt of Qualified Trafficking in Persons under Section 6(a) and (c), in relation to Sections 4(a) and 3, and penalized under Section 10(a) and (c) of Republic Act No. 9208, otherwise known as the *Anti-Trafficking in Persons Act of 2003*, sentences them to suffer the penalty of life imprisonment, and orders each of them to pay a fine of ₱2,000,000.00 and the costs, with interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

The instant case seeks to reverse and set aside the Court of Appeals (CA) Decision[1] dated January 20, 2015 in CA-G.R. CR-HC No. 04913. The CA upheld the Decision[2] of the Regional Trial Court (*RTC*) of Taguig City, Branch 163, dated January 11, 2011 in Criminal Case No. 134985, which found accused-appellants spouses Primo C. Ybañez and Nila S. Ybañez (*the Spouses Ybañez*), Mariz Q. Reyos, Michelle T. Huat guilty beyond reasonable doubt of Qualified Trafficking in Persons under Section 6(a) and (c), in relation to Sections 4(a) and 3, and penalized under Section 10(a) and (c) of Republic Act (*R.A.*) No. 9208, otherwise known as the *Anti-Trafficking in Persons Act of 2003*.

An Information was filed charging the Spouses Ybañez, Reyos, and Huat with Qualified Trafficking in Persons, which reads:

> That on or about March 2005 until February 15, 2007 in the City of Taguig, Metro Manila, the above-named accused PRIMO C. YBAÑEZ, NILA S. YBAÑEZ, MARIZ Q. REYOS, MICHELLE T. HUAT, in conspiracy with one another, and by means of deceit and taking advantage of the vulnerability of the victims, and for the purpose of exploitation, such as prostitution and other forms of sexual exploitation, but under the pretext of domestic employment, did then and there wilfully, unlawfully and knowingly RECRUIT, RECEIVE, HARBOR AND EMPLOY, ANGELINE A. BONETE, KATE M. TURADO, VIRGIE C. ANTONIO and JENNY S. POCO, as a prostitute in Kiray Bar and KTV Club Restaurant under the pretext of being employed as GRO's (Guest Relations Officer) to their damage and prejudice.
>
> That the crime was attended by the qualifying circumstances of minority, victims Angeline Bonete and Virgie Antonio being 15 and

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[1] Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Japar B. Dimaampao and Franchito N. Diamante; concurring; *rollo*, pp. 2-15.

[2] Penned by Judge Leili Cruz Suarez; CA *rollo*, pp. 28-34.

17 years of age, respectively, and that the crime was committed by a syndicate and in large scale.

CONTRARY TO LAW.[3]

When arraigned on May 21, 2007, the Spouses Ybañez, Reyos, and Huat pleaded not guilty to the crime charged. Thus, trial ensued.

The factual antecedents of the case are as follows:

The prosecution presented Angeline Bonete, Virgie Antonio, and Kate Turado as witnesses. Bonete testified that she was born on February 27, 1991. She started working as a Guest Relations Officer (*GRO*) on May 13, 2006 at Kiray Bar and KTV Club Restaurant (*Kiray*) in Taguig City, which was owned by the Spouses Ybañez, and where Reyos and Huat were working as floor managers. It was her mother who applied for her through Huat. On May 14, 2006, a customer brought her inside the Super VIP room on the second floor of the bar, and they had sexual intercourse. Before Bonete headed home at 3:00 a.m., Nila had given her ₱300.00 as payment. Subsequently, Bonete would also have sexual intercourse with her other customers in the Super VIP room. Virgie Antonio attested that she was born on February 24, 1989. On May 18, 2006, she ran away from home and lived in Bicutan with a certain Lovely, who was then working as a GRO at Kiray. Lovely later brought Antonio to Kiray on June 18, 2006. Nila hired her and told her to start working on the same day. During her orientation, she was told to wear a mini skirt and entertain her customers as "ka-table." On her third night, a customer brought her to the Super VIP room after paying ₱1,000.00 to the cashier. Inside the room, they drank beer and likewise had sexual intercourse. Antonio was also given ₱300.00 for her work that night. Thereafter, she would have intercourse with her other customers. Lastly, Kate Turado narrated that she had been previously employed at a club near Kiray. In March 2005, she left said club and transferred to Kiray upon Nila and Huat's invitation. Kiray had a ground floor with

[3] *Id.* at 28.

a band and disco area, and a second floor with two rooms. The Super VIP room was where "gamitan" or sexual intercourse would take place, while the VIP room Was for "tyansing only." She was told that she would earn a commission of ₱300.00 if a customer would bring her to the Super VIP room, ₱120.00 for the VIP room, and ₱50.00 if she had ladies' drinks on the ground floor. The customer must pay at the cashier if he wanted to have sex. Turado alleged that Nila and Huat would tell them to agree to have sex even if they did not like the customers. Each time that she was brought to the Super VIP room, she would get a ₱300.00 commission, with or without intercourse. Aside from being "tabled" by customers, she was also made to dance in provocative outfits. After a series of tests and evaluation, Turado was found to be functioning within the mildly retarded level and is not capable of protecting herself.

Marfil Baso, a special investigator of the NBI Anti-Organized Crime Division, testified that on February 15, 2007, he was assigned to investigate an International Justice Mission (*IJM*) report about prostitution and illicit sexual activities at Kiray. On the same day, they held a raid briefing with the Department of Social Welfare and Development and IJM representatives where they prepared the marked money and designated *poseur*-customers. They dispensed with the routinary surveillance because IJM had already provided them with all the essential information about Kiray, including photos of minors who were allegedly employed there. At around 9:30 p.m., Baso arrived at Kiray with his team. He and two other NBI agents then entered the bar where they were met by two women who took their orders and asked if they wanted ladies to give them company. They said yes and four ladies were sent to their table. Later, Reyos and Huat came and offered to transfer them to the Super VIP rooms on the second floor, where, they were told, they could do whatever they wanted with the girls. But should they wish to have sex with the girls, they would have to pay more. Accordingly, Baso gave ₱3,000.00 to Reyos and Huat for the use of the two Super VIP rooms. Immediately thereafter, Baso used his mobile phone to inform their ground commander, who then announced the raid.

NBI Forensic Chemist Loren Borines testified that she marked the six ₱500.00 bills used in the raid with invisible crayon and fluorescent powder. Upon ultraviolet light examination, she noted the presence of fluorescent specks and smudges on both hands of Reyos and Huat, similar to the ones placed on the marked bills.

On the other hand, Nila denied the charges and asserted that Kiray was engaged in a legitimate business. It was a business establishment where live bands would perform and *barangay tanods* would hold meetings. Kiray did not have private rooms and the VIP room had a glass door with no lock. There was no prostitution or lewd shows in the bar and the employees were prohibited by their rules to flirt or engage in any indecent activity with the customers. Copies of said rules were also visibly posted on the ground and second floors of the establishment. She said that on February 15, 2007, NBI agents arrived at Kiray as customers. They asked to be transferred upstairs and for two more women to join them. One of the agents asked Nila if he could take a woman out. When Nila refused, the agent became angry and banged the beer bottle on the table. She then saw her husband, Primo, being arrested by the NBI. They were then brought to the NBI Compound, together with Reyos, Huat, Bonete, Antonio, and Turado.

On January 11, 2011, the RTC of Taguig City found the Spouses Ybañez, Reyos, and Huat guilty of Qualified Trafficking in Persons under Section 6(a) and (c), in relation to Sections 4(a) and 3, and sentenced them to suffer the penalty of life imprisonment, and ordered them to each pay a fine of ₱2,000,000.00, the costs, and the legal rate of interest, thus:

> WHEREFORE, in light of all the foregoing considerations, accused Primo Ybañez, Nila Ybañez, Mariz Reyos, and Michelle Huat are hereby found GUILTY beyond reasonable doubt of Qualified Trafficking in Persons under Section 6 (a) and (c), in relation to Sections 4 (a) and 3, and [are] hereby sentenced to suffer life imprisonment and to each pay a fine of Two Million Pesos (₱2,000,000.00), and the costs, at the legal rate of interest from the time of filing of the Information, until fully paid.

