PHILIPPINE REPORTS

VOL. 795

SEPTEMBER 14, 2016 TO SEPTEMBER 21, 2016

VOLUME 795

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

SEPTEMBER 14, 2016 TO SEPTEMBER 21, 2016

SUPREME COURT
MANILA
2017

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2017

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 10782. September 14, 2016]

ATTY. DELIO M. ASERON, *complainant, vs.* **ATTY. JOSE A. DIÑO, JR.**, *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE RULE DOES NOT RECOGNIZE THE FILING OF A SECOND MOTION FOR RECONSIDERATION, AND EXPRESSLY PROVIDES THAT THE PROPER REMEDY OF THE LOSING PARTY IS TO FILE A PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; LIBERAL APPLICATION IN CASE AT BAR.— In Bar Matter No. 1755, the Court emphasized the application of Section 12, Rule 139-B of the Rules of Court, x x x Clearly, the rule does not recognize the filing of a second motion for reconsideration. In fact, the rule expressly provides that the proper remedy of the losing party is to file a Petition for Review under Rule 45 with this Court. In accordance, however, with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, the Court treats the second Motion for Reconsideration filed by the respondent as a petition for review under Rule 45. This is consistent with the *sui generis* nature of disbarment proceedings which focuses on the qualification and fitness of a lawyer to continue membership in the bar and not the procedural technicalities in filing the case.

2. ID.; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); ALL MEMBERS OF THE BAR ARE DIRECTED TO CONDUCT THEMSELVES WITH COURTESY, FAIRNESS, AND CANDOR TOWARDS THEIR FELLOW LAWYERS AND AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL; VIOLATION IN CASE AT BAR.— Canon 8 of the CPR directs all members of the bar to conduct themselves with courtesy, fairness, and candor towards their fellow lawyers and avoid harassing tactics against opposing counsel. x x x In the present case, the respondent's actions failed to measure up to this Canon. Records show that he imputed to the complainant the use of his influence as a former public prosecutor to harass his clients during the inquest proceedings without sufficient proof or evidence to support the same. As an officer of the court, the respondent could have aired his charge against the complainant in a proper forum and without using offensive and abusive language. He should refrain from being tempted by the adversarial nature of our legal system to use strong language in pursuit of his duty to advance the interest of his client. x x x The Court has consistently reminded lawyers that though they are entitled to present their case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive.

3. ID.; ID.; MISCONDUCT OF LAWYERS; PENALTY; THE COURT FINDS PROPER THE PENALTY OF REPRIMAND TO A LAWYER FOR USING INTEMPERATE LANGUAGE AGAINST HIS FELLOW LAWYER; CASE AT BAR.— As to the penalty, in *Uy v. Atty. Depasucat*, the Court reprimanded the lawyers for misconduct in using offensive and abusive language in their Manifestation. Here, considering that the respondent was merely over-zealous in protecting the rights of his client, the Court finds that the recommended penalty by the IBP Board of Governors to reprimand him for the use of intemperate language against his fellow lawyer is proper under the circumstances.

RESOLUTION

REYES, *J.*:

In a verified complaint[1] filed before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), Atty. Delio M. Aseron (complainant) sought the disbarment of Atty. Jose A. Diño, Jr. (respondent) for his alleged violations of the Code of Professional Responsibility (CPR).

The Facts of the Disbarment Case

On January 25, 2009, the complainant figured in a vehicular accident along Commonwealth Avenue, Quezon City with a bus operated by Nova Auto Transport, Inc. (NATI) which, at that time, was driven by Jerry Garcia (Garcia).[2]

Consequently, the complainant filed the following cases: (i) a criminal case against Garcia for Reckless Imprudence Resulting in Damage to Property with Serious Physical Injuries docketed as Criminal Case No. 025403 before the Metropolitan Trial Court of Quezon City, Branch 36; and (ii) a civil case for Damages against Garcia and NATI docketed as Civil Case No. Q-09-64558 before the Regional Trial Court of Quezon City, Branch 105. In both instances, the respondent is the counsel of record for Garcia and NATI.[3]

On March 3, 2009, Atty. Alberto H. Habitan, counsel for the complainant, demanded from NATI damages in the amount of not less than Two Million Pesos (₱2,000,000.00) as a result of the accident.[4]

The complainant, however, claimed that the respondent's reply letter[5] dated March 20, 2009, was couched in abusive,

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

[2] *Id*. at 3.

[3] *Id*. at 2.

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

[5] *Id*. at 10-11.

disrespectful language, malicious and unfounded accusations and besmirched his reputation.[6] The reply letter in part stated:

> With reference to said Criminal Case No. 09-025403, we received information that [the complainant] allegedly used his "influence" in persuading the former handling Prosecutor of Inquest Case No. 09-388, not to allow the release of the Passenger Bus with Plate No. TWL-653, unless our client agrees to immediately pay the mercenary claim of Php 2 Million as demanded by [the complainant]. Fortunately, our client heeded our Law Office's persistent advice not to fall prey to such hustler tactic.[7]

Due to the insinuations made by the respondent in his reply letter, the complainant was constrained to file a libel case against the former before the Office of the City Prosecutor of Quezon City.[8]

Also, the complainant asseverated that the respondent made a mockery of the judicial system by employing unwarranted dilatory tactics in Criminal Case No. 025403 and Civil Case No. Q-09-64558 by filing numerous motions that were eventually denied by the courts for lack of merit.[9]

Moreover, the complainant alleged that the respondent committed malpractice by misleading the court when he admitted ownership of the passenger bus with body number 054 and plate number TWC 653 as that of NATI in one pleading and denying it in another.[10]

On February 11, 2010, the IBP-CBD issued an Order[11] directing the respondent to file his Answer within a period of 15 days from receipt thereof. The respondent, however, failed to file his Answer within the period given to him.

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[6] *Id*. at 3.

[7] *Id*. at 10.

[8] *Id*. at 3.

[9] *Id*. at 4-6.

[10] *Id*. at 6.

[11] *Id*. at 56.

On August 9, 2010, the IBP-CBD issued a Notice[12] directing the parties to attend a mandatory conference. The parties were likewise ordered to submit their respective briefs at least three days prior to the scheduled conference.

On April 6, 2011, the IBP-CBD issued an Order[13] declaring the case submitted for resolution due to the respondent's failure to attend the mandatory conference and to file his brief.

Resolutions of the IBP

On November 6, 2011, Commissioner Oliver A. Cachapero (Commissioner Cachapero) issued his Report and Recommendation[14] recommending that a penalty of censure be meted against the respondent for failure to conduct himself toward his fellow lawyer with courtesy.

On February 12, 2013, the IBP Board of Governors issued a Resolution[15] adopting and approving the Report and Recommendation of Commissioner Cachapero after finding that the respondent breached his ethical duties as a lawyer and that the same is fully supported by the evidence on record and the applicable laws and rules.

The respondent, on May 16, 2013, filed his motion for reconsideration[16] but the same was denied by the IBP Board of Governors in a Resolution[17] dated September 27, 2014 it being a mere reiteration of the matters which had already been threshed out and taken into consideration. The IBP Board of Governors, however, modified the penalty by increasing it from censure to reprimand.

Undaunted, the respondent filed a Motion for Leave to File and to Admit Motion for Reconsideration[18] on April 15, 2015

[12] *Id*. at 59.

[13] *Id*. at 82.

[14] *Id*. at 188-191.

[15] *Id*. at 187.

[16] *Id*. at 192-215.

[17] *Id*. at 245-246.

[18] *Id*. at 255-257.

praying that his second motion for reconsideration[19] be given due course.

Issue

Essentially, the sole issue in the present case is whether or not there is sufficient evidence on record to hold the respondent liable for violation of the CPR.

Ruling of the Court

The rule does not recognize the filing of a second Motion for Reconsideration

In Bar Matter No. 1755, the Court emphasized the application of Section 12, Rule 139-B of the Rules of Court, thus:

> In case a decision is rendered by the [Board of Governors] that exonerates the respondent or imposes a sanction less than suspension or disbarment, the aggrieved party can file a motion for reconsideration within the 15-day period from notice. If the motion is denied, said party can file a petition for review under Rule 45 of the Rules of Court with this Court within fifteen (15) days from notice of the resolution resolving the motion. If no motion for reconsideration is filed, the decision shall become final and executory and a copy of said decision shall be furnished this Court.[20]

Clearly, the rule does not recognize the filing of a second motion for reconsideration. In fact, the rule expressly provides that the proper remedy of the losing party is to file a Petition for Review under Rule 45 with this Court.

In accordance, however, with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, the Court treats the second Motion for Reconsideration filed by the respondent as a petition for review under Rule 45. This is consistent with the *sui generis* nature of disbarment proceedings

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[19] *Id.* at 258-276.

[20] Court *en banc* Resolution Re: Clarification on Rules of Procedure of the Commission on Bar Discipline, B.M. No. 1755, June 17, 2008.

which focuses on the qualification and fitness of a lawyer to continue membership in the bar and not the procedural technicalities in filing the case.[21]

There is no sufficient reason to reverse the findings of the IBP

Nonetheless, after a careful perusal of the records of the case, the Court agrees with the findings of the IBP-CBD and the Board of Governors that the respondent violated the CPR when he used intemperate language in his letter to the complainant.

Canon 8 of the CPR directs all members of the bar to conduct themselves with courtesy, fairness, and candor towards their fellow lawyers and avoid harassing tactics against opposing counsel. Specifically, in Rule 8.01, the CPR provides:

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

In the present case, the respondent's actions failed to measure up to this Canon. Records show that he imputed to the complainant the use of his influence as a former public prosecutor to harass his clients during the inquest proceedings without sufficient proof or evidence to support the same.

As an officer of the court, the respondent could have aired his charge against the complainant in a proper forum and without using offensive and abusive language. He should refrain from being tempted by the adversarial nature of our legal system to use strong language in pursuit of his duty to advance the interest of his client.[22] Commissioner Cachapero's Report and Recommendation in part stated:

> Indeed, there is a strong showing that the Respondent had failed to conduct himself toward his fellow lawyer with that courtesy that all have the right to expect. When he mentioned that Complainant had used his influence in persuading the fiscal, he used a language

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[21] *Villatuya v. Atty. Tabalingcos*, 690 Phil. 381, 396 (2012).

[22] *Saberon v. Atty. Larong*, 574 Phil. 510, 516 (2008).

which was abusive, offensive or otherwise improper. He showed ill-feelings toward Complainant and allowed such feeling to influence him in his conduct and demeanor towards the latter.[23]

The Court has consistently reminded lawyers that though they are entitled to present their case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive.[24]

As to the penalty, in *Uy v. Atty. Depasucat*,[25] the Court reprimanded the lawyers for misconduct in using offensive and abusive language in their Manifestation.[26]

Here, considering that the respondent was merely over-zealous in protecting the rights of his client, the Court finds that the recommended penalty by the IBP Board of Governors to reprimand him for the use of intemperate language against his fellow lawyer is proper under the circumstances.

WHEREFORE, premises considered, the Court **RESOLVES** to treat respondent Atty. Jose A. Diño, Jr.'s second Motion for Reconsideration as a Petition for Review under Rule 45, and **DENY** the same for lack of merit.

Moreover, the Court **ADOPTS** and **AFFIRMS** the Resolution No. XXI-2014-597 dated September 27, 2014 of the Integrated Bar of the Philippines Board of Governors meting out the penalty of **REPRIMAND** against Atty. Jose A. Diño, Jr. for breach of his ethical duties as a lawyer.

SO ORDERED.

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

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[23] *Rollo*, p. 190.

[24] *Saberon v. Atty. Larong*, *supra* note 22, at 517.

[25] 455 Phil. 9 (2003).

[26] *Id.* at 22.

FIRST DIVISION

[A.C. No. 11323. September 14, 2016]

NICOLAS ROBERT MARTIN EGGER, *complainant, vs.* **ATTY. FRANCISCO P. DURAN,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; COMMENCES WHEN A LAWYER SIGNIFIES HIS AGREEMENT TO HANDLE A CLIENT'S CASE AND ACCEPTS MONEY REPRESENTING LEGAL FEES FROM THE LATTER.—** A judicious perusal of the records reveals that sometime in January 2014, complainant and Reposo had already forged a lawyer-client relationship with respondent, considering that the latter agreed to file a petition for annulment of marriage in their behalf, and in connection therewith, received the aggregate amount of ₱100,000.00 representing legal fees. Case law instructs that a lawyer-client relationship commences when a lawyer signifies his agreement to handle a client's case and accepts money representing legal fees from the latter, as in this case. Respondent's contention that he only has a lawyer-client relationship with Reposo but not with her husband, the complainant, is belied by the letter dated April 25, 2014 signed by no less than Reposo herself which shows that she and complainant *jointly* sought the services of respondent to work on their annulment case, but had to eventually withdraw therefrom on account of respondent's failure to render any actual legal service despite their agreement and payment of legal fees amounting to ₱100,000.00.

2. **ID.; ID; ID.; RULE 18.03, CANON 18 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; DUTY OF FIDELITY TO THE CLIENT'S CAUSE; THE CLIENT'S FAILURE TO REMIT THE FULL ACCEPTANCE FEE IS NOT AN EXCUSE TO ABANDON THE CLIENT'S CAUSE, FOR A LAWYER'S DUTY TO SAFEGUARD HIS CLIENT'S INTERESTS COMMENCES FROM HIS RETAINER UNTIL HIS EFFECTIVE DISCHARGE FROM THE CASE OR THE FINAL DISPOSITION OF THE ENTIRE SUBJECT MATTER OF LITIGATION.—** Once

a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. This is commanded by Rule 18.03, Canon 18 of the CPR x x x. However, respondent admittedly breached this duty when he failed to prepare, much less file, the appropriate pleading to initiate complainant and Reposo's case before the proper court. Respondent's additional contention that his failure to file the petition was due to complainant and Reposo's failure to remit the full acceptance fee of ₱150,000.00 is not an excuse to abandon his client's cause considering that his duty to safeguard his client's interests commences from his retainer until his effective discharge from the case or the final disposition of the entire subject matter of litigation.

3. **ID.; ID.; ID.; ID.; A LAWYER'S NEGLECT OF A LEGAL MATTER ENTRUSTED HIM BY THE CLIENT CONSTITUTES INEXCUSABLE NEGLIGENCE FOR WHICH HE MUST BE HELD ADMINISTRATIVELY LIABLE.—** [R]espondent's act of agreeing to handle complainant's case, coupled with his acceptance of the partial payment of ₱100,000.00, already established an attorney-client relationship that gave rise to his duty of fidelity to the client's cause. Indubitably, respondent's neglect of a legal matter entrusted him by complainant and Reposo constitutes inexcusable negligence for which he must be held administratively liable.

4. **ID.; ID.; ID.; CANON 16, RULE 16.01 AND 16.03 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; THE HIGHLY FIDUCIARY RELATIONSHIP BETWEEN A LAWYER AND HIS CLIENT IMPOSES UPON THE LAWYER THE DUTY TO ACCOUNT FOR THE MONEY OR PROPERTY COLLECTED OR RECEIVED FOR OR FROM HIS CLIENT; THUS, A LAWYER'S FAILURE TO RETURN UPON DEMAND THE FUNDS HELD BY HIM ON BEHALF OF HIS CLIENT GIVES RISE TO THE PRESUMPTION THAT HE HAS APPROPRIATED THE SAME FOR HIS OWN USE IN VIOLATION OF THE TRUST REPOSED IN HIM BY HIS CLIENT.—** [R]espondent also violated Rules 16.01 and 16.03, Canon 16 of the CPR when he failed to return the amount of ₱100,000.00

representing the legal fees that complainant paid him x x x. "The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics."

5. **ID.; ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW IMPOSED AGAINST A LAWYER WHO NEGLECTED HIS CLIENT'S AFFAIRS AND FAILED TO RETURN THE LATTER'S MONEY AND/OR PROPERTY DESPITE DEMAND.—** Case law provides that in similar instances where lawyers neglected their client's affairs and at the same time failed to return the latter's money and/or property despite demand, the Court imposed upon them the penalty of suspension from the practice of law. In *Segovia-Ribaya v. Lawsin*, the Court suspended the lawyer for a period of one (1) year for his failure to perform his undertaking under his retainership agreement with his client and to return the money given to him by the latter. Similarly, in *Meneses v. Macalino*, the same penalty was imposed on a lawyer who failed to render any legal service to his client, as well as to return the money he received for such purpose. These pronouncements notwithstanding, there have been instances where the Court tempered the penalty imposed upon a lawyer due to humanitarian and equitable considerations. In view of the foregoing, and taking into consideration respondent's dire financial condition brought by Typhoon Yolanda and his willingness to return the money he received from complainant as soon as he recovers from such economic status, the Court finds it appropriate to sustain the recommended suspension from the practice of law for a period of six (6) months.

6. **ID.; ID.; ID.; THE RULE THAT DISCIPLINARY PROCEEDINGS SHOULD ONLY REVOLVE AROUND THE DETERMINATION OF THE RESPONDENT-LAWYER'S ADMINISTRATIVE AND NOT HIS CIVIL LIABILITY, APPLIES ONLY WHEN THE CLAIM**

INVOLVES MONEYS RECEIVED BY THE LAWYER FROM HIS CLIENT IN A TRANSACTION SEPARATE AND DISTINCT AND NOT INTRINSICALLY LINKED TO HIS PROFESSIONAL ENGAGEMENT.— [T]he Court sustains the IBP's recommendation ordering respondent to return the amount of ₱100,000.00 he received from complainant as legal fees. It is well to note that "while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement." Hence, since respondent received the aforesaid amount as part of his legal fees, the Court finds the return thereof to be in order.

APPEARANCES OF COUNSEL

Radula Sanchez Montealegre Bauzon Bragat Mendoza & Danlag-Luig Law Offices for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a Complaint[1] dated November 27, 2014 filed before the Integrated Bar of the Philippines (IBP) by complainant Nicolas Robert Martin Egger (complainant) against respondent Atty. Francisco P. Duran (respondent), praying that the latter be meted disciplinary sanctions for his failure to perform his undertaking as counsel and to return complainant's money despite demand and earlier promise to do so, in violation of the Code of Professional Responsibility (CPR).

The Facts

Complainant alleged that on January 22, 2014, he engaged respondent's services to file on his behalf a petition for the

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[1] *Rollo*, pp. 2-6.

annulment of his marriage. As consideration therefor, complainant deposited the total amount of ₱100,000.00 to respondent's bank account, spread over two (2) tranches of ₱50,000.00 each. Despite such payment, respondent never prepared, much less filed, said petition. This prompted complainant to terminate respondent's services due to loss of trust and confidence. Further, complainant, through his wife,[2] Dioly Rose Reposo (Reposo), wrote a letter[3] demanding for the return of the ₱100,000.00 he gave to respondent as lawyer's fees. In reply, respondent wrote complainant a letter[4] promising the return of the aforesaid amount before the end of May 2014. However, respondent did not fulfill his promise, prompting complainant to hire a new counsel, who in turn, wrote another letter[5] demanding for the return of the said lawyer's fees. As the second demand letter went unheeded, complainant filed the instant case against respondent.[6]

In various issuances, the IBP-Commission on Bar Discipline (IBP-CBD) required respondent to file his Answer,[7] as well as to appear in the mandatory conference,[8] but the latter failed to do so. Resultantly, the IBP issued an Order[9] dated March 18, 2015 submitting the case for report and recommendation.

On March 26, 2015, however, respondent belatedly filed his Answer[10] praying for the dismissal of the instant complaint. Respondent averred that he had no lawyer-client relationship with complainant as his client was the latter's wife, Reposo.

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[2] See *id*. at 19.

[3] Dated April 25, 2014. *Id*. at 7.

[4] Dated April 25, 2014. *Id*. at 8.

[5] Dated November 12, 2014. *Id*. at 9.

[6] See *id*. at 2-3.

[7] See Order dated December 15, 2014 signed by Director for Bar Discipline Dominic C. M. Solis; *id*. at 12.

[8] See Notice of Mandatory Conference dated February 11, 2015 signed by Commissioner Arsenio A. Adriano; *id*. at 13.

[9] *Id*. at 18.

[10] *Id*. at 19-22.

Further, while respondent admitted the receipt of ₱100,000.00 and that no petition for annulment was filed, he denied being remiss in his duties as a lawyer, explaining that such non-filing was due to, *inter alia*, Reposo's failure to pay the full acceptance fee amounting to ₱150,000.00, as well as to produce her psychiatric evaluation report. Finally, respondent claimed that his failure to return the ₱100,000.00 fee he collected was due to the fact that he lost most of his assets due to Typhoon Yolanda. Nevertheless, he signified his intention to return said fee as soon as he recovers from his dire financial condition.[11]

The IBP's Report and Recommendation

In its Report and Recommendation[12] dated April 21, 2015, the IBP-CBD found respondent administratively liable and, accordingly, recommended that he be meted the penalty of suspension from the practice of law for a period of six (6) months and ordered to return the amount of ₱100,000.00 with legal interest from April 25, 2014 to complainants. It was likewise recommended that respondent show compliance with such directives within thirty (30) days from the finality of the suspension order by the Court.[13] Essentially, the IBP-CBD found respondent guilty of violating Canon 18 of the CPR for neglecting a legal matter entrusted to him (*i.e.*, the filing of the petition for annulment of marriage), and Canon 16 of the same for his failure to hold in trust all the money he received from complainant.[14]

In a Resolution[15] dated June 20, 2015, the IBP Board of Governors adopted and approved the aforesaid report and recommendation with modification deleting the imposition of legal interest.

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[11] See *id*. at 19-21.

[12] *Id*. at 45-46.

[13] *Id*. at 46.

[14] See *id*.

[15] See Notice of Resolution in Resolution No. XXI-2015-553 signed by National Secretary Nasser A. Marohomsalic; *id*. at 43-44.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the CPR.

The Court's Ruling

A judicious perusal of the records reveals that sometime in January 2014, complainant and Reposo had already forged a lawyer-client relationship with respondent, considering that the latter agreed to file a petition for annulment of marriage in their behalf, and in connection therewith, received the aggregate amount of ₱100,000.00 representing legal fees. Case law instructs that a lawyer-client relationship commences when a lawyer signifies his agreement to handle a client's case and accepts money representing legal fees from the latter,[16] as in this case. Respondent's contention that he only has a lawyer-client relationship with Reposo but not with her husband, the complainant, is belied by the letter[17] dated April 25, 2014 signed by no less than Reposo herself which shows that she and complainant *jointly* sought the services of respondent to work on their annulment case, but had to eventually withdraw therefrom on account of respondent's failure to render any actual legal service despite their agreement and payment of legal fees amounting to ₱100,000.00.

Once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him.[18] This is commanded by Rule 18.03, Canon 18 of the CPR, which reads:

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[16] See *Emiliano Court Townhouses Homeowners Association v. Dioneda*, 447 Phil. 408, 414 (2003).

[17] *Rollo*, p. 7.

[18] See *Dongga-as v. Cruz-Angeles*, A.C. No. 11113, August 9, 2016, citing *Spouses Lopez v. Limos*, A.C. No. 7618, February 2, 2016.

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

However, respondent admittedly breached this duty when he failed to prepare, much less file, the appropriate pleading to initiate complainant and Reposo's case before the proper court. Respondent's additional contention that his failure to file the petition was due to complainant and Reposo's failure to remit the full acceptance fee of ₱150,000.00 is not an excuse to abandon his client's cause considering that his duty to safeguard his client's interests commences from his retainer until his effective discharge from the case or the final disposition of the entire subject matter of litigation. To reiterate, respondent's act of agreeing to handle complainant's case, coupled with his acceptance of the partial payment of ₱100,000.00, already established an attorney-client relationship that gave rise to his duty of fidelity to the client's cause.[19] Indubitably, respondent's neglect of a legal matter entrusted him by complainant and Reposo constitutes inexcusable negligence for which he must be held administratively liable.

Further, respondent also violated Rules 16.01 and 16.03, Canon 16 of the CPR when he failed to return the amount of ₱100,000.00 representing the legal fees that complainant paid him, *viz.*:

CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

x x x x x x x x x

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[19] See *Emiliano Court Townhouses Homeowners Association v. Dioneda*, 447 Phil. 408, 414 (2003).

Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

"The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics."[20]

Having established respondent's administrative liability, the Court now determines the proper penalty to be imposed upon him.

Case law provides that in similar instances where lawyers neglected their client's affairs and at the same time failed to return the latter's money and/or property despite demand, the Court imposed upon them the penalty of suspension from the practice of law. In *Segovia-Ribaya v. Lawsin*,[21] the Court suspended the lawyer for a period of one (1) year for his failure to perform his undertaking under his retainership agreement with his client and to return the money given to him by the latter.[22] Similarly, in *Meneses v. Macalino*,[23] the same penalty was imposed on a lawyer who failed to render any legal service to his client, as well as to return the money he received for such purpose.[24] These pronouncements notwithstanding, there have been instances where the Court tempered the penalty imposed upon a lawyer due to humanitarian and equitable considerations.[25]

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[20] See *id*.

[21] 721 Phil. 44 (2013).

[22] See *id*. at 50-53.

[23] 518 Phil. 378 (2006).

[24] See *id*. at 384-387.

[25] *Olayta-Camba v. Bongon*, A.C. No. 8826, March 25, 2015, 754 SCRA 205, 212.

In view of the foregoing, and taking into consideration respondent's dire financial condition brought by Typhoon Yolanda and his willingness to return the money he received from complainant as soon as he recovers from such economic status, the Court finds it appropriate to sustain the recommended suspension from the practice of law for a period of six (6) months.

Finally, the Court sustains the IBP's recommendation ordering respondent to return the amount of ₱100,000.00 he received from complainant as legal fees. It is well to note that "while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement."[26] Hence, since respondent received the aforesaid amount as part of his legal fees, the Court finds the return thereof to be in order.

WHEREFORE, respondent Atty. Francisco P. Duran is found guilty of violating Rules 16.01 and 16.03, Canon 16 and Rule 18.03, Canon 18 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of six (6) months, effective upon the finality of this Decision, and **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

Further, respondent is **ORDERED** to return to complainant Nicolas Robert Martin Egger the legal fees he received from the latter in the amount of ₱100,000.00 within ninety (90) days from the finality of this Decision. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Let a copy of this Decision be furnished the Office of the Bar Confidant to be appended to respondent's personal record

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[26] *Dongga-as v. Cruz-Angeles*, *supra* note 18, citing *Pitcher v. Gagate*, 719 Phil. 82, 94 (2013).

as a member of the Bar. Likewise, let copies of the same be served on the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.

Sereno C.J. (Chairperson), Leonardo-de Castro, and *Caguioa, JJ.,* concur.

Bersamin, J., on official leave.

SECOND DIVISION

[G.R. No. 172507. September 14, 2016]

NATIONAL POWER CORPORATION, *petitioner, vs.* **SPS. MARGARITO ASOQUE AND TARCINIA ASOQUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; EFFECT OF FAILURE TO APPEAR; IF THE DEFENDANT FAILS TO APPEAR, THE PLAINTIFF MAY BE ALLOWED TO PRESENT HIS EVIDENCE *EX PARTE* AND THE COURT MAY RENDER JUDGMENT ON THE BASIS THEREOF.— The Regional Trial Court did not err in allowing respondents to present their evidence ex parte. The action of the trial court is expressly allowed under Rule 18, Section 5 of the 1997 Rules of Civil Procedure. Section 5 provides that if it is the defendant who fails to appear, then the plaintiff may be allowed "to present his evidence ex parte and the court to render judgment on the basis thereof."

2. ID.; ID.; ID.; APPEARANCE OF PARTIES; IT IS THE DUTY OF THE PETITIONER TO APPEAR AT THE FIRST PRE-

TRIAL SETTING, AS ATTENDANCE BY THE PARTY AND ITS COUNSEL DURING A PRE-TRIAL CONFERENCE IS MANDATORY.— Petitioner's stance that it was deprived of due process because it was not given the *reasonable opportunity* to attend the second pre-trial setting is likewise untenable. Petitioner and its counsel were absent during the first pre-trial setting on May 8, 2000. Respondents' counsel attended, although he was late. Had petitioner and its counsel appeared on the first setting, they would have been reasonably notified then and there of the second pre-trial resetting on May 24, 2000 and would have had the opportunity to ask for a later date. Nonetheless, petitioner's counsel should have tried to inquire from the court the next schedule of the pre-trial. Attendance by the party and its counsel during a pre-trial conference is mandatory as expressly stated under Rule 18, Section 4 of the 1997 Rules of Civil Procedure

3. **ID.; ID.; ID.; ID.; A MOTION FOR POSTPONEMENT SHOULD NEVER BE PRESUMED TO BE GRANTED, AS THE MATTER OF POSTPONEMENT OF A HEARING IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT, AND UNLESS THERE IS A GRAVE ABUSE OF DISCRETION IN THE EXERCISE THEREOF THE SAME SHOULD NOT BE DISTURBED ON REVIEW.—** Petitioner alleges that it filed a motion for postponement of the first pre-trial setting. This notwithstanding, it was still its duty to appear at the pre-trial first set on May 8, 2000. A motion for postponement should never be presumed to be granted. Petitioner does not refute respondents' argument that its *Urgent Manifestation and Motion*, although dated May 24, 2000, was filed only one (1) day after the scheduled pre-trial sought to be postponed, on May 25, 2000. The trial court was, therefore, justified in denying petitioner's motion for postponement for having been filed out of time. A motion for postponement should be filed on or before the lapse of the day sought to be postponed. In any case, "the matter of postponement of a hearing is addressed to the sound discretion of the court [and] unless there is a grave abuse of discretion in the exercise thereof the same should not be disturbed on review."

4. **ID.; ID.; ID.; ID.; THE NON-APPEARANCE OF A PARTY AT THE PRE-TRIAL SETTING MAY ONLY BE EXCUSED FOR A VALID CAUSE; NO DENIAL OF DUE PROCESS WHERE PETITIONER WAS GIVEN THE OPPORTUNITY TO BE HEARD.—** Petitioner's counsel received the Regional

Trial Court Order resetting the pre-trial to May 24, 2000 on May 22, 2000. Assuming its counsel was unable to appear at the second pre-trial setting, petitioner could and should have sent a representative on May 24, 2000 to ask for postponement of the second pre-trial setting. During the second pre-trial setting, it was not only petitioner's counsel who failed to appear, but petitioner as well. Under the circumstances, petitioner cannot claim that it was denied due process. "Parties are presumed to have known the governing rules and the consequences for the violation of such rules." Moreover, the essence of due process is an opportunity to be heard. Petitioner was given that opportunity. Yet, it failed to appear at the two (2) pre-trial settings. A pre-trial cannot be taken for granted for it serves a vital objective: the simplification and expedition of the trial, if not its dispensation. Non-appearance of a party may only be excused for a valid cause. We see none in this case. x x x. [P]etitioner in this case was not deprived of its day in court. Petitioner was able to file a Motion for Reconsideration, participate in further proceedings, and was allowed to submit its objections to respondents' evidence and to the Commissioner's recommendation before the trial court rendered judgment. It must, therefore, bear the consequences of its lapses.

5. ID.; ID.; TRIAL BY COMMISSIONER; THE TRIAL COURT IS NOT BOUND BY THE COMMISSIONER'S RECOMMENDED VALUATION OF THE PROPERTY, FOR IT STILL HAS THE DISCRETION ON WHETHER TO ADOPT THE COMMISSIONER'S RECOMMENDATION OR TO MAKE ITS OWN INDEPENDENT VALUATION AS GATHERED FROM THE EVIDENCE REPORTED BY THE COMMISSIONER.— We hold that the non-appointment of three (3) Commissioners in the court a quo does not render infirm the entire proceedings. Neither do we find improper the trial court's appointment of the Branch Clerk of Court as Commissioner to receive and report on respondents' evidence. The trial court is not bound by the Commissioner's recommended valuation of the property. It still has the discretion on whether to adopt the Commissioner's recommendation or to make its own independent valuation as gathered from the evidence reported by the Commissioner.

6. ID.; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; ACQUISITION OF A RIGHT-OF-WAY EASEMENT OVER

THE PORTION OF PRIVATE PROPERTY IS A TAKING UNDER THE POWER OF EMINENT DOMAIN; TAKING UNDER EMINENT DOMAIN, ELEMENTS THEREOF.— Petitioner is liable to pay respondents just compensation and not merely an easement fee on the basis that its acquisition of a right-of-way easement over the portion of respondents' land was a taking under the power of eminent domain. While expropriation normally involves a taking of title to and possession of the property, an easement of right of way on a private property can be considered a taking under eminent domain under certain conditions. In *Republic v. PLDT*: Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way. There is taking in the context of the state's power of eminent domain when the following elements are present: (1) The expropriator enters a private property; (2) The entrance into the private property is indefinite or permanent: (3) There is color of legal authority in the entry into the property; (4) The property is devoted to public use or purpose; and (5) The use of property for public use removed from the owner all beneficial enjoyment of the property.

7. **ID.; ID.; ID.; A RIGHT-OF-WAY EASEMENT OR BURDEN BECOMES A "TAKING" UNDER EMINENT DOMAIN WHEN THERE IS MATERIAL IMPAIRMENT OF THE VALUE OF THE PROPERTY OR PREVENTION OF THE ORDINARY USES OF THE PROPERTY FOR AN INDEFINITE PERIOD; THE RIGHT-OF-WAY EASEMENT RESULTING IN A LIMITATION ON PROPERTY RIGHTS OVER THE LAND TRAVERSED BY TRANSMISSION LINES ALSO FALLS WITHIN THE AMBIT OF THE TERM "EXPROPRIATION." —** A right-of-way easement or burden becomes a "taking" under eminent domain when there is material impairment of the value of the property or prevention of the ordinary uses of the property for an indefinite period. The intrusion into the property must be so immediate and direct as to subtract from the owner's full enjoyment of the property and to limit his or her exploitation of it. x x x. The right-of-way easement resulting in a limitation

on property rights over the land traversed by transmission lines also falls within the ambit of the term "expropriation."

8. ID.; ID.; ID.; ID.; WHERE THE RIGHT-OF-WAY EASEMENT WILL DEPRIVE THE NORMAL USE OF THE LAND FOR AN INDEFINITE PERIOD AND EXPOSE THE PROPERTY OWNERS' LIVES AND LIMBS TO DANGER, JUST COMPENSATION MUST BE BASED ON THE FULL MARKET VALUE OF THE AFFECTED PROPERTY.— [D]ue to the nature of the easement, which will deprive the normal use of the land for an indefinite period and expose the property owners' lives and limbs to danger, just compensation must be based on the full market value of the affected property. Section 3(a) of Republic Act No. 6395, as amended, states that only 10% of the market value of the property is due the owner of the property subject to a right-of-way easement. However, this rule is not binding on the Court. Well-settled is the rule that the determination of just compensation for property taken in expropriation is a judicial prerogative. Such discretion cannot be curtailed by legislation. x x x. Therefore, the Regional Trial Court was correct when it adjudged the National Power Corporation liable to pay the value of the 4,352-square-meter portion of respondents' land that was used for its transmission line project.

9. ID.; CIVIL PROCEDURE; APPEALS; FACTUAL ISSUES PERTAINING TO THE VALUATION OF THE EXPROPRIATED PROPERTY ARE GENERALLY BEYOND THE PALE OF REVIEW UNDER A RULE 45 PETITION.— As regards the amount of just compensation, factual issues pertaining to the valuation of the expropriated property are generally beyond the pale of review under a Rule 45 petition. Factual findings of the trial and appellate courts will not be disturbed by this Court unless they are grounded entirely on speculations, surmises, or conjectures, among others, which do not obtain in this case.

10. ID.; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; JUST COMPENSATION; DEFINED; FACTORS TO CONSIDER IN THE DETERMINATION OF JUST COMPENSATION.— Just compensation has been defined as the "fair and full equivalent of the loss." In *National Power Corporation v. YCLA Sugar Development Corporation*: The word "just" is used to intensify the meaning of the word

"compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample. The constitutional limitation of "just compensation" is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government. The value and character of the land at the time it was taken by government are the criteria for determining just compensation. "All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, must thus be considered." Some factors that have been previously considered by the courts were acquisition cost, current value of like properties, its actual or potential uses, its size, shape, and location, and the tax declarations on the property. In this regard, the standards enumerated in statutes such as Section 5 of Republic Act No. 8974 are merely recommendatory, and courts are not bound to consider all of them.

11. ID.; ID.; ID.; ID.; THE DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION; THE COURT AFFIRMS THE VALUATION SET BY THE REGIONAL TRIAL COURT AND APPROVED BY THE COURT OF APPEALS.—[T]he Branch Clerk of Court as Commissioner stated that one high-ranking personnel of the City Assessor's Office of Calbayog observed that the market value of respondents' land in the Tax Declaration is a very low appraisal. As such, when he made the recommendation, he considered other factors such as the accessibility of the property, availability of basic services in the area, land valuation trend in the City of Calbayog (which was somewhere between ₱600.00 and ₱3,000.00 per square meter), and interviews with some landowners of the adjacent lots stating that they would not sell their lands lower than ₱500.00 per square meter. The Regional Trial Court found the amount recommended by the Commissioner as just compensation for the property to be reasonable x x x. The determination of just compensation being a judicial function, we find no compelling reason to disturb the valuation set by the Regional Trial Court and approved by the Court of Appeals. It has not been sufficiently shown to be grossly exorbitant or otherwise unjustified.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Jose M. Mendiola for respondents.

D E C I S I O N

LEONEN, *J.*:

Article III, Section 9[1] of the Constitution provides a substantive guarantee that private property that is taken by the state for public use should be paid for with just compensation. If the state does not agree with the property owner on a price, the state, through the competent government agency, should file the proper expropriation action under Rule 67 of the Revised Rules of Court.

In case of a taking without the proper expropriation action filed, the property owner may file its own action to question the propriety of the taking or to compel the payment of just compensation. Among these inverse condemnation actions is a complaint for payment of just compensation and damages.

When an inverse condemnation is filed, the provisions for the appointment of commissioners under Rule 32—not Sections 5, 6, 7, or 8 of Rule 67 of the Rules of Court—will be followed.

This resolves a Petition for Review on Certiorari[2] filed by the National Power Corporation to nullify and set aside the November 21, 2005 Decision[3] and May 3, 2006 Resolution[4] of

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[1] CONST., Art. III, Sec. 9 provides:

SECTION 9. Private property shall not be taken for public use without just compensation.

[2] *Rollo*, pp. 7-31.

[3] *Id*. at 32-42. The Decision was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. of the Twentieth Division, Court of Appeals, Cebu.