SO ORDERED.[4]

Thus, accused-appellants brought the case to the CA. On January 20, 2015, the CA affirmed the RTC Decision, to wit:

WHEREFORE, the appeal is **DENIED**. The Decision dated January 11, 2011 of the Regional Trial Court of Taguig City, Branch 163 in Criminal Case No. 134985 is **AFFIRMED**.

SO ORDERED.[5]

Accused-appellants are now before the Court, maintaining that the prosecution failed to prove their guilt beyond reasonable doubt

The appeal is devoid of merit.

Trafficking in Persons refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.[6] When the trafficked person is a child, a person below 18 years of age or one who is over 18 but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition, the offense becomes qualified.[7]

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[4] *Id.* at 34.

[5] *Rollo*, p. 14. (Emphasis in the original)

[6] Section 3(a), Republic Act No. 9208, Entitled *An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for Other, or the Anti-Trafficking in Persons Act of 2003*.

[7] Sections 3(b) and 6(a), R.A. No. 9208.

As supported by their birth certificates, Bonete was merely 15 years old and Antonio was 16 when they were hired in 2006. Although Turado was more than 18 years old when she started at Kiray, she was found to be functioning within a mildly retarded level, and therefore, incapable of protecting herself from abuse and exploitation.

The complainants categorically testified that they were hired as GROs and tasked to entertain customers to the extent of even having sexual intercourse with them, and being paid commissions for said services. The bar was likewise designed with a stage where the GROs were made to dance in provocative outfits. It had a VIP room where the customers could caress and grope the girls, and a Super VIP room where they could completely satisfy their lust. Even if the claims regarding the rules prohibiting flirting and lascivious conduct between the GROs and the customers were true, the same would still not absolve accused-appellants from any liability. Said rules were merely posted as meaningless warnings and were never really intended to be implemented, as evidenced by the fact that said prohibited acts had actually been committed, tolerated, and perpetuated at Kiray.

Even assuming that their main task was to serve as waitresses, the evidence would show that Reyos and Huat did more than just serve food and beverages to the customers. As Baso claimed, they even offered to bring him and his team to the Super VIP room and they actually received the amount paid for the "additional service."

Therefore, the courts below aptly found that there was sufficient evidence that accused-appellants were indeed engaged in the recruitment of young women for the purpose of prostitution or sexual exploitation. However, in view of the demise of accused-appellants Primo C. Ybañez[8] and Nila S. Ybañez,[9] their names have been dropped as respondents in the instant case

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[8] *Rollo*, pp. 38-39.

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

pursuant to Article 89 of the Revised Penal Code. Consequently, the case has been considered closed and terminated as to them.[10]

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals, dated January 20, 2015, in CA-G.R. CR-HC No. 04913, affirming the Decision of the Regional Trial Court of Taguig City, Branch 163, dated January 11, 2011 in Criminal Case No. 134985, with respect to accused-appellants Mariz Q. Reyos and Michelle T. Huat, is hereby **AFFIRMED** with **MODIFICATION** as to the legal rate of interest. The Court finds them guilty beyond reasonable doubt of Qualified Trafficking in Persons under Section 6(a) and (c), in relation to Sections 4(a) and 3, and penalized under Section 10(a) and (c) of Republic Act No. 9208, otherwise known as the *Anti-Trafficking in Persons Act of 2003*, sentences them to suffer the penalty of life imprisonment, and orders each of them to pay a fine of P2,000,000.00 and the costs, with interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 220715. August 24, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RONNIE BOY EDA *y* CASANI,** *appellant.*

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[10] Resolution dated March 16, 2016, *id.* at 43-44.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 19, 2015.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, PRESENT IN CASE AT BAR.— For a successful prosecution of illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, the following elements must be satisfied: (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 by the seller of the marked money consummate the illegal transaction. What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence. In this case, the Court believes and so holds that all the requisites for the illegal sale of shabu were met. As demonstrated by the testimonies of the prosecution witnesses and the supporting documents they presented and offered, the identities of the buyer, the seller, the prohibited drug, and the marked money, have all been proven by the required quantum of evidence.

2. ID.; ID.; ILLEGAL POSSESSION OF PROHIBITED DRUGS; ELEMENTS, SUFFICENTLY ESTABLISHED.— [T]he following elements must be established to convict an accused of illegal possession of a prohibited drug under Section 11, Paragraph 2 (3), Article II of R.A. 9165: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated 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. Mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession; the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*. Here, PO1 Briones confirmed his statement in the *Magkasamang Sinumpaang Salaysay* that after Eda's lawful arrest, he conducted a body search on him and recovered four (4) more sachets of shabu. He positively identified in open court the specimen marked as "RCB-2" to "RCB-5" as the same sachets of shabu he recovered from Eda because he gave them to PO2 Bejer, who put the markings thereon while they were near each

other. Likewise, PO2 Bejer affirmed that the specimens marked as "RCB-2" to "RCB-5" were confiscated by PO1 Briones from Eda since the same were given to him for marking. There is no showing from the records that Eda was legally authorized by law to possess the four plastic sachets of shabu. Instead of giving any plausible explanation on his absence of *animus possidendi* so as to negate a finding that he was freely and consciously aware of possessing said illegal drug, he readily accepted the accusations against him.

3. ID.; ID.; CHAIN OF CUSTODY RULE; UNBROKEN CHAIN OF CUSTODY OVER THE RECOVERED DRUG ESTABLISHED WITH MORAL CERTAINTY.— [T]he prosecution was able to establish with moral certainty and prove to the Court beyond reasonable doubt that there was an unbroken chain of custody over the recovered drug, from the time it was lawfully seized and came into the possession of the apprehending officers up to the time it was presented and offered in evidence before the trial court. The testimonies of the witnesses included every person who touched the exhibit and described 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 delivered to the next link in the chain, and 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.

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.*:**

On appeal is the December 10, 2014 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 06470, which affirmed

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Socorro B. Inting and Victoria Isabel A. Paredes, concurring; *rollo*, pp. 2-13.

in toto the September 17, 2013 Joint Decision[2] of the Regional Trial Court (*RTC*), Branch 9, Balayan, Batangas, in Criminal Cases No. 6604 and 6605, convicting appellant Ronnie Boy Eda *y* Casani (*Eda*) of illegal possession and sale of Methamphetamine Hydrochloride, commonly known as "shabu," in violation of Section 11, Paragraph 2 (3) and Section 5, respectively, Article II of Republic Act (*R.A.*) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

On February 18, 2011, two (2) Informations were filed against Eda, charging him as follows:

Criminal Case No. 6604:

That on or about the 17th day of February, 2011, at about 5:00 o'clock in the afternoon, at Barangay Caloocan, Municipality of Balayan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully have in her *(sic)* possession, custody and control four (4) heat-sealed transparent plastic sachets referred to as specimens A-2 (RCB2) to A-5 (RCB5) in Chemistry Report No. BD-040-2011 each containing methamphetamine hydrochloride, commonly known as "shabu", having a total weight of 0.08 gram, a dangerous drug.

Contrary to law.[3]

Criminal Case No. 6605:

That on or about the 17th day of February, 2011, at about 5:00 o'clock in the afternoon, at Barangay Caloocan, Municipality of Balayan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully sell, deliver and give away one (1) heat-sealed transparent plastic sachet referred to as Specimen A-1 (RCB1) in Chemistry Report No. BD-040-2011, containing methamphetamine hydrochloride, commonly known as shabu, weighing 0.02 gram, a dangerous drug.

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[2] Records (Crim. Case No. 6605), pp. 188-203; CA *rollo*, pp. 52-67.

[3] Records (Crim. Case No. 6604), p. 1.

Contrary to law.[4]

In his arraignment, Eda entered a plea of "Not Guilty."[5] Trial ensued while he was under detention. The prosecution presented PO2 Roman De Chavez Bejer, PO1 Reynante Brosas Briones, and PO3 Bryan De Jesus, who were part of the buy-bust team. Only Eda testified for the defense.

Evidence for the Prosecution

On February 17, 2011, at around 2:00 p.m., PO2 Bejer received a telephone call from a civilian asset informing that Eda was selling shabu in Barangay Caloocan, Balayan, Batangas. He relayed the matter to Police Chief Inspector Elpidio Argoncillo Ramirez, who immediately formed a buy-bust team composed of PO2 Bejer, PO1 Briones, PO3 Alvin Andulan Baral and PO2 Johnny De Joya Dechoso. PO2 Bejer prepared the ₱500.00 marked money as well as the Pre-Operation Report and Coordination Sheet, which were sent to the Philippine Drug Enforcement Agency (*PDEA*) Office in Calamba City, Laguna and PAIDSOTF, Batangas Police Provincial Office.[6] At around 3:00 p.m., the buy-bust team, together with the civilian asset proceeded to Brgy. Caloocan. By 4:30 p.m., PO2 Bejer received a call from SPO1 Gomer Tebes De Guzman, who confirmed receipt of the Pre-Operation Report and Coordination Sheet. PO1 Briones, PO3 Baral, and PO2 Dechoso acted as lookouts and positioned themselves near Saver's grocery store located at Brgy. Ermita, Balayan, Batangas. PO2 Bejer was on board the tricycle being driven by the civilian asset. They proceeded to Jamaica Subdivision in Brgy. Caloocan. At around 5:00 p.m., they approached Eda, who was already waiting along the road near Balayan Cable Network in Brgy. Caloocan. While PO2 Bejer was inside the sidecar of the tricycle, the civilian asset and Eda talked to each other. PO2 Bejer heard the civilian asset telling Eda that he would buy shabu in the amount of ₱500.00.

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[4] Records (Crim. Case No. 6605), p. 1.

[5] Records (Crim. Case No. 6604), p. 8; *id*. at 29.

[6] Records (Crim. Case No. 6605), pp. 12-13.

When PO2 Bejer saw the exchange of one plastic sachet containing white crystalline substance and the marked money, he immediately alighted from the tricycle and introduced himself to Eda as a police officer. While PO2 Bejer was arresting him, PO1 Briones approached the scene to render assistance. PO2 Bejer was able to recover the marked money from the left hand of Eda.[7] When PO1 Briones frisked him, additional four plastic sachets with white crystalline contents were also found in his right pocket. PO1 Briones turned over the same to PO2 Bejer. After Eda was apprised of his constitutional rights, the confiscated items were marked by PO2 Bejer. When people began to converge in the area, the arresting officers decided to continue and complete the inventory of the seized items at the nearby barangay hall of Caloocan. The physical inventory was witnessed by the representatives of the Department of Justice (Benilda Diaz), barangay (Brgy. Captain Reynaldo Ballelos), and media (ABC President Raul De Jesus). PO3 De Jesus prepared the inventory receipt, which was signed by the witnesses, and took photographs at the crime scene and the barangay hall.[8] Thereafter, Eda was brought to the Balayan Police Station.[9] On the same day, requests for drug test and laboratory examination with the Batangas Provincial Crime Laboratory were made.[10] Per Chemistry Report No. BD-040-2011 dated February 18, 2011 and sworn to by Police Inspector Herminia Carandang Lacuna, the specimens submitted were tested and found positive for the presence of methamphetamine hydrochloride.[11]

Evidence for the Defense

Eda denied that he sold and possessed the illegal drug seized, claiming that not even once in his life did he use shabu. On February 16, 2011, he was in the house of his sister-in-law,

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[7] *Id*. at 15.

[8] *Id*. at 14, 19-22.

[9] *Id*. at 16.

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

[11] *Id*. at 23.

Joan Nicole Macalalad, in Brgy. Caloocan to ask if he could celebrate his birthday at their farm on February 19, 2011. He left his house in Brgy. Sta. Lucia, Dasmariñas, Cavite at 4:00 p.m. and reached Joan's place about 9:00 p.m. After talking to Joan's husband, Christopher Macalalad, they had a drinking spree that lasted until dawn next day. Thereafter, he rested. Then they had a drinking session again around 10:00 a.m. until before lunchtime. After eating lunch, he rested. Around 3:00 p.m. to 4:00 p.m., he went home. While he was walking towards a tricycle going to the bus terminal, four men approached him near Saver's grocery, which was just across the public cemetery. One of them immediately grabbed his left hand and placed it at his back. Somebody said, *"Ikaw ay tulak,"* or pusher in that place. Since he was drunk at the time, he fought back as one of them continued saying, *"Ikaw ang tulak dito, ikaw ang nagdadala ng shabu dito."* He got hurt because PO2 Bejer hit him on his nape. Likewise, he was punched and pushed, and a gun was pointed at him. He was asked to sit in front of the public cemetery. Out of fear and so that his pain would stop, he just said "yes" on their accusation. PO2 Bejer then drew five sachets of shabu from his pocket and placed it on top of a concrete structure on the ground. Eda was directed to point those items while pictures were being taken. When PO3 De Jesus arrived, he was asked to stand and was brought to the Caloocan barangay hall. Upon entering the hall, he was handcuffed at the back. One of the barangay officials approached him and inquired if he was a real *"tulak"* or pusher in that place. Said official also punched him in the lower chest while being told that *"Ikaw ang tulak dito."* Again, out of fear and pain, he just said "yes" and accepted every accusation. Thereafter, with handcuffed removed, he was brought near a table and was asked to point the sachets of shabu on top of it as if the items were his. He was then made to rest and eat snacks, after which he was brought to the Balayan Municipal Police Station, where he was questioned if the seized illegal drug belonged to him. Since he previously answered in the affirmative, *"umoo na lang po ako ng umoo, inako ko na lang."* He was then incarcerated.

When shown with a copy of the Receipt/Inventory of Property(ies)/Item(s) Seized dated February 17, 2011, Eda declared that none was issued to him. He stressed that the alleged sachets of prohibited drug recovered from him after the conduct of body search were actually from PO2 Bejer, who "planted" the same. He admitted that he has no proof to show that he suffered physical injuries as a result of the harm caused by the arresting officers and the unknown barangay official. Likewise, he does not know any reason why the police would choose him to be the target of their buy-bust operation, "plant" shabu, and charge him with a very serious offense.