[4] *Id*. at 43-44. The Resolution was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. of the the Twentieth Division, Court of Appeals, Cebu.

the Court of Appeals in CA-G.R. CV No. 76313. The assailed Decision affirmed with modification the judgment of Branch 31 of the Regional Trial Court, Calbayog City, which, in turn, directed the National Power Corporation to pay the value of the 4,352-square-meter portion of Spouses Margarito and Tarcinia Asoque's (Spouses Asoque) land utilized in its Leyte-Luzon Transmission Line Project.[5] The assailed Resolution denied the National Power Corporation's Motion for Reconsideration.[6]

Spouses Asoque are the registered owners of a parcel of coconut land located in Barangay Bugtong, Calbayog City. The parcel of land has an area of 59,099 square meters and is covered by Original Certificate of Title No. 2376.[7]

Sometime in November 1995, the National Power Corporation entered the Spouses Asoque's land to install transmission lines for its 350 KV Leyte-Luzon HVDC Power Transmission Line Project.[8] The National Power Corporation utilized 4,352 square meters for the project.[9]

Spouses Asoque allege that beforehand, they were made to understand that the National Power Corporation would pay them the value of the portion of the land used and all improvements that would be destroyed for the National Power Corporation's project.[10] Spouses Asoque incurred actual damages as a result of the National Power Corporation's cutting off some coconut trees and other fruit- and non-fruit-bearing plants during the construction.[11] They were also prohibited from introducing on the 4,352-square-meter area any improvement that could rise by a few meters from the ground.[12]

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[5] *Id*. at 41.

[6] *Id*. at 44.

[7] RTC records, p. 114.

[8] *Id*. at 2, Complaint.

[9] *Id*.

[10] *Id*.

[11] *Rollo*, p. 33.

[12] *Id*.

Upon Spouses Asoque's demand for just compensation, the National Power Corporation only paid for the improvements destroyed and refused to pay for the actual value of the 4,352-square-meter area utilized for the project.[13] The National Power Corporation claimed that it was only liable to pay for right of way at 10% of the market value under Section 3-A of Republic Act No. 6395,[14] as amended.[15]

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[13] RTC records, p. 2.

[14] Republic Act No. 6395 is otherwise known as the Charter of the National Power Corporation. Rep. Act No. 6395, as amended by Pres. Decree No. 938, Sec. 3-A provides:

Sec. 3-A – In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessaryshall be acquired.

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall —

(a) With respect to the acquired land or portion thereof, not exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) ***With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value*** declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; *Provided*, that in cases any buildings, houses and similar structures are actually affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation; *Provided, further*, that such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefor. (Emphasis supplied)

[15] *Rollo*, p. 106.

On September 20, 1999, Spouses Asoque filed before the Regional Trial Court of Calbayog City a Complaint[16] for payment of just compensation and damages against the National Power Corporation. The case was docketed as Civil Case No. 737 and was raffled to Branch 31.

In its Answer[17] dated February 7, 2000, the National Power Corporation denied Spouses Asoque's claims that it had illegally utilized their property. It alleged that it entered the property with Spouses Asoque's consent, as shown by the acknowledgment receipt[18] for ₱9,897.00 as payment for damaged improvements and waiver of claims to improvements damaged.[19] By virtue of the acknowledgement receipt and the waiver, the National Power Corporation claimed that there was no more need for it to institute an expropriation proceeding.[20]

When Civil Case No. 737 was called for pre-trial on May 8, 2000, the case was ordered dismissed by the trial court due to the non-appearance of both parties and their counsel.[21] However, the case was reinstated after Spouses Asoque's counsel explained to the trial court the reason why he arrived late. The pre-trial of the case was reset to May 24, 2000.[22]

On May 24, 2000, the trial court, noting the absence of the National Power Corporation and its counsel, allowed Spouses Asoque to present their evidence ex parte before a court-appointed Commissioner. It simultaneously dismissed the National Power Corporation's counterclaim.[23]

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[16] RTC records, pp. 1-5.

[17] *Id*. at 29-34.

[18] *Id*. at 35.

[19] *Id*. at 36.

[20] *Id*. at 32.

[21] *Rollo*, p. 34.

[22] *Id*. at 111.

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

On June 6, 2000, the trial court denied National Power Corporation's Urgent Manifestation and Motion to Reset Pre-trial, finding it to have been filed out of time and also moot and academic.[24] National Power Corporation's subsequent Motion for Reconsideration was denied in the trial court's Order dated June 21, 2000.[25]

"On June 22, July 24[,] and August 28, 2000, Spouses Asoque presented evidence ex parte before Atty. Ferdinand S. Arpon, Branch Clerk of Court, who was appointed Commissioner by the trial court."[26] Spouses Asoque then filed their Formal Offer of Documentary Exhibits[27] on September 6, 2000, to which the National Power Corporation filed its Comment/Objection[28] on October 13, 2000, citing the inadmissibility of the exhibits presented.[29]

On July 20, 2001, the Commissioner submitted to the trial court his Commissioner's Report dated July 19, 2001.[30] He recommended that the fair market value of the land be placed at ₱800.00 per square meter and that the schedule of prevailing market value of the trees, plants, and crops prepared by the Office of the Provincial Agriculturist, Catbalogan, Samar be adopted to compute the amount of compensation for the damaged improvements.[31]

On August 21, 2001, the trial court received the National Power Corporation's Comment/Opposition to Commissioner's Report, to which Spouses Asoque filed their Rejoinder on September 20, 2001.[32]

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[24] *Id*. at 112.

[25] *Id*.

[26] *Id*.

[27] RTC records, pp. 108-113.

[28] *Id*. at 150-151.

[29] *Rollo*, pp. 112-114.

[30] RTC records, pp. 156-164.

[31] *Rollo*, pp. 114-115.

[32] *Id*. at 115.

The National Power Corporation and Spouses Asoque filed their respective memoranda on February 5, 2002 and April 1, 2002. Thereafter, the case was deemed submitted for decision.[33]

On June 25, 2002, the Regional Trial Court rendered the Decision[34] in favor of Spouses Asoque and ordered the National Power Corporation to pay them the amounts of:

(1) ₱3,481,600.00 as just compensation of the land containing an area of 4,352 square meters at ₱800.00 per square meter, with legal interest from November 1995 until fully paid; and

(2) ₱158,369.00 as compensation for the improvements on the land, with interest at the legal rate from November 1995 until fully paid.

Aggrieved, the National Power Corporation filed an appeal before the Court of Appeals.[35]

The Court of Appeals denied[36] the National Power Corporation's appeal in its Decision dated November 21, 2005. It affirmed with modification the Regional Trial Court Decision by deleting the amount of ₱158,369.00 as compensation for the damaged improvements for lack of legal and factual basis.[37]

The Court of Appeals found no impropriety on the part of the Regional Trial Court in allowing Spouses Asoque to present their evidence ex parte and in appointing the Branch Clerk of Court as Commissioner to receive Spouses Asoque's evidence ex parte.[38] It also found no irregularity in the trial court's adoption

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[33] *Id.* at 115–116.

[34] RTC records, pp. 197-213. The Decision was penned by Acting Presiding Judge Rosario B. Bandal of Branch 31, Regional Trial Court, Calbayog City.

[35] *Rollo*, p. 117.

[36] *Id.* at 32-41.

[37] *Id.* at 41.

[38] *Id.* at 36-37.

of the Commissioner's report/recommendation, which was found to be comprehensive and supported by evidence.[39]

Rejecting the National Power Corporation's stance that only an easement of right of way was acquired at 10% of the market value under Section 3-A of Republic Act No. 6395, the Court of Appeals ruled that the determination of just compensation is a judicial function and cannot be diminished by Republic Act No. 6395, as amended.[40]

Finally, the Court of Appeals found that Spouses Asoque have already been properly compensated for the damaged improvements per disbursement vouchers in the total amount of ₱17,133.50, and Spouses Asoque failed to present competent proof that they were entitled to an additional award of actual damages.[41]

The National Power Corporation moved for reconsideration, but the Motion was denied in the Resolution dated May 3, 2006.

Hence, petitioner National Power Corporation filed the present Petition, assigning the following errors purportedly committed by the appellate court:

> [1] The appellate court erred in affirming respondents' presentation of evidence *ex parte*[;]
>
> [2] The appellate court erred in affirming the trial court's appointment of a commissioner, and validating the proceedings he conducted[;]
>
> [3] The appellate court erred in affirming the trial court's directive to petitioner NPC to compensate respondents for the value of the land notwithstanding that only an easement thereon was acquired[;] [and]
>
> [4] Assuming that petitioner NPC is liable to pay just compensation for the subject property and the improvements thereon, the trial

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

[40] *Id*. at 38-40.

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

court nonetheless erred in the determination of the values thereof.[42]

This Court outright denied the Petition for lack of a verified statement of material date of filing of the Motion for Reconsideration of the assailed judgment under Rule 45, Sections 4(b) and 5, in relation to Rule 56, Section 5(d).[43] However, on petitioner's Motion for Reconsideration,[44] this Court reinstated[45] the Petition and required respondents to comment.

Respondents Spouses Margarito and Tarcinia Asoque filed their Comments[46] on October 25, 2006, and petitioner filed its Reply[47] on April 17, 2007. Pursuant to this Court's Resolution[48] dated June 25, 2007, petitioner and respondents filed their respective memoranda on December 14, 2007[49] and November 29, 2007.[50]

On February 11, 2008, this Court noted the memoranda of the parties.[51]

Petitioner contends that it was not given a reasonable opportunity to be heard, which is the essence of due process.[52] Only a very short notice was given to its counsel to attend the pre-trial, even though petitioner's lawyers were based in Cebu.[53]

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[42] *Id*. at 19.

[43] *Id*. at 47.

[44] *Id*. at 48-54.

[45] *Id*. at 56.

[46] *Id*. at 57-66.

[47] *Id*. at 81-87.

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

[49] *Id*. at 104-128.

[50] *Id*. at 130-143.

[51] *Id*. at 148.

[52] *Id*. at 118.

[53] *Id*. at 119.

In contrast, respondents' counsel held office in Catbalogan City, where the trial court sits.[54]

The May 24, 2000 pre-trial setting was allegedly too close to May 8, 2000, the date of the Order that set it, as to afford petitioner a reasonable opportunity to make arrangements for it.[55] The May 8, 2000 Order, which was served by registered mail, was received by petitioner only on May 22, 2000, just two (2) days before the pre-trial on May 24, 2000.[56] By then, both of petitioner's lawyers were out of town (one was in Manila and the other was in San Isidro, Northern Samar) on official business.[57] Petitioner contends that despite having been informed through the Urgent Manifestation and Motion to Reset Pre-trial dated May 24, 2000 and the Motion for Reconsideration dated June 8, 2000 of the reason for the failure of petitioner's counsel to appear at the May 24, 2000 pre-trial, the trial court refused to reconsider its default order; thus, the trial court deprived petitioner of its right to due process.[58]

Petitioner further argues that the trial court's appointment of a commissioner and the latter's appraisal of the fair market value of the property and the improvements made were defective and *ultra vires*.[59] It contends that Rule 18, Section 2(f) of the Rules of Court does not give the Commissioner such authority but merely allows him to assist in defining the issues to be resolved during the trial.[60] Petitioner also points out that the May 8, 2000 Order merely designated a commissioner to receive respondents' evidence and nothing more.[61] There is likewise

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[54] *Id*.

[55] *Id*. at 119.

[56] *Id*. at 119-120.

[57] *Id*. at 120.

[58] *Id*.

[59] *Id*. at 121-122.

[60] *Id*. at 121.

[61] *Id*. at 122.

no showing that the Commissioner took an oath before performing his function, as required by the Rules.[62]

As to the third and fourth assigned errors, petitioner claims that it is liable to pay only an easement fee under Section 3-A of its Charter, which is computed as 10% of the fair market value of the affected portion of respondents' land based on the valuation (₱3.31 per square meter) specified in Tax Declaration No. 96-03023-00104.[63] Petitioner contends that the three (3) expropriation cases decided in 1997 by other branches of the Regional Trial Court of Catbalogan City, which were cited by the trial court in adopting the Commissioner's recommendation, were not reliable bases for determining the fair market value of respondents' property. This is because the parcels of land in the three (3) expropriation cases were located in other barangays of Calbayog City and there is no showing that the decisions therein have attained finality.[64] Finally, petitioner submits that the City Assessor's valuation of the subject property appearing in Tax Declaration No. 96-03023-00104 should prevail over that determined by the Commissioner—the Branch Clerk of Court—who does not have the expertise or competence to conduct property appraisals as required under Rule 67, Section 5.[65]

Respondents aver that the trial court was justified in allowing them to present evidence ex parte because (1) petitioner and its counsel failed to appear at the pre-trial on May 24, 2000; and (2) petitioner's Urgent Manifestation and Motion to postpone the pre-trial setting on May 24, 2000 was filed late.[66] They add that due process was satisfied in the court a quo as petitioner was afforded the fair and reasonable opportunity to defend its side and to move for the reconsideration of the trial court ruling.[67]

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[62] *Id*.

[63] *Id*. at 123-124.

[64] *Id*. at 125-126.

[65] *Id*. at 124-125.

[66] *Id*. at 136-140.

[67] *Id*.

As to the appointment of the Branch Clerk of Court as Commissioner, respondents aver that this was proper and sanctioned by the Rules; that the Commissioner's preliminary determination of just compensation was merely recommendatory and did not make the ex parte proceedings invalid; and that the final determination of the amount of just compensation still rests on the trial judge.[68]

Lastly, respondents contend that Section 3-A of Republic Act No. 6395 cannot defeat the trial court's determination of the just compensation of their property; that the determination of just compensation is a judicial function; and that it has been ruled in previous cases that the acquisition of right-of-way easement is a taking under the power of eminent domain and the owner is entitled to the money equivalent of the property expropriated.[69]

The issues for resolution are:

First, whether petitioner was deprived of due process when respondents were allowed to present evidence ex parte;

Second, whether the appraisal of the property was valid and the court-appointed Commissioner exceeded his authority when he conducted an appraisal of the property and recommended a valuation for just compensation;

Third, whether petitioner should be made to pay simple easement fee or full compensation for the land traversed by its transmission lines; and

Lastly, whether the trial court erred in its determination of the amount of just compensation to be paid to respondents.

The Petition lacks merit.

I

The Regional Trial Court did not err in allowing respondents to present their evidence ex parte. The action of the trial court

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[68] *Id*. at 140-142.

[69] *Id*.

is expressly allowed under Rule 18, Section 5 of the 1997 Rules of Civil Procedure. Section 5 provides that if it is the defendant who fails to appear, then the plaintiff may be allowed "to present his evidence ex parte and the court to render judgment on the basis thereof." Petitioner's stance that it was deprived of due process because it was not given the *reasonable opportunity* to attend the second pre-trial setting is likewise untenable.

Petitioner and its counsel were absent during the first pre-trial setting on May 8, 2000. Respondents' counsel attended, although he was late. Had petitioner and its counsel appeared on the first setting, they would have been reasonably notified then and there of the second pre-trial resetting on May 24, 2000 and would have had the opportunity to ask for a later date. Nonetheless, petitioner's counsel should have tried to inquire from the court the next schedule of the pre-trial.

Attendance by the party and its counsel during a pre-trial conference is mandatory as expressly stated under Rule 18, Section 4 of the 1997 Rules of Civil Procedure.[70] Petitioner alleges that it filed a motion for postponement of the first pre-trial setting. This notwithstanding, it was still its duty to appear at the pre-trial first set on May 8, 2000. A motion for postponement should never be presumed to be granted.[71]

Petitioner does not refute respondents' argument that its *Urgent Manifestation and Motion*, although dated May 24, 2000, was filed only one (1) day after the scheduled pre-trial sought to be

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[70] RULES OF COURT, Rule 18, Sec. 4 provides:

SECTION 4. Appearance of Parties. — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

[71] *In re Presbitero, Sr. v. Court of Appeals,* 291 Phil. 387, 395-396 (1993) [Per *J.* Davide, Jr., Third Division]. See also *Heirs of Gayares v. Pacific Asia Overseas Shipping Corp.,* 691 Phil. 46, 55 (2012) [Per *J.* del Castillo, First Division] citing *Ramos v. Dajoyag, Jr.,* 428 Phil. 267, 278 (2002) [Per *J.* Mendoza, Second Division].

postponed, on May 25, 2000. The trial court was, therefore, justified in denying petitioner's motion for postponement for having been filed out of time. A motion for postponement should be filed on or before the lapse of the day sought to be postponed.[72] In any case, "the matter of postponement of a hearing is addressed to the sound discretion of the court [and] unless there is a grave abuse of discretion in the exercise thereof the same should not be disturbed on review."[73]

Petitioner's counsel received the Regional Trial Court Order resetting the pre-trial to May 24, 2000 on May 22, 2000. Assuming its counsel was unable to appear at the second pre-trial setting, petitioner could and should have sent a representative on May 24, 2000 to ask for postponement of the second pre-trial setting. During the second pre-trial setting, it was not only petitioner's counsel who failed to appear, but petitioner as well.

Under the circumstances, petitioner cannot claim that it was denied due process. "Parties are presumed to have known the

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[72] In *Linis v. Roviro,* 61 Phil. 137, 139 (1935) [Per *J.* Imperial, *En Banc*], the trial court denied the motion for postponement of a hearing on the ground that it was presented out of time and the reason alleged therein was insufficient. This Court affirmed the trial court, thus: "The postponement of the hearing of a case, which had been previously set and of which the parties and their attorneys had already been notified, is not an absolute right of the litigants nor of their attorneys. The granting of a motion for postponement depends entirely upon the discretion of the courts, in the exercise of which all the attending circumstances and the rights of all the parties appearing therein should be taken into account. If the postponement would manifestly prejudice some of the parties, or, if the motion for postponement had been presented too late to prevent them from notifying their witnesses not to appear, thus causing them considerable trouble and expense, as probably would have happened in the present case, it is the duty of the courts to deny it."

In *Macabingkil v. People's Homesite and Housing Corp.*, 164 Phil. 328, 341 (1976) [Per *J.* Antonio, Second Division]: "These provisions of the Rules of Court prescribing the time within which certain acts must he done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial businesses. The time can be extended only if a motion for extension is filed within the time or period provided therefor."

[73] *Belstar Transportation, Inc. v. Board of Transportation,* 260 Phil. 219, 223 (1990) [Per *J.* Gancayco, First Division].

governing rules and the consequences for the violation of such rules."[74] Moreover, the essence of due process is an opportunity to be heard. Petitioner was given that opportunity. Yet, it failed to appear at the two (2) pre-trial settings. A pre-trial cannot be taken for granted for it serves a vital objective: the simplification and expedition of the trial, if not its dispensation. Non-appearance of a party may only be excused for a valid cause. We see none in this case.

In *Air Philippines Corporation v. International Business Aviation Services Philippines, Inc.*,[75] the petitioner and its counsel did not appear during the scheduled pre-trials and did not file a pre-trial brief even after filing a motion to extend the date for filing. Hence, the respondent was allowed to adduce its evidence ex parte. The petitioner moved for reconsideration, but the motion was denied. After the ex parte presentation of the respondent's evidence, the trial court rendered a judgment in favor of the respondent. The petitioner moved for new trial arguing that it was deprived of its day in court due to the gross negligence of its counsel, but the trial court denied the motion. Affirming the trial court, this Court ruled that the petitioner and its counsel's lapses showed a plain disregard of the duty imposed by law. Ruling that there was no denial of due process, this Court held:

> "The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense." Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side" or defend its "interest in due course," "there is no denial of procedural due process." Petitioner has been given its chance, and after being declared in default, judgment has not been automatically "rendered in favor of the non-defaulting party." Rather, judgment was made only after carefully weighing the evidence presented. Substantive and adjective laws do complement each other "in the just and speedy resolution of the dispute between the parties."[76] (Citations omitted)

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[74] *Paredes v. Verano,* 535 Phil. 274, 285 (2006) [Per *J.* Tinga, Third Division].

[75] 481 Phil. 366 (2004) [Per *J.* Panganiban, Third Division].

[76] *Id*. at 386.

Similarly, petitioner in this case was not deprived of its day in court. Petitioner was able to file a Motion for Reconsideration, participate in further proceedings, and was allowed to submit its objections to respondents' evidence and to the Commissioner's recommendation before the trial court rendered judgment. It must, therefore, bear the consequences of its lapses.

II

On the second issue, we likewise find petitioner's arguments untenable.

The procedure of designating the clerk of court as commissioner to receive and report evidence to the court is likewise sanctioned by Rule 32, Sections 2 and 3 of the 1997 Rules of Civil Procedure. Section 3 of the same Rule, speaking of the authority that may be granted to a Commissioner, provides:

RULE 32
Trial by Commissioner

. . . . . .

SEC. 3. *Order of reference; powers of the commissioner.* – When a reference is made, the clerk shall forthwith furnish the commissioner with a copy of the order of reference. The order may specify or limit the powers of the commissioner, and may direct him to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only, and may fix the date for beginning and closing the hearings and for the filing of his report. Subject to the specifications and limitations stated in the order, the commissioner has and shall exercise the power to regulate the proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may issue subpoenas and subpoenas *duces tecum*, swear witnesses, and unless otherwise provided in the order of reference, he may rule upon the admissibility of evidence. The trial or hearing before him shall proceed in all respects as it would if held before the court.

Furthermore, after the hearing before the Commissioner, the Commissioner must file a written report, which may contain his or her factual findings and conclusions of law:

RULE 32
Trial by Commissioner

. . . . . .

SEC. 9. *Report of commissioner*. – Upon the completion of the trial or hearing or proceeding before the commissioner, he shall file with the court his report in writing upon the matters submitted to him by the order of reference. When his powers are not specified or limited, he shall set forth his findings of fact and conclusions of law in his report. He shall attach thereto all exhibits, affidavits, depositions, papers and the transcript, if any, of the testimonial evidence presented before him.

With respect to the proceedings in the court a quo, the Court of Appeals observed that:

> The report of the commissioner shows clearly that he received and evaluated [respondents'] evidence which were adduced *ex parte*. His preliminary determination of the just compensation of the property [in] issue would not necessarily render invalid the *ex parte* proceedings conducted by him. The valuations suggested by the commissioner as just compensation for [respondents'] land that was utilized by [petitioner] were merely recommendatory. The final determination of just compensation was left to the court *a quo* as it rests within the exclusive domain of the latter. Simply stated, the court *a quo* was still at liberty to reject or adopt the recommendations of the commissioner.[77] (Emphasis in the original)

Hence, absent any express limitation in the order of reference, Branch Clerk of Court Atty. Ferdinand S. Arpon, as the court-appointed Commissioner, may make factual findings and recommendations on the valuation of the property. Indeed, the Commissioner's recommendation could have been necessarily rejected had it been an *ultra vires* act.

Besides, the proceedings before the Regional Trial Court were not for expropriation—for which petitioner itself claims that there is no need—but were for recovery of just compensation and damages initiated by respondents. Hence, Rule 67, Section 5

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[77] *Rollo*, p. 37.

on the ascertainment of the just compensation to be paid was no longer applicable. A trial before commissioners, for instance, was dispensable.[78]

In *Republic of the Philippines v. Court of Appeals*,[79] the National Irrigation Administration took possession of the property without the benefit of expropriation proceedings. The property owner subsequently filed a case for recovery of possession or its value and damages. This Court held that Rule 67 presupposes a prior filing of a complaint by the expropriator for eminent domain with the appropriate court. If no such complaint is filed, the expropriator is considered to have violated procedural requirements and, hence, waived the usual procedure prescribed in Rule 67. This includes the appointment of commissioners to ascertain just compensation, thus:

> NIA contends that it was deprived of due process when the trial court determined the compensation due to respondent without the assistance of commissioners. NIA refers to the procedure found in Section 5, Rule 67 of the 1964 Rules of Court applicable at the time[.]
>
> . . . . . .
>
> Rule 67, however, presupposes that NIA exercised its right of eminent domain by filing a complaint for that purpose before the appropriate court. Judicial determination of the propriety of the exercise of the power of eminent domain and the just compensation for the subject property then follows. The proceedings give the property owner the chance to object to the taking of his property and to present evidence on its value and on the consequential damage to other parts of his property.
>
> Respondent was not given these opportunities, as NIA did not observe the procedure in Rule 67. Worse, NIA refused to pay respondent just compensation. The seizure of ones property without

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[78] *National Power Corporation v. Sta. Loro vda. De Capin, et al.,* 590 Phil. 665, 680 (2008) [Per *J.* Chico-Nazario, Third Division]; *National Power Corporation v. Bongbong,* 549 Phil. 93, 109 (2007) [Per *J.* Callejo, Sr., Third Division]; and *National Power Corporation v. Court of Appeals and Antonino Pobre,* 479 Phil. 850, 867 (2004) [Per *J.* Carpio, First Division].

[79] 494 Phil. 494 (2005) [Per *J.* Carpio, First Division].

payment, even though intended for public use, is a taking without due process of law and a denial of the equal protection of the laws. NIA, not respondent, transgressed the requirements of due process.

When a government agency itself violates procedural requirements, it waives the usual procedure prescribed in Rule 67. This Court ruled in the recent case of ***National Power Corporation (NPC) v. Court of Appeals***, to wit:

> We have held that the *usual procedure in the determination of just compensation is waived when the government itself initially violates procedural requirements.* NPC's taking of Pobre's property without filing the appropriate expropriation proceedings and paying him just compensation is a transgression of procedural due process.

Like in ***NPC***, the present case is not an action for expropriation. NIA never filed expropriation proceedings although it had ample opportunity to do so. Respondents' complaint is an ordinary civil action for the recovery of possession of the Property or its value, and damages. Under these circumstances, a trial before commissioners is not necessary.[80] (Emphasis in the original, citations omitted)

We hold that the non-appointment of three (3) Commissioners in the court a quo does not render infirm the entire proceedings. Neither do we find improper the trial court's appointment of the Branch Clerk of Court as Commissioner to receive and report on respondents' evidence. The trial court is not bound by the Commissioner's recommended valuation of the property. It still has the discretion on whether to adopt the Commissioner's recommendation or to make its own independent valuation as gathered from the evidence reported by the Commissioner.

III

Petitioner is liable to pay respondents just compensation and not merely an easement fee on the basis that its acquisition of a right-of-way easement over the portion of respondents' land was a taking under the power of eminent domain.

While expropriation normally involves a taking of title to and possession of the property, an easement of right of way on

[80] *Id.* at 504-506.

a private property can be considered a taking under eminent domain under certain conditions. In *Republic v. PLDT*:[81]

> Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way.[82]

There is taking in the context of the state's power of eminent domain when the following elements are present:

(1) The expropriator enters a private property;

(2) The entrance into the private property is indefinite or permanent;

(3) There is color of legal authority in the entry into the property;

(4) The property is devoted to public use or purpose; and

(5) The use of property for public use removed from the owner all beneficial enjoyment of the property.[83]

A right-of-way easement or burden becomes a "taking" under eminent domain when there is material impairment of the value of the property or prevention of the ordinary uses of the property for an indefinite period.[84] The intrusion into the property must be so immediate and direct as to subtract from the owner's full enjoyment of the property and to limit his or her exploitation of it.

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[81] 136 Phil. 20 (1969) [Per *J.* J.B.L. Reyes, *En Banc*].

[82] *Id.* at 29-30.

[83] *Republic v. Vda. de Castellvi, et al.*, 157 Phil. 329, 345-347 (1974) [Per *J.* Zaldivar, *En Banc*].

[84] *Heirs of Pidacan v. ATO,* 552 Phil. 48, 55-56 (2007) [Per *J.* Quisumbing, Second Division]; *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun,* 520 Phil. 457, 480-481 (2006) [Per *J.* Chico-Nazario, First Division].

In *Republic v. Andaya*,[85] the enforcement by the Republic of its legal easement on Andaya's property for concrete levees and floodwalls would render the remaining property unusable and uninhabitable. This Court held that there was a taking of the remaining area of Andaya's property:

> We are, however, unable to sustain the Republic's argument that it is not liable to pay consequential damages if in enforcing the legal easement on Andaya's property, the remaining area would be rendered unusable and uninhabitable. "Taking," in the exercise of the power of eminent domain, occurs not only when the government actually deprives or dispossesses the property owner of his property or of its ordinary use, but also when there is a practical destruction or material impairment of the value of his property. Using this standard, there was undoubtedly a taking of the remaining area of Andaya's property. True, no burden was imposed thereon and Andaya still retained title and possession of the property. But, as correctly observed by the Board and affirmed by the courts *a quo*, *the nature and the effect of the floodwalls would deprive Andaya of the normal use of the remaining areas. It would prevent ingress and egress to the property and turn it into a catch basin for the floodwaters coming from the Agusan River*.[86] (Emphasis supplied, citations omitted)

National Power Corporation v. Heirs of Sangkay[87] held that the National Power Corporation's surreptitious construction of a tunnel underneath the respondents' land adversely affected the respondent's rights and interests. This is because the National Power Corporation's subterranean intervention prevented the respondents from introducing any developments on the surface and from disposing of the land or any portion of it. Hence, there was a taking of the land as to entitle the owners to just compensation:

> We agree with both the RTC and the CA that there was a full taking on the part of NPC, notwithstanding that the owners were not completely and actually dispossessed. It is settled that the taking of

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[85] 552 Phil. 40 (2007) [Per *J.* Quisumbing, Second Division].

[86] *Id.* at 45-46.

[87] 671 Phil. 569 (2011) [Per *J.* Bersamin, First Division].

private property for public use, to be compensable, need not be an actual physical taking or appropriation. Indeed, the expropriator's action may be short of acquisition of title, physical possession, or occupancy but may still amount to a taking. Compensable taking includes destruction, restriction, diminution, or interruption of the rights of ownership or of the common and necessary use and enjoyment of the property in a lawful manner, lessening or destroying its value. It is neither necessary that the owner be wholly deprived of the use of his property, nor material whether the property is removed from the possession of the owner, or in any respect changes hands.[88] (Citations omitted)

The right-of-way easement resulting in a limitation on property rights over the land traversed by transmission lines also falls within the ambit of the term "expropriation."[89]

In *National Power Corporation v. Spouses Gutierrez*,[90] the petitioner argued that it should only be made to pay easement fees instead of the full market value of the land traversed by its transmission lines. In striking down the petitioner's argument and ruling that the property owners were entitled to the full market value of the land in question, the Court ruled that:

The trial court's observation shared by the appellate court show that "x x x While it is true that plaintiff [is] only after a right-of-way easement, it nevertheless perpetually deprives defendants of their proprietary rights as manifested by the imposition by the plaintiff upon defendants that below said transmission lines no plant higher than three (3) meters is allowed. Furthermore, because of the high-tension current conveyed through said transmission lines, danger to life and limbs that may be caused beneath said wires cannot altogether be discounted, and to cap it all, plaintiff only pays the fee to defendants

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[88] *Id.* at 595-596.

[89] See *National Power Corporation v. Suarez,* 589 Phil. 219 (2008) [Per *J.* Carpio Morales, Second Division]; *National Power Corporation v. Tiangco,* 543 Phil. 637 (2007) [Per *J.* Garcia, First Division]; *National Power Corp. v. Manubay Agro-Industrial Development Corp.*, 480 Phil. 470 (2004) [Per *J.* Panganiban, Third Division]; *Camarines Norte Electric Cooperative, Inc. v. Court of Appeals,* 398 Phil. 886 (2000) [Per *J.* Pardo, First Division].

[90] 271 Phil. 1 (1991) [Per *J.* Bidin, Third Division].

once, while the latter shall continually pay the taxes due on said affected portion of their property."

The foregoing facts considered, the acquisition of the right-of-way easement falls within the purview of the power of eminent domain. Such conclusion finds support in similar cases of easement of right-of-way where the Supreme Court sustained the award of just compensation for private property condemned for public use[.]

. . . . . .

In the case at bar, the easement of right-of-way is definitely a taking under the power of eminent domain. Considering the nature and effect of the installation of the 230 KV Mexico-Limay transmission lines, the limitation imposed by NPC against the use of the land for an indefinite period deprives private respondents of its ordinary use.[91]

In *National Power Corporation v. Judge Paderanga*,[92] despite the National Power Corporation's protestation that the traversed land could still be used for agricultural purposes, subject only to its easement, this Court nevertheless held that the right-of-way easement was a taking under the power of eminent domain:

From the Commissioners Report chronicling the following findings:

. . . . . .

IMPROVEMENTS AFFECTED

Per ocular inspection made on lot own[ed] by PETRONA O. DILAO, *et al*. traversed by a transmission line of NPC and with my verification as to the number of improvements, the following trees had been damaged.

1. 55 coco trees productive
2. 10 mango trees productive
3. 30 cacao trees productive
4. 110 bananas
5. 400 ipil-ipil trees

. . . . . .

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

[92] 502 Phil. 722 (2005) [Per *J*. Carpio Morales, Third Division].

it cannot be gainsaid that NPCs complaint merely involves a simple case of mere passage of transmission lines over Dilao, *et al*.'s property. Aside from the actual damage done to the property traversed by the transmission lines, the agricultural and economic activity normally undertaken on the entire property is unquestionably restricted and perpetually hampered as the environment is made dangerous to the occupants' life and limb.[93]

In *National Power Corporation v. Tiangco*:[94]

While the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property, no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of the condemned property, without loss of title and possession. However, *if the easement is intended to perpetually or indefinitely deprive the owner of his proprietary rights through the imposition of conditions that affect the ordinary use, free enjoyment and disposal of the property or through restrictions and limitations that are inconsistent with the exercise of the attributes of ownership, or when the introduction of structures or objects which, by their nature, create or increase the probability of injury, death upon or destruction of life and property found on the land is necessary, then the owner should be compensated for the monetary equivalent of the land*, in accordance with our ruling in *NPC v. Manubay Agro-Industrial:*

. . . . . .

The evidence suggests that NPC's transmission line project that traverses the respondents' property is perpetual, or at least indefinite, in nature. Moreover, not to be discounted is the fact that the high-tension current to be conveyed through said transmission lines evidently poses a danger to life and limb; injury, death or destruction to life and property within the vicinity. As the Court held in *NPC v. Chiong*, it is not improper to assume that NPC will erect structures for its transmission lines within the property. What is sought to be expropriated in this case is, at its longest extent, 326.34 meters, and

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[93] *Id.* at 735-736.

[94] 543 Phil. 637 (2007) [Per *J*. Garcia, First Division]. *National Power Corporation v. Tiangco* was also cited in *Spouses Cabahug v. National Power Corporation,* 702 Phil. 597, 606 (2013) [Per *J*. Perez, Second Division].

through it may be built several structures, not simply one[.][95] (Emphasis supplied, citations omitted)

Hence, due to the nature of the easement, which will deprive the normal use of the land for an indefinite period and expose the property owners' lives and limbs to danger, just compensation must be based on the full market value of the affected property.[96]

Section 3(a) of Republic Act No. 6395, as amended, states that only 10% of the market value of the property is due the owner of the property subject to a right-of-way easement. However, this rule is not binding on the Court. Well-settled is the rule that the determination of just compensation for property taken in expropriation is a judicial prerogative.[97] Such discretion cannot be curtailed by legislation.

In *Export Processing Zone Authority v. Dulay*:[98]

The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail

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[95] *Id*. at 649-650.

[96] *National Power Corporation v. Spouses Saludares*, 686 Phil. 967, 976-978 (2012) [Per *J.* Sereno, Second Division]; *National Power Corporation v. Tuazon,* 668 Phil. 301, 314 (2011) [Per *J.* Brion, Second Division]; *National Power Corporation v. Co,* 598 Phil. 58, 73 (2009) [Per *J.* Tinga, Second Division]; *National Power Corporation v. Bagui,* 590 Phil. 429, 434 (2008) [Per *J.* Tinga, Second Division], citing *National Power Corporation v. Manubay Agro-Industrial Development Corp*., 480 Phil. 470, 480 (2004) [Per *J.* Panganiban, Third Division] and *National Power Corporation v. Bongbong,* 549 Phil. 93, 111 (2007) [Per *J.* Callejo, Sr., Third Division]; *Natonal Power Corporation v. Tiangco,* 543 Phil. 637, 648 (2007) [Per *J.* Garcia, First Division].

[97] *National Power Corporation v. Spouses Rodolfo Zabala and Lilia Baylon*, 702 Phil. 491, 499-500 (2013) [Per *J.* del Castillo, Second Division] citing *Land Bank of the Philippines v. Celada,* 515 Phil. 467, 477 (2006) [Per *J.* Ynares-Santiago, First Division].

[98] 233 Phil. 313 (1987) [Per *J.* Gutierrez, Jr., *En Banc*].

over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[99] (Emphasis supplied)

Therefore, the Regional Trial Court was correct when it adjudged the National Power Corporation liable to pay the value of the 4,352-square-meter portion of respondents' land that was used for its transmission line project.

IV

As regards the amount of just compensation, factual issues pertaining to the valuation of the expropriated property are generally beyond the pale of review under a Rule 45 petition.[100] Factual findings of the trial and appellate courts will not be disturbed by this Court unless they are grounded entirely on speculations, surmises, or conjectures, among others,[101] which do not obtain in this case.

Just compensation has been defined as the "fair and full equivalent of the loss."[102] In *National Power Corporation v. YCLA Sugar Development Corporation*:[103]

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[99] *Id*. at 326.

[100] *Land Bank of the Philippines v. Spouses Costo,* 700 Phil. 290, 300 (2012) [Per *J*. Peralta, Third Division].

[101] In *Westmont Investment Corp. v. Francia, Jr.,* 678 Phil. 180, 191 (2011) [Per *J*. Mendoza, Third Division], jurisprudence recognize other exceptions, namely: "(2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record."

[102] *National Power Corporation v. Court of Appeals and Antonino Pobre,* 479 Phil. 850 (2004) [Per *J*. Carpio, First Division].

[103] 723 Phil. 616 (2013) [Per *J*. Reyes, First Division].

The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample. The constitutional limitation of "just compensation" is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.[104]

The value and character of the land at the time it was taken by government are the criteria for determining just compensation.[105] "All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, must thus be considered."[106]

Some factors that have been previously considered by the courts were acquisition cost, current value of like properties, its actual or potential uses, its size, shape, and location, and the tax declarations on the property.[107] In this regard, the standards enumerated in statutes such as Section 5[108] of Republic Act

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[104] *Id*. at 623. See *Republic v. Rural Bank of Kabacan, Inc*., 680 Phil. 247, 256-257 (2012) [Per *J.* Sereno, Second Division].

[105] *National Power Corporation v. Spouses Chiong,* 452 Phil 649, 664 (2003) [Per *J.* Quisumbing, Second Division].

[106] *National Power Corporation v. Suarez,* 589 Phil. 219, 225 (2008) [Per *J.* Carpio Morales, Second Division]*; National Power Corporation v. Manubay Agro-Industrial Development Corporation,* 480 Phil. 470, 480 (2004) [Per *J.* Panganiban, Third Division].

[107] *Republic v. Court of Appeals,* 612 Phil. 965, 977 (2009) [Per *J.* Carpio, First Division]; *Republic v. Ker & Company Ltd.,* 433 Phil. 70, 77 (2002) [Per *J.* Austria-Martinez, First Division].

[108] SECTION 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale.*— In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;
(b) The developmental costs for improving the land;

No. 8974[109] are merely recommendatory, and courts are not bound to consider all of them.[110]

In this case, the Branch Clerk of Court as Commissioner reported that an inquiry with the Register of Deeds, Calbayog City involving transfer of realties from January 1998 to December 2000 showed that no transaction involved a parcel of land located at Barangay Bugtong or its adjacent barangays of Tinaplacan and Caglanipao Sur.[111] On the other hand, he found Exhibits F and G not sufficient to prove respondents' claim that their land was worth ₱1,000.00 per square meter as the properties in Exhibits F and G were located several kilometers away from respondents' land and were of a different classification.[112]

Furthermore, the Branch Clerk of Court as Commissioner stated that one high-ranking personnel of the City Assessor's Office of Calbayog observed that the market value of respondents' land in the Tax Declaration is a very low appraisal.[113] As such, when he made the recommendation, he considered

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(c) The value declared by the owners;
(d) The current selling price of similar lands in the vicinity;
(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of the improvements thereon;
(f) The size, shape or location, tax declaration and zonal valuation of the land;
(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

[109] An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes.