On September 17, 2013, the RTC convicted Eda of the crimes charged. The dispositive portion of the Joint Decision states:

> **WHEREFORE**, in view of the foregoing, this Court hereby finds accused Ronnie Boy Eda y Casani **GUILTY** beyond reasonable doubt for Violation of Section 11, paragraph 3, and Section 5, Article II, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and sentences him to suffer:
>
> for **Crim. Case No. 6604 –** the penalty of **imprisonment** for **Twelve (12) Years, Four (4) Months** and **One (1) Day**, as **minimum**, to **Fourteen (14) Years and Six (6) months**, as **maximum**, and to pay a **fine** of **Three Hundred Thousand Pesos (₱300,000.00)** with subsidiary imprisonment for non-payment thereof; and
>
> for **Crim. Case No. 6605 –** the penalty of **Life imprisonment** and a **fine** of **Five Hundred Thousand Pesos (₱500,000.00)** with subsidiary imprisonment for non-payment thereof.
>
> With costs.
>
> Let the necessary mittimus be issued for the immediate transfer of the accused to the New Bilibid Prison, Muntinlupa City, for the service of his sentence.
>
> SO ORDERED.[12]

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[12] *Id*. at 202-203; CA *rollo*, pp. 66-67. (Emphasis in the original)

The RTC held that the prosecution established with moral certainty all the elements constitutive of the offenses that were charged against Eda. As to the illegal sale of shabu, it viewed:

> Herein prosecution witnesses testified in open Court categorically and convincingly. They evinced firmness and consistency all throughout their narrations of the subject incident. The Court finds their testimonies credible and worthy of credence.
>
> PO2 Bejer and PO1 Briones gave a detailed narration of every step of the entire operation, from receipt of the information from the civilian asset, the pre-operation, planning, actual conduct of the buy-bust operation, to the post-operation activities.
>
> As declared in the Joint Sworn Statement (Exh. "A") by prosecution witness PO2 Bejer, herein accused was caught delivering one (1) heat-sealed transparent plastic sachet of shabu to the civilian asset. Although the asset was not presented in Court to testify, the actual transaction of sale was witnessed by PO2 Bejer. PO2 Bejer identified the accused as the same person he arrested during the buy-bust operation (t.s.n. [p.] 13 February 15, 2012). When the shabu subject of sale was presented in Court, PO2 Bejer identified it to be the same item sold to the asset by the accused because of the marking "RCB-1" which PO2 Bejer had written thereon (t.s.n. [p.] 4, May 29, 2012). PO1 Briones corroborated such testimony as he was near PO2 Bejer when the latter marked the shabu (t.s.n. [p.] 9, November 27, 2012). PO2 Bejer also identified in Court the buy-bust money recovered from the accused in the amount of Five Hundred Pesos with serial number DQ-247003 (t.s.n. [p.] 7, February 15, 2012).[13]

With respect to the illegal possession of shabu, it found:

> On the occasion of the accused's lawful arrest from the buy-bust operation, four (4) sachets of shabu (Exhs. "G-3" to "G-6") were recovered from his right pocket by PO1 Briones. PO1 Briones positively identified in open Court the four (4) sachets of shabu as the same shabu he recovered from the accused (t.s.n. [p.] 9, November 25, 2012). PO2 Bejer affirmed PO1 Briones' testimony on the basis of the markings "RCB-2", "RCB-3", "RCB-4", and "RCB-5" that he placed thereon (t.s.n. pp. 4-5, May 29, 2012). There is also no

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[13] *Id*. at 199; *id*. at 63.

showing from the records of the case that herein accused was legally authorized by law to possess the four (4) plastic sachets of shabu.

It is a settled rule [that] mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of satisfactory explanation (People vs. De Jesus, G.R. No. 198794, February 6, 2013). The accused, instead of giving explanations on his absence of knowledge or *animus possidendi* of the shabu recovered in his possession, accepted the accusations against him (t.s.n. pp. 9 and 11, August 7, 2013).[14]

The RTC opined that Section 21 (1), Article II of R.A. No. 9165 and its Implementing Rules and Regulations were properly observed in this case:

Record shows that after PO2 Bejer recovered the shabu sold to the asset, he placed the marking "RCB-1" thereon. Such testimony was confirmed by PO1 Briones. PO1 Briones testified further that after he recovered from the body of the accused the four (4) plastic sachets of shabu, he turned them over to PO2 Bejer for marking (t.s.n. [p.] 9, November 27, 2012). During inventory, DOJ representative Benilda Diaz and Barangay Chairman Reynaldo Ballelos of Barangay Caloocan, Balayan, Batangas signed the Inventory Receipt of the Property Seized (Exh. "D") in the presence of herein prosecution witnesses. Photograph was taken by PO2 De Jesus during inventory. After a Request for Laboratory Examination (Exh. "H") was prepared, PO2 Bejer and PO1 Briones brought the seized drugs to the Crime Laboratory Office for examination, which yielded positive result for the presence of methamphetamine hydrochloride, as evidence by Chemistry Report No. BD-119-2011 (Exh. "I"). The seized drugs were offered as evidence in Court and were positively identified by both PO2 Bejer and PO1 Briones on the basis of the markings thereon.[15]

Finally, Eda's claim of frame-up and planting of evidence was dismissed for his failure to adduce any clear and convincing evidence sufficient to overcome the presumption of regularity in favor of the police officers.

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[14] *Id*. at 200; *id*. at 64.

[15] *Id*. at 201-202; *id*. at 65-66.

Eda elevated the case to the CA *via* notice of appeal.[16] The appellate court, however, sustained his conviction. It ruled that the alleged inconsistencies in the testimonies of the prosecution witnesses are immaterial because they refer only to irrelevant and collateral matters that have nothing to do with the elements of the crimes charged, and that there was an unbroken chain of custody of the shabu seized. The CA declared:

> Evidently, illegal sale was consummated when accused-appellant sold shabu to the civilian informant of PO2 Bejer. Likewise, it was duly established that the marked money used for the purchase of shabu was recovered from the accused-appellant. The laboratory report further proved that the plastic sachets with white crystalline substance, indeed, contained methamphetamine hydrochloride, a dangerous drug. All of [the] aforementioned evidence were positively and categorically identified in court.
>
> Consequently, the evidences *(sic)* submitted by the prosecution to convict the accused-appellant for illegal possession of prohibited drugs were all established in this case. The accused-appellant was found in possession of the five small plastic sachets of shabu, an item or object that is identified to be a prohibited or dangerous drug, that such possession by the accused-appellant of the five small plastic sachets of shabu is not authorized by law and that the accused-appellant freely and consciously possessed the dangerous drug.
>
> xxx xxx xxx
>
> The prosecution was able to sufficiently establish the following circumstances showing an unbroken chain of custody over the shabu that was seized from herein accused-appellant:
>
> (1) PO2 Bejer, at the time when the accused-appellant was apprehended, marked the plastic sachets on site. The confiscated items and the accused-appellant were brought to [the] Barangay Hall of Caloocan, Balayan, Batangas, to complete the physical inventory report and this was witnessed by Benilda Diaz, Brgy. Captain Reynaldo Ballelos and Raul De Jesus;
>
> (2) The arresting officers then brought the accused-appellant to [the] Balayan Police Station and thereafter requested a drug test and laboratory examination of the seized items;

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[16] *Id*. at 210-211, 216.

(3) The arresting officers had turned-over the seized items to PO3 De Jesus; and

(4) P/Insp. Llacuna then conducted a qualitative examination on the specimen and prepared a report which gave a positive result to the test for the presence of methamphetamine hydrochloride.

The foregoing did not show any gap in the transfer of the seized items from one officer to another or even showed a scintilla of irregularity.[17]

Now before Us, Eda manifests that he repleads and adopts all the defenses and arguments raised in his Appellant's Brief filed before the CA.[18] Similarly, the Office of the Solicitor General manifests that it adopts its Appellee's Brief in lieu of filing a Supplemental Brief.[19]

The appeal is dismissed.

For a successful prosecution of illegal sale of dangerous drugs under Section 5,[20] Article II of R.A. 9165, the following elements must be satisfied: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[21] The delivery of

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[17] *Rollo*, pp. 9-11; *id*. at 123-125.

[18] *Id.* at 21.

[19] *Id*. at 26.