[110] *Republic v. Heirs of Spouses Bautista,* 702 Phil. 284, 298 (2013) [Per *J.* del Castillo, Second Division].

[111] RTC records, pp. 160 and 163.

[112] *Id.* at 160.

[113] *Id.*

other factors such as the accessibility of the property, availability of basic services in the area, land valuation trend in the City of Calbayog (which was somewhere between ₱600.00 and ₱3,000.00 per square meter),[114] and interviews with some landowners of the adjacent lots stating that they would not sell their lands lower than ₱500.00 per square meter.[115]

The Regional Trial Court found the amount recommended by the Commissioner as just compensation for the property to be reasonable, thus:

> [T]he Court finds the amount recommended by the commissioner as just compensation of the property expropriated by defendant to be reasonable and fairly based on the evidence adduced by plaintiff. Exhibits "F" and series, "G" and series, and "H" and series show the comparative value of the lands in Western Samar. The Court takes note that in the three cases of expropriation involving lands in Catbalogan, Samar, the National Power Corporation was adjudged to pay the value of the properties from Php2,000.00 to Php2,200.00 per square meter, and these were cases decided in 1997. Likewise, this Court takes cognizance of the fact that the commissioner may avail or consider certain factors in determining the fair market value of the property apart from the proferred documentary evidences. Thus, the factors taken into account by the commissioner in arriving at the recommended fair market value of the property at Php800.00 per square meter, aside from the evidence available, were valid criteria or gauge in the determination of the just compensation of the subject property.[116]

The determination of just compensation being a judicial function, we find no compelling reason to disturb the valuation set by the Regional Trial Court and approved by the Court of Appeals. It has not been sufficiently shown to be grossly exorbitant or otherwise unjustified.[117]

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[114] *Id.* at 164.

[115] *Id.* at 161-162.

[116] RTC records, p. 210.

[117] *National Power Corporation v. Spouses Chiong,* 452 Phil. 649, 664 (2003) [Per *J.* Quisumbing, Second Division].

WHEREFORE, the Petition is **DENIED.** The November 21, 2005 Decision of the Court of Appeals in CA-G.R CV No. 76313 is **AFFIRMED**. Petitioner National Power Corporation is **ORDERED** to pay respondents Spouses Margarito and Tarcinia Asoque the amount of ₱3,481,600.00 as just compensation for the 4,352-square-meter property, with legal interest at 6% per annum from November 1995 until fully paid. Upon petitioner's payment of the full amount, respondents are **ORDERED** to execute a Deed of Conveyance of the 4,352-square-meter property in favor of petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175651. September 14, 2016]

PILMICO-MAURI FOODS CORP., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; NOT VIOLATED WHEN A PARTY HAS PARTICIPATED IN THE PROCEEDINGS AND HAS BEEN AFFORDED ALL THE OPPORTUNITIES TO VENTILATE ITS CLAIMS.— The first and second issues presented by PMFC are procedural in nature. They both pertain to the alleged omission of due process of law by the CTA since in its rulings, it invoked Section 238 of the 1977 NIRC, while in the proceedings below, the CIR's tax deficiency assessments issued against PMFC were instead anchored on Section 34 of

the 1997 NIRC. x x x In the case at bar, the CIR issued assessment notices against PMFC for deficiency income, VAT and withholding tax for the year 1996. PMFC assailed the assessments before the Bureau of Internal Revenue and later, before the CTA. In the Joint Stipulation of Facts, dated March 7, 2001, filed before the CTA First Division, the CIR and PMFC both agreed that among the issues for resolution was "*whether or not the ₱5,895,694.66 purchases of raw materials are unsupported*." Estoppel, thus, operates against PMFC anent its argument that the issue of lack or inadequacy of documents to justify the costs of purchase of raw materials as deductions from the gross income had not been presented in the proceedings below, hence, barred for being belatedly raised only on appeal. Further, in issuing the assessments, the CIR had stated the material facts and the law upon which they were based. In the petition for review filed by PMFC before the CTA, it was the former's burden to properly invoke the applicable legal provisions in pursuit of its goal to reduce its tax liabilities. The CTA, on the other hand, is not bound to rule solely on the basis of the laws cited by the CIR. x x x PMFC was at the outset aware that the lack or inadequacy of supporting documents to justify the deductions claimed from the gross income was among the issues raised for resolution before the CTA. With PMFC's acquiescence to the Joint Stipulation of Facts filed before the CTA and thenceforth, the former's participation in the proceedings with all opportunities it was afforded to ventilate its claims, the alleged deprivation of due process is bereft of basis.

2. TAXATION; 1977 NATIONAL INTERNAL REVENUE CODE; DEDUCTIONS FROM GROSS INCOME; OFFICIAL RECEIPTS CAN PROVE DEDUCTIBLE EXPENSES, AND IF PRESENTED, SHALL BE SUBJECTED TO EXAMINATION; THE CTA RULING DISALLOWING THE DEDUCTIONS CLAIMED IS PROPER UNDER SECTION 238 OF THE CODE SINCE PMFC FAILED TO EXPLAIN DISCREPANCIES IN THE OFFICIAL RECEIPTS; CASE AT BAR.— The law x x x intends for Sections 29 and 238 of the 1977 NIRC to be read together, and not for one provision to be accorded preference over the other. It is undisputed that among the evidence adduced by PMFC on its behalf are the official receipts of alleged purchases of raw materials. Thus, the CTA cannot be faulted for making references

to the same, and for applying Section 238 of the 1977 NIRC in rendering its judgment. Required or not, the official receipts were submitted by PMFC as evidence. Inevitably, the said receipts were subjected to scrutiny, and the CTA exhaustively explained why it had found them wanting. x x x PMFC was, however, unable to persuasively explain and prove through other documents the discrepancies in the said receipts.

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AS THE COURT OF TAX APPEALS HAS DEVELOPED EXPERTISE ON THE CONSIDERATION OF TAX PROBLEMS, ITS CONCLUSIONS WILL NOT BE DISTURBED ON APPEAL UNLESS THERE HAS BEEN AN ABUSE OR IMPROVIDENT EXERCISE OF AUTHORITY.—** The Court recognizes that the CTA, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the tax court. In the absence of any clear and convincing proof to the contrary, the Court must presume that the CTA rendered a decision which is valid in every respect.

4. **TAXATION; REVENUE LAWS; TAXES ARE THE LIFEBLOOD OF THE GOVERNMENT AND LAWS RELATIVE THERETO MUST BE FAITHFULLY AND STRICTLY IMPLEMENTED.—** [R]evenue laws are not intended to be liberally construed. Taxes are the lifeblood of the government and in Holmes' memorable metaphor, the price we pay for civilization; hence, laws relative thereto must be faithfully and strictly implemented. While the 1977 NIRC required substantiation requirements for claimed deductions to be allowed, PMFC insists on leniency, which is not warranted under the circumstances.

APPEARANCES OF COUNSEL

Balmeo & Go for petitioner.
Joselito Biason for respondent.

R E S O L U T I O N

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court pursuant to Republic Act (R.A.) No. 1125,[2] Section 19,[3] as amended by R.A. No. 9282,[4] Section 12.[5] The petition filed by Pilmico-Mauri Foods Corp. (PMFC) against the Commissioner of Internal Revenue (CIR) assails the Decision[6] and Resolution[7] of the Court of Tax Appeals (CTA) *en banc*, dated August 29, 2006 and December 4, 2006, respectively, in C.T.A. EB No. 97.

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[1] *Rollo*, pp. 37-69.

[2] AN ACT CREATING THE COURT OF TAX APPEALS. Approved on June 16, 1954.

[3] **Sec. 19. *Review by certiorari*.**– Any ruling, order or decision of the Court of Tax Appeals may likewise be reviewed by the Supreme Court upon a writ of *certiorari* in proper cases. Proceedings in the Supreme Court upon a writ of *certiorari* or a petition for review, as the case may be, shall be in accordance with the provisions of the Rules of Court or such rules as the Supreme Court may prescribe.

[4] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES. Approved on March 30, 2004.

[5] Sec. 12. Section 19 of the same Act is hereby amended as follows:

Sec. 19. Review by *Certiorari*. – A party adversely affected by a decision or ruling of the CTA *en banc* may file with the Supreme Court a verified petition for review on *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

[6] Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta and Associate Justices Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez concurring, and Associate Justice Lovell R. Bautista dissenting; *rollo,* pp. 108-127.

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

Antecedents

The CTA aptly summed up the facts of the case as follows:

[PMFC] is a corporation, organized and existing under the laws of the Philippines, with principal place of business at Aboitiz Corporate Center, Banilad, Cebu City.

The books of accounts of [PMFC] pertaining to 1996 were examined by the [CIR] thru Revenue Officer Eugenio D. Maestrado of Revenue District No. 81 (Cebu City North District) for deficiency income, value-added [tax] (VAT) and withholding tax liabilities.

As a result of the investigation, the following assessment notices were issued against [PMFC]:

(a) Assessment Notice No. 81-WT-13-96-98-11-126, dated November 26, 1998, demanding payment for deficiency withholding taxes for the year 1996 in the sum of ₱384,925.05 (inclusive of interest and other penalties);

(b) Assessment Notice No. 81-VAT-13-96-98-11-127, dated November 26, 1998, demanding payment of deficiency value-added tax in the sum of ₱5,017,778.01 (inclusive of interest and other penalties); [and]

(c) Assessment Notice No. 81-IT-13-96[-]98-11-128, dated November 26, 1998, demanding payment of deficiency income tax for the year 1996 in the sum of ₱4,359,046.96 (inclusive of interest and other penalties).

The foregoing Assessment Notices were all received by [PMFC] on December 1, 1998. On December 29, 1998, [PMFC] filed a protest letter against the aforementioned deficiency tax assessments through the Regional Director, Revenue Region No. 13, Cebu City.

In a final decision of the [CIR] on the disputed assessments dated July 3, 2000, the deficiency tax liabilities of [PMFC] were reduced from ₱9,761,750.02 to ₱3,020,259.30, broken down as follows:

a) Deficiency withholding tax from ₱384,925.05 to ₱197,780.67;
b) Deficiency value-added tax from ₱5,017,778.01 to ₱1,642,145.79; and
c) Deficiency Income Tax from ₱4,359,046.96 to ₱1,180,332.84.

x x x x x x x x x

On the basis of the foregoing facts[, PMFC] filed its Petition for Review on August 9, 2000. In the "Joint Stipulation of Facts" filed on March 7, 2001, the parties have agreed that the following are the issues to be resolved:

I. Whether or not [PMFC] is liable for the payment of deficiency income, value-added, expanded withholding, final withholding and withholding tax (on compensation).

II. On the ₱1,180,382.84 deficiency income tax

   A. Whether or not the ₱5,895,694.66 purchases of raw materials are unsupported[;]
   B. Whether or not the cancelled invoices and expenses for taxes, repairs and freight are unsupported[;]
   C. Whether or not commission, storage and trucking charges claimed are deductible[; and]
   D. Whether or not the alleged deficiency income tax for the year 1996 was correctly computed.

x x x x x x x x x

V. Whether or not [CIR's] decision on the 1996 internal revenue tax liabilities of [PMFC] is contrary to law and the facts.

After trial on the merits, the [CTA] in Division rendered the assailed Decision affirming the assessments but in the reduced amount of ₱2,804,920.36 (inclusive of surcharge and deficiency interest) representing [PMFC's] Income, VAT and Withholding Tax deficiencies for the taxable year 1996 plus 20% delinquency interest per annum until fully paid. The [CTA] in Division ruled as follows:

> "However, [PMFC's] contention that the NIRC of 1977 did not impose substantiation requirements on deductions from gross income is bereft of merit. Section 238 of the 1977 Tax Code [now Section 237 of the National Internal Revenue Code of 1997] provides:
>
> **SEC. 238.** ***Issuance of receipts or sales or commercial invoices***. – All persons, subject to an internal revenue tax shall for each sale or transfer of merchandise or for services rendered valued at ₱25.00 or more, issue receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service:

> Provided, That in the case of sales, receipts or transfers in the amount of ₱100.00 or more, or, regardless of amount, where the sale or transfer is made by persons subject to value-added tax to other persons also subject to value-added tax; or, where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client. **The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued**, while the duplicate shall be kept and preserved by the issuer, also in his place of business for a like period. x x x

From the foregoing provision of law, a person who is subject to an internal revenue tax shall issue receipts, sales or commercial invoices, prepared at least in duplicate. *The provision likewise imposed a responsibility upon the purchaser to keep and preserve the original copy of the invoice or receipt for a period of three years from the close of the taxable year in which such invoice or receipt was issued.* The rationale behind the latter requirement is the duty of the taxpayer to keep adequate records of each and every transaction entered into in the conduct of its business. So that when their books of accounts are subjected to a tax audit examination, all entries therein, could be shown as adequately supported and proven as legitimate business transactions. Hence, [PMFC's] claim that the NIRC of 1977 did not require substantiation requirements is erroneous.

In fact, in its effort to prove the above-mentioned purchases of raw materials, [PMFC] presented the following sales invoices:

Exhibit Number	Invoice No.	Date	Gross Amount	10% VAT	Net Amount
B-3	2072	04/18/96	₱2,312,670.00	₱210,242.73	₱2,102,427.27
B-7,					
B-11	2026	Undated	2,762,099.10	251,099.92	2,510,999.18
			₱5,074,769.10	₱461,342.65	₱4,613,426.45
			==========	==========	=========

The mere fact that *[PMFC] submitted the foregoing sales invoices belies [its] claim that the NIRC of 1977 did not require that deductions must be substantiated by adequate records*.

From the total purchases of ₱5,893,694.64 which have been disallowed, it seems that a portion thereof amounting to ₱1,280,268.19 (729,663.64 + 550,604.55) has *no supporting sales invoices* because of [PMFC's] failure to present said invoices.

A scrutiny of the invoices supporting the remaining balance of ₱4,613,426.45 (₱5,893,694.64 less ₱1,280,268.19) revealed the following:

a) In Sales Invoice No. 2072 marked as Exhibit B-3, *the name Pilmico Foods Corporation was erased and on top of it the name [PMFC] was inserted but with a countersignature therein*;

b) For *undated Sales Invoice No. 2026*, [PMFC] presented two exhibits marked as Exhibits B-7 and B-11. Exhibit B-11 is the original sales invoice whereas Exhibit B-7 is a photocopy thereof. *Both exhibits contained the word Mauri which was inserted on top and between the words Pilmico and Foods. The only difference is that in the original copy* (Exhibit B-11), *there was a countersignature although the ink used was different from that used in the rest of the writings in the said invoice*; while in the photocopied invoice (Exhibit B-7), *no such countersignature appeared*. [PMFC] did not explain why the said countersignature did not appear in the photocopied invoice considering it was just a mere reproduction of the original copy.

The sales invoices contain alterations particularly in the name of the purchaser giving rise to serious doubts regarding their authenticity and if they were really issued to [PMFC]. Exhibit B-11 does not even have any date indicated therein, which is a *clear violation of Section 238 of the NIRC of 1977 which required that the official receipts must show the date of the transaction*.

Furthermore, *[PMFC] should have presented documentary evidence establishing that Pilmico Foods Corporation did not claim the subject purchases as deduction from its gross income*.

> After all, the records revealed that both [PMFC] and its parent company, Pilmico Foods Corporation, have the same AVP Comptroller in the person of Mr. Eugenio Gozon, who is in-charge of the financial records of both entities x x x.
>
> Similarly, the *official receipts presented by [PMFC]* x x x, *cannot be considered as valid proof of [PMFC's] claimed deduction for raw materials purchases. The said receipts did not conform to the requirements provided for under Section 238 of the NIRC of 1977*, as amended. First*, the official receipts were not in the name of [PMFC] but in the name of Golden Restaurant*. And second, *these receipts were issued by PFC and not the alleged seller, JTE.*
>
> Likewise, [PMFC's] allegations regarding the offsetting of accounts between [PMFC], PFC and JTE is untenable. The following circumstances contradict [PMFC's] proposition: 1) *the Credit Agreement itself does not provide for the offsetting arrangement*; 2*) [PMFC] was not even a party to the credit agreement*; and 3) *the official receipts in question pertained to the year 1996 whereas the Credit Agreement (Exhibit M) and the Real Estate Mortgage Agreement (Exhibit N) submitted by [PMFC] to prove the fact of the offsetting of accounts, were both executed only in 1997.*
>
> Besides, in order to support its claim, [PMFC] should have presented the following vital documents, namely, 1) Written Offsetting Agreement; 2) proof of payment by [PMFC] to Pilmico Foods Corporation; and 3) Financial Statements for the year 1996 of Pilmico Foods Corporation to establish the fact that Pilmico Foods Corporation did not deduct the amount of raw materials being claimed by [PMFC].
>
> *Considering that the official receipts and sales invoices presented by [PMFC] failed to comply with the requirements of Section 238 of the NIRC of 1977, the disallowance by the [CIR] of the claimed deduction for raw materials is proper.*

[PMFC] filed a Motion for Partial Consideration on January 21, 2005 x x x but x x x [PMFC's] Motion for Reconsideration was denied in a Resolution dated May 19, 2005 for lack of merit. x x x.[8] (Citation omitted, italics ours and emphasis in the original)

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[8] *Id*. at 109-114.

Unperturbed, PMFC then filed a petition for review before the CTA *en banc*, which adopted the CTA First Division's ruling and ratiocinations. Additionally, the CTA *en banc* declared that:

> The language of [Section 238] of the 1977 NIRC, as amended, is clear. It requires that for each sale valued at ₱100.00 or more, the name, business style and address of the purchaser, customer or client shall be indicated and that the purchaser is required to keep and preserve the same in his place of business. The purpose of the law in requiring the preservation by the purchaser of the official receipts or sales invoices for a period of three years is two-fold: 1) ***to enable said purchaser to substantiate his claimed deductions from the gross income,*** and 2*) to enable the Bureau of Internal Revenue to verify the accuracy of the gross income of the seller from external sources such as the customers of said seller.* Hence, [PMFC's] argument that there was no substantiation requirement under the 1977 NIRC is without basis.
>
> Moreover, the Supreme Court had ruled that in claiming deductions for business expenses[,] it is not enough to prove the business test but a claimant must substantially prove by evidence or records the deductions claimed under the law, thus:
>
> > The principle is recognized that when a taxpayer claims a deduction, *he must point to some specific provision of the statute in which that deduction is authorized* and must be able to prove that he is entitled to the deduction which the law allows. As previously adverted to, the law allowing expenses as deduction from gross income for purposes of the income tax is Section 30 (a) (1) of the National Internal Revenue which allows a deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.["] An item of expenditure, in order to be deductible under this section of the statute must fall squarely within its language.
> >
> > We come, then, to the statutory test of deductibility where it is axiomatic that to be deductible as a business expense, *three conditions* are imposed, namely: (1) the expense must be *ordinary and necessary*; (2) it must be *paid or incurred within the taxable year*, and (3) it must be *paid or incurred in carrying on a trade or business*. ***In addition, not only must the taxpayer meet the business test, he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same***

> ***will be disallowed***. The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction. x x x

And in proving claimed deductions from gross income, the Supreme Court held that *invoices and official receipts are the best evidence to substantiate deductible business expenses*. x x x

x x x x x x x x x

The irregularities found on the official receipts and sales invoices submitted in evidence by [PMFC], i.e. not having been issued in the name of [PMFC] as the purchaser and the fact that the same were not issued by the alleged seller himself directly to the purchaser, rendered the same of no probative value.

Parenthetically, *the "Cohan Rule" which according to [PMFC] was adopted by the Supreme Court in the case of Visayan Cebu Terminal v. Collector, x x x, is not applicable because in both of these cases[,] there were natural calamities that prevented the taxpayers therein to fully substantiate their claimed deductions*. In the *Visayan Cebu Terminal* case, there was a fire that destroyed some of the supporting documents for the claimed expenses. There is no such circumstance in [PMFC's] case, hence, the ruling therein is not applicable. It is noteworthy that notwithstanding the destruction of some of the supporting documents in the aforementioned *Visayan Cebu Terminal* case, the Supreme Court[,] in denying the appeal[,] issued the following *caveat* noting the violation of the provision of the Tax Code committed by [PMFC] therein:

> "It may not be amiss to note that the explanation to the effect that the supporting paper of some of those expenses had been destroyed when the house of the treasurer was burned, **can hardly be regarded as satisfactory, for appellant's records are supposed to be kept in its offices,** not in the residence of one of its officers." x x x

From the above-quoted portion of the Supreme Court's Decision, *it is clear that compliance with the mandatory record-keeping requirements of the National Internal Revenue Code should not be taken lightly.* Raw materials are indeed deductible provided they are duly supported by official receipts or sales invoices prepared and issued in accordance with the invoicing requirements of the National Internal Revenue Code. x x x [PMFC] failed to show compliance with the requirements of Section 238 of the 1977 NIRC

as shown by the fact that the sales invoices presented by [it] were not in its name but in the name of Pilmico Foods Corporation.

x x x x x x x x x

In the Joint Stipulation of Facts filed on March 7, 2001, the parties have agreed that with respect to the deficiency income tax assessment, the following are the issues to be resolved:

a. Whether or not the ₱5,895,694.66 purchases of raw materials are unsupported;

x x x x x x x x x

Clearly, *the issue of proper substantiation of the deduction from gross income pertaining to the purchases of raw materials was properly raised even before [PMFC] began presenting its evidence. [PMFC] was aware that the [CIR] issued the assessment from the standpoint of lack of supporting documents for the claimed deduction and the fact that the assessments were not based on the deductibility of the cost of raw materials.* There is no difference in the basis of the assessment and the issue presented to the [CTA] in Division for resolution since both pertain to the issue of proper supporting documents for ordinary and necessary business expenses.[9] (Citation omitted, italics ours and emphasis in the original)

PMFC moved for reconsideration. Pending its resolution, the CIR issued Revenue Regulation (RR) No. 15-2006,[10] the abatement program of which was availed by PMFC on October 27, 2006. Out of the total amount of ₱2,804,920.36 assessed as income, value-added tax (VAT) and withholding tax deficiencies, plus surcharges and deficiency interests, PMFC paid the CIR ₱1,101,539.63 as basic deficiency tax. The PMFC, thus, awaits the CIR's approval of the abatement, which can render moot the resolution of the instant petition.[11]

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[9] *Id*. at 122-126.

[10] Prescribes the guidelines on the implementation of one-time administrative abatement of all penalties/surcharges and interest on delinquent accounts and assessments (preliminary or final, disputed or not) as of June 30, 2006, published on September 28, 2006.

[11] *Rollo*, pp. 3-4.

Meanwhile, the CTA *en banc* denied the motion for reconsideration[12] of PMFC, in its Resolution[13] dated December 4, 2006.

Issues

In the instant petition, what is essentially being assailed is the CTA *en banc*'s concurrence with the CTA First Division's ruling, which affirmed but reduced the CIR's income deficiency tax assessment against PMFC. More specifically, the following errors are ascribed to the CTA:

I

The Honorable CTA First Division deprived PMFC of due process of law and the CTA assumed an executive function when it substituted a legal basis other than that stated in the assessment and pleading of the CIR, contrary to law.

II

The decision of the Honorable CTA First Division must conform to the pleadings and the theory of the action under which the case was tried. A judgment going outside the issues and purporting to adjudicate something on which the parties were not heard is invalid. Since the legal basis cited by the CTA supporting the validity of the assessment was never raised by the CIR, PMFC was deprived of its constitutional right to be apprised of the legal basis of the assessment.

III

The nature of evidence required to prove an ordinary expense like raw materials is governed by Section 29[14] of

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[12] *Id.* at 84-106.

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

[14] **Sec. 29.** ***Deductions from gross income***.— In computing taxable income subject to tax under Sections 21 (a), 24 (a), (b) and (c); and 25 (a) (1), there shall be allowed as deductions the items specified in paragraphs (a) to (i) of this section; *Provided, however*, That in computing taxable income subject

the 1977 National Internal Revenue Code (NIRC) and not by Section 238 as found by the CTA.[15]

In support of the instant petition, PMFC claims that the deficiency income tax assessment issued against it was anchored on Section 34(A)(1)(b)[16] of the 1997 NIRC. In disallowing the

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to tax under Section 21 (f) in the case of individuals engaged in business or practice of profession, only the following direct costs shall be allowed as deductions:

(a) Raw materials, supplies and direct labor;

x x x x x x x x x

For individuals whose cost of goods sold and direct costs are difficult to determine, a maximum of forty per cent (40%) of their gross receipts shall be allowed as deductions to answer for business or professional expenses as the case may be. (As amended by Republic Act No. 7496, May 18, 1992)

x x x x x x x x x

(a) Expenses. — (1) Business expenses. — (A) In general. — All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; travelling expenses while away from home in the pursuit of a trade profession or business, rentals or other payments required to be made as a condition to the continued use or possession, for the purpose of the trade, profession or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

x x x x x x x x x

(Underscoring ours)

[15] *Rollo*, p. 44.

[16] **SEC. 34.** ***Deductions from Gross Income***. — Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B) and (C); and 28 (A) (1), there shall be allowed the following deductions from gross income;

(A) ***Expenses.*** **-**

(1) ***Ordinary and Necessary Trade, Business or Professional Expenses***. —

(b) *Substantiation Requirements*. — No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts

deduction of the purchase of raw materials from PMFC's gross income, the CIR never made any reference to Section 238 of the 1977 NIRC relative to the mandatory requirement of keeping records of official receipts, upon which the CTA had misplaced reliance. Had substantiation requirements under Section 238 of the 1977 NIRC been made an issue during the trial, PMFC could have presented official receipts or invoices, or could have compelled its suppliers to issue the same.[17]

PMFC further argues that in determining the deductibility of the purchase of raw materials from gross income, Section 29 of the 1977 NIRC is the applicable provision. According to the said section, for the deduction to be allowed, the expenses must be (a) both ordinary and necessary; (b) incurred in carrying on a trade or business; and (c) paid or incurred within the taxable year. PMFC, thus, claims that prior to the promulgation of the 1997 NIRC, the law does not require the production of official receipts to prove an expense.[18]

In its Comment,[19] the Office of the Solicitor General (OSG) counters that the arguments advanced by PMFC are mere reiterations of those raised in the proceedings below. Further, PMFC was fully apprised of the assailed tax assessments and had all the opportunities to prove its claims.[20]

The OSG also avers that in the Joint Stipulation of Facts filed before the CTA First Division on March 7, 2001, it was stated that one of the issues for resolution was "*whether or not the Php5,895,694.66 purchases of raw materials are unsupported*." Hence, PMFC was aware that the CIR issued the assessments due to lack of supporting documents for the

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or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer. (Underscoring ours)

[17] *Rollo*, pp. 46-49.

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

[19] *Id*. at 193-207.

[20] *Id*. at 205.

deductions claimed. Essentially then, even in the proceedings before the CIR, the primary issue has always been the lack or inadequacy of supporting documents for ordinary and necessary business expenses.[21]

The OSG likewise points out that PMFC failed to satisfactorily discharge the burden of proving the propriety of the tax deductions claimed. Further, there were discrepancies in the names of the sellers and purchasers indicated in the receipts casting doubts on their authenticity.[22]

Ruling of the Court

The Court affirms but modifies the herein assailed decision and resolution.

Preliminary matters

On December 19, 2006, PMFC filed before the Court a motion for extension of time to file a petition for review.[23] In the said motion, PMFC informed the Court that it had availed of the CIR's tax abatement program, the details of which were provided for in RR No. 15-2006. PMFC paid the CIR the amount of ₱1,101,539.63 as basic deficiency tax. PMFC manifested that if the abatement application would be approved by the CIR, the instant petition filed before the Court may be rendered superfluous.

According to Section 4 of RR No. 15-2006, after the taxpayer's payment of the assessed basic deficiency tax, the docket of the case shall be forwarded to the CIR, thru the Deputy Commissioner for Operations Group, for issuance of a termination letter. However, as of this Resolution's writing, none of the parties have presented the said termination letter. Hence, the Court cannot outrightly dismiss the instant petition on the ground of mootness.

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[21] *Id*. at 200-201.

[22] *Id*. at 201, 205.

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

On the procedural issues raised by PMFC

The first and second issues presented by PMFC are procedural in nature. They both pertain to the alleged omission of due process of law by the CTA since in its rulings, it invoked Section 238 of the 1977 NIRC, while in the proceedings below, the CIR's tax deficiency assessments issued against PMFC were instead anchored on Section 34 of the 1997 NIRC.

Due process was not violated.

In *CIR v. Puregold Duty Free, Inc.*,[24] the Court is emphatic that:

> It is well settled that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal and are barred by estoppel. To allow the contrary would constitute a violation of the other party's right to due process, and is contrary to the principle of fair play. x x x
>
> > x x x Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.[25] (Citations omitted)

In the case at bar, the CIR issued assessment notices against PMFC for deficiency income, VAT and withholding tax for the year 1996. PMFC assailed the assessments before the Bureau of Internal Revenue and later, before the CTA.

In the Joint Stipulation of Facts, dated March 7, 2001, filed before the CTA First Division, the CIR and PMFC both agreed that among the issues for resolution was "*whether or not the ₱5,895,694.66 purchases of raw materials are unsupported*."[26] Estoppel, thus, operates against PMFC anent its argument that

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[24] G.R. No. 202789, June 22, 2015.

[25] *Id*.

[26] *Rollo*, p. 110.

the issue of lack or inadequacy of documents to justify the costs of purchase of raw materials as deductions from the gross income had not been presented in the proceedings below, hence, barred for being belatedly raised only on appeal.

Further, in issuing the assessments, the CIR had stated the material facts and the law upon which they were based. In the petition for review filed by PMFC before the CTA, it was the former's burden to properly invoke the applicable legal provisions in pursuit of its goal to reduce its tax liabilities. The CTA, on the other hand, is not bound to rule solely on the basis of the laws cited by the CIR. Were it otherwise, the tax court's appellate power of review shall be rendered useless. An absurd situation would arise leaving the CTA with only two options, to wit: (a) affirming the CIR's legal findings; or (b) altogether absolving the taxpayer from liability if the CIR relied on misplaced legal provisions. The foregoing is not what the law intends.

To reiterate, PMFC was at the outset aware that the lack or inadequacy of supporting documents to justify the deductions claimed from the gross income was among the issues raised for resolution before the CTA. With PMFC's acquiescence to the Joint Stipulation of Facts filed before the CTA and thenceforth, the former's participation in the proceedings with all opportunities it was afforded to ventilate its claims, the alleged deprivation of due process is bereft of basis.

On the applicability of Section 29 of the 1977 NIRC

The third issue raised by PMFC is substantive in nature. At its core is the alleged application of Section 29 of the 1977 NIRC as regards the deductibility from the gross income of the cost of raw materials purchased by PMFC.

It bears noting that while the CIR issued the assessments on the basis of Section 34 of the 1997 NIRC, the CTA and PMFC are in agreement that the 1977 NIRC finds application.

However, while the CTA ruled on the basis of Section 238 of the 1977 NIRC, PMFC now insists that Section 29 of the same code should be applied instead. Citing *Atlas Consolidated*

Mining and Development Corporation v. CIR,[27] PMFC argues that Section 29 imposes less stringent requirements and the presentation of official receipts as evidence of the claimed deductions is dispensable. PMFC further posits that the mandatory nature of the submission of official receipts as proof is a mere innovation in the 1997 NIRC, which cannot be applied retroactively.[28]

PMFC's argument fails.

The Court finds that the alleged differences between the requirements of Section 29 of the 1977 NIRC invoked by PMFC, on one hand, and Section 238 relied upon by the CTA, on the other, are more imagined than real.

In *CIR v. Pilipinas Shell Petroleum Corporation*,[29] the Court enunciated that:

> It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The law must not be read in truncated parts, its provisions must be read in relation to the whole law. The particular words, clauses and phrases should not be studied as detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.[30] (Citations omitted)

The law, thus, intends for Sections 29 and 238 of the 1977 NIRC to be read together, and not for one provision to be accorded preference over the other.

It is undisputed that among the evidence adduced by PMFC on its behalf are the official receipts of alleged purchases of raw materials. Thus, the CTA cannot be faulted for making

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[27] 190 Phil. 195 (1981).

[28] *Rollo*, pp. 56-58.

[29] G.R. No. 192398, September 29, 2014, 736 SCRA 623.

[30] *Id*. at 637.

references to the same, and for applying Section 238 of the 1977 NIRC in rendering its judgment. Required or not, the official receipts were submitted by PMFC as evidence. Inevitably, the said receipts were subjected to scrutiny, and the CTA exhaustively explained why it had found them wanting.

PMFC cites *Atlas*[31] to contend that the *statutory test*, as provided in Section 29 of the 1977 NIRC, is sufficient to allow the deductibility of a business expense from the gross income. As long as the expense is: (a) both ordinary and necessary; (b) incurred in carrying a business or trade; and (c) paid or incurred within the taxable year, then, it shall be allowed as a deduction from the gross income.[32]

Let it, however, be noted that in *Atlas*, the Court likewise declared that:

> In addition, not only must the taxpayer meet the business test, *he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed.* The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction.[33] (Citation omitted and italics ours)

It is, thus, clear that Section 29 of the 1977 NIRC does not exempt the taxpayer from substantiating claims for deductions. While official receipts are not the only pieces of evidence which can prove deductible expenses, if presented, they shall be subjected to examination. PMFC submitted official receipts as among its evidence, and the CTA doubted their veracity. PMFC was, however, unable to persuasively explain and prove through other documents the discrepancies in the said receipts. Consequently, the CTA disallowed the deductions claimed, and in its ruling, invoked Section 238 of the 1977 NIRC considering that official receipts are matters provided for in the said section.

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[31] *Supra* note 27.

[32] *Rollo*, p. 56.

[33] *Atlas Consolidated Mining and Development Corporation v. CIR*, *supra* note 27, at 204.

Conclusion

The Court recognizes that the CTA, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the tax court. In the absence of any clear and convincing proof to the contrary, the Court must presume that the CTA rendered a decision which is valid in every respect.[34]

Further, revenue laws are not intended to be liberally construed. Taxes are the lifeblood of the government and in Holmes' memorable metaphor, the price we pay for civilization; hence, laws relative thereto must be faithfully and strictly implemented.[35] While the 1977 NIRC required substantiation requirements for claimed deductions to be allowed, PMFC insists on leniency, which is not warranted under the circumstances.

Lastly, the Court notes too that PMFC's tax liabilities have been more than substantially reduced to 2,804,920.36 from the CIR's initial assessment of ₱9,761,750.02.[36]

In précis, the affirmation of the herein assailed decision and resolution is in order.

However, the Court finds it proper to modify the herein assailed decision and resolution to conform to the interest rates prescribed in *Nacar v. Gallery Frames, et al.*[37] The total amount of ₱2,804,920.36 to be paid by PMFC to the CIR shall be subject to an interest of six percent (6%) *per annum* to be computed from the finality of this Resolution until full payment.

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[34] *CIR v. Puregold Duty Free, Inc.*, *supra* note 24, citing *Toshiba Information Equipment (Phils.), Inc. v. CIR*, 628 Phil. 430, 468 (2010).

[35] *CIR v. Acosta*, 556 Phil. 31, 39-40 (2007).

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

[37] 716 Phil. 267 (2013).

WHEREFORE, the instant petition is **DENIED**. The Decision dated August 29, 2006 and Resolution dated December 4, 2006 of the Court of Tax Appeals *en banc* in C.T.A. EB No. 97 are **AFFIRMED**. However, as **MODIFICATION** thereof, the legal interest of six percent (6%) *per annum*, reckoned from the finality of this Resolution until full satisfaction, is hereby imposed upon the amount of ₱2,804,920.36 to be paid by Pilmico-Mauri Foods Corporation to the Commissioner of Internal Revenue.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 190015 & 190019. September 14, 2016]

GERALDINE MICHELLE B. FALLARME and ANDREA MARTINEZ-GACOS, *petitioners, vs.* **SAN JUAN DE DIOS EDUCATIONAL FOUNDATION, INC., CHONA M. HERNANDEZ, VALERIANO ALEJANDRO III, SISTER CONCEPCION GABATINO, D.C., and SISTER JOSEFINA QUIACHON, D.C.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO QUESTIONS OF LAW, EXCEPT WHEN THE FINDINGS OF THE COURT OF APPEALS CONFLICT WITH THOSE OF THE LABOR AUTHORITIES, IN WHICH CASE THE COURT WILL NOT HESITATE TO REVIEW THE EVIDENCE ON RECORD.— [W]e note the general rule that a petition for review on *certiorari* under Rule 45 is limited to questions of law. However, an exception to

this rule arises when the findings of the CA conflict with those of the labor authorities, in which case this Court will not hesitate to review the evidence on record. In this case, the labor arbiter's factual findings differ from those of the NLRC and the CA. The labor arbiter found that the satisfactory service rendered by petitioners during their probationary period warranted their regularization, while the NLRC and the CA found otherwise. These conflicting findings of fact provide sufficient justification for our review of the facts involved.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYMENT; REQUIREMENTS TO BE VALID; THE SCHOOL HAS THE DISCRETION AND THE PREROGATIVE TO IMPOSE STANDARDS ON ITS TEACHERS AND TO DETERMINE WHETHER THESE HAVE BEEN MET UPON THE CONCLUSION OF THE PROBATIONARY PERIOD, SUBJECT TO THE LIMITATIONS IMPOSED BY THE LABOR CODE AND JURISPRUDENCE ON VALID PROBATIONARY EMPLOYMENT.— Indeed, the determination of whether the performance of probationary teaching personnel has been sufficiently satisfactory as to warrant their regularization lies in the hands of the school pursuant to its administrative prerogative, which is an extension of its academic freedom under Section 5(2), Article XIV of the Constitution. Academic freedom gives the school the discretion and the prerogative to impose standards on its teachers and to determine whether these have been met upon the conclusion of the probationary period. It must be pointed out that the school's exercise of administrative prerogative in this respect is not plenary as respondents would like us to believe. The exercise of that prerogative is still subject to the limitations imposed by the Labor Code and jurisprudence on valid probationary employment. In *Abbott Laboratories v. Alcaraz,* this Court explained that valid probationary employment under Art. 281 presupposes the concurrence of two requirements: (1) the employer must have made known to the probationary employee the reasonable standard that the latter must comply with to qualify as a regular employee; and (2) the employer must have informed the probationary employee of the applicable performance standard at the time of the latter's engagement. Failing in one or both, the employee, even if initially hired as a probationary employee, shall be considered a regular employee.