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

[21] *People v. Raul Amaro y Catubay alias "Lalaks"*, G.R. No. 207517, June 1, 2016; *People v. Eduardo Dela Cruz y Gumabat @ Eddie*, G.R. No. 205414, April 4, 2016; *People v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016; and *People v. Edwin Dalawis y Hidalgo*, G.R. No. 197925, November 9, 2015.

the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money consummate the illegal transaction.[22] What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.[23]

In this case, the Court believes and so holds that all the requisites for the illegal sale of shabu were met. As demonstrated by the testimonies of the prosecution witnesses and the supporting documents they presented and offered, the identities of the buyer, the seller, the prohibited drug, and the marked money, have all been proven by the required quantum of evidence. Contrary to Eda's contention that PO2 Bejer was not privy to the transaction, the sale of shabu was actually witnessed by the latter since he and the civilian asset were beside each other *("magkatabi"*) during the buy-bust operation.[24] At the time, the civilian asset was at the driver's seat, while PO2 Bejer was inside the tricycle. On the witness stand, PO2 Bejer identified Eda as the person he arrested during the buy-bust operation.[25] When the specimen marked as "RCB-1" was presented in court, PO2 Bejer identified it as the same item sold by Eda to the civilian asset because he was the one who marked it.[26] PO1 Briones corroborated PO2 Bejer's testimony as he was near him when he marked the sachet of shabu.[27] PO2 Bejer also identified in court the ₱500.00 bill

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[22] *People v. Raul Amaro y Catubay alias "Lalaks"*, G.R. No. 207517, June 1, 2016; *People v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016; and *People v. Edwin Dalawis y Hidalgo*, G.R. No. 197925, November 9, 2015.

[23] *People v. Raul Amaro y Catubay alias "Lalaks"*, G.R. No. 207517, June 1, 2016; *People v. Eduardo Dela Cruz y Gumabat @ Eddie*, G.R. No. 205414, April 4, 2016; *People v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016; and *People v. Edwin Dalawis y Hidalgo*, G.R. No. 197925, November 9, 2015.

[24] TSN, September 26, 2012, pp. 4-5.

[25] TSN, February 15, 2012, p. 13.

[26] TSN, May 29, 2012, p. 4.

[27] TSN, November 27, 2012, pp. 8-9.

with serial number DQ-247003, which he prepared for the buy-bust operation and recovered from Eda after the illegal sale.[28]

On the other hand, the following elements must be established to convict an accused of illegal possession of a prohibited drug under Section 11,[29] Paragraph 2 (3), Article II of R.A. 9165: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated 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.[30] Mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession; the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*.[31]

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[28] TSN, February 15, 2012, p. 7.

[29] SEC 11. *Possession of Dangerous Drugs*. – 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

xxx xxx xxx

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[30] *Sy v. People*, 671 Phil. 164, 180 (2011) and *Miclat, Jr. v. People*, 672 Phil. 191, 209 (2011).

[31] *Id*.

Here, PO1 Briones confirmed his statement in the *Magkasamang Sinumpaang Salaysay*[32] that after Eda's lawful arrest, he conducted a body search on him and recovered four (4) more sachets of shabu.[33] He positively identified in open court the specimen marked as "RCB-2" to "RCB-5" as the same sachets of shabu he recovered from Eda because he gave them to PO2 Bejer, who put the markings thereon while they were near each other.[34] Likewise, PO2 Bejer affirmed that the specimens marked as "RCB-2" to "RCB-5" were confiscated by PO1 Briones from Eda since the same were given to him for marking.[35] There is no showing from the records that Eda was legally authorized by law to possess the four plastic sachets of shabu. Instead of giving any plausible explanation on his absence of *animus possidendi* so as to negate a finding that he was freely and consciously aware of possessing said illegal drug, he readily accepted the accusations against him.

Against the prosecution evidence, Eda merely denied the accusations against him and raised the defense of frame-up. We note, however, that the defense of denial and frame-up has been invariably viewed with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of R.A. No. 9165.[36] In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.[37] In this connection, Eda had the burden of proof to defeat the presumption that the police officers handled the seized drugs with regularity and that they properly performed their official duties. He failed. No bad faith or planting of evidence was actually shown. He did not substantiate any illicit motive on the part of the police officers, as to why they would choose to falsely implicate him in a very serious crime that

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[32] Records (Crim. Case No. 6605), pp. 9-11.

[33] TSN, November 27, 2012, pp. 7-9.

[34] *Id*. at 9.

[35] TSN, May 29, 2012, pp. 4-5.

[36] See *Miclat, Jr. v. People, supra* note 30.

[37] *Miclat, Jr. v. People, supra* note 30.

would cause his imprisonment for life. For this failure, the testimonies of prosecution witnesses deserve full faith and credit.

Further, this Court is of the view that the chain of custody of the seized shabu did not suffer from serious flaws.

Pertinent portion of Section 21, Article II of R.A. No. 9165 provides:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (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;
>
> (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;

xxx xxx xxx

In *People v. Ros*,[38] We held:

Notably, Section 21 of R.A. No. 9165 serves as a protection for the accused from malicious imputations of guilt by abusive police officers. The illegal drugs being the *corpus delicti*, it is essential for the prosecution to prove and show to the court beyond reasonable doubt that the illegal drugs presented to the trial court as evidence of the crime are indeed the illegal drugs seized from the accused. In particular, Section 21, paragraph no. 1, Article II of the law prescribes the *method* by which law enforcement agents/personnel are to go about in handling the *corpus delicti* at the time of seizure and confiscation of dangerous drugs in order to ensure full protection to the accused. x x x

Section 21, however, was not meant to thwart the legitimate efforts of law enforcement agents. The Implementing Rules and Regulations of the law clearly expresses that "non-compliance with [the] 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."

We likewise recognize that while the chain of custody should ideally be perfect and unbroken, it is not in reality "as it is almost always impossible to obtain an unbroken chain." Thus, non-compliance with Section 21 does not automatically render illegal the arrest of an accused or inadmissible the items seized/confiscated. As the law mandates, what is vital is the preservation of the integrity and the evidentiary value of the seized/confiscated illegal drugs since they will be used to determine the guilt or innocence of the accused.[39]

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[38] G.R. No. 201146, April 15, 2015, 755 SCRA 518.

[39] *People v. Ros, supra*, at 536-537; See also *People v. Eduardo Dela Cruz y Gumabat @ Eddie*, G.R. No. 205414, April 4, 2016; *People v. Jun Asislo y Matio*, G.R. No. 206224, January 18, 2016; *People v. Nicolas Lara III y Agatep, et al.*, G.R. No. 198796; and *People v. Manuela Flores y Salazar @ Wella*, G.R. No. 201365, August 3, 2015.

In the present case, the body of evidence adduced by the prosecution supports the conclusion that the integrity and evidentiary value of the subject shabu were successfully and properly preserved and safeguarded through an unbroken chain of custody. Both the testimonial and documentary evidence indubitably show the following:

1. When PO2 Bejer seized the shabu sold by Eda to the civilian asset, he immediately placed the marking "RCB-1" on the plastic sachet.

2. Similarly, after PO1 Briones recovered from Eda the four plastic sachets of shabu, he turned them over to PO2 Bejer, who marked the same as "RCB-2" to "RCB-5."

3. During the physical inventory that was conducted by PO3 De Jesus at the scene of the crime and at the Caloocan barangay hall, representatives of the DOJ, the media, and the barangay attended and signed the inventory receipt in the presence of Eda and the prosecution witnesses.

4. Photographs of the actual marking of the confiscated shabu and the proceedings during the inventory were also taken by PO3 De Jesus.

5. After the arresting officers brought Eda to the Balayan Police Station, requests for drug test and laboratory examination of the seized items were prepared on the same day.

6. PO2 Bejer was in possession of the subject shabu from the time of confiscation until he and PO1 Briones personally delivered them to the Batangas Provincial Crime Laboratory.

7. P/Insp. Llacuna, a forensic chemist, conducted a qualitative examination and prepared a report under oath which concluded that the specimens marked as "RCB-1" to "RCB-5" contained methamphetamine hydrochloride.

8. The marked sachets of shabu were presented and offered as evidence in court and were positively identified by both PO2 Bejer and PO1 Briones as the same illegal drugs taken from Eda. Further, the marked money was presented in court and offered in evidence.