3. ID.; ID.; ID.; ID.; ID.; A SCHOOL MUST NOT ONLY SET REASONABLE STANDARDS THAT WILL DETERMINE WHETHER A PROBATIONARY TEACHER RENDERED SATISFACTORY SERVICE AND IS QUALIFIED FOR REGULAR STATUS, BUT IT MUST ALSO COMMUNICATE THESE STANDARDS TO THE TEACHER AT THE START OF THE PROBATIONARY PERIOD; SHOULD IT FAIL TO DO SO, THE TEACHER SHALL BE DEEMED A REGULAR EMPLOYEE FROM DAY ONE.— With respect to the regularization of probationary teachers, the standards laid down in *Abbott Laboratories* apply to the third requisite under the 1992 Manual: *that they must have rendered satisfactory service*. As observed by this Court in *Colegio del Santisimo Rosario v. Rojo*, the use of the term *satisfactory* "necessarily connotes the requirement for schools to set reasonable standards to be followed by teachers on probationary employment. For how else can one determine if probationary teachers have satisfactorily completed the probationary period if standards therefor are not provided?" Therefore, applying Article 281 of the Labor Code, a school must not only set reasonable standards that will determine whether a probationary teacher rendered satisfactory service and is qualified for regular status; it must also communicate these standards to the teacher at the start of the probationary period. Should it fail to do so, the teacher shall be deemed a regular employee from Day One. However, the records lack evidence that respondent college clearly and directly communicated to petitioners, at the time they were hired, what reasonable standards they must meet for the school to consider their performance satisfactory and for it to grant them regularization as a result. x x x. Respondents were clearly remiss in their duty under the Labor Code to inform petitioners of the standards for the latter's regularization. Consequently, petitioners ought to be considered as regular employees of respondent college right from the start.

4. ID.; ID.; TERMINATION OF EMPLOYMENT; JUST CAUSES; INSUBORDINATION OR WILLFUL DISOBEDIENCE; TO BE A VALID CAUSE, THE EMPLOYEE'S ASSAILED CONDUCT MUST HAVE BEEN WILLFUL, CHARACTERIZED BY A WRONGFUL AND PERVERSE ATTITUDE, AND THE ORDER VIOLATED MUST HAVE BEEN REASONABLE, LAWFUL, MADE

KNOWN TO THE EMPLOYEE, AND PERTINENT TO THE DUTIES THAT THE EMPLOYEE HAS BEEN ENGAGED TO DISCHARGE.— Dismissals have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process. With respect to substantive due process, insubordination or willful disobedience is one of the just causes of dismissal under Article 282 of the Labor Code. For there to be a valid cause, two elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and pertinent to the duties that the employee has been engaged to discharge. Moreover, to be considered as a valid cause analogous to that specified in the law, it is simply required that the cause must be due to the voluntary or willful act or omission of the employee. x x x. We find that [the] infractions committed by petitioners in connection with their jobs have been established by substantial evidence and constitute willful disobedience or conduct analogous thereto.

5. **ID.; ID.; ID.; AN EMPLOYER HAS THE RIGHT TO DISMISS ITS ERRING EMPLOYEES AS A MEASURE OF SELF-PROTECTION AGAINST ACTS INIMICAL TO ITS INTEREST.—** [N]ot just one but three infractions show that the continued service of petitioners in respondent college was inimical to its interest, as their actions indicated lack of respect for the school authorities. It is settled that an employer has the right to dismiss its erring employees as a measure of self-protection against acts inimical to its interest. With respect to schools, this right must be seen in light of their recognized prerogative to set high standards of efficiency for its teachers. The exercise of that prerogative is pursuant to the mandate of the Constitution for schools to provide quality education and its recognition of their academic freedom to choose who should teach pursuant to reasonable standards. We find those standards to be present in this case. Therefore, respondent college cannot be faulted for finding the performance of petitioners inimical to its interest as a school after the cited infractions.

6. **ID.; ID.; ID.; PROCEDURAL DUE PROCESS; TWO-NOTICE RULE; NOT COMPLIED WITH.—** Although the dismissal of petitioner was for a valid cause, we nevertheless find that

respondent college failed to comply with the proper procedure for their dismissal in violation of procedural due process. For termination based on a just cause, as in this case, the law requires two written notices before the termination of employment: (1) a written notice served by the employer on the employee specifying the ground for termination and giving a reasonable opportunity for that employee to explain the latter's side; and (2) a written notice of termination served by the employer on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify the latter's termination. We find a complete deviation from the two-notice rule in this case.

7. ID.; ID.; D.; ID.; IF THE DISMISSAL WAS FOR A VALID CAUSE, FAILURE TO COMPLY WITH THE PROPER PROCEDURAL REQUIREMENTS SHALL NOT NULLIFY THE DISMISSAL, BUT SHALL ONLY WARRANT THE PAYMENT OF INDEMNITY IN THE FORM OF NOMINAL DAMAGES, THE AMOUNT OF WHICH IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT.— In *Agabon v. National Labor Relations Commission*, this Court held that if the dismissal was for a valid cause, failure to comply with the proper procedural requirements shall not nullify the dismissal, but shall only warrant the payment of indemnity in the form of nominal damages. The amount of damages is addressed to the sound discretion of the Court, taking into account the relevant circumstances. Since *Agabon*, this Court has consistently pegged the award of nominal damages at ₱30,000 in cases where the employee's right to procedural due process has been violated. It was held that the amount of nominal damages awarded is not intended to enrich the employee, but to deter the employer from future violations of the procedural due process rights of the former. Considering the circumstances in the present case and in compliance with prevailing jurisprudence, we deem it appropriate for respondent college to pay petitioners ₱30,000 each. This amount is in lieu of the ₱20,000 awarded to each petitioner by the NLRC and the CA.

APPEARANCES OF COUNSEL

Emelito A. Licerio for petitioners.
Padilla Law Office for respondents.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45, assailing the Decision[1] and the Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP Nos. 105355 and 105361. The CA affirmed the Decision[3] and the Resolution[4] of the National Labor Relations Commission (NLRC), which had ruled in favor of the validity of the termination of Geraldine Michelle B. Fallarme and Andrea Martinez-Gacos (petitioners) by San Juan de Dios Educational Foundation, Inc., Chona M. Hernandez, Valeriano Alejandro III, Sr., Concepcion Gabatino, D.C., and Sr. Josefina Quiachon, D.C. (respondents).

THE FACTS

Petitioners were hired by San Juan de Dios Educational Foundation, Inc. (respondent college), for full-time teaching positions.[5]

The appointment of petitioner Fallarme was effective at the start of the first semester of School Year (SY) 2003-2004[6] as signified by a memorandum[7] issued by the school informing

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[1] *Rollo*, pp. 42-58; dated 31 July 2009 and penned by CA Associate Justice Myrna Dimaranan Vidal with Associate Justices Portia Alino-Hormachuelos and Arcangelita R. Lontok concurring.

[2] *Id*. at 60-62; dated 20 October 2009 and penned by CA Associate Justice Myrna Dimaranan Vidal with Associate Justices Portia Alino-Hormachuelos and Isaias P. Dicdican (additional member in the Resolution dated 20 October 2009 in lieu of J. Lontok per Office Order No. 700-09) concurring.

[3] *Id*. at 81-92; dated 23 April 2008 and penned by Commissioner Raul T. Aquino with Commissioners Victoriano R. Calaycaly and Angelica A. Gacutan concurring.

[4] *Id*. at 93-94.

[5] *Id*. at 347.

[6] *Id*. at 44.

[7] *Id*. at 117.

her that she had been hired. The memorandum did not specify whether she was being employed on a regular or a probationary status. Aside from being appointed to a faculty position, she was also appointed to perform administrative work for the school as personnel officer[8] and to serve as head of the Human Development Counseling Services.[9]

Despite having served as a faculty member since SY 2003-2004, Fallarme was asked only on 1 March 2006 to sign and submit to respondent Chona M. Hernandez, dean of general education, a written contract on the nature of the former's employment and corresponding obligations.[10] The contract was denominated as "Appointment and Contract for Faculty on Probation" (appointment contract),[11] and its effectivity period covered the second semester of SY 2005-2006 – specifically from 4 November 2005 to 18 March 2006.[12] The appointment contract specified the status of Fallarme as a probationary faculty member.

After the expiration of the contract, respondent college informed her that it would not be renewed for the first semester of SY 2006-2007.[13] When she asked on what basis her contract would not be renewed, she was informed that it was the school's "administrative prerogative."[14]

Petitioner Martinez-Gacos taught at respondent college from the start of SY 2003-2004 and continued to do so for a total of six semesters and one summer.[15] Her engagement as a faculty member was signified by a memorandum[16] issued by the school,

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[8] *Id*. at 118.

[9] *Id*. at 119.

[10] *Id*. at 46.

[11] *Id*. at 176.

[12] *Id*.

[13] *Id*. at 46.

[14] *Id*.

[15] *Id*. at 47.

[16] *Id*. at 132.

which informed her that she had been hired. The memorandum, which was similar to that issued to Fallarme, did not specify whether Martinez-Gacos was being employed on a regular or a probationary status.

Like Fallarme, even though Martinez-Gacos had been employed as a faculty member since SY 2003-2004, it was only on 1 March 2006 that the latter was ordered by respondent Valeriano Alejandro III to sign and submit a written contract on the nature of her employment and corresponding obligations.[17] The terms of the contract were similar to those in the contract signed by Fallarme. It was also denominated as "Appointment and Contract for Faculty on Probation,"[18] and its effectivity period also covered the second semester of SY 2005-2006 – specifically from 4 November 2005 to 18 March 2006.[19] Under the appointment contract, the probationary status of Martinez-Gacos was likewise specified for the first time.

After the lapse of the contract's effectivity, she was similarly informed that her contract would not be renewed for the first semester of SY 2006-2007. She was also told that the nonrenewal of her contract was made on the basis of "administrative prerogative."[20]

Petitioners submitted a letter to respondent Hernandez,[21] questioning the nonrenewal of their respective employment contracts. Not satisfied with the reply,[22] they filed a Complaint against respondents for illegal dismissal, reinstatement, back wages, and damages before the labor arbiter.[23]

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[17] *Id*. at 47.

[18] *Id*. at 177.

[19] *Id*.

[20] *Id*. at 48.

[21] *Id*. at 145-146.

[22] *Id*. at 147-148.

[23] *Id*. at 49.

In their defense, respondents claimed that petitioners had been remiss in their duties. Specifically, both of them reportedly sold computerized final examination sheets to their students without prior school approval. Allegedly, Fallarme also sold sociology books to students, while Martinez-Gacos served as part-time faculty in another school and organized out-of-campus activities, all without the permission of respondent college.[24] These infractions supposedly prevented it from considering their services satisfactory.

THE LABOR ARBITER'S DECISION

The labor arbiter ruled that petitioners were regular employees who were entitled to security of tenure.[25] The former cited the 1992 Manual of Regulations for Private Schools (1992 Manual), which provides that regularization must be given to a teacher who (i) is employed as a full-time teacher; (ii) has rendered three consecutive years of service; and (iii) has performed satisfactorily within that period.[26] The labor arbiter held that petitioners had complied with these requisites for their regularization and, contrary to respondents' contention, performed satisfactorily within the years of their probationary employment. Thus, the labor arbiter ordered respondent college to reinstate petitioners and pay them their back wages as well as their 13th month pay.[27]

THE NLRC'S RULING

Upon respondents' appeal, the NLRC reversed the Decision of the labor arbiter.[28] It held that petitioners had failed to meet the third requirement for regularization as prescribed by the 1992 Manual; that is, they had not served respondent college satisfactorily. The NLRC found that certain actions they had

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[24] *Id*. at 188-191.

[25] *Id*. at 243-256.

[26] *Id*. at 251.

[27] *Id.* at 255.

[28] *Id*. at 81-92.

done without the requisite approval of respondent college brought about their unsatisfactory performance during their probationary period. However, given the failure of respondent to observe due process, the NLRC ordered it to pay them ₱20,000 each as indemnity. Upon the denial of their Motion for Reconsideration,[29] petitioners proceeded to the CA.

THE CA RULING

The CA affirmed the NLRC Decision.[30] It upheld respondent college's administrative prerogative to determine whether or not petitioners were entitled to regularization on the basis of respondents' academic freedom.[31] Furthermore, the award of ₱20,000 as indemnity to each of the petitioners was upheld.

Upon the denial by the CA of their Motion for Reconsideration,[32] petitioners have now come before this Court via this Petition.

THE ISSUES

We cull the issues as follows:

1. Were petitioners regular employees of respondent college?
2. Was petitioners' dismissal for a valid cause?
3. If the dismissal of petitioners was for a valid cause, was the proper dismissal procedure observed?

OUR RULING

We deny the Petition. While we agree with petitioners that they were regular employees of the college, we differ on the basis they invoke for their regularization. Nevertheless, we agree with respondents that as regular employees, petitioners were dismissed for a valid cause. But due to respondents' failure to observe the proper procedure, petitioners are entitled to nominal damages.

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[29] *Id*. at 93-94.

[30] *Id*. at 51-57.

[31] *Id*. at 52-54.

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

The case calls for a review of questions of fact.

At the outset, we note the general rule that a petition for review on *certiorari* under Rule 45 is limited to questions of law. However, an exception to this rule arises when the findings of the CA conflict with those of the labor authorities, in which case this Court will not hesitate to review the evidence on record.[33]

In this case, the labor arbiter's factual findings differ from those of the NLRC and the CA. The labor arbiter found that the satisfactory service rendered by petitioners during their probationary period warranted their regularization, while the NLRC and the CA found otherwise. These conflicting findings of fact provide sufficient justification for our review of the facts involved.

We now proceed to the merits of the case.

Petitioners are deemed regular employees.

While the parties did not contest the allegation that petitioners were employed as probationary employees, a review of the records will show that they were considered regular employees since Day One of their employment.

It is established that while the Labor Code provides general rules as to probationary employment, these rules are supplemented by the Manual of Regulations for Private Schools with respect to the period of probationary employment of private school teachers.[34]

As prescribed by the 1992 Manual, a teacher must satisfy the following requisites to be entitled to regular faculty status:

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[33] *Sampaguita Auto Transport Corp. v. National Labor Relations Commission,* 702 Phil. 701 (2013).

[34] *Mercado v. AMA Computer College-Parañaque City, Inc*., 632 Phil. 228 (2010); Since petitioners were employed by respondent college in 2003, it is the 1992 version of the Manual of Regulations for Private Schools that applies. However, the Commission of Higher Education (CHED) later issued the 2008 Manual of Regulations for Private Higher Education through CHED Memorandum Order No. 40, Series of 2008, which is now the applicable Manual for all private higher education institutions.

(1) must be a full-time teacher; (2) must have rendered three years of service (or six consecutive semesters of service for teachers on the tertiary level); and (3) that service must have been satisfactory.[35]

In this case, the first two requisites for regularization under the 1992 Manual – full-time faculty status and completion of the probationary period – are conceded in favor of petitioners. However, the parties disagree on the fulfillment of the third requisite:[36] whether petitioners' performance within the probationary period was satisfactory.

It is with respect to the determination of whether petitioners' performance was satisfactory that respondent college invokes its "administrative prerogative." As argued by respondents in their Comment before this Court, the exercise of their administrative prerogative not to renew the contracts was prompted by their dissatisfaction with the way petitioners conducted themselves in school.[37] Specifically, respondent college asserts that appellants were remiss in their fiduciary duty to the school when they engaged in various acts like selling books and exam materials, as well as organizing extracurricular activities with students without its permission.[38] It contends that its administrative prerogative is part of its academic freedom under the Constitution.[39]

These contentions are misplaced.

Indeed, the determination of whether the performance of probationary teaching personnel has been sufficiently satisfactory

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[35] 1992 Manual of Regulations for Private Schools, §§92-93; *St. Mary's University v. Court of Appeals*, 493 Phil. 232 (2005); *La Consolacion College v. National Labor Relations Commission*, 418 Phil. 503 (2001); *University of Sto. Tomas v. NLRC*, 261 Phil. 483 (1990).

[36] *Rollo,* p. 52.

[37] *Id*. at 358.

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

[39] *Id*. at 346.

as to warrant their regularization lies in the hands of the school[40] pursuant to its administrative prerogative, which is an extension of its academic freedom under Section 5(2), Article XIV[41] of the Constitution. Academic freedom gives the school the discretion and the prerogative to impose standards on its teachers and to determine whether these have been met upon the conclusion of the probationary period.[42]

It must be pointed out that the school's exercise of administrative prerogative in this respect is not plenary as respondents would like us to believe. The exercise of that prerogative is still subject to the limitations imposed by the Labor Code and jurisprudence on valid probationary employment.[43]

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[40] *Herrera-Manaois v. St. Scholastica's College*, G.R. No. 188914, 11 December 2013, 712 SCRA 418; *Colegio del Santisimo Rosario v. Rojo*, G.R. No. 170388, 4 September 2013, 705 SCRA 63; *Lacuesta v. Ateneo de Manila University*, 513 Phil. 329 (2005); *La Salette of Santiago, Inc. v. National Labor Relations Commission*, 272-A Phil. 33 (1991); *Cagayan Capitol College v. National Labor Relations Commission*, G.R. Nos. 90010-11, 267 Phil. 696 (1990).

[41] Section 5(2), Article XIV provides: Academic freedom shall be enjoyed in all institutions of higher learning.

[42] *Herrera-Manaois v. St. Scholastica's College, supra* note 39.

[43] In *Mercado v. AMA Computer College-Parañaque City, Inc*. (*supra* note 33), this Court reconciled the Labor Code with the 1992 Manual by clarifying that other than in the matter of probationary period, the following portion of Article 281 of the Labor Code still fully applies to probationary teachers:

> x x x The services of an employee who has been engaged on a probationary basis may be terminated for a just cause when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

We recognized then that if a reconciliation of the Labor Code with the 1992 Manual is not made, the requirements of Article 281 on probationary status would be fully negated. Failure to reconcile the two would have an unsettling effect on the existing equilibrium *vis-a-vis* the relations between labor and management which the Constitution and the Labor Code have worked hard to establish (*Colegio del Santisimo Rosario v. Rojo, supra* note 39).

In *Abbott Laboratories v. Alcaraz,*[44] this Court explained that valid probationary employment under Art. 281 presupposes the concurrence of two requirements: (1) the employer must have made known to the probationary employee the reasonable standard that the latter must comply with to qualify as a regular employee; and (2) the employer must have informed the probationary employee of the applicable performance standard at the time of the latter's engagement. Failing in one or both, the employee, even if initially hired as a probationary employee, shall be considered a regular employee.[45]

With respect to the regularization of probationary teachers, the standards laid down in *Abbott Laboratories* apply to the third requisite under the 1992 Manual: *that they must have rendered satisfactory service*. As observed by this Court in *Colegio del Santisimo Rosario v. Rojo*,[46] the use of the term *satisfactory* "necessarily connotes the requirement for schools to set reasonable standards to be followed by teachers on probationary employment. For how else can one determine if probationary teachers have satisfactorily completed the probationary period if standards therefor are not provided?" Therefore, applying Article 281 of the Labor Code, a school must not only set reasonable standards that will determine whether a probationary teacher rendered satisfactory service and is qualified for regular status; it must also communicate these standards to the teacher at the start of the probationary period. Should it fail to do so, the teacher shall be deemed a regular employee from Day One.[47]

However, the records lack evidence that respondent college clearly and directly communicated to petitioners, at the time

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[44] G.R. No. 192571, 22 April 2014, 723 SCRA 25.

[45] *Abbott Laboratories, Phils. v. Alcaraz, supra; see also* Section 6, Rule I, Implementing Rules of Book VI of the Labor Code; *Clarion Printing House v. NLRC*, 500 Phil. 61 (2005); *Cielo v. NLRC*, 271 Phil. 433 (1991).

[46] *Colegio del Santisimo Rosario v. Rojo*, G.R. No. 170388, 4 September 2013, 705 SCRA 63, 75.

[47] *Id*.

they were hired, what reasonable standards they must meet for the school to consider their performance satisfactory and for it to grant them regularization as a result.

Respondents claim that the standards were provided in the appointment contracts signed by petitioners. Each of the contracts supposedly provided that it "incorporates by reference the school policies, regulations, operational procedures and guidelines provided for in the Manual of Operations of the School x x x."[48] However, this claim defeats respondents' own defense, because the appointment contracts invoked were signed by petitioners only at the start of the second semester of SY 2005-2006.[49]

Nonetheless, it is clear and undisputed that petitioners were hired by respondent college as early as 2003, but were required to sign appointment contracts for the first time only in 2005. An examination of the records will show that when they were hired in 2003, they each signed a mere memorandum informing them that they had passed the qualifying examinations for faculty members, and that they were being hired effective first semester of SY 2003-2004.[50] The memorandum did not indicate their status as probationary employees, the specific period of effectivity of their status as such, and the reasonable standards they needed to comply with to be granted regular status. The failure to inform them of these matters was in violation of the requirements of valid probationary employment. It also violated Section 91 of the 1992 Manual, which provides as follows:

> Every contract of employment shall specify the designation, qualification, salary rate, **the period and nature of service** and **its date of effectivity**, and such other terms and conditions of employment as may be consistent with laws and the rules, regulations and standards of the school. A copy of the contract shall be furnished the personnel concerned. (Emphasis supplied)

The appointment contracts invoked by respondents appear to be an afterthought, as they asked petitioners to sign the

[48] *Rollo*, p. 366.

[49] *Id.* at 176-177.

[50] *Id.* at 117 & 132.

contracts only when the latter's three-year probationary period was about to expire. Apparently, this act was an effort to put a stamp of validity on respondents' refusal to renew petitioners' contracts.

Respondents were clearly remiss in their duty under the Labor Code to inform petitioners of the standards for the latter's regularization. Consequently, petitioners ought to be considered as regular employees of respondent college right from the start.

Petitioners' dismissal was for a valid cause.

Now that petitioners' regular status has been settled, it is time to examine whether their contracts' nonrenewal, which was effectively their dismissal, was valid.

Dismissals have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process.[51]

With respect to substantive due process, insubordination or willful disobedience is one of the just causes of dismissal under Article 282 of the Labor Code. For there to be a valid cause, two elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and pertinent to the duties that the employee has been engaged to discharge.[52]

Moreover, to be considered as a valid cause analogous to that specified in the law, it is simply required that the cause must be due to the voluntary or willful act or omission of the employee.[53]

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[51] *Lopez v. Alturas Group of Companies,* 663 Phil. 121 (2011).

[52] *The Coffee Bean and Tea Leaf Philippines, Inc. v. Arenas,* G.R. No. 208908, 11 March 2015, 753 SCRA 187.

[53] *Nadura v. Benguet Consolidated*, 116 Phil. 28 (1962).

Furthermore, under the 1992 Manual, the following has also been enumerated as one of the valid causes for termination, in addition to those found in the Labor Code:

> (f) The sale of tickets or the collection of any contributions in any form or for any purpose of project whatsoever, whether voluntary or otherwise, from pupils, students and school personnel x x x.

In this case, the records bear out the following misdemeanors of petitioners:

(1) Both petitioners were remiss in their obligation to secure respondent college's consent before they sold computerized final examination sheets to their students.[54] They failed to do so despite the prior advice of their subject area coordinator that the dean's approval must first be secured before examination sheets could be sold.[55]

(2) Petitioner Fallarme failed to secure respondent college's consent before selling sociology textbooks to her students during the second semester of SY 2005-2006.[56] This rule was violated even after it had been clearly discussed during their department's general meeting held at the opening of SY 2005-2006. The teachers were then told that they were prohibited from transacting business with any publishing house or collecting any payment without informing their respective area chairs.[57]

(3) Petitioner Martinez-Gacos organized out-of-campus activities with students, again without respondent college's permission and in violation of the school's Student Handbook.[58]

The above infractions imputed by respondent college to petitioners were admitted by the latter in their letters to

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[54] *Rollo,* pp. 197, 204, 198-199.

[55] *Id*. at 197.

[56] *Id*. at 203, 413-416.

[57] *Id*. at 202.

[58] *Id*. at 207.

respondents[59] and in their Petition before this Court.[60] They made that admission in conjunction with their defense that the supposed infractions did not cause serious damage to respondents and were but a part of their academic freedom and freedom of expression, among others.

We find that these infractions committed by petitioners in connection with their jobs have been established by substantial evidence[61] and constitute willful disobedience or conduct analogous thereto.

***First*,** the act of selling computerized final examination sheets to students without respondent college's permission, despite the prior advice of their subject area coordinator, indicated a knowing disregard by petitioners of their superior's express order not to do so. We find that order to be lawful as well as reasonable. Clearly, the school was not prohibiting the sale of those sheets *per se,* but was only requiring that its permission be secured first. This order was made in consideration of the supervision and control that the school was expected to exercise over all matters relevant to its students and personnel.[62] The order was also pertinent to their duties as teachers, as the sheets were used in examinations administered in their classes.

Furthermore, it is significant that petitioners' act of collecting money from their students falls under one of the valid causes for termination under the 1992 Manual as enumerated above.

There is no merit in the defense that petitioners were not aware of the policy regarding the examination sheets.[63] In their

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[59] *Id.* at 198-200, 205, 234.

[60] *Id.* at 36-37.

[61] Well-entrenched is the principle that in order to establish a case before judicial and quasi-administrative bodies, it is necessary that allegations must be supported by substantial evidence. Substantial evidence is more than a mere scintilla but such relevant evidence as a reasonable mind might accept as adequate to support a conclusion (*Ledesma, Jr. v. NLRC,* 562 Phil. 939 [2007]).

[62] *University of the East v. Jader,* 382 Phil. 697 (2000).

[63] *Rollo*, p. 221.

letters to respondent college, they in fact apologized and recognized the fault they committed when they did not inform school authorities before selling the computerized sheets.[64] The apologies of petitioners indicate their awareness of this requirement.

Second, when petitioner Fallarme sold textbooks to her students without permission, even after the act had been clearly prohibited in a general meeting, her act also indicated her willful disregard of a school policy. That policy, which was made known to her beforehand, was lawful in light of the recognized authority exercised by schools over their students and personnel.[65]

Moreover, we consider that policy to be in line with the fiduciary relationship between the school and its professors, teachers, and instructors. They are merely the school's agents in providing the education it has contracted to deliver to its students.[66] As such, they have an obligation to avoid any conflict of interest with the school as their principal.[67] Here, by selling textbooks without the school's authorization, petitioners were harboring a conflict of interest, inasmuch as it was commonplace for a school itself – not its individual teachers – to sell the textbooks to its students.

Furthermore, the order was reasonable. As with the sale of examination sheets, the sale of books was not being prohibited by the school, as it was only requiring teachers to first secure its authorization. That such order was related to the duties of petitioner Fallarmeas a teacher can be easily discerned from the fact that the focus of the policy was the textbooks used in the classroom.

It is noteworthy that this misdemeanor was substantiated by the letters of Fallarme's students attesting to the fact before

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[64] *Id*. at 198, 205.

[65] *University of the East v. Jader, supra* note 61.

[66] *Id*.

[67] *Severino v. Severino,* 44 Phil. 343 (1923).

the school authorities.[68] While she raised before the labor arbiter the defense that some of the students had confided to her that they had written the letters involuntarily, she failed to substantiate this self-serving claim with any proof.[69]

***Third*,** petitioner Martinez-Gacos' act of organizing out-of-campus activities without the consent of respondent college and in violation of its Student Handbook likewise shows traces of insubordination or acts analogous thereto. Martinez-Gacos undertook the activities complained of in 2005,[70] or two years after she was hired. Her awareness of the Student Handbook's provisions, which she cavalierly disregarded, can therefore be reasonable expected. It is notable that she never disputed or debunked the existence of the Student Handbook provisions invoked by the Dean of Student Services.

We find the defense invoked by petitioner – that the questioned activity was a personal trip[71] – insufficient to dispute an established fact. Specifically, while she was the publications adviser of the school paper, she went on two out-of-town trips with several students, whose stories later on appeared in that publication.[72]

It must be stressed that the rules and policies that were disobeyed by petitioners are necessary incidents of the supervision and control schools exercise over teachers as well as students.[73] The exercise of such supervision has been declared to be an obligation of schools.[74] In *Miriam College Foundation v. Court of Appeals*,[75] this Court recognized that the establishment

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[68] *Rollo*, pp. 413-416.

[69] *Id*. at 222.

[70] *Id*. at 207.

[71] *Id*. at 226.

[72] *Id*. at 89.

[73] *University of the East v. Jader, supra* note 61.

[74] *Palisoc v. Brillantes,* 148-B Phil. 1029 (1971).

[75] 401 Phil. 431 (2000).

of an educational institution requires rules and regulations necessary for the maintenance of an orderly educational program and the creation of an educational environment conducive to learning. These rules and regulations are also necessary for the protection of the students, faculty, and property. Therefore, to disobey school rules and regulations, as petitioners did in this case, is to go against this recognized mandate.

All told, not just one but three infractions show that the continued service of petitioners in respondent college was inimical to its interest, as their actions indicated lack of respect for the school authorities. It is settled that an employer has the right to dismiss its erring employees as a measure of self-protection against acts inimical to its interest.[76] With respect to schools, this right must be seen in light of their recognized prerogative to set high standards of efficiency for its teachers. The exercise of that prerogative is pursuant to the mandate of the Constitution for schools to provide quality education[77] and its recognition of their academic freedom to choose who should teach pursuant to reasonable standards.[78] We find those standards to be present in this case.

Therefore, respondent college cannot be faulted for finding the performance of petitioners inimical to its interest as a school after the cited infractions. As correctly pointed out by the NLRC, petitioners were teachers who handled in their classrooms women and men at an impressionable age, not mere inanimate and repeatable objects as in the manufacturing sector. Therefore, teachers stand as role models for living out basic values, which include respect for authority.[79] Because of the failure of petitioners to live up to that standard, this Court finds that their dismissal was for a valid cause.

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[76] *Mendoza v. National Labor Relations Commission,* 369 Phil. 1113 (1999).

[77] *Peña v. National Labor Relations Commission,* 327 Phil. 673 (1996).

[78] *Mercado v. AMA Computer College-Parañaque City, Inc*, *supra* note 34.

[79] *Rollo*, pp. 89-90.

Respondents failed to observe the proper procedure in petitioners' dismissal.

Although the dismissal of petitioner was for a valid cause, we nevertheless find that respondent college failed to comply with the proper procedure for their dismissal in violation of procedural due process.

For termination based on a just cause, as in this case, the law requires two written notices before the termination of employment: (1) a written notice served by the employer on the employee specifying the ground for termination and giving a reasonable opportunity for that employee to explain the latter's side; and (2) a written notice of termination served by the employer on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify the latter's termination.[80]

We find a complete deviation from the two-notice rule in this case. The records show that respondent college effectively dismissed petitioners by sending them a written notice informing them that the school would no longer renew their contracts for the forthcoming semester.[81] We find that the letters were abruptly sent and lacked any specification of the grounds for their termination. Neither did the letters give petitioners the opportunity to explain their side. To aggravate the matter, upon their inquiry into the reason behind their termination, all that respondent college cited was its supposed "administrative prerogative," which was misplaced as discussed earlier.

In *Agabon v. National Labor Relations Commission*,[82] this Court held that if the dismissal was for a valid cause, failure to comply with the proper procedural requirements shall not nullify the dismissal, but shall only warrant the payment of

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[80] *Olympia Housing, Inc. v. Lapastora,* G.R. No. 187691, 13 January 2016.

[81] *Rollo*, p. 126, 138.

[82] 485 Phil. 248, 288 (2004).

indemnity in the form of nominal damages. The amount of damages is addressed to the sound discretion of the Court, taking into account the relevant circumstances. Since *Agabon,* this Court has consistently pegged the award of nominal damages at ₱30,000 in cases where the employee's right to procedural due process has been violated.[83] It was held that the amount of nominal damages awarded is not intended to enrich the employee, but to deter the employer from future violations of the procedural due process rights of the former.[84] Considering the circumstances in the present case and in compliance with prevailing jurisprudence,[85] we deem it appropriate for respondent college to pay petitioners ₱30,000 each. This amount is in lieu of the ₱20,000 awarded to each petitioner by the NLRC and the CA.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED.** The Court of Appeals Decision dated 31 July 2009 and Resolution dated 20 October 2009 in CA-G.R. SP Nos. 105355 and 105361 are hereby **AFFIRMED with MODIFICATIONS,** in that petitioners are each awarded nominal damages of ₱30,000 for the violation of their right to procedural due process. Legal interest at the rate of 6% per annum is imposed on the award of damages from the finality of this Decision until full payment.

SO ORDERED.

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

Bersamin, J., on official leave.

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[83] See *Sang-an v. Equator Knights Detective and Security Agency, Inc.,* 703 Phil. 492 (2013); *Ancheta v. Destiny Financial Plans, Inc.,* 626 Phil. 550 (2010); *Coca-Cola Bottlers Philippines, Inc. v. Garcia,* 567 Phil. 342 (2008); *Challenge Socks Corp. v. Court of Appeals,* 511 Phil. 4 (2005).

[84] *Ancheta v. Destiny Financial Plans, id.*

[85] *Id.*; See also *Santos v. Integrated Pharmaceutical, Inc.,* G.R. No. 204620, 11 July 2016; *University of the Immaculate Conception v. Office of the Secretary of Labor and Employment,* G.R. Nos. 178085-178086, 14 September 2015.

FIRST DIVISION

[G.R. No. 190271. September 14, 2016]

TRANSIMEX CO., *petitioner, vs.* **MAFRE ASIAN INSURANCE CORP.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; IN THE ABSENCE OF CONTRADICTORY EVIDENCE, THE PRESUMPTION IS THAT THE POSTMASTER HAS REGULARLY PERFORMED HIS DUTY.— [T]he CA ruled that petitioner's Motion for Reconsideration was filed late x x x. The Court agrees. The Certification issued by the Office of the Postmaster of Makati, which states that the Decision was received by respondent's counsel on 4 September 2009, is entitled to full faith and credence. In the absence of contradictory evidence, the presumption is that the postmaster has regularly performed his duty. In this case, there is no reason to doubt his statement as to the date respondent received the CA Decision.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMMON CARRIERS; THE LIABILITY OF COMMON CARRIER FOR THE ALLEGED SHORTAGE MUST BE DETERMINED IN ACCORDANCE WITH THE PROVISIONS OF THE CIVIL CODE ON COMMON CARRIERS, AS THE CIVIL CODE TAKES PRECEDENCE AS THE PRIMARY LAW OVER THE RIGHTS AND OBLIGATIONS OF COMMON CARRIERS WITH THE CODE OF COMMERCE AND THE CARRIAGE OF GOODS BY SEA ACT (COGSA) APPLYING SUPPLETORILY.— This Court upholds the ruling of the CA with respect to the applicable law. As expressly provided in Article 1753 of the Civil Code, "[t]he law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration." Since the cargo in this case was transported from Odessa, Ukraine, to Tabaco, Albay, the liability of petitioner for the alleged shortage must be determined in accordance with the provisions of the Civil Code on common carriers. In *Eastern*

Shipping Lines, Inc. v. BPI/MS Insurance Corp., the Court declared: According to the New Civil Code, the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration. The Code takes precedence as the primary law over the rights and obligations of common carriers with the Code of Commerce and COGSA applying suppletorily.

3. ID.; ID.; ID.; ID.; TERM "STORM" OR "PERIL OF THE SEA," CONSTRUED; IN ORDER THAT THE INCLEMENT WEATHER WHICH ASSAULTED THE VESSEL MAY BE CONSIDERED AS A "STORM" OR "PERIL OF THE SEA," IT MUST BE SHOWN THAT THE BAD WEATHER CONDITION IS UNUSUAL, UNEXPECTED, OR CATASTROPHIC, OR THE STRONG WINDS AND WAVES ARE WORSE THAN WHAT SHOULD HAVE BEEN EXPECTED IN THAT PARTICULAR LOCATION DURING THAT TIME OF THE YEAR.— It must be emphasized that not all instances of bad weather may be categorized as "storms" or "perils of the sea" within the meaning of the provisions of the Civil Code and COGSA on common carriers. To be considered absolutory causes under either statute, bad weather conditions must reach a certain threshold of severity. With respect to storms, this Court has explained the difference between a storm and ordinary weather conditions in *Central Shipping Co. Inc. v. Insurance Company of North America* x x x. According to PAGASA, **a storm has a wind force of 48 to 55 knots, equivalent to 55 to 63 miles per hour or 10 to 11 in the Beaufort Scale**. The second mate of the vessel stated that the wind was blowing around force 7 to 8 on the Beaufort Scale. **Consequently, the strong winds accompanying the southwestern monsoon could not be classified as a "storm." Such winds are the ordinary vicissitudes of a sea voyage.** The phrase "perils of the sea" carries the same connotation. Although the term has not been definitively defined in Philippine jurisprudence, courts in the United States of America generally limit the application of the phrase to weather that is "so unusual, unexpected and catastrophic as to be beyond reasonable expectation." Accordingly, strong winds and waves are not automatically deemed perils of the sea, if these conditions are not unusual for that particular sea area at that specific time, or if they could have been reasonably anticipated or foreseen. While cases decided by U.S. courts are not binding precedents

in this jurisdiction, the Court considers these pronouncements persuasive in light of the fact that COGSA was originally an American statute that was merely adopted by the Philippine Legislature in 1936. In this case, the documentary and testimonial evidence cited by petitioner indicate that *M/V Meryem Ana* faced winds of only up to 40 knots while at sea. This wind force clearly fell short of the 48 to 55 knots required for "storms" under Article 1734(1) of the Civil Code based on the threshold established by PAGASA. Petitioner also failed to prove that the inclement weather encountered by the vessel was unusual, unexpected, or catastrophic. In particular, the strong winds and waves, which allegedly assaulted the ship, were not shown to be worse than what should have been expected in that particular location during that time of the year. Consequently, this Court cannot consider these weather conditions as "perils of the sea" that would absolve the carrier from liability.

4. ID.; ID.; ID.; A COMMON CARRIER CANNOT BE ABSOLVED FROM LIABILITY FOR LOSS OR DAMAGE TO THE CARGO ABSENT PROOF THAT THE BAD WEATHER ENCOUNTERED BY THE VESSEL WAS THE PROXIMATE AND ONLY CAUSE OF DAMAGE TO THE SHIPMENT, AND IT FAILED TO ESTABLISH THAT IT HAD EXERCISED THE DILIGENCE REQUIRED FROM COMMON CARRIERS TO PREVENT LOSS OR DAMAGE TO THE CARGO.—Even assuming that the inclement weather encountered by the vessel amounted to a "storm" under Article 1734(1) of the Civil Code, there are two other reasons why this Court cannot absolve petitioner from liability for loss or damage to the cargo under the Civil Code. First, there is no proof that the bad weather encountered by *M/V Meryem Ana* was the proximate and only cause of damage to the shipment. Second, petitioner failed to establish that it had exercised the diligence required from common carriers to prevent loss or damage to the cargo. We emphasize that common carriers are automatically presumed to have been at fault or to have acted negligently if the goods they were transporting were lost, destroyed or damaged while in transit. This presumption can only be rebutted by proof that the carrier exercised extraordinary diligence and caution to ensure the protection of the shipment in the event of foul weather. x x x. In the instant case, there is absolutely no evidence that petitioner satisfied the two requisites.

x x x. Under these circumstances, the Court cannot absolve petitioner from liability for the shortage incurred by the shipment.

APPEARANCES OF COUNSEL

Valdez Domondon & Espinoza for petitioner.
Astorga & Repol Law Offices for respondent.