Verily, the prosecution was able to establish with moral certainty and prove to the Court beyond reasonable doubt that there was an unbroken chain of custody over the recovered drug, from the time it was lawfully seized and came into the possession of the apprehending officers up to the time it was presented and offered in evidence before the trial court. The testimonies of the witnesses included every person who touched the exhibit and described 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 delivered to the next link in the chain, and 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.[40]

Lastly, as to the penalty, We sustain the amount of fine and the indeterminate sentence imposed in Criminal Cases No. 6604 and 6605. Based on Section 11, Article II of R.A. No. 9165, illegal possession of less than five (5) grams of methamphetamine hydrochloride or shabu is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). The evidence adduced by the prosecution established beyond reasonable doubt that Eda possessed a total of 0.08 gram of shabu without any legal authority. Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law and the maximum period shall not exceed the maximum period allowed under the law.[41] Taking that into consideration, the penalty meted out by the RTC, as affirmed by the CA, was within the range provided by R.A. No. 9165. The appropriate penalty was, therefore, imposed by the lower court.

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[40] See *People v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016.

[41] *Sy v. People*, *supra* note 30, at 182 and *Miclat, Jr. v. People, supra* note 30, at 212.

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The December 10, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06470, which affirmed *in toto* the September 17, 2013 Joint Decision of the Regional Trial Court, Branch 9, Balayan, Batangas, in Criminal Cases No. 6604 and 6605, convicting appellant Ronnie Boy Eda *y* Casani of illegal possession and sale of *shabu*, in violation of Sections 5 and 11, Article II of Republic Act No. 9165, is **AFFIRMED**.

SO ORDERED.

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

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

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated November 4, 2015.

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Factual findings in labor cases — The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact; it is settled that the Court is not a trier of facts and this rule applies with greater force in labor cases. (HSY Marketing Ltd., Co. *vs.* Villastique, G.R. No. 219569, Aug. 17, 2016) p. 560

Factual findings of adjudicative body — Factual findings and conclusions of an adjudicative body, especially when affirmed on appeal and supported by enough evidence are entitled to great weight, full respect and even finality by this Court, because administrative agencies or quasi-judicial bodies are clothed with special knowledge and expertise on specific matters within their jurisdiction. (AFP Retirement and Separation Benefits System (AFPRSBS) *vs.* Sanvictores, G.R. No. 207586, Aug. 17, 2016) p. 442

Factual findings of administrative agencies — By reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus their findings of fact in that regard are generally accorded great respect, if not finality, by the courts. (Nat'l. Transmission Corp. *vs.* Misamis Oriental I Electric Cooperative, Inc., G.R. No. 195138, Aug. 24, 2016) p. 704

— General rule in administrative law is that the courts of justice should respect the findings of fact of administrative agencies; one exception is when the precise issue is whether there is substantial evidence to support the findings of the administrative agency. (Atty. Navarro *vs.* Office of the Ombudsman, G.R. No. 210128, Aug. 17, 2016) p. 453

Petition for review on certiorari to the Supreme Court under Rule 45 — The CA properly denied the petitioner's Motion for Extension of Time to File Verified Petition for Review on Certiorari and justifiably considered the case closed and terminated; the petitioner was patently guilty of taking an erroneous appeal in view of her manifest intention to limit her appeal to questions of law; such an appeal would only be by petition for review on

without opening the car's doors; (*d*) where the occupants are not subjected to a physical or body search; (*e*) where the inspection of the vehicles is limited to a visual search or visual inspection; and (*f*) where the routine check is conducted in a fixed area. (People *vs.* Manago *y* Acut, G.R. No. 212340, Aug. 17, 2016) p. 505

Valid warrantless arrest — In warrantless arrests made pursuant to Sec. 5 (b), it is essential that the element of personal knowledge must be coupled with the element of immediacy; otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible in consonance with the exclusionary rule of the 1987 Constitution; with the element of immediacy imposed under Sec. 5 (b), Rule 113 of the Revised Rules of Criminal Procedure, the police officer's determination of probable cause would necessarily be limited to raw or uncontaminated facts or circumstances, gathered as they were within a very limited period of time. (People *vs.* Manago *y* Acut, G.R. No. 212340, Aug. 17, 2016) p. 505

— Three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto;* (*b*) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another. (*Id.*)

ATTORNEYS

Attorney-client relationship — An attorney impliedly accepts the relation when he acts on behalf of his client in pursuance of the request made by the latter. (Gimena *vs.* Atty. Sabio, A.C. No. 7178, Aug. 23, 2016) p. 644

Code of Professional Responsibility — A lawyer shall not neglect a legal matter entrusted to him; he must exercise

— Lawyers are required to exert every effort and consider it their duty to assist in the speedy and efficient administration of justice; the Code also obliges lawyers to employ only fair and honest means to attain the lawful objectives of their client. (Avida Land Corp. *vs.* Atty. Argosino, A.C No. 7437, Aug. 17, 2016) p. 210

Disbarment — A lawyer may be disbarred on any of the following grounds, namely: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyers oath; (7) willful disobedience of any lawful order of a superior court; and (8) corruptly or willfully appearing as a lawyer for a party to a case without authority so to do. (Interadent Zahntechnik, Phil., Inc. *vs.* Atty. Francisco–Simbillo, A.C. No. 9464, Aug. 24, 2016) p. 685

— Disbarment should not be decreed where any punishment less severe would accomplish the end desired. (Wee-Cruz *vs.* Atty. Lim, A.C. No. 11380, Aug. 16, 2016) p. 1

— In order to hold the lawyer amenable to disbarment by reason of his or her having committed a crime involving moral turpitude, it is not enough to show that there is a pending case involving moral turpitude against him or her, because Section 27 of Rule 138 expressly requires that he or she must have been found by final judgment guilty of the crime involving moral turpitude. (Interadent Zahntechnik, Phil., Inc. *vs.* Atty. Francisco–Simbillo, A.C. No. 9464, Aug. 24, 2016) p. 685

— The Court disbarred the lawyer for misappropriating the client's money intended for securing a certificate of title on the latter's behalf; membership in the legal profession is a privilege and whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of his clients and the public, it becomes not only the right but also the duty of the Court to withdraw the same. (San Juan *vs.* Atty. Venida, A.C. No. 11317, Aug. 23, 2016) p. 656

BILL OF RIGHTS

Rights of the accused — In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him to ensure that his due process rights are observed; every indictment must embody the essential elements of the crime charged with reasonable particularity as to the name of the accused, the time and place of commission of the offense, and the circumstances thereof. (People *vs.* Galia Bagamano, G.R. No. 222658, Aug. 17, 2016) p. 602

BOUNCING CHECKS LAW (BATAS PAMBANSA BILANG 22)

Violation of — It would best serve the ends of criminal justice if, in fixing the penalty to be imposed for violation of B.P. Blg. 22, the same philosophy underlying the Indeterminate Sentence Law is observed; that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order. (Higa *vs.* People, G.R. No. 185473, Aug. 17, 2016) p. 248

— Redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness, should be considered in favor of the accused who is not shown to be a habitual delinquent or a recidivist. (*Id*.)

CERTIORARI

Petition for — A petition for *certiorari* under Rule 65 is proper to correct errors of jurisdiction committed by the lower court or grave abuse of discretion which is tantamount to lack of jurisdiction; a petitioner must allege in his or her petition and establish facts to show that any other existing remedy is not speedy or adequate. (Cunanan *vs.* CA (Ninth Div.), G.R. No. 205573, Aug. 17, 2016) p. 400

— If the application of the Rules would tend to frustrate rather than promote justice, it is always within the power

of income of the public officer/employee and he fails to properly account or explain his other sources of income, does he become susceptible to dishonesty. (Atty. Navarro *vs.* Office of the Ombudsman, G.R. No. 210128, Aug. 17, 2016) p. 453

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002

Chain of custody — The testimonies of the witnesses included every person who touched the exhibit and described 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 delivered to the next link in the chain and 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. (People *vs.* Boy Eda *y* Casani, G.R. No. 220715, Aug. 24, 2016) p. 885

Illegal possession of prohibited drugs — The following elements must be established to convict an accused of illegal possession of a prohibited drug under Section 11, Paragraph 2 (3), Article II of R.A. 9165: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated 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; mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession; the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*. (People *vs.* Boy Eda *y* Casani, G.R. No. 220715, Aug. 24, 2016) p. 885

Illegal sale of dangerous drugs — Elements that must be satisfied: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor. (People *vs.* Boy Eda *y* Casani, G.R. No. 220715, Aug. 24, 2016) p. 885

of the court. (Barangay Mayamot, Antipolo City *vs.* Antipolo City *Sangguniang Panglungsod* of Antipolo, G.R. No. 187349, Aug. 17, 2016) p. 260

— Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed; this defense may be interposed at any time, during appeal or even after final judgment. (*Id*.)