D E C I S I O N

SERENO, *C.J.*:

This case involves a money claim filed by an insurance company against the ship agent of a common carrier. The dispute stemmed from an alleged shortage in a shipment of fertilizer delivered by the carrier to a consignee. Before this Court, the ship agent insists that the shortage was caused by bad weather, which must be considered either a storm under Article 1734 of the Civil Code or a peril of the sea under the Carriage of Goods by Sea Act (COGSA).[1]

In the Decision[2] and the Resolution[3] assailed in this Petition for Review on *Certiorari*,[4] the Court of Appeals (CA) affirmed the Decision[5] of the Regional Trial Court (RTC). The RTC ordered petitioner Transimex Co. (Transimex) to pay respondent Mafre Asian Insurance Corp.[6] the amount of ₱1,617,527.37 in addition to attorney's fees and costs. Petitioner is the local ship agent of the vessel, while respondent is the subrogee of Fertiphil

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[1] Commonwealth Act No. 65, Public Act No. 521 (1936).

[2] Dated 27 August 2009, and penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Portia Aliño-Hormachuelos and Ramon R. Garcia; *rollo*, pp. 19-36.

[3] Dated 10 November 2009; *id*. at 38-39.

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

[5] Dated 16 February 1999 and penned by Judge Teofilo L. Guadiz, Jr.; *id.* at 56-62.

[6] "Mapfre Asian Insurance Corporation" in some parts of the record.

Corporation (Fertiphil),[7] the consignee of a shipment of Prilled Urea Fertilizer transported by *M/V Meryem Ana*.

FACTUAL ANTECEDENTS

On 21 May 1996, *M/V Meryem Ana* received a shipment consisting of 21,857 metric tons of Prilled Urea Fertilizer from Helm Duengemittel GMBH at Odessa, Ukraine.[8] The shipment was covered by two separate bills of lading and consigned to Fertiphil for delivery to two ports – one in Poro Point, San Fernando, La Union; and the other in Tabaco, Albay.[9] Fertiphil insured the cargo against all risks under Marine Risk Note Nos. MN-MAR-HO-0001341 and MN-MAR-HO-0001347 issued by respondent.[10]

On 20 June 1996, *M/V Meryem Ana* arrived at Poro Point, La Union, and discharged 14,339.507 metric tons of fertilizer under the first bill of lading.[11] The ship sailed on to Tabaco, Albay, to unload the remainder of the cargo. The fertilizer unloaded at Albay appeared to have a gross weight of 7,700 metric tons.[12] The present controversy involves only this second delivery.

As soon as the vessel docked at the Tabaco port, the fertilizer was bagged and stored inside a warehouse by employees of the consignee.[13] When the cargo was subsequently weighed, it was discovered that only 7,350.35 metric tons of fertilizer had been delivered.[14] Because of the alleged shortage of 349.65

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[7] The appeal before the Court of Appeals case was docketed as CA-G.R. CV No. 64482.

[8] *Rollo*, p. 20.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 20-21.

[13] *Id*. at 21.

[14] *Id*.

metric tons, Fertiphil filed a claim with respondent for ₱1,617,527.37,[15] which was found compensable.[16]

After paying the claim of Fertiphil, respondent demanded reimbursement from petitioner on the basis of the right of subrogation. The claim was denied, prompting respondent to file a Complaint with the RTC for recovery of sum of money.[17] In support of its claim, respondent presented a Report of Survey[18] and a Certification[19] from David Cargo Survey Services to prove the shortage. In addition, respondent submitted an Adjustment Report[20] prepared by Adjustment Standards Corporation (ASC) to establish the outturn quantity and condition of the fertilizer discharged from the vessel at the Tabaco port.[21] In the report, the adjuster also stated that the shortage was attributable to the melting of the fertilizer while inside the hatches, when the vessel took on water because of the bad weather experienced at sea.[22] Two witnesses were then presented by respondent to buttress its documentary evidence.[23]

Petitioner, on the other hand, denied that there was loss or damage to the cargo.[24] It submitted survey certificates and presented the testimony of a marine surveyor to prove that there was, in fact, an excess of 3.340 metric tons of fertilizer delivered to the consignee.[25] Petitioner also alleged that defendants had

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[15] *Id*.

[16] *Id*.

[17] The case was filed with the RTC of Makati, Branch 147, and docketed as Civil Case No. 97-1300.

[18] *Rollo*, pp. 53-55.

[19] *Id*. at 44.

[20] *Id*. at 45-52.

[21] *Id*. at 49.

[22] *Id*. at 52.

[23] *Id*. at 60.

[24] *Id*.

[25] *Id*.

exercised extraordinary diligence in the transport and handling of the cargo.[26]

THE RTC RULING

The RTC ruled in favor of respondent and ordered petitioner to pay the claim of ₱1,617,527.37. In its Decision,[27] the trial court found that there was indeed a shortage in the cargo delivered, for which the common carrier must be held responsible under Article 1734 of the Civil Code. The RTC also refused to give credence to petitioner's claim of overage and noted that the presumption of fault and/or negligence on the part of the carrier remained unrebutted. The trial court explained:

> The defendants' defense is that there was no loss/damage to the cargo because instead of a shortage there was an overage of 3.340, invoking the findings of Raul Pelagio, a marine surveyor connected with Survey Specialists, Inc. whose services were engaged by the defendants. However, the Court notes that what was loaded in the vessel M/V Meryem Ana at Odessa, Ukraine on May 21, 1996 was 21,857 metric tons of prilled urea fertilizer (Draft Survey Report, Exhibit F). How the quantity loaded had increased to 21,860.34 has not been explained by the defendants. Thus, the Court finds incredible the testimony of Raul Pelagio that he found an overage of 3.340 metric tons. The Court is inclined to give credence to the testimonies of witness Jaime David, the cargo surveyor engaged by consignee Fertiphil Corporation, and witness Fabian Bon, a cargo surveyor of Adjustment Standards Corporation, whose services were engaged by plaintiff Mafre Asian Insurance Corporation, there being no reason for the Court to disregard their findings which jibe with one another.
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> Thus, it appears crystal clear that on the vessel M/V Meryem Ana was loaded in bulk on May 21, 1996 at Odessa, Ukraine a cargo consisting of 21,857 metric tons of prilled urea fertilizer bound for delivery at Poro Point, San Fernando, La Union and at Tabaco, Albay; that the cargo unloaded at said ports of destination had a shortage of 349.65 metric tons.
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[26] *Id*. at 61.

[27] Dated 16 February 1999; *id*. at 56-62.

As to the defense that defendants had supposedly exercised extraordinary care and diligence in the transport and handling of the cargo, the Court finds that the evidence presented by the defendants is absolutely and completely bereft of anything to support their claim of having exercised extraordinary care and diligence.

Hence, the presumption of fault and/or negligence as provided in Art. 1735 of the Civil Code on the part of the defendants stands unrebutted as against the latter.[28]

THE CA RULING

The CA affirmed the ruling of the RTC and denied petitioner's appeal.[29] After evaluating the evidence presented during trial, the appellate court found no reason to disturb the trial court's conclusion that there was indeed a shortage in the shipment.[30]

The CA also rejected the assertion that petitioner was not a common carrier.[31] Because the latter offered services to the public for the transport of goods in exchange for compensation, it was considered a common carrier in accordance with Article 1732 of the Civil Code. The CA further noted that petitioner had already admitted this fact in the Answer[32] and even raised the defenses usually invoked by common carriers during trial and on appeal, i.e., the exercise of extraordinary care and diligence, and fortuitous event.[33] These defenses were, however, found unmeritorious:

Defendants-appellants claim that the loss was due to a fortuitous event as the Survey Report of Jaime David stated that during its voyage, the vessel encountered bad weather. But to excuse a common carrier fully of any liability, Article 1739 of the Civil Code requires that the fortuitous event must have been the proximate and only cause of the loss. Moreover, it should have exercised due diligence to prevent

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[28] *Id*. at 60-61.

[29] Decision dated 27 August 2009; *id*. at 19-36.

[30] *Id*. at 25-30.

[31] *Id*. at 30-32.

[32] *Id*. at 31.

[33] *Id*. at 32.

or minimize the loss before, during and after the occurrence of the fortuitous event.

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In the present case, defendants-appellants did not present proof that the "bad weather" they encountered was a "storm" as contemplated by Article 1734(1). String winds are the ordinary vicissitudes of a sea voyage. Even if the weather encountered by the ship was to be deemed a natural disaster under Article 1739 of the Civil Code, defendants-appellants failed to show that such natural disaster or calamity was the proximate and only cause of the loss. The shortage must not have been caused or worsened by human participation. The defense of fortuitous event or natural disaster cannot be successfully made when the injury could have been avoided by human precaution.[34]

Petitioner moved for reconsideration of the CA Decision, but the motion was denied.[35] Not only did the Motion for Reconsideration lack merit according to the appellate court; it was also filed out of time.[36]

PROCEEDINGS BEFORE THIS COURT

On 3 December 2009, Transimex filed a Petition for Review on *Certiorari*[37] before this Court praying for the reversal of the CA Decision and Resolution.[38] Petitioner asserts that the lower courts erred in holding it liable for the alleged shortage in the shipment of fertilizer. While it no longer questions the existence of the shortage, it claims that the loss or damage was caused by bad weather.[39] It then insists that the dispute is governed by Section 4 of COGSA, which exempts the carrier from liability for any loss or damage arising from "perils, dangers and accidents of the sea.[40]

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

[35] Resolution dated 10 November 2009; *id*. at 38-39.

[36] *Id*.

[37] *Id*. at 3-18

[38] *Id*. at 14.

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

[40] *Id*.

In its Comment,[41] respondent maintains that petitioner was correctly held liable for the shortage of the cargo in accordance with the Civil Code provisions on common carriers.[42] It insists that the factual findings of the lower courts must be respected[43] particularly in this case, since petitioner failed to timely appeal the Decision of the CA.[44]

Petitioner, in its Reply,[45] takes a position different from its initial stance as to the law applicable to the dispute. It concedes that the Civil Code primarily governs its liability as a carrier, with COGSA as a suppletory source.[46] Under both laws, petitioner contends that it is exempt from liability, because damage to the cargo was caused by the bad weather encountered by the vessel while at sea. This kind of weather supposedly qualifies as a violent storm under the Civil Code; or as a peril, danger or accident of the sea under COGSA.[47]

ISSUES

The following issues are presented for resolution by this Court:

1. Whether the CA Decision has become final and executory
2. Whether the transaction is governed by the provisions of the Civil Code on common carriers or by the provisions of COGSA
3. Whether petitioner is liable for the loss or damage sustained by the cargo because of bad weather

OUR RULING

We **DENY** the Petition.

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[41] Dated 23 March 2010; *id*. at 68-77.

[42] *Id*. at 70-73.

[43] *Id*. at 74-75.

[44] *Id*. at 75-76.

[45] Dated 26 June 2010; *id*. at 79-95.

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

[47] *Id*. at 82-91.

This Court finds that the CA Decision has become final because of the failure of petitioner to timely file a motion for reconsideration. Furthermore, contrary to the argument raised by the latter, there is insufficient evidence to establish that the loss or damage to the cargo was caused by a storm or a peril of the sea.

The CA Decision has become final and executory.

In the assailed Resolution, in which the CA ruled that petitioner's Motion for Reconsideration was filed late, it explained:

> Defendants-appellants' motion for reconsideration of the Court's Decision dated August 7, 2009 was filed out of time, as based on the reply letter dated October 13, 2009 of the Chief, Administrative Unit, Office of the Postmaster, Makati City, copy of said Decision was received by defendants-appellants' counsel on September 4, 2009, not September 14, 2009 as alleged in the motion for reconsideration. Consequently, the subject Decision dated August 27, 2009 had become final and executory considering that the motion for reconsideration was filed only on September 29, 2009, beyond the fifteen (15)-day reglementary period which lasted until September 19, 2009.[48]

The Court agrees. The Certification issued by the Office of the Postmaster of Makati, which states that the Decision was received by respondent's counsel on 4 September 2009, is entitled to full faith and credence. In the absence of contradictory evidence, the presumption is that the postmaster has regularly performed his duty.[49] In this case, there is no reason to doubt his statement as to the date respondent received the CA Decision.

Significantly, Transimex failed to address this matter in its Petition. While it continued to allege that it received the CA Decision on 14 September 2009, it did not refute the finding of the appellate court that the former's Motion for Reconsideration had been filed late. It was only after respondent again asserted the finality of the CA Decision in its Comment did petitioner attempt to explain the discrepancy:

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[48] *Id.* at 38.

[49] See *Aportadera, Sr. v. Court of Appeals,* 242 Phil. 420 (1988)

x x x Apparently, the said Decision dated 27 August 2009 was delivered by the postman to the guard on duty at the ground floor of the building where undersigned counsel's office is located. It was the guard on duty who received the said decision on 4 September 2009 but it was only on 14 September 2009 that undersigned counsel actually received the said decision. Hence, the date of receipt of the decision should be reckoned from the date of receipt by the counsel of the decision and not from the date of receipt of the guard who is not an employee of the law office of the undersigned counsel.

This Court notes that the foregoing account remains unsupported by evidence. The guard on duty or any employee of the law firm could have easily substantiated the explanation offered by counsel for petitioner, but no statement from any of them was ever submitted. Since petitioner was challenging the official statement of the Office of the Postmaster of Makati on the matter, the former had the burden of proving its assertions and presenting countervailing evidence. Unfounded allegations would not suffice.

In any event, this Court has decided to review the merits of this case in the interest of justice. After a judicious evaluation of the arguments interposed by the parties, we find no reason to reverse the CA Decision and Resolution.

The provisions of the Civil Code on common carriers are applicable.

As previously discussed, petitioner initially argued that the CA erred in applying the provisions of the Civil Code to this case. It insisted that the contract of carriage between the parties was governed by COGSA,[50] the law applicable to "all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade."[51] This assertion is bereft of merit.

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[50] *Rollo*, p. 10;

[51] Section 1 of CA No. 65 states:

Section 1. That the provisions of Public Act Numbered Five hundred and twenty-one of the Seventy-fourth Congress of the United States, approved on April sixteenth, nineteen hundred and thirty-six, be accepted, as it is hereby accepted to be made applicable to all contracts for the carriage of

This Court upholds the ruling of the CA with respect to the applicable law. As expressly provided in Article 1753 of the Civil Code, "[t]he law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration." Since the cargo in this case was transported from Odessa, Ukraine, to Tabaco, Albay, the liability of petitioner for the alleged shortage must be determined in accordance with the provisions of the Civil Code on common carriers. In *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp.*, the Court declared:

> According to the New Civil Code, the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration. The Code takes precedence as the primary law over the rights and obligations of common carriers with the Code of Commerce and COGSA applying suppletorily.[52]

Besides, petitioner itself later conceded in its Reply that the Civil Code provisions on common carriers are primarily applicable to the present dispute, while COGSA only applies in a suppletory manner.[53]

Petitioner is liable for the shortage incurred by the shipment.

Having settled the foregoing preliminary issues, the only argument left for this Court to resolve is petitioner's assertion that it is exempt from liability for the loss or damage to the cargo. As grounds for this exemption, petitioner cites both the Civil Code and COGSA, particularly the provisions absolving a carrier from loss or damage sustained as the result of a "storm" or a "peril of the sea."

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goods by sea to and from Philippine ports in foreign trade: *Provided*, That nothing in the Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force, or as limiting its application.

[52] G.R. No. 182864, 12 January 2015, 745 SCRA 98.

[53] *Rollo,* pp. 81-82.

In its Petition, Transimex summarizes the testimony of one witness for respondent supposedly proving that the shortage in the shipment was caused by inclement weather encountered by the vessel at sea. Petitioner claims that this testimony proves that damage to the cargo was the result of the melting of the fertilizer after seawater entered Hatch No. 1 of the vessel as a result of the bad weather conditions at sea:

> The evidence for the respondent clearly proves that the loss/damage/shortage [suffered by] the cargo was caused by the bad weather encountered by the vessel during the voyage from Odessa, Ukraine to Poro Point, San Fernando, La Union, wherein due to bad weather[,] sea water found its way inside Hatch No. 1 resulting in the wetting, melting and discoloration of the prilled urea fertilizer. The fact that sea water found its way inside Hatch No. 1 was clearly testified to by the witness for the respondent. Jaime R. Davis testified that:
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> "He was present during the discharging operation, that **he saw the hatches opened whereupon he noticed the presence of water thereat; accordingly, he informed the master of the vessel of the presence of water at the hatches to which the master of the vessel replied that on the way they encountered bad weather**."[54] (Emphasis in the original)

Petitioner also cites a portion of the Adjustment Report submitted by respondent during trial as proof that damage to the cargo was caused by a storm:

> How the sea water found its way inside Hatch No. 1 was clearly explained by another witness for the respondent by the name of Fabian Bon who stated in his Adjustment as follows:
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> Our inquiries disclosed that the master of the vessel interviewed by the consignee's surveyor (David Cargo Survey Services) that during sailing from Odessa (Ukraine) bound to Poro Point, San Fernando, La Union, Philippines, **the vessel encountered bad weather on June 3, 1996 and was rolling from starboard to portside top of the 1, 2, 3, 4, 5, 6 & 7 hatch covers and sea water were washing over all main deck.**
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> **On the following day, June 4, 1996, wind reading up to 40 knots and very high swells were coming from south west**

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

> **direction. The vessel was rolling and pitching heavily. Heavy sea water were washing all main deck and were jumping from main deck to top of the seven (7) hatch covers. As a result, the master filed a Marine Note of Protest on June 19, 1996 at the Port of Poro Point, San Fernando, La Union, Philippines.**[55] (Emphases in the original)

The question before this Court therefore comes down to whether there is sufficient proof that the loss or damage incurred by the cargo was caused by a "storm" or a "peril of the sea."

We rule in the negative. As will be discussed, petitioner failed to prove the existence of a storm or a peril of the sea within the context of Article 1734(1) of the Civil Code or Section 4(2)(c) of COGSA. Furthermore, there was no sufficient proof that the damage to the shipment was solely and proximately caused by bad weather.

The presence of a "storm" or a "peril of the sea" was not established.

It must be emphasized that not all instances of bad weather may be categorized as "storms" or "perils of the sea" within the meaning of the provisions of the Civil Code and COGSA on common carriers. To be considered absolutory causes under either statute, bad weather conditions must reach a certain threshold of severity.

With respect to storms, this Court has explained the difference between a storm and ordinary weather conditions in *Central Shipping Co. Inc. v. Insurance Company of North America*:[56]

> Nonetheless, to our mind it would not be sufficient to categorize the weather condition at the time as a "storm" within the absolutory causes enumerated in the law. Significantly, no typhoon was observed within the Philippine area of responsibility during that period.
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> According to PAGASA, **a storm has a wind force of 48 to 55 knots, equivalent to 55 to 63 miles per hour or 10 to 11 in the**

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[55] *Id.* at 12.

[56] 481 Phil. 868 (2004).

Beaufort Scale. The second mate of the vessel stated that the wind was blowing around force 7 to 8 on the Beaufort Scale. **Consequently, the strong winds accompanying the southwestern monsoon could not be classified as a "storm." Such winds are the ordinary vicissitudes of a sea voyage.**[57] (Emphases supplied; citations omitted)

The phrase "perils of the sea" carries the same connotation. Although the term has not been definitively defined in Philippine jurisprudence, courts in the United States of America generally limit the application of the phrase to weather that is "so unusual, unexpected and catastrophic as to be beyond reasonable expectation."[58] Accordingly, strong winds and waves are not automatically deemed perils of the sea, if these conditions are not unusual for that particular sea area at that specific time, or if they could have been reasonably anticipated or foreseen.[59] While cases decided by U.S. courts are not binding precedents

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[57] *Id.* at 877-878.

[58] 13 A.L.R. Fed. 323 (originally published in 1972) citing, among others, *Georgia-Pacific Corp. v. The Motorship Marilyn L.,* 331 F Supp 776 (1971); *New Rotterdam Ins. Co. v The Loppersum,* 215 F Supp 563 (1963); *Freedman & Slater, Inc. v. M. V. Tofevo*, 222 F Supp 964 (1963); *R. T. Jones Lumber Co. v. Roen S.S. Co.*, 270 F2d 456 (1959); *R. T. Jones Lumber Co. v. Roen S.S. Co.,* 213 F2d 370 (1954); *Waterman S.S. Corp. v. United States Smelting, Ref. & Min. Co.,* 155 F2d 687 (1946).

[59] 13 A.L.R. Fed. 323 (originally published in 1972) citing, among others, *J. Gerber & Co. v. S.S. Sabine Howaldt,* 437 F2d 580 (1971); *Nichimen Co. v. MV Farland,* 333 F Supp 691 (1971); *New Rotterdam Ins. Co. v. The Loppersum,* 215 F Supp 563 (1963); *Freedman & Slater, Inc. v. M. V. Tofevo,* 222 F Supp 964 (1963); *R. T. Jones Lumber Co. v. Roen S.S. Co.,* 270 F2d 456 (1959*); Pakistan, Ministry of Food & Agriculture v. The Ionian Trader,* 173 F Supp 29 (1959); *Petition of Moore-McCormack Lines, Inc.,* 164 F Supp 198 (1958); *Palmer Distributing Corp. v. S.S. American Counselor,* 158 F Supp 264 (1957); *State S.S. Co. v. United States*, 259 F 2d 458 (1957); *Diethelm & Co. v. The Flying Trader,* 141 F Supp 271 (1956); *Establissements Edouard Materne v. The Leerdam,* 143 F Supp 367 (1956); *R. T. Jones Lumber Co. v. Roen S.S. Co.,* 213 F2d 370 (1954); *Continex, Inc. v. The Flying Independent,* 106 F Supp 319 (1952); *Artemis Maritime Co. v. Southwestern Sugar & Molasses Co.,* 189 F2d 488 (1951); *Middle East Agency, Inc. v. John B. Waterman,* 86 F Supp 487 (1949)*; The Norte,* 69 F Supp 881 (1947); *The Vizcaya,* 63 F Supp 898 (1945); *S.S. Corp. v. D/S A/S Hassel*, 137 F2d 326 (1943); *The Schickshinny,* 45 F Supp 813 (1942).

in this jurisdiction, the Court considers these pronouncements persuasive[60] in light of the fact that COGSA was originally an American statute[61] that was merely adopted by the Philippine Legislature in 1936.[62]

In this case, the documentary and testimonial evidence cited by petitioner indicate that *M/V Meryem Ana* faced winds of only up to 40 knots while at sea. This wind force clearly fell short of the 48 to 55 knots required for "storms" under Article 1734(1) of the Civil Code based on the threshold established by PAGASA.[63] Petitioner also failed to prove that the inclement weather encountered by the vessel was unusual, unexpected, or catastrophic. In particular, the strong winds and waves, which allegedly assaulted the ship, were not shown to be worse than what should have been expected in that particular location during that time of the year. Consequently, this Court cannot consider these weather conditions as "perils of the sea" that would absolve the carrier from liability.

As a side note, we observe that there are no definite statutory standards for determining the existence of a "storm" or "peril of the sea" that would exempt a common carrier from liability. Hence, in marine insurance cases, courts are constrained to rely upon their own understanding of these terms of art, or upon imprecise accounts of the speed of the winds encountered and the strength of the waves experienced by a vessel. To obviate

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[60] A similar approach has been taken by this Court with respect to Philippine law on: (a) corporations (See *Ponce v. Legaspi*, 284 Phil. 517 [1992]; *Philippine First Insurance Co., Inc. v. Hartigan*, 145 Phil. 310 [1970]); and (b) income taxes (See *Chamber of Real Estate and Builders' Association, Inc. v. Romulo*, 628 Phil. 508 [2010]; *Commissioner of Internal Revenue v. Baier-Nickel,* 531 Phil. 480 [2006]).

[61] 46 U.S.C.A. §§ 1300-1315.

[62] Public Act No. 521 or the "Carriage of Goods by Sea Act" was enacted by Seventy-fourth Congress of the United States on 16 April 1936. It was adopted by the National Assembly and made applicable to the Philippines through Commonwealth Act No. 65 enacted on 22 October 1936. (See Carriage of Goods by Sea Act , Commonwealth Act No. 65, Public Act No. 521, [1936]).

[63] *Supra* note 56.

uncertainty, it may be time for Congress to lay down specific rules to distinguish "storms" and other "perils of the sea" from the ordinary action of the wind and waves. While uniform measures of severity may prove difficult to establish, the legislature may consider providing more detailed standards to be used by the judiciary in resolving maritime cases. These may include wind velocity, violence of the seas, the height of the waves, or even the expected weather conditions in the area involved at the time of the incident.

Petitioner failed to prove the other requisites for exemption from liability under Article 1734 of the Civil Code.

Even assuming that the inclement weather encountered by the vessel amounted to a "storm" under Article 1734(1) of the Civil Code, there are two other reasons why this Court cannot absolve petitioner from liability for loss or damage to the cargo under the Civil Code. First, there is no proof that the bad weather encountered by *M/V Meryem Ana* was the proximate and only cause of damage to the shipment. Second, petitioner failed to establish that it had exercised the diligence required from common carriers to prevent loss or damage to the cargo.

We emphasize that common carriers are automatically presumed to have been at fault or to have acted negligently if the goods they were transporting were lost, destroyed or damaged while in transit.[64] This presumption can only be rebutted by proof that the carrier exercised extraordinary diligence and caution to ensure the protection of the shipment in the event of foul weather.[65] As this Court explained in *Fortune Sea Carrier, Inc. v. BPI/MS Insurance Corp.*:

While the records of this case clearly establish that M/V Sea Merchant was damaged as result of extreme weather conditions,

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[64] *Unsworth Transport International (Phils.), Inc. v. Court of Appeals*, 639 Phil. 371, 380 (2010).

[65] *Fortune Sea Carrier, Inc. v. BPI/MS Insurance Corp.,* G.R. No. 209118 (Notice), 24 November 2014.

petitioner cannot be absolved from liability. As pointed out by this Court in *Lea Mer Industries, Inc. v. Malayan Insurance, Inc.*, a common carrier is not liable for loss only when (1) the fortuitous event was the only and proximate cause of the loss and (2) it exercised due diligence to prevent or minimize the loss. The second element is absent here. As a common carrier, petitioner should have been more vigilant in monitoring weather disturbances within the country and their (possible) effect on its routes and destination. More specifically, it should have been more alert on the possible attenuating and dysfunctional effects of bad weather on the parts of the ship. It should have foreseen the likely prejudicial effects of the strong waves and winds on the ship brought about by inclement weather and should have taken the necessary precautionary measures through extraordinary diligence to prevent the weakening or dysfunction of the parts of the ship to avoid or prune down the loss to cargo.[66] (citations omitted)

In the instant case, there is absolutely no evidence that petitioner satisfied the two requisites. Before the trial court, petitioner limited itself to the defense of denial. The latter refused to admit that the shipment sustained any loss or damage and even alleged overage of the cargo delivered.[67] As a result, the evidence it submitted was severely limited, i.e., the testimony of a witness that supposedly confirmed the alleged excess in the quantity of the fertilizer delivered to the consignee in Albay.[68] No other evidence was presented to demonstrate either the proximate and exclusive cause of the loss or the extraordinary diligence of the carrier.

Under these circumstances, the Court cannot absolve petitioner from liability for the shortage incurred by the shipment.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Decision and Resolution dated 27 August 2009 and 10 November 2009, respectively, are hereby **AFFIRMED**.

SO ORDERED.

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

Bersamin, J., on official leave.

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[66] *Id*.

[67] *Rollo,* p. 22, 60.

[68] *Id*.

FIRST DIVISION

[G.R. No. 191170. September 14, 2016]

CAMERON GRANVILLE 3 ASSET MANAGEMENT, INC., *petitioner, vs.* **FIDEL O. CHUA and FILIDEN REALTY AND DEVELOPMENT CORP.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; PERMISSIVE JOINDER OF PARTIES; COURTS ARE GIVEN BROAD DISCRETION IN DETERMINING WHO MAY PROPERLY BE JOINED IN A PROCEEDING, AND UNLESS THE EXERCISE OF THAT DISCRETION IS SHOWN TO BE ARBITRARY, THE COURT IS NOT INCLINED TO REVIEW ACTS COMMITTED BY THE COURTS *A QUO*. — Section 6, Rule 3 of the Rules of Court, provides the rule on the joinder of parties: x x x. The rationale for allowing parties to join in a proceeding that delves on a common question of law or fact concerning them is trial convenience; i.e., to save the parties unnecessary work, trouble and expense. In order to meet the requirements of justice and convenience, the rule on the joinder of parties is construed with considerable flexibility. Hence, courts are given broad discretion in determining who may properly be joined in a proceeding. x x x. Notably, unless the exercise of that discretion is shown to be arbitrary, this Court is not inclined to review acts committed by the courts *a quo*.

2. ID.; ID.; ID.; ID.; ID.; IN CASE OF A TRANSFER OF INTEREST, THE TRIAL COURT HAS DISCRETION TO DETERMINE WHETHER OR NOT THE TRANSFEREE SHOULD BE SUBSTITUTED IN THE ACTION OR SHOULD BE JOINED WITH THE ORIGINAL PARTY. — The rules also provide that in case of a transfer of interest, the court, upon motion, may direct the person to whom the interest is transferred to be substituted in the action or joined with the original party. Indeed, a transferee *pendente lite* is a proper party that stands exactly in the shoes of the transferor, the original party. Transferees are bound by the proceedings and judgment in the case, such that there is no need for them to be included

or impleaded by name. We have even gone further and said that the transferee is joined or substituted in the pending action by operation of law from the exact moment when the transfer of interest is perfected between the original party and the transferee. Nevertheless, "[w]hether or not the transferee should be substituted for, or should be joined with, the original party is largely a matter of discretion." That discretion is exercised in pursuance of the paramount consideration that must be afforded for the protection of the parties' interests and right to due process.

3. ID.; ID.; ID.; ID.; REQUISITES; DISCLOSURE OF THE CONSIDERATION FOR THE TRANSFER OF INTEREST IS NOT A REQUIREMENT FOR A PARTY TO BE JOINED IN A PROCEEDING.— We observe that the CA effectively ruled that the disclosure of the consideration for the transfer of rights was a condition precedent for the joinder of petitioner in the proceedings. In order not to preempt judgment or make a pronouncement as to any matter other than the pertinent issue before it, this Court will simply remind the CA and the parties that a disclosure of the consideration for the transfer of interest is not among the following requirements for a party to be joined in a proceeding: (1) the right to relief arises out of the same transaction or series of transactions; (2) there is a question of law or fact common to all the parties; and (3) the joinder is not otherwise prohibited by the rules on jurisdiction and venue.

APPEARANCES OF COUNSEL

Mendoza Navarro-Mendoza & Partners for petitioner.
Flores Talens & Romanillos for respondents.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to nullify the Court of Appeals (CA) Decision[1]

[1] *Rollo*, pp. 69-83. The Decision dated 26 August 2009 issued by the Court of Appeals Special Third Division was penned by Associate Justice Ricardo R. Rosario, with Associate Justices Martin S. Villarama (a retired Member of this Court) and Pampio A. Abarintos concurring.

and Resolution[2] in CA-G.R. SP No. 103809. The CA Decision annulled the Orders[3] of the Regional Trial Court of Parañaque City, Branch 258 (RTC Branch 258), which joined petitioner as party-defendant in Civil Case No. 01-0207. The CA Resolution denied petitioner's motion for reconsideration.

FACTS

In 1988, respondents obtained an initial loan of ₱4 million from the Metropolitan Bank and Trust Co. (Metrobank). The loan was secured by a real estate mortgage constituted over three parcels of land located in Parañaque City (subject property).[4] The real estate mortgage was amended several times to accommodate additional loans they incurred over the years.[5] On 13 January 2000, respondents and Metrobank restructured the obligation through a Debt Settlement Agreement over the outstanding obligation of ₱88,101,093.98.[6]

For failure of respondents to pay, Metrobank sought the extrajudicial foreclosure of the real estate mortgage over the subject property. On 4 May 2001, it sent them a Notice of Sale[7] setting the public auction on 31 May 2001. Seeking to stop the intended public auction, respondents filed a Complaint[8] docketed as Civil Case No. 01-0207 for injunction with prayer for the issuance of a temporary restraining order (TRO), preliminary injunction and damages.

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[2] *Id*. at 66-67. The Resolution dated 11 February 2010 issued by the Court of Appeals Special Former Special Third Division was penned by Associate Justice Ricardo R. Rosario, with Associate Justices Pampio A. Abarintos and Mariflor Punzalan-Castillo (in lieu of *J.* Villarama, Jr. per Raffle dated 24 November 2009) concurring.

[3] *Id*. at 85-87. The Orders dated 28 December 2007 and 9 April 2008 issued by the Regional Trial Court of Parañaque City, Branch 258, in Civil Case No. 01-0207 were penned by Judge Raul E. de Leon.

[4] *Id*. at 89.

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

[6] *Id*. at 111-114.

[7] *Id*. at 116-117.

[8] *Id*. at 88-98.

The Regional Trial Court of Parañaque City, Branch 257 (RTC Branch 257), issued a TRO.[9] However, upon the expiration of the TRO, Metrobank scheduled another public auction on 8 November 2001. On the morning of that day, RTC Branch 257 issued an Order directing Metrobank to reschedule the intended sale to a date after the resolution of the application for preliminary injunction.[10] However, the latter allegedly received the Order only on 12 November 2001 and pushed through with the scheduled public auction on 8 November 2001. A Certificate of Sale[11] was thereafter issued in its favor on 9 November 2001.

In an Order dated 6 March 2002,[12] the application for preliminary injunction filed by respondents was denied by RTC Branch 257 for mootness in view of the consummated public auction sale. When their motion for reconsideration was denied,[13] respondents filed a petition for certiorari before the CA. The appellate court reversed and set aside the Order dated 6 March 2002 issued by RTC Branch 257 and remanded Civil Case No. 01-0207 for further proceedings.[14]

Upon motion of respondents, the presiding judge of RTC Branch 257 inhibited from further hearing the case.[15] The case was later re-raffled to RTC Branch 258.[16]

Meanwhile, respondents filed a Motion to Admit Amended Complaint[17] with attached Amended Verified Complaint[18] for

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[9] *Id*. at 127, 131.

[10] *Id*. at 185.

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

[12] *Id*. at 292-295.

[13] *Id*. at 319.

[14] *Id*. at 386-397; Decision dated 26 July 2002 in CA-G.R. SP No. 70208. On 9 April 2003, this Court found no reversible error in the CA ruling, and entry of judgment was made on 28 July 2003.

[15] *Id*. at 443.

[16] *Id*. at 445.

[17] *Id*. at 244-245.

[18] *Id*. at 246-260.

annulment of foreclosure of mortgage, declaration of nullity of certificate of sale, and injunction.

On 17 October 2007, petitioner filed a Motion for Joinder of Party and/or Substitution.[19] It alleged that by virtue of a Deed of Absolute Sale dated 17 September 2003,[20] Metrobank sold to Asia Recovery Corporation (ARC) its credit against respondents including all rights, interests, claims and causes of action arising out of the loan and mortgage agreements between Metrobank and respondents. ARC, in turn, specifically assigned the credit to petitioner through a Deed of Assignment dated 31 March 2006.[21] Petitioner prayed that it be substituted in lieu of Metrobank in the proceedings before RTC Branch 258.

Aside from its *conforme* to the motion filed by petitioner, Metrobank also filed a Comment[22] stating that the bank had no objection to its substitution by petitioner. Metrobank explained that the account of respondents had been declared a nonperforming loan pursuant to Republic Act No. 9182 (Special Purpose Vehicle Act of 2002 or SPV Act) and, as such, had been included among the other accounts sold to ARC by virtue of the Deed of Absolute Sale.[23]

The motion of petitioner was, however, vigorously opposed by respondents.[24] They alleged that they were entitled to a full disclosure of the details of the sale, as well as of the transfer and assignment of their debt pursuant to their right of redemption under the SPV Act and Article 1634[25] of the Civil Code.

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[19] *Id*. at 465-469.

[20] *Id*. at 470-474.

[21] *Id*. at 475-476.

[22] *Id*. at 478-479.

[23] *Id*. at 507-509.

[24] *Id*. at 480-484.

[25] CIVIL CODE, Article 1634:

Article 1634. When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee

RULING OF THE RTC

In an Order dated 28 December 2007,[26] RTC Branch 258 granted the motion and ordered petitioner to be joined as party-defendant, but without dropping Metrobank as defendant.

In the Order dated 9 April 2008,[27] RTC Branch 258 denied respondents' motion for reconsideration. It ruled that petitioner was a necessary party to the final determination of the case.

Aggrieved, petitioners filed a special civil action for certiorari under Rule 65 of the Rules of Court before the CA.

RULING OF THE CA

In the assailed Decision dated 26 August 2009,[28] the CA granted the petition and annulled the Orders of RTC Branch 258.

The CA ruled that if it was true that Metrobank had divested itself of any interest in respondents' debt, then the trial court should have forthwith ordered the bank's exclusion from the proceedings.[29] According to the CA, the trial court provided for a provisional joinder/substitution of parties – a practice that cannot be countenanced due to the basic rule that every action must be prosecuted or defended in the name of the real party in interest.[30]

The appellate court also doubted whether substitution was proper, because the Deed of Absolute Sale between Metrobank

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for the price the latter paid therefor, the judicial costs incurred by him, and the interest on the price from the day on which the same was paid.

A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered.

The debtor may exercise his right within thirty days from the date the assignee demands payment from him.

[26] *Rollo*, p. 85.

[27] *Id*. at 86-87.

[28] *Supra* note 1.

[29] *Id*. at 75.

[30] *Id*. at 76.

and ARC did not specify whether respondents' debt was included in the portfolio of nonperforming loans sold.[31]

At bottom, the CA ruled that petitioner could not substitute for Metrobank in the proceedings before the trial court without first disclosing the consideration paid by petitioner for the transfer of interest.[32]

Petitioner filed a motion for reconsideration, which the CA denied in the challenged Resolution dated 11 February 2010.[33]

ISSUE

The issue to be resolved in this case is simple: whether petitioner may be joined as party-defendant in Civil Case No. 01-0207.

OUR RULING

We grant the petition.

As stated at the outset, the instant petition seeks a Rule 45 review of a Rule 65 decision of the CA. We stated in *Montoya v. Transmed Manila Corp.*[34] that our task in these cases is not to determine the correctness of the ruling of the trial court, but to examine whether the CA correctly determined the existence of grave abuse of discretion in the Orders of RTC Branch 258 allowing the joinder of petitioner in Civil Case No. 01-0207.

Section 6, Rule 3 of the Rules of Court, provides the rule on the joinder of parties:

> Section 6. *Permissive joinder of parties.* — All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants

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[31] *Id.* at 76-78.

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

[33] *Supra* note 2.

[34] 613 Phil. 696 (2009).

in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest.

The rationale for allowing parties to join in a proceeding that delves on a common question of law or fact concerning them is trial convenience; i.e., to save the parties unnecessary work, trouble and expense.[35] In order to meet the requirements of justice and convenience, the rule on the joinder of parties is construed with considerable flexibility.[36] Hence, courts are given broad discretion in determining who may properly be joined in a proceeding.[37]

The rules also provide that in case of a transfer of interest, the court, upon motion, may direct the person to whom the interest is transferred to be substituted in the action or joined with the original party.[38]

Indeed, a transferee *pendente lite* is a proper party that stands exactly in the shoes of the transferor, the original party.[39] Transferees are bound by the proceedings and judgment in the case, such that there is no need for them to be included or impleaded by name.[40] We have even gone further and said that the transferee is joined or substituted in the pending action by operation of law from the exact moment when the transfer of interest is perfected between the original party and the transferee.[41]

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[35] *Prudential Bank v. Intermediate Appellate Court*, G.R. No. 74886, 8 December 1992, 216 SCRA 257.

[36] *Balbastro v. CA*, 150-C Phil. 462 (1972).

[37] *Id.*

[38] Rules of Court, Rule 3, Section 19.

[39] *Fetalino v. Sanz*, 44 Phil. 691 (1923).

[40] *Id*.

[41] *Natalia Realty, Inc. v. CA*, 440 Phil. 1 (2002).

Nevertheless, "[w]hether or not the transferee should be substituted for, or should be joined with, the original party is largely a matter of discretion."[42] That discretion is exercised in pursuance of the paramount consideration that must be afforded for the protection of the parties' interests and right to due process.[43]

Notably, unless the exercise of that discretion is shown to be arbitrary, this Court is not inclined to review acts committed by the courts *a quo*.[44]

In this case, part of the reason why the CA ascribed grave abuse of discretion to the trial court was the latter's statement in the Order dated 28 December 2007 as follows:

> Thus, the Court hereby grants that [petitioner] be joined as party defendant in this case without dropping Metrobank at this stage conditioned, however, that if in the course of the trial, the Court finds that based on the testimonial and documentary evidence to be presented by Metrobank that it can be dropped, the same shall be effected pursuant to Section 11, Rule 3 of the 1997 Rules of Civil Procedure.[45]

According to the CA, this statement allowed for a "provisional" joinder/substitution of parties. It is difficult to fathom how the above statement of the trial court could have constituted grave abuse of discretion when the ruling was in accordance with Section 11, Rule 3 of the Rules of Court. The rule provides that parties may be dropped or added by order of the court on motion of any party or on the court's own initiative at any stage of the action and on such terms as are just. For the CA to say that, as between Metrobank and petitioner, "only one of them is clothed with the personality to actively participate in the proceedings below"[46] is to show a regrettable lack of

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[42] *Galace v. Bagtas*, 120 Phil. 657, 663 (1964).

[43] *Heirs of Medrano v. De Vera*, 641 Phil. 228 (2010).

[44] *Galace v. Bagtas*, *supra*.

[45] *Rollo*, p. 85.

[46] *Id*. at 76.

understanding of the rules and an unwarranted restriction of the trial court's discretion.

Contrary to the finding of the CA, there is enough evidence in the records to support the fact of the transfer of interest between Metrobank and petitioner. The CA highlights only that it was not clear whether respondents' debt was included in the portfolio of nonperforming loans sold to ARC. The appellate court then turned a blind eye to the representations of Metrobank before the trial court confirming the fact of the transfer of interest to ARC and then later to petitioner. The admission by Metrobank sufficiently supplied whatever was omitted by the non-presentation of the entire portfolio of nonperforming loans. The non-presentation may be understandable in view of the sensitive nature of the portfolio and its contents. At any rate, the Deed of Assignment clearly spelled out that all of the rights, title, and interest over respondents' loan, which had an outstanding principal balance of ₱88,101,093.98, had been transferred by ARC to petitioner.

We observe that the CA effectively ruled that the disclosure of the consideration for the transfer of rights was a condition precedent for the joinder of petitioner in the proceedings.

In order not to preempt judgment or make a pronouncement as to any matter other than the pertinent issue before it, this Court will simply remind the CA and the parties that a disclosure of the consideration for the transfer of interest is not among the following requirements for a party to be joined in a proceeding: (1) the right to relief arises out of the same transaction or series of transactions; (2) there is a question of law or fact common to all the parties; and (3) the joinder is not otherwise prohibited by the rules on jurisdiction and venue.[47]

In fine, we find that the CA erred in ruling that RTC Branch 258 committed grave abuse of discretion when the latter allowed the joinder of petitioner as party-defendant in Civil Case No. 01-0207.

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[47] *Pantranco North Express, Inc. v. Standard Insurance Co., Inc.*, 493 Phil. 616 (2005).

Under the rules, the trial court is given wide discretion and enough leeway to determine who may be joined in a proceeding, or whether a party may properly be substituted by another due to a transfer of interest. Within the premises, the trial court's grant of the joinder cannot be seriously assailed.

WHEREFORE, the petition is **GRANTED**. The Court of Appeals Decision dated 26 August 2009 and Resolution dated 11 February 2010 in CA-G.R. SP No. 103809 are **REVERSED** and **SET ASIDE**.

The Orders dated 28 December 2007 and 9 April 2008 issued by the Regional Trial Court of Parañaque City, Branch 258, are **REINSTATED**.

SO ORDERED.

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

Bersamin, J., on official leave.

SECOND DIVISION

[G.R. No. 191537. September 14, 2016]

PAULINO M. ALECHA, FELIX B. UNABIA, RICARDO A. TOLINO and MARIO A. CATANES, *petitioners, vs.* **JOSE L. ATIENZA JR., THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), MICHAEL L. ROMERO and BOARD OF DIRECTORS OF 168 FERRUM PACIFIC MINING CORPORATION,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; NOT COMMITTED; THE FILING OF A PETITION FOR

THE ISSUANCE OF A *WRIT OF KALIKASAN* SHALL NOT PRECLUDE THE FILING OF SEPARATE CIVIL, CRIMINAL, OR ADMINISTRATIVE ACTIONS.— We do not find meritorious the OSG's position that the petitioners committed forum shopping. ***First***, the petitions involved different causes of action. In particular, a petition for the issuance of a *writ kalikasan* is initiated on behalf of persons **whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation**, and involves environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces. On the other hand, the present petition for *certiorari* involves the issues in wanton disregard of due process and in the incidental violation of IP rights. ***Second***, Rule 7, Section 17 of the Rules of Procedure for Environmental Cases expressly provides that the filing of a petition for the issuance of the *writ of kalikasan* shall not preclude the filing of separate **civil**, criminal, or administrative actions.

2. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; WILL NOT PROSPER EVEN IF THE ALLEGED GROUND IS GRAVE ABUSE OF DISCRETION WHERE THE PARTY FAILS TO EXHAUST ALL THE AVAILABLE ADMINISTRATIVE REMEDIES.— It is a settled rule that the special civil action of *certiorari* under Rule 65 of the Rules of Court is available to an aggrieved party only when there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. Otherwise, the petition will not prosper even if the alleged ground is grave abuse of discretion. In the present case, it would appear that the petitioners failed to exhaust all the remedies available to it before resorting to the present *certiorari* petition. First, the petitioners did not file a motion for reconsideration on the resolution of the DENR Secretary dismissing the petition for cancellation of the mining agreement. The Administrative Code of 1987 that embodies the general administrative procedures provides that one (1) motion for reconsideration may be filed from the decision of the administrative agency concerned, i.e. the DENR. Second, the petitioners did not appeal the DENR resolution to the Office of the President within the 30-day reglementary period, pursuant to Section 1 of Administrative Order No. 18, series of 1987. x x x. The petitioners' failure to exhaust all the available

administrative remedies prevents them from filing the present petition for *certiorari*.

3. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; IF A REMEDY WITHIN THE ADMINISTRATIVE MACHINERY CAN STILL BE RESORTED TO BY GIVING THE ADMINISTRATIVE OFFICER CONCERNED EVERY OPPORTUNITY TO DECIDE ON A MATTER THAT COMES WITHIN HIS JURISDICTION THEN SUCH REMEDY SHOULD BE EXHAUSTED FIRST BEFORE THE COURT'S JUDICIAL POWER CAN BE SOUGHT. OTHERWISE, THE COMPLAINT SHALL BE DISMISSED FOR LACK OF CAUSE OF ACTION.— We have consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before the court's judicial power can be sought. The non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.

4. ID.; ID.; ID.; ID.; EXCEPTIONS; NOT PRESENT.— The principle of exhaustion of administrative remedies, however, is not an iron-clad rule and is disregarded when any of the following exceptions are present: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an *alter ego* of the

President bear the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; and (11) when there are circumstances indicating the urgency of judicial intervention. The petitioners failed to show that the present case falls under any of the above-enumerated exceptions.

5. ID.; ID.; ID.; ID.; ADMINISTRATIVE DECISIONS ON MATTERS WITHIN THE JURISDICTION OF ADMINISTRATIVE BODIES ARE TO BE RESPECTED AND CAN ONLY BE SET ASIDE ON PROOF OF GRAVE ABUSE OF DISCRETION, FRAUD, OR ERROR OF LAW.— "Grave abuse of discretion" defies exact definition; generally, it refers to the "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction;" the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. Closely related with the limited focus of the present petition is the doctrine that administrative decisions on matters within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law. Unless it is shown that the then DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration and similar reasons, this Court cannot look into or review the wisdom of the exercise of such discretion. We find that the DENR Secretary did not gravely abuse his discretion in taking judicial notice of the documents submitted for 168 FPMC's application for the mining agreement that showed compliance with the FPIC process and all the legal requirements for the approval of the mining agreement.

6. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) WITHOUT SHOWING OF ANY GRAVE ABUSE OF DISCRETION, OR THAT THE FACTUAL FINDINGS WERE ARRIVED AT

ARBITRARILY OR IN DISREGARD OF THE EVIDENCE ON RECORD, ARE ACCORDED GREAT RESPECT AND EVEN FINALITY BY THE APPELLATE COURTS BECAUSE IT POSSESSES THE SPECIALIZED KNOWLEDGE AND EXPERTISE IN ITS FIELD.— Factual considerations relating to mining applications properly rest within the administrative competence of the DENR. Its factual findings are accorded great respect and even finality by the appellate courts because it possesses the specialized knowledge and expertise in its field. As such, the DENR's factual findings are binding upon this Court without showing of any grave abuse of discretion, or that the factual findings were arrived at arbitrarily or in disregard of the evidence on record. While the DENR Secretary should have notified that petitioners of the documents that it had considered to allow the rebuttal of the documents, **we find that his failure to notify does not amount to grave abuse of discretion** since the circumstances of the present case afforded the petitioner sufficient notice and the opportunity to contest the documents even before the filing of the petition for cancellation.

7. ID.; ID.; ADMINISTRATIVE AGENCIES ARE GIVEN WIDE LATITUDE IN THE EVALUATION OF EVIDENCE AND THE EXERCISE OF THEIR ADJUDICATIVE FUNCTIONS, WHICH INCLUDES THE AUTHORITY TO TAKE JUDICIAL NOTICE OF FACTS WITHIN THEIR SPECIAL COMPETENCE.— [I]t is well-settled that the rules of evidence are not strictly applied in proceedings before administrative bodies. Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency. Administrative agencies are given wide latitude in the evaluation of evidence and in the exercise of their adjudicative functions, latitude which includes the authority to take judicial notice of facts within their special competence. The petitioners lost their chance to question the documents considered when they failed to file a motion for reconsideration or an appeal of the DENR resolution through their own fault.

8. ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES PARTICULARLY

WITH RESPECT TO THE APPROVAL OF THE MINING AGREEMENT, IS STRONG WITH RESPECT TO ADMINISTRATIVE AGENCIES LIKE THE DENR WHICH ARE VESTED WITH QUASI-JUDICIAL POWERS IN ENFORCING THE LAWS AFFECTING THEIR RESPECTIVE FIELDS OF ACTIVITY.— [T]here is the legal presumption that the DENR officials regularly performed their official duties, particularly with respect to the approval of the mining agreement in the present case. The presumption of regularity in the performance of official duties is strong with respect to administrative agencies like the DENR which are vested with quasi-judicial powers in enforcing the laws affecting their respective fields of activity, the proper regulation of which requires of them such technical mastery of all relevant conditions obtaining in the nation. Unless the presumption is rebutted by clear and convincing evidence to the contrary, it becomes conclusive.

APPEARANCES OF COUNSEL

Alexander A. Acain for petitioners.
Nolasco and Associates Law Offices for private respondents.
Vincent G. Escalona for private respondent.
Office of the Solicitor General for public respondent.

D E C I S I O N

BRION, *J.*:

Before us is the petition for *certiorari* filed by Paulino M. Alecha, Felix B. Unabia, Ricardo A. Tolino, and Mario A. Catanes (*petitioners*) under Rule 65 of the Rules of Court, assailing the Department of Environment and Natural Resources (*DENR*) resolution[1] dated December 16, 2009, in DENR Case No. 8714.

The DENR resolution dismissed the petitioners' petition for cancellation of Mining Production and Sharing Agreement No.

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[1] *Rollo,* pp. 121-129.

267-2008-IX previously granted in 168 Ferrum Pacific Mining Corporation's (*168 FPMC*) favor.

The Factual Antecedents

On December 22, 2003, Cebu Ore and Mineral Resources Corporation (*Cebu Ore*) filed an application for the approval of the Mineral Production Sharing Agreement (*subject mining agreement*), denominated as ASPA-101-IX, covering an area of about 8,100 hectares located in the municipalities of Midsalip and Bayog, Zamboanga del Sur.[2] Cebu Ore later on assigned to 168 FPMC its rights over the mining agreement.[3] On August 21, 2008, public respondent Jose L. Atienza, Jr., then DENR Secretary, granted the mining agreement to 168 FPMC.[4]

Eight (8) months after, the petitioners filed a petition[5] for cancellation of the subject mining agreement with the DENR. In their petition,[6] they alleged that 168 FPMC failed to secure the Free and Prior Informed Consent (*FPIC*) of the Indigenous Peoples (*IP*) concerned for the approval of the mining agreement. They also alleged that the contract area under the mining agreement was located in the volcanic cones of Mt. Sugarloaf Complex, a known key biodiversity area and forest reserve, thus rendering it exempt from any mining application. Lastly, they submitted that the proposed operation would destroy the lives of the Zamboanga Peninsula residents.

In its comment,[7] 168 FPMC vehemently denied the allegations and insisted that it had observed the FPIC process. It submitted the National Commission on Indigenous Peoples (*NCIP*) Compliance Certificate Control No. CCRIX-08-09-161 (*Certification Precondition*) as proof of its compliance with the FPIC process. The certificate provided:

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[2] *Id*. at 124-125.

[3] *Id*. at 125.

[4] *Id*. at 127.

[5] Docketed as *DENR case No. 8714. Id.* at 123-129.

[6] *Id*. at 17-32.

[7] *Id*. at 108-111.

THIS IS TO CERTIFY, that **168 [FPMC],** a private corporation created and existing by virtue of the laws of the Republic of the Philippines, with office address at R2 Building 136 Malakas T., Diliman, Quezon City, Philippines, has, in connection with its Mineral Production Sharing Agreement (MPSA) Application denominated as APSA 101-IX, located at Barangay Datagan, Bantal, Canoayan, Liba, and Mitin-ao, Bayog, Zamboanga Del Sur, **satisfactorily complied with the procedures and process requirements for the issuance of Certificate Precondition and the Free and Prior Informed Consent**, as prescribed under NCIP Administrative Order No. 01, Series of 2006.

THIS IS TO CERTIFY FURTHER, that under NCIP En Banc Resolution No. 303 Series of 2008, dated September 30, 2008, the Commission approved the issuance of a Certification as precondition to the aforementioned project of the proponent, subject to the following terms and conditions embodied in the Memorandum of Agreement entered into and executed by and between the IPs/ICCs of Barangay Dataga, Bantal, Canoayan, Liba, and Matin-ao, Bayog, Zamboanga Del Sur, the 168 FERRUM PACIFIC MINING CORPORATION and the NCIP, hereto attached as Annex "A" and made an integral part hereof. (emphases supplied)

The 168 FPMC also claimed that the nearest volcanic cones of Mt. Sugarloaf Complex cones are located 9 kilometers away from the contract area.[8] As proof, it submitted an illustration[9] of the contract area *vis-a-vis* the location of the Mt. Sugarloaf Volcanic cones.

On December 16, 2009, the DENR Secretary dismissed the petition for cancellation of the mining agreement.[10] In dismissing the petition, the **DENR Secretary considered the records that the DENR had previously received for 168 FPMC's application for the mining agreement**.[11] Among the documents submitted for the mining agreement application are the following:

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[8] *Id*. at 109.

[9] *Id*. at 114.

[10] *Id*. at 121-129.

[11] *Id*. at 127.

1. Approved Area Status and Clearance dated May 18, 2004, and issued by the One-Stop-Shop Committee, DENR Region IX;

2. Posting, publication, and radio announcement of the Notice of Application for MPSA (Notice):

    a. Posting for two (2) consecutive weeks-

        i. Certification dated July 10, 2007, by MGB R.O. No. IX attesting that the Notice was posted for two consecutive weeks (May 28 to June 28, 2007)

        ii. Certification dated July 19, 2004, by the DENR PENRO in Pagadian City attesting that the Notice was posted for two (2) consecutive weeks.

        iii. Copy of the Registry Return Receipt dated June 6, 2007, showing the Notice was received by the Office of the Governor, Province of Zamboanga del Sur.

        iv. Certification dated July 5, 2007, by the Mayor, Municipality of Bayog, attesting that the Notice was posted for two (2) consecutive weeks.

        v. Affidavit dated June 12, 2008, by the former Mayor of the Municipality of Midsalip, attesting that the Notice was posted for two (2) consecutive weeks from June 11 to 30, 2004.

    b. Publication in newspapers, one of general circulation and the other of local circulation (once a week for two [2] consecutive weeks)

        i. Affidavit dated June 22, 2007, by the Mindanao BiozNEWS attesting that the Notice was published in its issues of June 7, 14, and 21, 2007.

        ii. Affidavit dated June 22, 2007, by the Publisher of *Taliba* attesting that the Notice as published in its issues of June 14 and 21, 2007.

    c. Radio announcement in a local radio program (daily for two [2] consecutive weeks) in the form of an undated Certificate of Performance issued by the Manila Broadcasting Company "Radyo Natin Fm 91.9 Mhz" attesting that the Notice was aired for the period of June 14 to 18, 2007.

d. Certification dated September 28, 2007, by the Panel of Arbitrators concerned attesting that "no adverse claim protest or opposition has affected the mining rights application x x x."

e. National Commission on Indigenous People (NCIP) Certification Precondition or Memorandum of Agreement by and among the applicant, Indigenous Cultural Communities (ICCs)/ Indigenous Peoples (IPs) concerned and the NCIP, or Report on the Field Based Investigation (FBI). x x x[12]

The DENR Secretary concluded that 168 FPMC followed the legal process for the approval of the assailed mining agreement and secured the free and prior consent of the IPs concerned based on the available records.[13]

The DENR Secretary also held that the Certification Precondition was the best evidence that 168 FPMC complied with the FPIC process.[14] He stressed that before any application was approved, time and effort were exerted to ensure that the contract area did not fall within any reservation or protected area where mining activities are disallowed.[15] Undeterred, the petitioners sought the intervention of the Court through the present petition.

The Petition and Comment

The present petition is based on the following grounds:

1. That the DENR Secretary gravely abused his discretion in deciding the petition based on the evidence which were not presented at the hearing, or contained in the record and disclosed to the parties affected;

2. That the DENR Secretary gravely abused his discretion in approving the mining agreement despite the failure to observe the FPIC process;

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[12] *Id*. at 125-127.

[13] *Id*. at. 127.

[14] *Id*. at 128.

[15] *Id*. at 128.

3. That the DENR Secretary gravely abused his discretion in approving the mining agreement covering an area previously declared as a forest reserve;

4. That the DENR Secretary gravely abused his discretion in approving the mining agreement since Mt. Sugarloaf Complex has been previously declared as a Key Biodiversity Area;

5. That the DENR Secretary gravely abused his discretion in approving the mining agreement because mining operations would activate the dormant volcanoes; and

6. That the proposed open pit mine would surely destroy the livelihood of several hundred thousand residents of the entire Zamboanga peninsula.

In its *comment*,[16] 168 FPMC raises procedural arguments to support the dismissal of the present petition. 168 FPMC points out that the present petition is not the plain, speedy, and adequate remedy in the ordinary course of law and the petitioner should have moved for reconsideration of the assailed decision or filed an appeal with the Office of the President.

168 FPMC also stresses that it had secured the FPIC of the IPs concerned. As added proof, it attached the Memorandum of Agreement (*MOA*) it executed with the concerned IPs.[17] Lastly, it insists that by filing the present petition, 168 FPMC effectively violated the doctrine of hierarchy of courts.

The Office of the Solicitor General (*OSG*) filed a *comment*[18] on behalf of the DENR Secretary. Like 168 FPMC, the OSG argues that the present petition should be dismissed for the petitioners' failure to exhaust the administrative remedies. It also argues that the DENR Secretary did not gravely abuse his discretion in dismissing the petition to cancel 168 FPMC's mining agreement since it had complied with all the requirements of the law.

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[16] *Id.* at 159-211.

[17] *Id.* at 195-211.

[18] *Id.* at 248-266.

Subsequently, the OSG filed a *manifestation*[19] stating that the petitioners engaged in forum shopping since they also filed with this Court a petition for the issuance of a *writ of kalikasan,* docketed as *G.R. No. 197754*. The *writ of kalikasan* petition and the present petition pray for the same relief – the cancellation and revocation of the mineral agreement to prevent irreparable damage and injury to the petitioners and the residents of Midsalip, Zamboanga Del Sur, and the entire Zamboanga Peninsula.[20]

THE ISSUE

The core issue in the present petition is whether the DENR Secretary gravely abused his discretion when he dismissed the petition for cancellation of the 168 FPMC mining agreement.

THE COURT'S RULING

We dismiss the petition.

Before discussing the substantive issues of the petition, we first resolve the issue on forum shopping.

The petitioners did not commit forum shopping.

We do not find meritorious the OSG's position that the petitioners committed forum shopping.

First, the petitions involved different causes of action. In particular, a petition for the issuance of a *writ of kalikasan* is initiated on behalf of persons **whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation**, and involves environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.[21] On the other hand, the present petition for *certiorari* involves the issues in wanton disregard of due process and in the incidental violation of IP rights.

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[19] *Id.* at 306-312.

[20] *Id.* at 308.

[21] Rule 7, Section 1, Rules of Procedure for Environmental Cases.

Second, Rule 7, Section 17 of the Rules of Procedure for Environmental Cases expressly provides that the filing of a petition for the issuance of the *writ of kalikasan* shall not preclude the filing of separate **civil**, criminal, or administrative actions.

We now proceed to the substantive issues of the petition.

The petitioner had available administrative remedies to question the DENR decision.

It is a settled rule that the special civil action of *certiorari* under Rule 65 of the Rules of Court is available to an aggrieved party only when there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.[22] Otherwise, the petition will not prosper even if the alleged ground is grave abuse of discretion.[23]

In the present case, it would appear that the petitioners failed to exhaust all the remedies available to it before resorting to the present *certiorari* petition.

First, the petitioners did not file a motion for reconsideration on the resolution of the DENR Secretary dismissing the petition for cancellation of the mining agreement. The Administrative Code of 1987[24] that embodies the general administrative procedures provides that one (1) motion for reconsideration may be filed from the decision of the administrative agency concerned,[25] *i.e.,* the DENR.

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[22] *Bethel Realty and Development Corporation v. HLURB*, G.R. No. 184482, July 4, 2012, sc.judiciary.gov.ph.

[23] *Id.*

[24] Executive Order No. 292, The Administrative Code of 1987, July 25, 1987.

[25] The Administrative Code of 1987, Book VII, Chapter 3 (*Adjudication*), Section 15 provides:

> **SECTION 15.** Finality of Order.— The decision of the agency shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected. One motion for reconsideration may be filed, which shall suspend the running of the said period.

***Second*,** the petitioners did not appeal the DENR resolution to the Office of the President within the 30-day reglementary period, pursuant to Section 1[26] of Administrative Order No. 18,[27] series of 1987.

We have consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system.[28] The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.[29] The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[30]

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[26] SECTION 1. Unless otherwise governed by special laws, an appeal to the Office of the President shall be taken within thirty (30) days from receipt by the aggrieved party of the decision/resolution/order complained of or appealed from. Said appeal shall be filed with the Office of the President, or with the Ministry/agency concerned, with copies furnished to the affected parties and, if the appeal is filed with the Office of the President, to the Ministry/agency concerned. If the appeal is directly filed with the Ministry/agency concerned, such Ministry/agency shall, within five (5) days from receipt thereof, transmit the appeal to the Office of the President, together with the records of the case.

The time during which a motion for reconsideration has been pending with the Ministry/agency concerned shall be deducted from the period for appeal. But where such a motion for reconsideration has been filed during office hours of the last day of the period herein provided, the appeal must be made within the day following receipt of the denial of said motion by the appealing party.

[27] **PRESCRIBING RULES AND REGULATIONS GOVERNING APPEALS TO THE OFFICE OF THE PRESIDENT OF THE PHILIPPINES,** February 12, 1987.

[28] *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc*., G.R. No. 175039, April 18, 2012, 670 SCRA 83.

[29] *Id.* at 84.

[30] *Id.*

If a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before the court's judicial power can be sought.[31] The non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[32]

The principle of exhaustion of administrative remedies, however, is not an iron-clad rule and is disregarded when any of the following exceptions are present: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an *alter ego* of the President bear the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; and (11) when there are circumstances indicating the urgency of judicial intervention.[33]

The petitioners failed to show that the present case falls under any of the above-enumerated exceptions. The petitioners' mere allegations that the DENR Secretary gravely abused his discretion in granting the mining agreement to 168 FPMC and in issuing the assailed resolution will not suffice to vest in the Court the power that has been specifically granted by law to special government agencies. Further, the issues on the grant

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[31] *Id*.

[32] *Id*.

[33] *Paat v. Court of Appeals,* G.R. No. 111107, January 10, 1997, sc.judiciary.gov.ph.

of the mining agreement and whether the FPIC process was observed involve a determination of factual matters which is within the DENR's competence.

The petitioners' failure to exhaust all the available administrative remedies prevents them from filing the present petition for *certiorari*. Even assuming *arguendo* that petitioners' direct resort to the Court was permissible, the petition must still be dismissed.

The DENR Secretary did not gravely abuse his discretion in dismissing the petition for cancellation based on the records that the DENR had previously received for 168 FPMC's application for the mining agreement.

"Grave abuse of discretion" defies exact definition; generally, it refers to the "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction;" the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[34] Mere abuse of discretion is not enough; it must be grave.[35]

Closely related with the limited focus of the present petition is the doctrine that administrative decisions on matters within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law.[36] Unless it is shown that the then DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration

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[34] *Intestate Estate of Carmen de Luna v. Intermediate Appellate Court,* G.R. No. 72424, February 13, 1989, 170 SCRA 246.

[35] *Cabrera v. Lapid,* G.R. No. 129098, 539 Phil. 114 ,124 (2006).

[36] *Celestial Mining v. Macroasia,* G.R. No. 169080, December 19, 2007, 541 SCRA 166, 172-173, 195.

and similar reasons, this Court cannot look into or review the wisdom of the exercise of such discretion.[37]

We find that the DENR Secretary did not gravely abuse his discretion in taking judicial notice of the documents submitted for 168 FPMC's application for the mining agreement that showed compliance with the FPIC process and all the legal requirements for the approval of the mining agreement.

In quasi-judicial proceedings, an agency may take notice of judicially cognizable facts and of generally cognizable technical or scientific facts within its specialized knowledge. The parties shall be notified and afforded an opportunity to contest the facts so noticed. (Section 12[4], Chapter 3, Book VII, The Administrative Code of 1987).

In the present case, the DENR Secretary took judicial notice of the documents submitted for the approval of the subject mining agreement which were already in his possession by reason of his office and were either posted in a conspicuous place, published in a newspaper of general circulation, or its contents announced through the radio. The DENR Secretary merely confirmed the 168 FPMC's allegation in its *Answer*[38] that it had complied with the legal process laid down by law and obtained the consent of the IPs concerned for the approval of the mining agreement.

Particularly, the DENR Secretary was able to confirm that the DENR-MGB endorsed the subject mining agreement to the NCIP; field-based investigations were conducted; a detailed presentation of the project was done and the necessary information regarding the mining application was given to all the tribal leaders of the affected barangays and the ancestral domain representatives; community consultative assemblies were conducted on various dates; a memorandum of agreement was executed between 168 FPMC and the IPs concerned; the **NCIP Compliance Certificate was issued to 168 FPMC as proof**

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[37] *Id.*

[38] *Rollo,* pp. 108-109.

that there was free and prior consent from the indigenous cultural communities affected; **the One Stop Shop Committee of the DENR-MGB-RIX screened the subject mining application to ensure that the covered areas do not fall within any reservation or declared protected area**.[39]

Factual considerations relating to mining applications properly rest within the administrative competence of the DENR. Its factual findings are accorded great respect and even finality by the appellate courts because it possesses the specialized knowledge and expertise in its field.[40] As such, the DENR's factual findings are binding upon this Court without showing of any grave abuse of discretion, or that the factual findings were arrived at arbitrarily or in disregard of the evidence on record.[41]

While the DENR Secretary should have notified that petitioners of the documents that it had considered to allow the rebuttal of the documents,[42] **we find that his failure to notify does not amount to grave abuse of discretion** since the circumstances of the present case afforded the petitioner sufficient notice and the opportunity to contest the documents even before the filing of the petition for cancellation. As earlier stated, the documents submitted and considered by the DENR were either posted in a conspicuous place, published in a newspaper of general circulation, or its contents announced through the radio in order to notify the general public, including the petitioners, of the legal processes observed by 168 FPMC to secure the grant of the mining application. Hence, the petitioners are deemed to be fully aware of the existence of such documents or its contents even before the grant of the mining application.

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[39] *Id.* at 127-129.

[40] Cf. *Japson v. Civil Service Commission,* G.R. No. 189479, April 12, 2011, 648 SCRA 532-533.

[41] *Id*.

[42] Cf. *Al-Amanah Islamic Investment Bank of the Philippines v. Civil Service Commission*, G.R. No. 100599, April 8, 1992, 207 SCRA 801-803.

Notably, the petitioners belatedly questioned the subject mining application more than eight months after its grant.

The petitioners failed to show that the DENR Secretary's failure to notify the petitioners was done in "wanton, whimsical, or oppressive manner" or for the purpose of giving "undue advantage to a party or for an illegal consideration and similar reasons" that will amount to grave abuse of discretion.

Further, it is well-settled that the rules of evidence are not strictly applied in proceedings before administrative bodies.[43] Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency.[44] Administrative agencies are given wide latitude in the evaluation of evidence and in the exercise of their adjudicative functions, latitude which includes the authority to take judicial notice of facts within their special competence.[45]

The petitioners lost their chance to question the documents considered when they failed to file a motion for reconsideration or an appeal of the DENR resolution through their own fault.

With respect to the other grounds raised by the petitioners to cancel the subject mining agreement, the petitioners failed to adduce sufficient evidence to prove their arguments. Moreover, there is the legal presumption that the DENR officials regularly performed their official duties, particularly with respect to the approval of the mining agreement in the present case.

The presumption of regularity in the performance of official duties is strong with respect to administrative agencies like the DENR which are vested with quasi-judicial powers in enforcing the laws affecting their respective fields of activity, the proper regulation of which requires of them such technical

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[43] *Geronimo v. Sps. Calderon,* G.R. No. 201781, December 10, 2014, sc.judiciary.gov.ph.

[44] *Id.*

[45] *Id*.

mastery of all relevant conditions obtaining in the nation.[46] Unless the presumption is rebutted by clear and convincing evidence to the contrary, it becomes conclusive.[47]

WHEREFORE, premises considered, we hereby **DISMISS** the petition. The DENR resolution dated December 16, 2009, in DENR Case No. 8714 is **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 192132. September 14, 2016]

HEIRS OF ZOSIMO Q. MARAVILLA, namely, ZOSIMO W. MARAVILLA, JR., YVETTE MARAVILLA and RICHARD MARAVILLA, represented by ZOSIMO W. MARAVILLA, JR., *petitioners, vs.* **PRIVALDO TUPAS,** *respondent*.

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEED; THE ISLAND OF BORACAY IS CLASSIFIED AS A FOREST LAND; THUS, ONLY THE GOVERNMENT CAN DETERMINE THE MANNER IN WHICH THE ISLAND SHOULD BE DISPOSED OF OR CONVEYED TO PRIVATE INDIVIDUALS.— [Petitioners' basis of their claim over the subject property is the Deed of Sale of Unregistered Land that

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[46] *Factoran, Jr. v. Court of Appeals,* G.R. No. 93540, December 13, 1999, 320 SCRA 531, 545.

[47] *Bustillo v. People*, G.R. No. 160718, May 12, 2010, 620 SCRA 483.

the late Zosimo Maravilla executed with the late Asiclo S. Tupas. This Deed of Sale has been acknowledged and adjudged by the RTC to be binding between the parties, and in fact, has attained finality. This Court, however, in *The Secretary of the Department of Environment and Natural Resources (DENR), et al. v. Yap, et al.* and *Sacay, et al. v. the Secretary of the DENR, et al.,* ruled that the entire island of Boracay as state-owned except for lands already covered by existing titles. x x x. [T]his Court adjudicated that Boracay is classified as a public land, in particular, a forest land x x x. Therefore, the island, being owned by the State, can only be declared or made subject of private ownership by the Government. And only the Government can determine the manner in which the island should be disposed of or conveyed to private individuals, pursuant to the Regalian Doctrine as this Court ruled in *Secretary of the Department of Environment and Natural Resources v. Yap*: x x x. As such, the CA is then correct in ruling that with this Court's pronouncement that Boracay is state-owned, petitioners' claim of ownership over the subject property is negated.

2. ID.; ID.; ID.; A PARTY HAS NO RIGHT TO SELL A LAND THAT HAS NOT BEEN DECLARED ALIENABLE BY THE STATE AT THE TIME OF THE SALE; HENCE, HE CANNOT PASS UNTO ANOTHER ANY RIGHT OR TITLE TO OWN OR POSSESS THE LAND; THE SUBJECT "SALE OF UNREGISTERED LAND" IS NULL AND VOID, AS THE SUBJECT PROPERTY OF THE CONTRACT IS A FOREST LAND AND CANNOT BE ALIENATED AT THE TIME THE SAID DEED OF SALE WAS EXECUTED.— The x x x reasoning of the CA has its basis on a simple logic that one cannot dispose of a thing he does not own. In this case, at the time of the sale of the subject property, the late Asiclo S. Tupas had no right to sell a property that has not been declared alienable by the State; hence, he cannot pass unto another any right or title to own or possess the land. Therefore, the "Sale of Unregistered Land" entered into between the late Asiclo S. Tupas and the late Zosimo Maravilla on February 8, 1975, previously considered valid and legitimate and became the basis used by the RTC to settle the dispute between the parties as to who has the better to right to the property, has become null and void because the subject property of the contract is a forest land and cannot be alienated at the time the said deed of sale was executed. Article 1347 of

the Civil Code provides that only things, which are not outside the commerce of man, including future things, may be the objects of the contracts and Article 1409 of the Civil Code also states that contracts whose objects are outside the commerce of man are non-existent and void *ab initio*.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINAL AND IMMUTABLE JUDGMENT RULE; ONCE A JUDGMENT BECOMES IMMUTABLE AND UNALTERABLE BY VIRTUE OF ITS FINALITY, ITS EXECUTION SHOULD FOLLOW AS A MATTER OF COURSE, EXCEPT WHEN A SUPERVENING EVENT TRANSPIRED WHICH DIRECTLY AFFECTS THE MATTER ALREADY LITIGATED AND SETTLED, OR SUBSTANTIALLY CHANGES THE RIGHTS OR RELATIONS OF THE PARTIES THEREIN AS TO RENDER THE EXECUTION UNJUST, IMPOSSIBLE OR INEQUITABLE; THE DECISION OF THE SUPREME COURT IN *"THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), ET AL. V. YAP, ET AL."* (G.R. NO. 167707), AND *"SACAY, ET AL. V. THE SECRETARY OF THE DENR, ET AL."* (G.R. NO. 173775) IS A SUPERVENING EVENT THAT CAN STAY THE EXECUTION OF A JUDGMENT THAT HAS ALREADY ATTAINED FINALITY.— [T]his Court's decision in *The Secretary of the Department of Environment and Natural Resources (DENR), et al. v. Yap, et al.* and *Sacay, et al. v. the Secretary of the DENR, et al.* is, x x x considered as a supervening event that can stay the execution of a judgment that has already attained finality. In *Abrigo, et al. v. Flores, et al.* this Court ruled that: Once a judgment becomes immutable and unalterable by virtue of its finality, its execution should follow as a matter of course. A supervening event, to be sufficient to stay or stop the execution, must alter or modify the situation of the parties under the decision as to render the execution inequitable, impossible, or unfair. The supervening event cannot rest on unproved or uncertain facts. x x x We deem it highly relevant to point out that a supervening event is an exception to the execution as a matter of right of a final and immutable judgment rule, only if it directly affects the matter already litigated and settled, or substantially changes the rights or relations of the parties therein as to render the execution unjust, impossible or inequitable. A supervening event consists of facts that transpire

after the judgment became final and executory, or of new circumstances that develop after the judgment attained finality, including matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at that time. In that event, the interested party may properly seek the stay of execution or the quashal of the writ of execution, or he may move the court to modify or alter the judgment in order to harmonize it with justice and the supervening event. The party who alleges a supervening event to stay the execution should necessarily establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment.

APPEARANCES OF COUNSEL

Valencia Valencia Ciocon Dionela Pandan Rubica Rubica & Garcia Law Office for petitioners.
Decano Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Indeed, the well-settled principle of immutability of final judgments demands that once a judgment has become final, the winning party should not, through a mere subterfuge, be deprived of the fruits of the verdict.[1] There are, however, recognized exceptions to the execution as a matter of right of a final and immutable judgment, one of which is the existence of a supervening event.[2]

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated May 25, 2010 seeking to set aside the Decision[3] dated November 11, 2009 and the

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[1] *Gomez v. Hon. Presiding Judge, RTC, Br. 15, Ozamis City*, 319 Phil. 555, 562 (1995); *Johnson & Johnson (Phils.), Inc., v. CA*, 330 Phil. 856, 871 (1996).

[2] *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 23 (2002).

[3] Penned by Associate Justice Franchito N. Diamante, with the concurrence of Associate Justices Edgardo L. Delos Santos and Samuel H. Gaerlan.

Resolution dated March 17, 2010 of the Court of Appeals (CA) that declared null and void and set aside the Orders dated February 2, 2009 and April 7, 2009 of the Regional Trial Court (RTC), Kalibo, Aklan directing the execution of the latter's Decision dated March 31, 2003 that became final and executory on May 21, 2007.

The facts follow.

According to respondent, he, along with the other heirs of the late Asiclo S. Tupas, has maintained the occupation and possession of certain portions of the property subject of this case. Thereafter, the late Zosimo Maravilla claimed ownership over 10,000 square meters of said property by virtue of a Deed of Sale dated February 8, 1975, purportedly executed between him and the late Asiclo S. Tupas. The property situated in Diniwid, Barangay Balabag, Malay, Aklan, is more particularly described as follows:

> A parcel of land situated at Barangay Balabag, Malay, Aklan bounded on the North by Gil Aguirre, F. Flores; South by Antonio Tupas & T. Sacapaño, East by Asicio (sic) Tupas, and West by Seashore L. Villanueva of approximately 1,000 hectares, assessed at ₱2,610.00 under Tax Declaration No. 1304, in the name of Maravilla, Ozosimo A. for the year of 1985.