CRIMINAL PROCEDURE

Affidavit of desistance — An affidavit of desistance or pardon is not a ground for the dismissal of an action, once the action has been instituted in court. (Chua *vs.* People, G.R. No. 216146, Aug. 24, 2016) p. 815

DAMAGES

Attorney's fees — As a rule, the mere fact of having been forced to litigate to protect one's interest does not amount to a compelling legal reason to justify an award of attorney's fees in the claimant's favor; attorney's fees may be awarded to a claimant who is compelled to litigate with third persons or incur expenses to protect his interest by reason of an unjustified act or omission on the part of the party from whom it is sought only when there is sufficient showing of bad faith on the part of the latter in refusing to pay. (Gargallo *vs.* Dohle Seafront Crewing (Mla.), Inc., G.R. No. 215551, Aug. 17, 2016) p. 535

— The recovery of attorney's fees and expenses of litigation is allowed when the defendant's act or omission has compelled plaintiff to incur expenses to protect his interest. (Dev't. Bank of the Phils. *vs.* Clarges Realty Corp., G.R. No. 170060, Aug. 17, 2016) p. 227

Temperate damages — May be recovered when some pecuniary loss has been suffered but definite proof of its amount was not presented in court. (People *vs.* Tayao y Laya, G.R. No. 215750, Aug. 17, 2016) p. 548

Two aspects — Due process of law has two aspects: substantive and procedural due process; substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property; procedural due process, on the other hand, means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it. (Alliance for the Family Foundation, Phils., Inc. (ALFI) *vs.* Hon. Garin, G.R. No. 217872, Aug. 24, 2016) p. 831

EJECTMENT

Action for — Does not lie to recover a property occupied by another by mere tolerance for public use, but the owner has the right to be compensated for the reasonable value of the property. (Malonesio *vs.* Jizmundo, G.R. No. 199239, Aug. 24, 2016) p. 723

— Unlawful detainer and forcible entry are entirely distinct causes of action, to wit: (a) action to recover possession founded on illegal occupation from the beginning is forcible entry; and (b) action founded on unlawful detention by a person who originally acquired possession lawfully is unlawful detainer; what determines the cause of action is the nature of defendants' entry into the land; if entry is illegal, then the cause of action which may be filed against the intruder within one year therefrom is forcible entry; if on the other hand, entry is legal but thereafter possession became illegal, the case is one of illegal detainer which must be filed within one year from the date of the last demand. (Balibago Faith Baptist Church, Inc. *vs.* Faith in Christ Jesus Baptist Church, Inc., G.R. No. 191527, Aug. 22, 2016) p. 611

EMPLOYMENT, TERMINATION OF

Separation pay — Liability for the payment of separation pay is but a legal consequence of illegal dismissal where reinstatement is no longer viable or feasible; as a relief granted in lieu of reinstatement, it goes without saying

EQUAL PROTECTION

Valid classification — A classification that is drastically under inclusive with respect to the purpose or end appears as an irrational means to the legislative end because it poorly serves the intended purpose of the law. (Mosqueda *vs.* Pilipino Banana Growers & Exporters Association, Inc., G.R. No. 189185, Aug. 16, 2016) p. 17

— A substantially over inclusive or under inclusive classification tends to undercut the governmental claim that the classification serves legitimate political ends; where over inclusiveness is the problem, the vice is that the law has a greater discriminatory or burdensome effect than necessary. (*Id*.)

— A valid classification must be: (1) based on substantial distinctions; (2) germane to the purposes of the law; (3) not limited to existing conditions only; and (4) equally applicable to all members of the class. (*Id*.)

— The assailed ordinance also tends to be over inclusive because its impending implementation will affect groups that have no relation to the accomplishment of the legislative purpose; its implementation will unnecessarily impose a burden on a wider range of individuals than those included in the intended class based on the purpose of the law. (*Id*.)

— To determine the propriety of the classification, courts resort to three levels of scrutiny, viz: the rational scrutiny, intermediate scrutiny and strict scrutiny; the rational basis scrutiny (also known as the rational relation test or rational basis test) demands that the classification reasonably relate to the legislative purpose; the rational basis test often applies in cases involving economics or social welfare or to any other case not involving a suspect class; when the classification puts a quasi-suspect class at a disadvantage, it will be treated under intermediate or heightened review; classifications based on gender or illegitimacy receives intermediate scrutiny; to survive intermediate scrutiny, the law must not only further an

— Notarized document carries the evidentiary weight conferred upon it with respect to its due execution and documents acknowledged before a notary public have in their favor the presumption of regularity which may only be rebutted by clear and convincing evidence; the presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular; defective notarization will strip the document of its public character and reduce it to a private document. (*Id*.)

Weight and sufficiency of — To justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal liability of the accused. (People *vs.* Tayao y Laya, G.R. No. 215750, Aug. 17, 2016) p. 548

FORUM SHOPPING

Certification against forum shopping — The simultaneous or successive institution of two or more actions or proceedings involving the same parties for the same cause of action with the hope that one or the other court would make a favorable disposition. (PASDA, Incorporated *vs.* Dimayacyac, Sr., G.R. No. 220479, Aug. 17, 2016) p. 583

Principle of — Institution of two or more actions involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would come out with a favorable disposition. (Begnaen *vs.* Sps. Caligtan, G.R. No. 189852, Aug. 17, 2016) p. 289

FORUM SHOPPING AND VERIFICATION

Rules on — Rules on verification against forum shopping, *viz.*: 1) a distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping; 2) as to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective; the court may order its submission or

INDETERMINATE SENTENCE LAW

Application of — The penalty for attempted homicide is *prision correccional*; it is two degrees lower than *reclusion temporal*, the penalty for homicide; the maximum of the indeterminate penalty shall be taken from the imposable penalty of *prision correccional*, taking into account the modifying circumstances, if any; there being no mitigating or aggravating circumstances, the maximum penalty should be imposed in its medium period; to determine the minimum of the indeterminate penalty, the penalty of *prision correccional* has to be reduced by one degree, which is *arresto mayor*; the minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor* in any of its periods. (People *vs.* Geron *y* Yema, G.R. No. 208758, Aug. 24, 2016) p. 766

INDIGENOUS PEOPLES' RIGHTS ACT OF 1997 (IPRA) (R.A. NO. 8371)

Application of — Governs the rights of indigenous peoples to their ancestral lands and domains; ancestral lands are lands occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present. (Begnaen *vs.* Sps. Caligtan, G.R. No. 189852, Aug. 17, 2016) p. 289

— IPRA does not confer original and exclusive jurisdiction to the NCIP over all claims and disputes involving rights of ICCs/IPs. (*Id.*)

INTERESTS

Interest rate — Parties were free to stipulate on the interest rate, provided that it was conscionable; the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (PASDA, Incorporated *vs.* Dimayacyac, Sr., G.R. No. 220479, Aug. 17, 2016) p. 583

to achieve that purpose without unduly oppressing the individuals regulated, the ordinance must survive a due process challenge. (*Id*.)