Maravilla filed a case for quieting of title with recovery of possession and damages before Branch 9 of the RTC of Kalibo, Aklan, docketed as Civil Case No. 4338. The dispositive portion of the Decision[4] reads:

> WHEREFORE, decision is hereby rendered as follows:
>
> 1. Declaring the deed of sale (Exhs. A & 1) executed by Asiclo Tupas in favor of plaintiff Zosimo Maravilla over one-half (½) portion or about 5,000 sq. m. of the conjugal property of the former as legal and valid;
>
> 2. Ordering that the portion sold be delineated from the shoreline with a length of at least 28 m. long from the southwestern direction

[4] Penned by Judge Pedro M. Icamina.

traversing in a straight line towards northeastern part between points 5-6 embracing an area of about 5,000 sq. m., depicted in Exh. G, interpreted in relation to amended commissioner's report and sketch plan, dated August 25, 1992 (Exh. L) across Lots B and A; with the northern portion of 5,000 sq. m. awarded to the defendants and the southern portion of 5,000 sq. m. to plaintiff; Defendants' cottages that may be found in plaintiff's one- half portion shall be removed by the former at their expense within 30 days from the finality of this decision. The existing muniments of the parties to the land in question like tax declarations, certificates of title, and other related documents are ordered modified or corrected to conform to this decision;

3. Defendants are ordered jointly and severally, to refund plaintiff the amount of seven thousand pesos (₱7,000.00), Philippine currency, representing the consideration of the ½ portion of the land in question herein awarded to them; and

4. Plaintiff is ordered to pay defendants for attorney's fees and litigation expenses in the sum of ten thousand pesos (₱10,000.00) and the costs of the suit.

SO ORDERED.[5]

Maravilla filed an appeal with the CA questioning the RTC's decision that he is only entitled to ½ of the area sold even if the validity of the deed of sale was upheld. The CA, in a Decision[6] dated August 28, 1996, ruled that:

WHEREFORE, the Decision of the court *a quo* is SET ASIDE and another judgment is issued declaring Zosimo Maravilla the owner of 10,000 sq. m. undivided share in the 36,382 sq. m. parcel of land of Asiclo S. Tupas and Francisca Aguirre and directing that this land be partitioned, either extra-judicially or judicially, and that Maravilla's portion of the property be determined; and ordering the defendants to turn over possession of the portion allocated to Maravilla.

Special Proceedings No. 39517 is DISMISSED.

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[5] *Rollo*, pp. 145-146.

[6] Penned by Associate Justice Salome A. Montoya, with the concurrence of Associate Justices Godardo A. Jacinto and Maximiano C. Asuncion.

No pronouncement as to costs.

SO ORDERED.[7]

On October 21, 1999, Maravilla filed another case for partition and damages before the RTC of Kalibo, Aklan, Branch 6, and on March 31, 2003, it disposed of the case as follows:[8]

WHEREFORE, judgment is hereby rendered containing that the one-hectare portion in the Sketch Plan [Annex B-1; Complaint] is the rightful share of the plaintiff.

Defendants are ordered to restore possession thereof to the plaintiff, and to pay jointly and severally the latter the agreed monthly reasonable compensation for the use and occupation thereof of ₱5,000.00 starting in 1990 until possession is fully restored to plaintiff.

Costs against the defendants.

SO ORDERED.[9]

Respondent appealed the decision with the CA, and in a Decision[10] dated April 13, 2007, the latter dismissed the appeal on the ground of *res judicata*. The CA opined that the first case, the one for quieting of title and the second case for partition, both presented identity of facts and evidence and that the truth of the matter is, part of the judgment of the first case ordered for partition of the subject parcel of land to delimit the portion owned by herein petitioner.

On October 31, 2008, Maravilla filed a Motion for Execution[11] of the March 31, 2003 Decision of the RTC-Branch 6 of Kalibo, Aklan.

While the motion for execution was pending before the RTC-Branch 6 of Kalibo, Aklan, this Court, on October 8, 2008,

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[7] *Rollo*, p. 154.

[8] Penned by Judge Niovady M. Marin.

[9] *Rollo*, pp. 119-120.

[10] Penned by Associate Justice Francisco P. Acosta, with the concurrence of Associate Justices Arsenio J. Magpale and Agustin S. Dizon.

[11] *Rollo*, pp. 179-183.

declared Boracay as government property in the consolidated cases of *The Secretary of the Department of Environment and Natural Resources (DENR), et al. v. Yap, et al.* and *Sacay, et al. v. the Secretary of the DENR, et al.* (Boracay Decision)[12]

On February 2, 2009, a Resolution was issued by the RTC granting the motion for execution.

Respondent filed a motion for reconsideration, but the RTC denied the same in an Order dated April 7, 2009.

Thus, respondent filed a petition for *certiorari* with the CA assailing the Resolution and the Order issued by the RTC. Respondent raised as an issue that the grant of the motion for execution is not in accordance with this Court's decision in *The Secretary of the Department of Environment and Natural Resources (DENR), et al. v. Yap, et al.* and *Sacay, et al. v. the Secretary of the DENR, et al.,* a supervening event, and that the RTC erred in not declaring as null and void the deed of sale of unregistered land considering that Boracay has been classified as an inalienable land. The CA granted the petition, thus:

> Withal, the Petition is hereby GRANTED. The assailed Orders dated February 2, 2009 and April 7, 2009, respectively, issued by public respondent are hereby declared NULL and VOID and SET ASIDE.
>
> SO ORDERED.[13]

Maravilla's motion for reconsideration was denied in a Resolution dated March 17, 2010, hence, the present petition.[14]

Petitioners (the heirs of Maravilla) raise the following grounds:

> In rendering the assailed Decision and Resolution, petitioners most humbly submit that the Court of Appeals gravely erred in making the following legal conclusions that warrants the power of review and supervision by the Honorable Supreme Court:

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[12] 589 Phil. 156 (2008).

[13] *Rollo*, p. 26.

[14] Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Samuel H. Gaerlan and Socorro B. Inting, concurring; *id.* at 30-31.

I. The Court of Appeals so far departed from the accepted and usual course of judicial proceedings when it set aside the Orders of the Regional Trial Court granting execution of the 31 March 2003 Decision of the Regional Trial Court in relation to the 28 August 1996 [Decision] of the Court of Appeals, both of which judgments have long become final and executory.

II. The Court of Appeals' finding that the Boracay Decision is a supervening event that prevents the trial court from implementing the writ of execution is not in accord with the applicable decisions of this Honorable Supreme Court. The Court of Appeals erred in finding that:

a. the Boracay Decision had a direct effect on the issue litigated and settled with finality between the parties, and substantially changed the rights and relations between the parties;

b. with the declaration of Boracay as state-owned, the claim of herein petitioners of rights to the Property is already without basis;

c. to allow execution of the judgment would be to give undue advantage to herein petitioners and would be a miscarriage of justice.[15]

They also bring up the following arguments:

I. Petitioners are entitled as a matter of right to the execution of the judgments that have long become final and executory.

II. The pronouncement of the Supreme Court in the Boracay Decision is not a supervening event:

A. The settled dispute between the parties as to who has the better right to the Property is distinct and separate from the issue of titling sought in the Boracay Decision;

B. The Boracay Decision does not substantially change the rights and relations between the petitioners and respondent that were already decided by the courts with finality;

C. Notwithstanding the Boracay Decision, it is still possible to execute the decision regarding the partition and restoration of the possession of Property in favor of petitioners as against respondent;

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[15] *Rollo,* pp. 67-68.

III. The Boracay Decision does not render the execution sought by [the] petition as unjust or inequitable that precludes the execution of the final and executory judgments.[16]

Petitioners insist that the CA's Decision dated August 28, 1996 in the original case for Quieting of Title with Recovery of Possession and Damages entitled petitioners to the restoration of their possession of the property consisting of 10,000 sq. m. out of the 36,382 sq. m. tract of land, after the validity of the sale to Maravilla by respondent's predecessor has been upheld by the court with finality. They further claim that it is well entrenched in Our rules and jurisprudence that the prevailing party may move for the execution of a decision that has become final and executory as a matter of right and the issuance of the writ of execution becomes a ministerial duty of the court.

The pronouncement in the Boracay Decision, according to petitioners, is not a supervening event. The Boracay Decision is simply a recognition of the right of the State to classify the island and to pave the way for the eventual titling or formalization of ownership claims of lands classified as alienable and disposable, and as to whether or not petitioners may secure title to the property is an issue that has not yet ripened into a legal controversy between petitioners and the State. Petitioners argue that the settled dispute between the parties as to who has the better right to the property is distinct and separate from the issue of titling sought in the Boracay Decision by the claimants therein.

Furthermore, petitioners do not contest the legal status of the land; what they assert is the satisfaction of their right to enjoy whatever imperfect rights that their predecessors had validly acquired from respondent's predecessor, as confirmed with finality by the courts.

The petition lacks merit.

The basic issue to be resolved is whether or not this Court's decision in *The Secretary of the Department of Environment*

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[16] *Id.* at 68-69.

and Natural Resources (DENR), et al. v. Yap, et al. and *Sacay, et al. v. the Secretary of the DENR, et al.* can be considered as supervening event and if so, whether or not such supervening event can prevent the execution of a judgment that has already attained finality.

In the present case, petitioners' basis of their claim over the subject property is the Deed of Sale of Unregistered Land that the late Zosimo Maravilla executed with the late Asiclo S. Tupas. This Deed of Sale has been acknowledged and adjudged by the RTC to be binding between the parties, and in fact, has attained finality. This Court, however, in *The Secretary of the Department of Environment and Natural Resources (DENR), et al. v. Yap, et al.* and *Sacay, et al. v. the Secretary of the DENR, et al.,* ruled that the entire island of Boracay as state-owned except for lands already covered by existing titles. To have a clearer view of the antecedents of the said case, the following are thus quoted:

> On April 14, 1976, the Department of Environment and Natural Resources (DENR) approved the National Reservation Survey of Boracay Island, which identified several lots as being occupied or claimed by named persons.
>
> On November 10, 1978, then President Ferdinand Marcos issued Proclamation No. 1801 declaring Boracay Island, among other islands, caves and peninsulas in the Philippines, as tourist zones and marine reserves under the administration of the Philippine Tourism Authority (PTA). President Marcos later approved the issuance of PTA Circular 3-82 dated September 3, 1982, to implement Proclamation No. 1801.
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> Claiming that Proclamation No. 1801 and PTA Circular No. 3-82 precluded them from filing an application for judicial confirmation of imperfect title or survey of land for titling purposes, respondents-claimants Mayor Jose S. Yap, Jr., Libertad Talapian, Mila Y. Sumndad, and Aniceto Yap filed a petition for declaratory relief with the RTC in Kalibo, Aklan.
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> In their petition, respondents-claimants alleged that Proclamation No. 1801 and PTA Circular No. 3-82 raised doubts on their right to secure titles over their occupied lands. They declared that they themselves, or through their predecessors-in-interest, had been in

open, continuous, exclusive, and notorious possession and occupation in Boracay since June 12, 1945, or earlier since time immemorial. They declared their lands for tax purposes and paid realty taxes on them.

Respondents-claimants posited that Proclamation No. 1801 and its implementing Circular did not place Boracay beyond the commerce of man. Since the Island was classified as a tourist zone, it was susceptible of private ownership. Under Section 48 (b) of Commonwealth Act (CA) No. 141, otherwise known as the Public Land Act, they had the right to have the lots registered in their names through judicial confirmation of imperfect titles.

The Republic, through the Office of the Solicitor General (OSG), opposed the petition for declaratory relief. The OSG countered that Boracay Island was an unclassified land of the public domain. It formed part of the mass of lands classified as "public forest", which was not available for disposition pursuant to Section 3 (a) of Presidential Decree (PD) No. 705 or the Revised Forestry Code, as amended.

The OSG maintained that respondents-claimants' reliance on PD No. 1801 and PTA Circular No. 3-82 was misplaced. Their right to judicial confirmation of title was governed by CA No. 141 and PD No. 705. Since Boracay Island had not been classified as alienable and disposable, whatever possession they had cannot ripen into ownership.

During pre-trial, respondents-claimants and the OSG stipulated on the following facts: (1) respondents-claimants were presently in possession of parcels of land in Boracay Island; (2) these parcels of land were planted with coconut trees and other natural growing trees; (3) the coconut trees had heights of more or less twenty (20) meters and were planted more or less fifty (50) years ago; and (4) respondents-claimants declared the land they were occupying for tax purposes.

The parties also agreed that the principal issue for resolution was purely legal: whether Proclamation No. 1801 posed any legal hindrance or impediment to the titling of the lands in Boracay. They decided to forego with the trial and to submit the case for resolution upon submission of their respective memoranda.

The RTC took judicial notice that certain parcels of land in Boracay Island, more particularly Lots 1 and 30, Plan PSU-5344, were covered by Original Certificate of Title No. 19502 (RO 2222) in the name of the Heirs of Ciriaco S. Tirol. These lots were involved in Civil Case Nos. 5222 and 5262 filed before the RTC of Kalibo, Aklan. The titles were issued on August 7, 1933.

RTC and CA Dispositions

On July 14, 1999, the RTC rendered a decision in favor of respondents-claimants, with a fallo reading:

> WHEREFORE, in view of the foregoing, the Court declares that Proclamation No. 1801 and PTA Circular No. 3-82 pose no legal obstacle to the petitioners and those similarly situated to acquire title to their lands in Boracay, in accordance with the applicable laws and in the manner prescribed therein; and to have their lands surveyed and approved by respondent Regional Technical Director of Lands as the approved survey does not in itself constitute a title to the land.
>
> SO ORDERED.

The RTC upheld respondents-claimants' right to have their occupied lands titled in their name. It ruled that neither Proclamation No. 1801 nor PTA Circular No. 3-82 mentioned that lands in Boracay were inalienable or could not be the subject of disposition. The Circular itself recognized private ownership of lands. The trial court cited Sections 87 and 53 of the Public Land Act as basis for acknowledging private ownership of lands in Boracay and that only those forested areas in public lands were declared as part of the forest reserve.

The OSG moved for reconsideration, but its motion was denied. The Republic then appealed to the CA.

On December 9, 2004, the appellate court affirmed *in toto* the RTC decision, disposing as follows:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the appeal filed in this case and AFFIRMING the decision of the lower court.

The CA held that respondents-claimants could not be prejudiced by a declaration that the lands they occupied since time immemorial were part of a forest reserve.

Again, the OSG sought reconsideration but it was similarly denied. Hence, the present petition under Rule 45.

G.R. No. 173775

On May 22, 2006, during the pendency of G.R. No. 167707, President Gloria Macapagal-Arroyo issued Proclamation No. 1064

classifying Boracay Island into four hundred (400) hectares of reserved forest land (protection purposes) and six hundred twenty-eight and 96/100 (628.96) hectares of agricultural land (alienable and disposable). The Proclamation likewise provided for a fifteen-meter buffer zone on each side of the centerline of roads and trails, reserved for right-of-way and which shall form part of the area reserved for forest land protection purposes.

On August 10, 2006, petitioners-claimants Dr. Orlando Sacay, Wilfredo Gelito, and other landowners in Boracay filed with this Court an original petition for prohibition, *mandamus*, and nullification of Proclamation No. 1064. They alleged that the Proclamation infringed on their "prior vested rights" over portions of Boracay. They have been in continued possession of their respective lots in Boracay since time immemorial. They have also invested billions of pesos in developing their lands and building internationally-renowned first class resorts on their lots.

Petitioners-claimants contended that there is no need for a proclamation reclassifying Boracay into agricultural land. Being classified as neither mineral nor timber land, the island is deemed agricultural pursuant to the Philippine Bill of 1902 and Act No. 926, known as the first Public Land Act. Thus, their possession in the concept of owner for the required period entitled them to judicial confirmation of imperfect title.

Opposing the petition, the OSG argued that petitioners-claimants do not have a vested right over their occupied portions in the island. Boracay is an unclassified public forest land pursuant to Section 3 (a) of PD No. 705. Being public forest, the claimed portions of the island are inalienable and cannot be the subject of judicial confirmation of imperfect title. It is only the executive department, not the courts, which has authority to reclassify lands of the public domain into alienable and disposable lands. There is a need for a positive government act in order to release the lots for disposition.

On November 21, 2006, this Court ordered the consolidation of the two petitions as they principally involve the same issues on the land classification of Boracay Island.[17]

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[17] *The Secretary of the Department of Environment and Natural Resources (DENR), et al. v. Yap, et al.* and *Sacay, et al. v. the Secretary of the DENR, et al.*, *supra* note 12, at 168-173. (Citations omitted)

The consolidated petitions basically raise the issue of whether or not private individuals may acquire vested right of ownership over the island, considering that they have been in open and continued possession for several years. With such factual antecedents, this Court adjudicated that Boracay is classified as a public land, in particular, a forest land, thus:

> Except for lands already covered by existing titles, Boracay was an unclassified land of the public domain prior to Proclamation No. 1064. Such unclassified lands are considered public forest under PD No. 705. The DENR 109 and the National Mapping and Resource Information Authority certify that Boracay Island is an unclassified land of the public domain.
>
> PD No. 705 issued by President Marcos categorized all unclassified lands of the public domain as public forest. Section 3 (a) of PD No. 705 defines a public forest as "a mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purpose and which are not". Applying PD No. 705, all unclassified lands, including those in Boracay Island, are *ipso facto* considered public forests. PD No. 705, however, respects titles already existing prior to its effectivity.
>
> The Court notes that the classification of Boracay as a forest land under PD No. 705 may seem to be out of touch with the present realities in the island. Boracay, no doubt, has been partly stripped of its forest cover to pave the way for commercial developments. As a premier tourist destination for local and foreign tourists, Boracay appears more of a commercial island resort, rather than a forest land.
>
> Nevertheless, that the occupants of Boracay have built multi-million peso beach resorts on the island; that the island has already been stripped of its forest cover; or that the implementation of Proclamation No. 1064 will destroy the island's tourism industry, do not negate its character as public forest.
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> Forests, in the context of both the Public Land Act and the Constitution classifying lands of the public domain into "agricultural, forest or timber, mineral lands, and national parks", do not necessarily refer to large tracts of wooded land or expanses covered by dense growths of trees and underbrushes. The discussion in *Heirs of Amunategui v. Director of Forestry* is particularly instructive:

A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by kaingin cultivators or other farmers. "Forest lands" do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, nipa palms, and other trees growing in brackish or sea water may also be classified as forest land. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. Unless and until the land classified as "forest" is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply.

There is a big difference between "forest" as defined in a dictionary and "forest or timber land" as a classification of lands of the public domain as appearing in our statutes. One is descriptive of what appears on the land while the other is a legal status, a classification for legal purposes. At any rate, the Court is tasked to determine the legal status of Boracay Island, and not look into its physical layout. Hence, even if its forest cover has been replaced by beach resorts, restaurants and other commercial establishments, it has not been automatically converted from public forest to alienable agricultural land.

Private claimants cannot rely on Proclamation No. 1801 as basis for judicial confirmation of imperfect title. The proclamation did not convert Boracay into an agricultural land. However, private claimants argue that Proclamation No. 1801 issued by then President Marcos in 1978 entitles them to judicial confirmation of imperfect title. The Proclamation classified Boracay, among other islands, as a tourist zone. Private claimants assert that, as a tourist spot, the island is susceptible of private ownership.

Proclamation No. 1801 or PTA Circular No. 3-82 did not convert the whole of Boracay into an agricultural land. There is nothing in the law or the Circular which made Boracay Island an agricultural land. The reference in Circular No. 3-82 to "private lands" and "areas declared as alienable and disposable" does not by itself classify the entire island as agricultural. Notably, Circular No. 3-82 makes reference not only to private lands and areas but also to public forested lands. Rule VIII, Section 3 provides:

> No trees in forested private lands may be cut without prior authority from the PTA. All forested areas in public lands are declared forest reserves.

Clearly, the reference in the Circular to both private and public lands merely recognizes that the island can be classified by the Executive department pursuant to its powers under CA No. 141. In fact, Section 5 of the Circular recognizes the then Bureau of Forest Development's authority to declare areas in the island as alienable and disposable when it provides:

> Subsistence farming, in areas declared as alienable and disposable by the Bureau of Forest Development.

Therefore, Proclamation No. 1801 cannot be deemed the positive act needed to classify Boracay Island as alienable and disposable land. If President Marcos intended to classify the island as alienable and disposable or forest, or both, he would have identified the specific limits of each, as President Arroyo did in Proclamation No. 1064. This was not done in Proclamation No. 1801.

The Whereas clauses of Proclamation No. 1801 also explain the rationale behind the declaration of Boracay Island, together with other islands, coves and peninsulas in the Philippines, as a tourist zone and marine reserve to be administered by the PTA — to ensure the concentrated efforts of the public and private sectors in the development of the areas' tourism potential with due regard for ecological balance in the marine environment. Simply put, the proclamation is aimed at administering the islands for tourism and ecological purposes. It does not address the areas' alienability.

More importantly, Proclamation No. 1801 covers not only Boracay Island, but sixty-four (64) other islands, coves, and peninsulas in the Philippines, such as Fortune and Verde Islands in Batangas, Port Galera in Oriental Mindoro, Panglao and Balicasag Islands in Bohol, Coron Island, Puerto Princesa and surrounding areas in Palawan, Camiguin Island in Cagayan de Oro, and Misamis Oriental, to name a few. If the designation of Boracay Island as tourist zone makes it alienable and disposable by virtue of Proclamation No. 1801, all the other areas mentioned would likewise be declared wide open for private disposition. That could not have been, and is clearly beyond, the intent of the proclamation.

It was Proclamation No. 1064 of 2006 which positively declared part of Boracay as alienable and opened the same to private ownership.

Sections 6 and 7 of CA No. 141 provide that it is only the President, upon the recommendation of the proper department head, who has the authority to classify the lands of the public domain into alienable or disposable, timber and mineral lands.

In issuing Proclamation No. 1064, President Gloria Macapagal-Arroyo merely exercised the authority granted to her to classify lands of the public domain, presumably subject to existing vested rights. Classification of public lands is the exclusive prerogative of the Executive Department, through the Office of the President. Courts have no authority to do so. Absent such classification, the land remains unclassified until released and rendered open to disposition.

Proclamation No. 1064 classifies Boracay into 400 hectares of reserved forest land and 628.96 hectares of agricultural land. The Proclamation likewise provides for a 15-meter buffer zone on each side of the center line of roads and trails, which are reserved for right of way and which shall form part of the area reserved for forest land protection purposes.

Contrary to private claimants' argument, there was nothing invalid or irregular, much less unconstitutional, about the classification of Boracay Island made by the President through Proclamation No. 1064. It was within her authority to make such classification, subject to existing vested rights.[18]

Therefore, the island, being owned by the State, can only be declared or made subject of private ownership by the Government. And only the Government can determine the manner in which the island should be disposed of or conveyed to private individuals, pursuant to the Regalian Doctrine as this Court ruled in *Secretary of the Department of Environment and Natural Resources v. Yap*:[19]

The Regalian Doctrine dictates that all lands of the public domain belong to the State, that the State is the source of any asserted right to ownership of land and charged with the conservation of such patrimony.[20]

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[18] *Id.* at 190-195.

[19] *Supra* note 12, at 176-177.

[20] *Zarate v. Director of Lands,* G.R. No. 131501, July 14, 2004, 434 SCRA 322; *Reyes v. Court of Appeals*, 356 Phil. 606, 624 (1998).

The doctrine has been consistently adopted under the 1935, 1973, and 1987 Constitutions.[21]

All lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.[22] Thus, all lands that have not been acquired from the government, either by purchase or by grant, belong to the State as part of the inalienable public domain.[23] Necessarily, it is up to the State to determine if lands of the public domain will be disposed of for private ownership. The government, as the agent of the state, is possessed of the plenary power as the persona in law to determine who shall be the favored recipients of public lands, as well as under what terms they may be granted such privilege, not excluding the placing of obstacles in the way of their exercise of what otherwise would be ordinary acts of ownership.[24]

It was only in 2006 when certain parts of Boracay became agricultural land when then President Gloria Macapagal-Arroyo issued Proclamation No. 1064, positively declaring parts of Boracay as alienable and opening the same to private ownership.

As such, the CA is then correct in ruling that with this Court's pronouncement that Boracay is state-owned, petitioners' claim of ownership over the subject property is negated, thus:

With the latest pronouncement of the Supreme Court of Boracay as state-owned, private respondent's ownership over the property in dispute is defeated. As discussed at length by the highest tribunal in the consolidated cases of The Secretary of DENR, et al. *v*. Yap, et al. in G.R. No. 167707 and Sacay, et al. *v.* The Secretary of DENR, et al.

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[21] *Republic v. Estonilo*, G.R. No. 157306, November 25, 2005, 476 SCRA 265.

[22] *Zarate v. Director of Lands*, *supra* note 20; *Collado v. Court of Appeals,* G.R. No. 107764, October 4, 2002, 390 SCRA 343; *Director of Lands v. Intermediate Appellate Court*, G.R. No. 73246, March 2, 1993, 219 SCRA 339.

[23] *Republic v. Estonilo*, *supra* note 21; *Zarate v. Director of Lands, supra* 20.

[24] *De los Reyes v. Ramolete*, G.R. No. L-47331, June 21, 1983, 122 SCRA 652, citing *Gonzaga v. Court of Appeals*, G.R. No. L-27455, June 28, 1973, 51 SCRA 381.

in G.R. No. 173775, Boracay is an unclassified land of public domain. Thus, where land is not alienable and disposable, possession of the land, no matter how long cannot confer ownership or possessory right.

It follows then that Asicio (sic) S. Tupas was not in a position to sell that which he did not own in the first place. This is because at the time the sale was entered into between private respondent and the late Asicio (sic) S. Tupas, the land in dispute was not alienable and subject to disposition. Since private respondent derives title from whatever right his predecessor-in-interest had, which unfortunately Asicio (sic) S. Tupas had none, his claim is no longer tenable. Private respondent cannot acquire a right greater than what his predecessor-in-interest had. To allow the execution of judgment would be to give undue advantage to private respondent whose very basis of claim is no longer tenable.[25]

The above reasoning of the CA has its basis on a simple logic that one cannot dispose of a thing he does not own. In this case, at the time of the sale of the subject property, the late Asiclo S. Tupas had no right to sell a property that has not been declared alienable by the State; hence, he cannot pass unto another any right or title to own or possess the land. Therefore, the "Sale of Unregistered Land" entered into between the late Asiclo S. Tupas and the late Zosimo Maravilla on February 8, 1975, previously considered valid and legitimate and became the basis used by the RTC to settle the dispute between the parties as to who has the better to right to the property, has become null and void because the subject property of the contract is a forest land and cannot be alienated at the time the said deed of sale was executed. Article 1347 of the Civil Code provides that only things, which are not outside the commerce of man, including future things, may be the objects of the contracts and Article 1409 of the Civil Code also states that contracts whose objects are outside the commerce of man are non-existent and void *ab initio*.

With the above disquisitions, this Court's decision in *The Secretary of the Department of Environment and Natural*

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[25] *Rollo*, pp. 23-24.

Resources (DENR), et al. v. Yap, et al. and *Sacay, et al. v. the Secretary of the DENR, et al.* is, therefore, considered as a supervening event that can stay the execution of a judgment that has already attained finality. In *Abrigo, et al. v. Flores, et al.*[26] this Court ruled that:

> Once a judgment becomes immutable and unalterable by virtue of its finality, its execution should follow as a matter of course. A supervening event, to be sufficient to stay or stop the execution, must alter or modify the situation of the parties under the decision as to render the execution inequitable, impossible, or unfair. The supervening event cannot rest on unproved or uncertain facts.
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> x x x x x x x x x
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> We deem it highly relevant to point out that a supervening event is an exception to the execution as a matter of right of a final and immutable judgment rule, only if it directly affects the matter already litigated and settled, or substantially changes the rights or relations of the parties therein as to render the execution unjust, impossible or inequitable.[27] A supervening event consists of facts that transpire after the judgment became final and executory, or of new circumstances that develop after the judgment attained finality, including matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at that time.[28] In that event, the interested party may properly seek the stay of execution or the quashal of the writ of execution,[29] or he may move the court to modify or alter the judgment in order to harmonize it with justice and the supervening event.[30] The party who alleges a supervening event to

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[26] 711 Phil. 251 (2013).

[27] *Javier v. Court of Appeals,* G.R. No. 96086, July 21, 1993, 224 SCRA 704, 712.

[28] *Natalia Realty, Inc. v. Court of Appeals*, G.R. No. 126462, November 12, 2002, 391 SCRA 370, 387.

[29] *Dee Ping Wee v. Lee Hiong Wee*, G.R. No. 169345, August 25, 2010, 629 SCRA 145, 168; *Ramirez v. Court of Appeals*, G.R. No. 85469, March 18, 1992, 207 SCRA 287, 292; *Chua Lee A.H. v. Mapa,* 51 Phil. 624, 628 (1928); *Li Kim Tho v. Go Siu Kao*, 82 Phil. 776, 778 (1949).

[30] S*errano v. Court of Appeals,* G.R. No. 133883, December 10, 2003, 417 SCRA 415, 424-425; *Limpin, Jr. v. Intermediate Appellate Court*, G.R. No. 70987, January 30, 1987, 147 SCRA 516, 522-523.

stay the execution should necessarily establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment.[31]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated May 25, 2010 of petitioners heirs of Zosimo Q. Maravilla is **DENIED** for lack of merit. Consequently, the Decision dated November 11, 2009 and the Resolution dated March 17, 2010 of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 194561. September 14, 2016]

DRUGSTORES ASSOCIATION OF THE PHILIPPINES, INC. and NORTHERN LUZON DRUG CORPORATION, *petitioners, vs.* **NATIONAL COUNCIL ON DISABILITY AFFAIRS; DEPARTMENT OF HEALTH; DEPARTMENT OF FINANCE; BUREAU OF INTERNAL REVENUE; DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT; and DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT,** *respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; POLICE POWER; A LEGISLATIVE ACT BASED ON THE POLICE POWER REQUIRES THAT THE

[31] *Abrigo v. Flores, supra*, at 253; 261-262.

INTERESTS OF THE PUBLIC GENERALLY, AS DISTINGUISHED FROM THOSE OF A PARTICULAR CLASS, SHOULD JUSTIFY THE INTERFERENCE OF THE STATE, AND THE MEANS EMPLOYED ARE REASONABLY NECESSARY FOR THE ACCOMPLISHMENT OF THE PURPOSE AND NOT UNDULY OPPRESSIVE UPON INDIVIDUALS.— Police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. On the other hand, the power of eminent domain is the inherent right of the state (and of those entities to which the power has been lawfully delegated) to condemn private property to public use upon payment of just compensation. In the exercise of police power, property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state. A legislative act based on the police power requires the concurrence of a lawful subject and a lawful method. In more familiar words, (a) the interests of the public generally, as distinguished from those of a particular class, should justify the interference of the state; and (b) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

2. ID.; ADMINISTRATIVE LAW; MAGNA CARTA FOR DISABLED PERSONS (REPUBLIC ACT NO. 7277), AS AMENDED BY R.A. NO. 9442, SECTION 32 THEREOF; THE MANDATORY DISCOUNT GRANTED TO PERSONS WITH DISABILITIES (PWDs) IN THE PURCHASE OF MEDICINE IS A VALID EXERCISE OF POLICE POWER AS THE BENEFIT IS ENJOYED BY THE GENERAL PUBLIC TO WHICH THESE CITIZENS BELONG, AND THE MEANS EMPLOYED IN INVOKING THE ACTIVE PARTICIPATION OF THE PRIVATE SECTOR IS REASONABLY AND DIRECTLY RELATED TO THE ACCOMPLISHMENT OF THE PURPOSE OF THE LAW AND ARE NOT OPPRESSIVE, AS THE DISCOUNT EXTENDED TO PWDs IN THE PURCHASE OF MEDICINE CAN BE CLAIMED BY THE ESTABLISHMENTS AS ALLOWABLE TAX DEDUCTIONS. — [R].A. No. 9442 which amended R.A. No. 7277 grants incentives and benefits including a twenty percent (20%) discount to PWDs in the purchase of medicines; fares for domestic air, sea and land travels

including public railways and skyways; recreation and amusement centers including theaters, food chains and restaurants. This is specifically stated in Section 4 of the IRR of R.A. No. 9442 x x x. Hence, the PWD mandatory discount on the purchase of medicine is supported by a valid objective or purpose as aforementioned. It has a valid subject considering that the concept of *public use* is no longer confined to the traditional notion of *use by the public*, but held synonymous with *public interest, public benefit, public welfare*, and *public convenience*. As in the case of senior citizens, the discount privilege to which the PWDs are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Also, the means employed to provide a fair, just and quality health care to PWDs are reasonably related to its accomplishment, and are not oppressive, considering that as a form of reimbursement, the discount extended to PWDs in the purchase of medicine can be claimed by the establishments as allowable tax deductions pursuant to Section 32 of R.A. No. 9442 as implemented in Section 4 of DOF Revenue Regulations No. 1-2009. Otherwise stated, the discount reduces taxable income upon which the tax liability of the establishments is computed.

3. ID.; ID.; ID.; MANDATORY TWENTY PERCENT (20%) DISCOUNT ON THE PURCHASE OF MEDICINE BY PERSONS WITH DISABILITY (PWDs); COMPLIES WITH THE STANDARDS OF SUBSTANTIVE DUE PROCESS.— Section 32 of R.A. No. 7277, as amended by R.A. No. 9442, must be read with its IRR which stated that upon its effectivity, NCWDP (which is the government agency tasked to ensure the implementation of RA 7277), would adopt the IDC issued by the local government units for purposes of uniformity in the implementation. Thus, NCDA A.O. No. 1 provides the reasonable guidelines in the issuance of IDCs to PWDs as proof of their entitlement to the privileges and incentives under the law and fills the details in the implementation of the law. xxx. Furthermore, [D]OH A.O. No. 2009-11 prescribes additional guidelines for the 20% discount in the purchase of all medicines for the exclusive use of PWD. To avail of the discount, the PWD must not only present his I.D. but also the doctor's prescription stating, among others, the generic name of the

medicine, the physician's address, contact number and professional license number, professional tax receipt number and narcotic license number, if applicable. A purchase booklet issued by the local social/health office is also required in the purchase of over-the-counter medicines. Likewise, any single dispensing of medicine must be in accordance with the prescription issued by the physician and should not exceed a one (1) month supply. Therefore, as correctly argued by the respondents, Section 32 of R.A. No. 7277 as amended by R.A. No. 9442 complies with the standards of substantive due process.

4. **ID.; ID.; ID.; ID.; THE DEFINITION OF TERMS UNDER THE LAW FOUND NOT VAGUE AND AMBIGUOUS; WHEN LAWS OR RULES ARE CLEAR, WHEN THE LAW IS UNAMBIGUOUS AND UNEQUIVOCAL, APPLICATION NOT INTERPRETATION THEREOF IS IMPERATIVE.—** We are likewise not persuaded by the argument of petitioners that the definition of "disabilities" under the subject laws is vague and ambiguous because it is allegedly so general and broad that the person tasked with implementing the law will undoubtedly arrive at different interpretations and applications of the law. x x x. Elementary is the rule that when laws or rules are clear, when the law is unambiguous and unequivocal, application not interpretation thereof is imperative. However, where the language of a statute is vague and ambiguous, an interpretation thereof is resorted to. A law is deemed ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses. The fact that a law admits of different interpretations is the best evidence that it is vague and ambiguous. In the instant case, We do not find the x x x definition of terms as vague and ambiguous.

5. **ID.; ID.; ID.; ID.; THE COURT ACCORDS GREAT RESPECT TO THE DECISIONS AND/OR ACTIONS OF ADMINISTRATIVE AUTHORITIES NOT ONLY BECAUSE OF THE DOCTRINE OF SEPARATION OF POWERS BUT ALSO FOR THEIR PRESUMED KNOWLEDGE, ABILITY, AND EXPERTISE IN THE ENFORCEMENT OF LAWS AND REGULATIONS ENTRUSTED TO THEIR JURISDICTION; RATIONALE. —** Settled is the rule that courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the

regulation of activities coming under the special and technical training and knowledge of such agency. As a matter of policy, We accord great respect to the decisions and/or actions of administrative authorities not only because of the doctrine of separation of powers but also for their presumed knowledge, ability, and expertise in the enforcement of laws and regulations entrusted to their jurisdiction. The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.

6. **ID.; ID.; ID.; ID.; THE CLASSIFICATION AND DIFFERENT TREATMENT ACCORDED TO PERSONS WITH DISABILITY FULLY SATISFY THE DEMANDS OF EQUAL PROTECTION, AS THEY FORM A CLASS SEPARATE AND DISTINCT FROM THE OTHER CITIZENS OF THE COUNTRY.—** Under the equal protection clause, all persons or things similarly situated must be treated alike, both in the privileges conferred and the obligations imposed. Conversely, all persons or things differently situated should be treated differently. x x x. The equal protection clause recognizes a valid classification, that is, a classification that has a reasonable foundation or rational basis and not arbitrary. With respect to R.A. No. 9442, its expressed public policy is the rehabilitation, self-development and self-reliance of PWDs. Persons with disability form a class separate and distinct from the other citizens of the country. Indubitably, such substantial distinction is germane and intimately related to the purpose of the law. Hence, the classification and treatment accorded to the PWDs fully satisfy the demands of equal protection. Thus, Congress may pass a law providing for a different treatment to persons with disability apart from the other citizens of the country.

7. **ID.; ID.; ID.; ID.; ALL REASONABLE DOUBTS SHOULD BE RESOLVED IN FAVOR OF THE CONSTITUTIONALITY OF A STATUTE, AND THE BURDEN OF PROOF IS ON HIM WHO CLAIMS THAT A STATUTE IS UNCONSTITUTIONAL.—** Subject to the determination of the courts as to what is a proper exercise of police power using

the due process clause and the equal protection clause as yardsticks, the State may interfere wherever the public interests demand it, and in this particular, a large discretion is necessarily vested in the legislature to determine, not only what interests of the public require, but what measures are necessary for the protection of such interests. Thus, We are mindful of the fundamental criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute. The burden of proof is on him who claims that a statute is unconstitutional. Petitioners failed to discharge such burden of proof.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioners.

Office of the Solicitor General for respondents.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari*[1] with a Prayer for a Temporary Restraining Order and/or Writ of Preliminary Injunction which seeks to annul and set aside the Decision[2] dated July 26, 2010, and the Resolution[3] dated November 19, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 109903. The CA dismissed petitioners' Petition for Prohibition[4] and upheld the constitutionality of the mandatory twenty percent (*20%*) discount on the purchase of medicine by persons with disability (*PWD*).

The antecedents are as follows:

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[1] *Rollo,* pp. 11-86.

[2] Penned by Associate Justice Noel G. Tijam, with Associate Justices Marlene Gonzales-Sison and Danton Q. Bueser, concurring; *id*. at 88-107.

[3] *Rollo,* pp. 109-112.

[4] *Id.* at 144-204.