— Taking only becomes confiscatory if it substantially divests the owner of the beneficial use of its property. (*Id*.)

LOCAL GOVERNMENT CODE OF 1991

Corporate powers — The corporate powers of the local government unit confer the basic authority to enact legislation that may interfere with personal liberty, property, lawful businesses and occupations in order to promote the general welfare; such legislative powers spring from the delegation thereof by Congress through either the Local Government Code or a special law; the General Welfare Clause in Section 16 of the Local Government Code embodies the legislative grant that enables the local government unit to effectively accomplish and carry out the declared objects of its creation, and to promote and maintain local autonomy. (Mosqueda *vs.* Pilipino Banana Growers & Exporters Association, Inc., G.R. No. 189185, Aug. 16, 2016) p. 17

Local legislation — Although the Local Government Code vests the municipal corporations with sufficient power to govern themselves and manage their affairs and activities, they definitely have no right to enact ordinances dissonant with the State's laws and policy; Local Government Code is not intended to vest in the local government unit the blanket authority to legislate upon any subject that it finds proper to legislate upon in the guise of serving the common good. (Mosqueda *vs.* Pilipino Banana Growers & Exporters Association, Inc., G.R. No. 189185, Aug. 16, 2016) p. 17

— In order to declare it as a valid piece of local legislation, it must also comply with the following substantive requirements, namely: (1) it must not contravene the Constitution or any statute; (2) it must be fair, not oppressive; (3) it must not be partial or discriminatory; (4) it must not prohibit but may regulate trade; (5) it

must be general and consistent with public policy; and (6) it must not be unreasonable. (*Id*.)

— Local Government Code explicitly vests the local government unit with the authority to enact legislation aimed at promoting the general welfare. (*Id*.)

— Rational basis approach appropriately applies in case at bar; under the rational basis test, we shall: (1) discern the reasonable relationship between the means and the purpose of the ordinance; and (2) examine whether the means or the prohibition against aerial spraying is based on a substantial or reasonable distinction. (*Id*.)

— The constitutional right to health and maintaining environmental integrity are privileges that do not only advance the interests of a group of individuals; the benefits of protecting human health and the environment transcend geographical locations and even generations; local government has the authority to enact pieces of legislation that will promote the general welfare, specifically the health of its constituents; such authority should not be construed, however, as a valid license for the local government to enact any ordinance it deems fit to discharge its mandate; a thin but well-defined line separates authority to enact legislations from the method of accomplishing the same. (*Id*.)

— The discriminatory character of the ordinance makes it oppressive and unreasonable in light of the existence and availability of more permissible and practical alternatives that will not overburden the respondents and those dependent on their operations as well as those who stand to be affected by the ordinance. (*Id*.)

— To be considered as a valid police power measure, an ordinance must pass a two-pronged test: the formal (*i.e.*, whether the ordinance is enacted within the corporate powers of the local government unit, and whether it is passed in accordance with the procedure prescribed by law); and the substantive (*i.e.*, involving inherent merit, like the conformity of the ordinance with the limitations

NATIONAL INTERNAL REVENUE CODE

in light of Sec. 22(Y), the reckoning of whether there are 20 or more individuals or corporate lenders is crucial in determining the tax treatment of the yield from the debt instrument; if there are 20 or more lenders, the debt instrument is considered a deposit substitute and subject to 20% final withholding tax. (Banco de Oro *vs.* RCBC, G.R. No. 198756, Aug. 16, 2016) p. 97

Section 59 — Any person who has control, receipt, custody, or disposal of the income may be constituted as withholding agent; the successful GSED-bidder, as agent of the Bureau of Treasury, has the primary responsibility to withhold the 20% final withholding tax on the interest valued at present value, when its sale and distribution of the government securities constitutes a deposit substitute transaction; the 20% final tax is deducted by the buyer from the discount of the bonds and included in the remittance of the purchase price. (Banco de Oro *vs.* RCBC, G.R. No. 198756, Aug. 16, 2016) p. 97

OBLIGATIONS

Conditional obligations — A condition is defined as every future and uncertain event upon which an obligation or provision is made to depend; it is a future and uncertain event upon which the acquisition or resolution of rights is made to depend by those who execute the juridical act; when a contract is subject to a suspensive condition, its effectivity shall take place only if and when the event which constitutes the condition happens or is fulfilled. (Sagun *vs.* ANZ Global Services and Operations (Mla.), Inc., G.R. No. 220399, Aug. 22, 2016) p. 633

Extinguishment of — Articles 1266 and 1267 of the Civil Code which release debtors from their obligations if they become legally or physical impossible or so difficult to be manifestly beyond the contemplation of the parties only apply to obligations to do; they do not apply to obligations to give as when a party is obliged to deliver a thing. (Dev't. Bank of the Phils. *vs.* Clarges Realty Corp., G.R. No. 170060, Aug. 17, 2016) p. 227

practical or useful purpose and cannot be enforced. (Roxas *vs.* Binay, P.E.T No. 004, Aug. 16, 2016) p. 9

PRESUMPTIONS

Disputable presumptions — In the absence of any evidence of coercion, the Court could only presume that the police simply performed their regular duty without resorting to extrajudicial measures. (People *vs.* Tayao y Laya, G.R. No. 215750, Aug. 17, 2016) p. 548

PROHIBITION

Petition for — A petition for prohibition is not the proper remedy to assail an administrative order issued in the exercise of a quasi-legislative function; prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. (Chairman and Executive Director, Palawan Council for Sustainable Dev't. *vs.* Lim, G.R. No. 183173, Aug. 24, 2016) p. 690

PROPERTY REGISTRATION DECREE (P. D. NO. 1529, AS AMENDED BY R. A. NO. 6732)

Reconstitution of title — If a certificate of title has not been lost, but is in fact in the possession of another person, then the reconstituted title is void and the court that rendered the decision had no jurisdiction; the decision may be attacked any time; a reconstituted title obtained by means of fraud, deceit or other machination is void *ab initio* as against the party obtaining the same and all persons having knowledge thereof. (Sps. Ibias *vs.* Macabeo, G.R. No. 205004, Aug. 17, 2017) p. 389

— The reconstitution of a title is simply the re-issuance of a lost duplicate certificate of title in its original form

3. By means of fraudulent machination or grave abuse of authority; and 4. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (*Id*.)

— The prosecution must prove that: (*a*) the offender had carnal knowledge of a woman; and (*b*) he accomplished this act through force, threat or intimidation, when the victim was deprived of reason or otherwise unconscious, by means of fraudulent machination or grave abuse of authority or when the victim is under 12 years of age or is demented. (People *vs.* Galia Bagamano, G.R. No. 222658, Aug. 17, 2016) p. 602

Statutory rape — For a conviction for Statutory Rape to prosper, the following elements must concur: (a) the victim is a female under 12 years of age or is demented; and (b) the offender has carnal knowledge of the victim. (People *vs.* Regalado, G.R. No. 210752, Aug. 17, 2016) p. 493

REGIONAL TRIAL COURTS

Jurisdiction — RTC is without jurisdiction to settle a boundary dispute involving barangays in the same city or municipality; said dispute shall be referred for settlement to the sangguniang panglungsod or sangguniang bayan concerned; if there is failure of amicable settlement, the dispute shall be formally tried by the sanggunian concerned and shall decide the same within sixty (60) days from the date of the certification referred to; the decision of the sanggunian may be appealed to the RTC having jurisdiction over the area in dispute, within the time and manner prescribed by the Rules of Court. (Barangay Mayamot, Antipolo City *vs.* Antipolo City *Sangguniang Panglungsod* of Antipolo, G.R. No. 187349, Aug. 17, 2016) p. 260

RES JUDICATA

Principle of — A legal principle that regards a final judgment on the merits of a case as conclusive between the parties to such case and their privies; the principle has two (2)

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