On March 24, 1992, Republic Act (*R.A.*) No. 7277, entitled "An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and their Integration into the Mainstream of Society and for Other Purposes," otherwise known as the "Magna Carta for Disabled Persons," was passed into law.[5] The law defines *"disabled persons*," *"impairment*" and "*disability"* as follows:

SECTION 4. *Definition of Terms.*– For purposes of this Act, these terms are defined as follows:

(a) *Disabled Persons* are those suffering from restriction of different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being;

(b) *Impairment* is any loss, diminution or aberration of psychological, physiological, or anatomical structure of function;

(c) *Disability* shall mean (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.[6]

On April 30, 2007, Republic Act No. 9442[7] was enacted amending R.A. No. 7277. The Title of R.A. No. 7277 was amended to read as *"Magna Carta for Persons with Disability"* and all references on the law to *"disabled persons"* were amended to read as *"persons with disability" (PWD)*.[8] Specifically, R.A. No. 9442 granted the PWDs a twenty (20) percent discount on the purchase of medicine, and a tax deduction scheme was adopted wherein covered establishments may deduct the discount granted from gross income based on the net cost of goods sold or services rendered:

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[5] *Id*. at 90.

[6] *Id*. at 17 and 979.

[7] An Act Amending Republic Act No. 7277, Otherwise known as the *Magna Carta for Persons with Disability as Amended, and For Other Purposes*; *rollo,* p. 90.

[8] Section 4 of R.A. No. 9442.

CHAPTER 8. Other Privileges and Incentives.

SEC. 32. Persons with disability shall be entitled to the following:

x x x x x x x x x

(d) At least twenty percent (20%) discount for the purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;

x x x x x x x x x

The abovementioned privileges are available only to persons with disability who are Filipino citizens upon submission of any of the following as proof of his/her entitlement thereto:

(i) An identification card issued by the city or municipal mayor or the barangay captain of the place where the person with disability resides;

(ii) The passport of the person with disability concerned; or

(ii) Transportation discount fare Identification Card (ID) issued by the National Council for the Welfare of Disabled Persons (NCWDP).

x x x x x x x x x

The establishments may claim the discounts granted in sub-sections (a), (b), (c), (f) and (g) as tax deductions based on the net cost of the goods sold or services rendered: *Provided, however,* That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted: *Provided, further,* That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code (*NIRC*), as amended.[9]

The Implementing Rules and Regulations (*IRR*) of R.A. No. 9442[10] was jointly promulgated by the Department of Social

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[9] *Rollo,* pp. 20 and 980.

[10] Published on January 21, 2009 in the Manila Standard Today, and filed with the Office of the National Administration Register, U.P. Law Center on January 31, 2008; *id*. at 90 and 982.

Welfare and Development (*DSWD*), Department of Education, Department of Finance (*DOF*), Department of Tourism, Department of Transportation and Communication, Department of the Interior and Local Government (*DILG*) and Department of Agriculture. Insofar as pertinent to this petition, the salient portions of the IRR are hereunder quoted:[11]

RULE III. DEFINITION OF TERMS

Section 5. *Definition of Terms.* For purposes of these Rules and Regulations, these terms are defined as follows:

5.1. *Persons with Disability* – are those individuals defined under Section 4 of RA 7277 "An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Persons with Disability as amended and their integration into the Mainstream of Society and for Other Purposes." This is defined as a person suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in a manner or within the range considered normal for human being. Disability shall mean (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

x x x x x x x x x

RULE IV. PRIVILEGES AND INCENTIVES FOR THE PERSONS WITH DISABILITY

Section 6. *Other Privileges and Incentives.* Persons with disability shall be entitled to the following:

x x x x x x x x x

6.1.d. *Purchase of Medicine* – at least twenty percent (20%) discount on the purchase of medicine for the exclusive use and enjoyment of persons with disability. All drugstores, hospital, pharmacies, clinics and other similar establishments selling medicines are required to provide at least twenty percent (20%) discount subject to the guidelines issued by DOH and PHILHEALTH.[12]

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[11] *Rollo*, p. 981.

[12] Underscoring supplied.

x x x x x x x x x

6.11 The abovementioned privileges are available only to persons with disability who are Filipino citizens upon submission of any of the following as proof of his/her entitlement thereto subject to the guidelines issued by the NCWDP in coordination with DSWD, DOH and DILG.

6.11.1 An identification card issued by the city or municipal mayor or the barangay captain of the place where the person with disability resides;

6.11.2 The passport of the persons with disability concerned; or

6.11.3 Transportation discount fare Identification Card (ID) issued by the National Council for the Welfare of Disabled Persons (NCWDP). However, upon effectivity of this Implementing Rules and Regulations, NCWDP will already adopt the Identification Card issued by the Local Government Unit for purposes of uniformity in the implementation. NCWDP will provide the design and specification of the identification card that will be issued by the Local Government Units.[13]

6.14. *Availment of Tax Deductions by Establishment Granting Twenty Percent 20% Discount* – The establishments may claim the discounts granted in sub-sections (6.1), (6.2), (6.4), (6.5) and (6.6) as tax deductions based on the net cost of the goods sold or services rendered: Provided, however, that the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted: Provided, further, That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

On April 23, 2008, the National Council on Disability Affairs (*NCDA*)[14] issued Administrative Order (*A.O.*) No. 1, Series of 2008,[15]

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[13] Underscoring supplied.

[14] Formerly *National Council for the Welfare of Disabled Persons* (*NCWDP*).

[15] Guidelines on the Issuance of Identification Card Relative to Republic Act 9442; *rollo,* pp. 117-119.

prescribing guidelines which should serve as a mechanism for the issuance of a PWD Identification Card (*IDC*) which shall be the basis for providing privileges and discounts to *bona fide* PWDs in accordance with R.A. 9442:

IV. INSTITUTIONAL ARRANGEMENTS

A. The Local Government Unit of the City or Municipal Office shall implement these guidelines in the issuance of the PWD-IDC

x x x x x x x x x

D. Issuance of the appropriate document to confirm the medical condition of the applicant is as follows:

Disability	Document	Issuing Entity
Apparent Disability	Medical Certificate	Licensed Private or Government Physician
	School Assessment	Licensed Teacher duly signed by the School Principal
	Certificate of Disability	Head of the Business Establishment or Head of Non-Government Organization
Non-Apparent Disability	Medical Certificate	Licensed Private or Government Physician

E. PWD Registration Forms and ID Cards shall be issued and signed by the City or Municipal Mayor, or Barangay Captain.

x x x x x x x x x

V. IMPLEMENTING GUIDELINES AND PROCEDURES

Any *bonafide* person with permanent disability can apply for the issuance of the PWD-IDC. His/her caregiver can assist in the application process. Procedures for the issuance of the ID Cards are as follows:

A. Completion of the Requirements. Complete and/or make available the following requirements:

1. Two "1×1" recent ID pictures with the names, and signatures or thumbmarks at the back of the picture
2. One (1) Valid ID
3. Document to confirm the medical or disability condition (See Section IV, D for the required document).

On December 9, 2008, the DOF issued Revenue Regulations No. 1-2009[16] prescribing rules and regulations to implement R.A. 9442 relative to the tax privileges of PWDs and tax incentives for establishments granting the discount. Section 4 of Revenue Regulations No. 001-09 states that drugstores can only deduct the 20% discount from their gross income subject to some conditions.[17]

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[16] Rules and Regulations Implementing Republic Act No. 9442, entitled "*An Act Amending Republic Act 7227, Otherwise Known as the Magna Carta for Persons with Disability*" Relative to the Tax Privileges of Persons with Disability and Tax Incentives for Establishments Granting Sales Discounts; *Rollo*, pp. 120-126.

[17] Section 4. *Availment by Establishments of Sales Discounts as Deduction from Gross Income* – Establishments granting sales discounts to persons with disability on their sale of goods and/or services specified under Section 3 above shall be entitled to deduct the said sales discount from their gross income subject to the following conditions:

1. The sales discounts shall be deducted from gross income after deducting the cost of goods sold or the cost of service;
2. The cost of the sales discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted;
3. Only that portion of the gross sales exclusively used, consumed or enjoyed by the person with disability shall be eligible for the deductible sales discount;
4. The gross selling price and the sales discount must be separately indicated in the sales invoice or official receipt issued by the establishment for the sale of goods or services to the person with disability;
5. Only the actual amount of the sales discount granted or a sales discount not exceeding 20% of the gross selling price or gross receipt can be deducted from the gross income, net of value added tax, if applicable, for income tax purposes, and from gross sales or gross receipts of the business enterprise concerned, for VAT or other percentage tax purposes; and shall be subject to proper documentation under pertinent provisions of the Tax Code of 1997, as amended;

On May 20, 2009, the DOH issued A.O. No. 2009-0011[18] specifically stating that the grant of 20% discount shall be provided in the purchase of branded medicines and unbranded generic medicines from all establishments dispensing medicines for the exclusive use of the PWDs.[19] It also detailed the guidelines for the provision of medical and related discounts and special privileges to PWDs pursuant to R.A. 9442.[20]

On July 28, 2009, petitioners filed a Petition for Prohibition with application for a Temporary Restraining Order and/or a Writ of Preliminary Injunction[21]before the Court of Appeals to annul and enjoin the implementation of the following laws:

1) Section 32 of R.A. No. 7277 as amended by R.A. No. 9442;
2) Section 6, Rule IV of the Implementing Rules and Regulations of R.A. No. 9442;
3) NCDA A.O. No. 1;
4) DOF Revenue Regulation No 1-2009;
5) DOH A.O. No. 2009-0011.

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6. The business establishment giving sales discount to qualified person with disability is required to keep separate and accurate record of sales, which shall include the name of the person with disability, ID Number, gross sales/receipts, sales discount granted, date of transactions and invoice number for every sale transaction to person with disability; and
7. All establishments mentioned in Section 3 above which granted sales discount to persons with disability on their sale of goods and/or services may claim the said discount as deduction from gross income.

[18] Guidelines to Implement the Provisions of Republic Act 9442, Otherwise known as "*An Act Amending Republic Act No. 7227, otherwise known as the "Magna Carta for Disabled Persons, and for Other Purposes*" for the provision of medical and related discounts and special privileges; Published in the Philippine Daily Inquirer on May 13, 2009, and filed in the Office of the National Administrative Register, U.P. Law Center on July 9, 2009; *rollo*, pp. 127-142.

[19] Title V, No.3, DOH A.O. No. 2009-0011.

[20] Number 4 of DOH issued Administrative Order No. 2009-0011.

[21] *Rollo*, pp. 144-204.

On July 26, 2010, the CA rendered a Decision upholding the constitutionality of R.A. 7277 as amended, as well as the assailed administrative issuances. However, the CA suspended the effectivity of NCDA A.O. No. 1 pending proof of respondent NCDA's compliance with filing of said administrative order with the Office of the National Administrative Register (*ONAR*) and its publication in a newspaper of general circulation. The dispositive portion of the Decision states:

> WHEREFORE, the petition is PARTLY GRANTED. The effectivity of NCDA Administrative Order No. 1 is hereby SUSPENDED pending Respondent's compliance with the proof of filing of NCDA Administrative Order No. 1 with the Office of the National Administrative Register and its publication in a newspaper of general circulation.

Respondent NCDA filed a motion for reconsideration before the CA to lift the suspension of the implementation of NCDA A.O. No. 1 attaching thereto proof of its publication in the *Philippine Star* and *Daily Tribune* on August 12, 2010, as well as a certification from the ONAR showing that the same was filed with the said office on October 22, 2009.[22] Likewise, petitioners filed a motion for reconsideration of the CA Decision.

In a Resolution dated November 19, 2010, the CA dismissed petitioners' motion for reconsideration and lifted the suspension of the effectivity of NCDA A.O. No. 1 considering the filing of the same with ONAR and its publication in a newspaper of general circulation.

Hence, the instant petition raising the following issues:

I. THE CA SERIOUSLY ERRED ON A QUESTION OF SUBSTANCE WHEN IT RULED THAT THE MANDATED PWD DISCOUNT IS A VALID EXERCISE OF POLICE POWER. ON THE CONTRARY, IT IS AN INVALID EXERCISE OF THE POWER OF EMINENT DOMAIN BECAUSE IT FAILS TO PROVIDE JUST COMPENSATION TO PETITIONERS AND OTHER SIMILARLY SITUATED DRUGSTORES;

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[22] *Id.* at 110-111 and 988.

II. THE CA SERIOUSLY ERRED WHEN IT RULED THAT SECTION 32 OF RA 7277 AS AMENDED BY RA 9442, NCDA AO 1 AND THE OTHER IMPLEMENTING REGULATIONS DID NOT VIOLATE THE DUE PROCESS CLAUSE;

III. THE CA SERIOUSLY ERRED WHEN IT RULED THAT THE DEFINITIONS OF DISABILITIES UNDER SECTION 4(A), SECTION 4(B) AND SECTION 4(C) OF RA 7277 AS AMENDED BY RA 9442, RULE 1 OF THE IMPLEMENTING RULES AND REGULATIONS[23] OF RA 7277, SECTION 5.1 OF THE IMPLEMENTING RULES AND REGULATIONS OF RA 9442, NCDA AO 1 AND DOH AO 2009-11 ARE NOT VAGUE, AMBIGUOUS AND UNCONSTITUTIONAL;

IV. THE CA SERIOUSLY ERRED WHEN IT RULED THAT THE MANDATED PWD DISCOUNT DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

We deny the petition.

The CA is correct when it applied by analogy the case of *Carlos Superdrug Corporation et al. v. DSWD, et al.*[24] wherein We pronounced that Section 4 of R.A. No. 9257 which grants 20% discount on the purchase of medicine of senior citizens is a legitimate exercise of police power:

> The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits.[25] Accordingly, it has been described as the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs.[26] It is [t]he power vested in the

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[23] Rule I. Title, Purpose, and Construction

[24] 553 Phil. 120, 132-133 (2007).

[25] *Sangalang v. Intermediate Appellate Court*, 257 Phil. 930 (1989).

[26] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, G.R. No. L-24693, July 31, 1967, 20 SCRA 849, citing *Noble State Bank v. Haskell*, 219 U.S. 412 (1911).

legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.[27]

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.[28]

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.[29]

Police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. On the other hand, the power of eminent domain is the inherent right of the state (and of those entities to which the power has been lawfully delegated) to condemn private property to public use upon payment of just compensation. In the exercise of police power, property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state.[30] A legislative act based on the police power requires the concurrence of a lawful subject and a lawful method. In more familiar words, (a) the interests of the public generally, as distinguished from those of a particular class, should justify the interference of the state; and (b) the means employed are reasonably necessary

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[27] *U.S. v. Toribio*, 15 Phil. 85 (1910), citing *Commonwealth v. Alger*, 7 Cush., 53 (Mass. 1851); *U.S. v. Pompeya*, 31 Phil. 245, 253-254 (1915).

[28] *Alalayan v. National Power Corporation*, 24 Phil. 172 (1968).

[29] *Id.*

[30] *Didipio Earth-Savers' Multi-Purpose Association, Inc., et al. v. Sec. Gozun, et al.,* 520 Phil. 457, 476 (2006).

for the accomplishment of the purpose and not unduly oppressive upon individuals.[31]

R.A. No. 7277 was enacted primarily to provide full support to the improvement of the total well-being of PWDs and their integration into the mainstream of society. The priority given to PWDs finds its basis in the Constitution:

ARTICLE XII

NATIONAL ECONOMY AND PATRIMONY

x x x x x x x x x

Section 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.[32]

ARTICLE XIII

SOCIAL JUSTICE AND HUMAN RIGHTS

x x x x x x x x x

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.[33]

Thus, R.A. No. 7277 provides:

SECTION 2. *Declaration of Policy.* The grant of the rights and privileges for disabled persons shall be guided by the following principles:

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[31] *National Development Company v. Philippine Veterans Bank, et al.,* 270 Phil. 349, 356 (1990); *Association of Small Landowners in the Philippines, Inc., et al. v. Honorable Secretary of Agrarian Reform,* 256 Phil. 777, 810 (1989).

[32] Underscoring supplied.

[33] Underscoring supplied.

(a). Disabled persons are part of the Philippine society, thus the Senate shall give full support to the improvement of the total well-being of disabled persons and their integration into the mainstream of society.

Toward this end, the State shall adopt policies ensuring the rehabilitation, self-development and self-reliance of disabled persons.

It shall develop their skills and potentials to enable them to compete favorably for available opportunities.

(b). Disabled persons have the same rights as other people to take their proper place in society. They should be able to live freely and as independently as possible. This must be the concern of everyone – the family, community and all government and non-government organizations. Disabled person's rights must never be perceived as welfare services by the Government.

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(d). The State also recognizes the role of the private sector in promoting the welfare of disabled persons and shall encourage partnership in programs that address their needs and concerns.[34]

To implement the above policies, R.A. No. 9442 which amended R.A. No. 7277 grants incentives and benefits including a twenty percent (20%) discount to PWDs in the purchase of medicines; fares for domestic air, sea and land travels including public railways and skyways; recreation and amusement centers including theaters, food chains and restaurants.[35] This is specifically stated in Section 4 of the IRR of R.A. No. 9442:

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[34] Underscoring supplied

[35] SEC. 32. Persons with disability shall be entitled to the following:

(a) At least twenty percent (20%) discount from all establishments relative to the utilization of all services in hotels and similar lodging establishments; restaurants and recreation centers for the exclusive use or enjoyment of persons with disability;
(b) A minimum of twenty percent (20%) discount on admission fees charged by theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement for the exclusive use of enjoyment of persons with disability;
(c) At least twenty percent (20%) discount for the purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;

Section 4. *Policies and Objectives* — It is the objective of Republic Act No. 9442 **to provide persons with disability, the opportunity to participate fully into the mainstream of society by granting them at least twenty percent (20%) discount in all basic services.** It is a declared policy of RA 7277 that persons with disability are part of Philippine society, and thus the State shall **give full support to the improvement of their total wellbeing and their integration into the mainstream of society.** They have the same rights as other people to take their proper place in society. They should be able to

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(d) At least twenty percent (20%) discount on medical and dental services including diagnostic and laboratory fees such as, but not limited to, x-rays, computerized tomography scans and blood tests, in all government facilities, subject to guidelines to be issued by the Department of Health (DOH), in coordination with the Philippine Health Insurance Corporation (PHILHEALTH);
(e) At least twenty percent (20%) discount on medical and dental services including diagnostic and laboratory fees, and professional fees of attending doctors in all private hospitals and medical facilities, in accordance with the rules and regulations to be issued by the DOH, in coordination with the PHILHEALTH;
(f) At least twenty percent (20%) discount on fare for domestic air and sea travel for the exclusive use or enjoyment of persons with disability;
(g) At least twenty percent (20%) discount in public railways, skyways and bus fare for the exclusive use and enjoyment of person with disability;
(h) Educational assistance to persons with disability, for them to pursue primary, secondary, tertiary, post tertiary, as well as vocational or technical education, in both public and private schools, through the provision of scholarships, grants, financial aids, subsidies and other incentives to qualified persons with disability, including support for books, learning material, and uniform allowance to the extent feasible: Provided, That persons with disability shall meet minimum admission requirements;
(i) To the extent practicable and feasible, the continuance of the same benefits and privileges given by the Government Service Insurance System (GSIS), Social Security System (SSS), and PAG-IBIG, as the case may be, as are enjoyed by those in actual service;
(j) To the extent possible, the government may grant special discounts in special programs for persons with disability on purchase of basic commodities, subject to guidelines to be issued for the purpose by the Department of Trade and Industry (DTI) and the Department of Agricultural (DA); and
(k) Provision of express lanes for persons with disability in all commercial and government establishments; in the absence thereof, priority shall be given to them.

live freely and as independently as possible. This must be the concern of everyone the family, community and all government and non-government organizations. Rights of persons with disability must never be perceived as welfare services. Prohibitions on verbal, non-verbal ridicule and vilification against persons with disability shall always be observed at all times.[36]

Hence, the PWD mandatory discount on the purchase of medicine is supported by a valid objective or purpose as aforementioned. It has a valid subject considering that the concept of *public use* is no longer confined to the traditional notion of *use by the public*, but held synonymous with *public interest*, *public benefit*, *public welfare*, and *public convenience*. As in the case of senior citizens,[37] the discount privilege to which the PWDs are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related.[38] Also, the means employed to provide a fair, just and quality health care to PWDs are reasonably related to its accomplishment, and are not oppressive, considering that as a form of reimbursement, the discount extended to PWDs in the purchase of medicine can be claimed by the establishments as allowable tax deductions pursuant to Section 32 of R.A. No. 9442 as implemented in Section 4 of DOF Revenue Regulations No.1-2009. Otherwise stated, the discount reduces taxable income upon which the tax liability of the establishments is computed.

Further, petitioners aver that Section 32 of R.A. No. 7277 as amended by R.A. No. 9442 is unconstitutional and void for violating the due process clause of the Constitution since entitlement to the 20% discount is allegedly merely based on any of the three documents mentioned in the provision, namely:

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[36] Emphasis supplied.

[37] *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, 496 Phil. 307, 335 (2005).

[38] *Carlos Superdrug Corporation, et al. v. DSWD, et al., supra* note 24, at 135.

(i) an identification card issued by the city or municipal mayor or the barangay captain of the place where the PWD resides; (ii) the passport of the PWD; or (iii) transportation discount fare identification card issued by NCDA. Petitioners, thus, maintain that none of the said documents has any relation to a medical finding of disability, and the grant of the discount is allegedly without any process for the determination of a PWD in accordance with law.

Section 32 of R.A. No. 7277, as amended by R.A. No. 9442, must be read with its IRR which stated that upon its effectivity, NCWDP (which is the government agency tasked to ensure the implementation of RA 7277), would adopt the IDC issued by the local government units for purposes of uniformity in the implementation.[39] Thus, NCDA A.O. No. 1 provides the reasonable guidelines in the issuance of IDCs to PWDs as proof of their entitlement to the privileges and incentives under the law[40] and fills the details in the implementation of the law.

As stated in NCDA A.O. No. 1, before an IDC is issued by the city or municipal mayor or the barangay captain,[41] or the Chairman of the NCDA,[42] the applicant must first secure a medical certificate issued by a licensed private or government physician that will confirm his medical or disability condition. If an applicant is an employee with apparent disability, a "certificate of disability" issued by the head of the business establishment or the head of the non-governmental organization is needed for him to be issued a PWD-IDC. For a student with apparent disability, the "school assessment" issued by the teacher and signed by the school principal should be presented to avail of a PWD-ID.

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[39] Section 6.11.3 of IRR of R.A. No. 9442.

[40] Part I, Nos. 4 and 5, NCDA Administrative Order No. 1; *rollo,* p. 111.

[41] Only for the first three (3) years as provided in DOH Administrative Order No. 2009-001; *id.* at 131.

[42] After three (3) years, the signatory to the IDC shall be the Chairperson of the NCDA as provided in DOH Administrative Order No. 2009-001; *id*.

Petitioners' insistence that Part IV (D) of NCDA Administrative Order No. 1 is void because it allows allegedly non-competent persons like teachers, head of establishments and heads of Non-Governmental Organizations (NGOs) to confirm the medical condition of the applicant is misplaced. It must be stressed that only for apparent disabilities can the teacher or head of a business establishment validly issue the mentioned required document because, obviously, the disability is easily seen or clearly visible. It is, therefore, not an unqualified grant of authority for the said non-medical persons as it is simply limited to apparent disabilities. For a non-apparent disability or a disability condition that is not easily seen or clearly visible, the disability can only be validated by a licensed private or government physician, and a medical certificate has to be presented in the procurement of an IDC. Relative to this issue, the CA validly ruled, thus:

> We agree with the Office of the Solicitor General's (OSG) ratiocination that teachers, heads of business establishments and heads of NGOs can validly confirm the medical condition of their students/ employees with apparent disability for obvious reasons as compared to non-apparent disability which can only be determined by licensed physicians. Under the Labor Code, **disabled persons are eligible as apprentices or learners** provided that their handicap are not as much as to effectively impede the performance of their job. We find that heads of business establishments can validly issue certificates of disability of their employees because aside from the fact that they can obviously validate the disability, they also have **medical records** of the employees as a **pre-requisite in the hiring** of employees. Hence, Part IV (D) of NCDA AO No. 1 is logical and valid.[43]

Furthermore, DOH A.O. No. 2009-11 prescribes additional guidelines for the 20% discount in the purchase of all medicines for the exclusive use of PWD.[44] To avail of the discount, the

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[43] Emphasis supplied.

[44] Guidelines for the twenty percent (20%) discount in the purchase of all medicines for the exclusive use of PWD:

a) All establishments through their registered pharmacist must have full disclosure and responsibility in dispensing all medicines for exclusive use of PWD.

PWD must not only present his I.D. but also the doctor's prescription stating, among others, the generic name of the medicine, the physician's address, contact number and professional license number, professional tax receipt number and narcotic license number, if applicable. A purchase booklet issued by the local social/health office is also required in the

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b) **Discounts shall be granted** to PWDs on all the purchase of all medicines **provided that it is supported by the following**:

i. PWD Identification Card as stated in the Definition of Terms;

ii. **Doctor's prescription** stating the name of the PWD, age, sex, address, date, generic name of the medicine, dosage form, dosage strength, quantity, signature over printed name of physician, physician's address, contact number of physician or dentist, professional license number, professional tax receipt number and narcotic license number, if applicable. To safeguard the health of PWDs and to prevent abuse of RA 9257, a doctor's prescription is required in the purchase of over-the counter medicines. Only prescriptions that contain the above information shall be honored.

iii. **Purchase booklet** issued by the local social/health office to PWDs for free containing the following basic information:
   a) PWD ID Number
   b) Booklet control number
   c) Name of PWD
   d) Sex
   e) Address
   f) Date of Birth
   g) Picture
   h) Signature of PWD
   i) Information of medicine purchased:
      i.1 Name of medicine
      i.2 Quantity
      i.3 Attending Physician
      i.4 License Number
      i.5 Servicing drug store name
      i.6 Name of dispensing pharmacist
   j) Authorization letter of the PWD who is residing in the Philippines at the time of purchase, currently dated and the identification card of the authorized person or representative, in case the medicine is bought by the representative or care giver of the PWD. (Emphasis supplied)

c) As a general rule, any single dispensing of medicine must be in accordance with the prescription issued by a physician and should not exceed a one (1) month supply.

purchase of over-the-counter medicines. Likewise, any single dispensing of medicine must be in accordance with the prescription issued by the physician and should not exceed a one (1) month supply. Therefore, as correctly argued by the respondents, Section 32 of R.A. No. 7277 as amended by R.A. No. 9442 complies with the standards of substantive due process.

We are likewise not persuaded by the argument of petitioners that the definition of "disabilities" under the subject laws is vague and ambiguous because it is allegedly so general and broad that the person tasked with implementing the law will undoubtedly arrive at different interpretations and applications of the law. Aside from the definitions of a "person with disability" or "disabled persons" under Section 4 of R.A. No. 7277 as amended by R.A. No. 9442 and in the IRR of RA 9442, NCDA A.O. No. 1 also provides:

> 4. Identification Cards shall be issued to any *bonafide* PWD with permanent disabilities due to any one or more of the following conditions: psychosocial, chronic illness, learning, mental, visual, orthopedic, speech and hearing conditions. This includes persons suffering from disabling diseases resulting to the person's limitations to do day to day activities as normally as possible such as but not limited to those undergoing dialysis, heart disorders, severe cancer cases and

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> Drug stores are required to maintain a special record book for PWD subject to inspection by the BFAD and BIR.
>
> d) For partial filling, the establishment's pharmacists will indicate the quantity partially filled in the special record book and the unfilled balance on the prescription. The PWD shall retain the partially filled prescription and present the same later to complete the prescribed quantity.
>
> e) Drugstores offering special discounted prices less than 20% of the regular retail price can deduct the percentage discount on their promotional campaign from the total of 20% discount as required by RA 9442. Thus, a total discount of 20% for PWD will still be observed.
>
> These discount privileges shall be non-transferable and exclusive for the benefits of the PWD.
>
> All establishments as defined above are enjoined to comply with above-cited guidelines.
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> x x x x x x x x x

such other similar cases resulting to temporary or permanent disability.[45]

Similarly, DOH A.O. No. 2009-0011 defines the different categories of disability as follows:

Rule IV, Section 4, Paragraph B of the Implementing Rules and Regulations (IRR) of this Act required the Department of Health to address the health concerns of seven (7) different categories of disability, which include the following: (1) Psychological and behavioral disabilities (2) Chronic illness with disabilities (3) Learning (cognitive or intellectual) disabilities (4) Mental disabilities (5) Visual/ seeing disabilities (6) Orthopedic/moving, and (7) communication deficits.[46]

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[45] No. 3, Part I of NCDA AO 1.

[46] *Rollo,* pp. 102-103.

Disability Types – the 7 types of disabilities mentioned in RA No. 7277 are psychosocial disability, disability due to chronic illness, learning disability, mental disability, visual disability, orthopaedic disability, and communication disability.
Communication Disability – an impairment in the process of speech, language or hearing: a) hearing impairment is a total or partial loss of hearing function which impede the communication process essential to language, educational, social and/or cultural interaction; Speech and Language Impairment means one or more speech/language disorders of voice, articulation, rhythm and/or the receptive or and expressive processes of language.
Learning Disability – any disorder in one or more of the basic psychological processes (perception, comprehension, thinking, etc.) involved in understanding or in using spoken or written language.
Mental Disability – disability resulting from organic brain syndrome (*i.e*. Mental retardation, acquired lesions of the central nervous system, or dementia) and/or mental illness (psychotic or non-psychotic disorder)
Orthopedic Disability – disability in the normal functioning of the joints, muscles or limbs.
Psychosocial Disability – any acquired behavioural, cognitive, emotional, social impairment that limits one or more activities necessary for effective interpersonal transactions and other civilizing process or activities for daily living such as but not limited to deviancy or anti-social behaviour.
Visual Disability – a person with visual disability (impairment) is one who has impairment of visual functioning even after treatment and/or standard refractive correction, and has visual acuity in the better eye of

Elementary is the rule that when laws or rules are clear, when the law is unambiguous and unequivocal, application not interpretation thereof is imperative. However, where the language of a statute is vague and ambiguous, an interpretation thereof is resorted to. A law is deemed ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses. The fact that a law admits of different interpretations is the best evidence that it is vague and ambiguous.[47]

In the instant case, We do not find the aforestated definition of terms as vague and ambiguous. Settled is the rule that courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency.[48] As a matter of policy, We accord great respect to the decisions and/or actions of administrative authorities not only because of the doctrine of separation of powers but also for their presumed knowledge, ability, and expertise in the enforcement of laws and regulations entrusted to their jurisdiction. The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of

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less than (6/18 for low vision and 3/60 for blind, or a visual field of less than 10 degrees from the point of fixation. A certain level of visual impairment is defined as legal blindness. One is legally blind when your best corrected central visual acuity in your better eye is 6/60 or worse or your side vision is 20 degrees or less in the better eye.

Chronic Illness – words to describe a group of health conditions that last a long time. It may get slowly worse over time or may become permanent or it may lead to death. It may cause permanent change to the body and it will certainly affect the person's quality of life.

[47] *Garcia v. Social Security Commission Legal and Collection, SSS,* 565 Phil. 193, 208 (2007).

[48] *PEZA v. Pearl City Manufacturing Corporation,* 623 Phil. 191, 207 (2009); *Department of Agrarian Reform vs. Samson, et al.,* 577 Phil. 370, 381 (2008).

specialized capabilities by the administrative agency charged with implementing a particular statute.[49]

Lastly, petitioners contend that R.A. No. 7227, as amended by R.A. No. 9442, violates the equal protection clause of the Constitution because it fairly singles out drugstores to bear the burden of the discount, and that it can hardly be said to "rationally" meet a legitimate government objective which is the purpose of the law. The law allegedly targets only retailers such as petitioners, and that the other enterprises in the drug industry are not imposed with similar burden. This same argument had been raised in the case of *Carlos Superdrug Corp., et al. v. DSWD, et al.,*[50] and We reaffirm and apply the ruling therein in the case at bar:

> The Court is not oblivious of the retail side of the pharmaceutical industry and the competitive pricing component of the business. While the Constitution protects property rights, petitioners must accept the realities of business and the State, in the exercise of police power, can intervene in the operations of a business which may result in an impairment of property rights in the process.
>
> Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good.[51]

Under the equal protection clause, all persons or things similarly situated must be treated alike, both in the privileges

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[49] *The Public Schools District Supervisors Association, et al. v. Hon. De Jesus,* 524 Phil. 366, 386-387 (2006).

[50] *Supra* note 24, at 146-147.

[51] By the general police power of the State, persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State; of the perfect right in the legislature to do which, no question ever was, or, upon acknowledged and general principles, ever can be made, so far as natural persons are concerned. (*U.S. v. Toribio, supra* note 27, at 98-99, citing *Thorpe v. Rutland & Burlington R.R. Co.* [27 Vt., 140, 149]).

conferred and the obligations imposed. Conversely, all persons or things differently situated should be treated differently.[52] In the case of *ABAKADA Guro Party List, et al. v. Hon. Purisima, et al.,*[53] We held:

> Equality guaranteed under the equal protection clause is equality under the same conditions and among persons similarly situated; it is equality among equals, not similarity of treatment of persons who are classified based on substantial differences in relation to the object to be accomplished. When things or persons are different in fact or circumstance, they may be treated in law differently. In *Victoriano v. Elizalde Rope Workers' Union*, this Court declared:
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> > The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the State. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. **The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different**. **It does not prohibit legislation which is limited either in the object to which it is directed** or by the territory within which it is to operate.
> >
> > The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. **All that is required of a valid classification is that it be reasonable,**

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[52] *National Development Company v. Philippine Veterans Bank, et al., supra* note 31, at 357.

[53] 584 Phil. 246, 269-270 (2008). (Emphasis in the original)

> **which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class**. This Court has held that **the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary**.
>
> In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence, legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.

The equal protection clause recognizes a valid classification, that is, a classification that has a reasonable foundation or rational basis and not arbitrary.[54] With respect to R.A. No. 9442, its expressed public policy is the rehabilitation, self-development and self-reliance of PWDs. Persons with disability form a class separate and distinct from the other citizens of the country. Indubitably, such substantial distinction is germane and intimately related to the purpose of the law. Hence, the classification and treatment accorded to the PWDs fully satisfy the demands of equal protection. Thus, Congress may pass a law providing for a different treatment to persons with disability apart from the other citizens of the country.

Subject to the determination of the courts as to what is a proper exercise of police power using the due process clause and the equal protection clause as yardsticks, the State may interfere wherever the public interests demand it, and in this particular, a large discretion is necessarily vested in the legislature

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[54] *ABAKADA Guro Party List v. Hon. Purisima, et al., supra,* at 270.

to determine, not only what interests of the public require, but what measures are necessary for the protection of such interests.[55] Thus, We are mindful of the fundamental criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute.[56] The burden of proof is on him who claims that a statute is unconstitutional. Petitioners failed to discharge such burden of proof.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated July 26, 2010, and the Resolution dated November 19, 2010, in CA-G.R. SP No. 109903 are **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 198350. September 14, 2016]

ATTY. MARCOS D. RISONAR, JR., *petitioner, vs.* **COR JESU COLLEGE and/or EDGARDO S. ESCURIL**, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; FIXED-TERM EMPLOYMENT; THE LABOR CODE DOES NOT PROSCRIBE OR PROHIBIT AN EMPLOYMENT

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[55] *U.S. v. Toribio, supra* note 27, at 98, citing *Lawton v. Steele*, 152 U.S. 133, 136; *Barbier v. Connoly*, 113 U.S. 27; *Kidd v. Pearson,* 128 U.S. 1.

[56] *People v. Vera,* 65 Phil. 199 (1937).

CONTRACT WITH A FIXED PERIOD; REQUISITES.— The validity of a fixed-term employment, as aptly pointed out by the CA, had long been settled by the Court. Indeed, where the duties of the employee consist of activities which are necessary or desirable in the usual business of the employer, the parties are not prohibited from agreeing on the duration of employment. Article 280 of the Labor Code does not proscribe or prohibit an employment contract with a fixed period. There is nothing essentially contradictory between a definite period of employment and the nature of the employee's duty. A contract of employment with a fixed period necessitates that: (1) the fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear on the employee and without any circumstances vitiating consent; or (2) it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter.

2. ID.; ID.; ID.; A FIXED-TERM EMPLOYEE, PRIOR TO THE EXPIRATION OF TERM SPECIFIED IN THE EMPLOYMENT CONTRACT, MAY NOT BE DISMISSED EXCEPT FOR JUST OR AUTHORIZED CAUSE PROVIDED BY LAW OR THE EMPLOYMENT CONTRACT AND AFTER DUE PROCESS HAS BEEN AFFORDED THE EMPLOYEE.— Fixed-term employees are akin to project employees. The period of employment of fixed-term employees has been fixed prior to engagement while the project employees' employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined likewise at the time of the engagement. A project employee enjoys security of tenure; he may not be dismissed prior to the completion or termination of the project or undertaking except for a just or authorized cause provided by law and after due process has been properly complied with. Similarly, fixed-term employees also enjoy security of tenure albeit limited to the duration of the term indicated in the employment contract. Thus, a fixed-term employee, prior to the expiration of the term specified in the employment contract, may not be dismissed except for a just or an authorized cause provided by law or the employment contract and after due process has been afforded to the employee.

3. ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; ILLEGAL DISMISSAL; REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND PAYMENT OF BACKWAGES ARE THE NORMAL CONSEQUENCES OF ILLEGAL DISMISSAL; WHERE REINSTATEMENT IS NO LONGER VIABLE AS AN OPTION, PAYMENT OF SEPARATION PAY IN ADDITION TO BACKWAGES IS PROPER; CASE AT BAR.— The normal consequences of an illegal dismissal are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages. However, considering that the petitioner's second term as the Law School Dean was only for three years or from June 1, 2007 until May 31, 2010, the monetary awards to which he is entitled as a consequence of his illegal dismissal are only limited to such period. The petitioner is, thus, entitled to backwages computed from the time his compensation was withheld until May 31, 2010. Further, considering that reinstatement is no longer feasible not only because the relationship between the parties has already been strained, but also the term of the petitioner's second appointment had already lapsed, he is entitled to separation pay equivalent to one (1) month salary for every year of service.

4. ID.; ID.; ID.; ID.; MONETARY AWARDS; WHERE AN EMPLOYEE WAS FORCED TO LITIGATE AND, THUS, INCURRED EXPENSES TO PROTECT HIS RIGHTS AND INTEREST, THE AWARD OF ATTORNEY'S FEES IS LEGALLY AND MORALLY JUSTIFIABLE; CASE AT BAR.— The petitioner is further entitled to attorney's fees in the amount of ten percent (10%) of the total monetary awards pursuant to Article 111 of the Labor Code. It is settled that where an employee was forced to litigate and, thus, incurred expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable. Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from the finality of the Decision in this case until fully paid.

APPEARANCES OF COUNSEL

Cagas Baña & Fernandez Law Offices for petitioner.
Carlos L. Espero II for respondents.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated December 9, 2010 and the Resolution[3] dated July 28, 2011 issued by the Court of Appeals (CA) in CA-G.R. SP No. 02957-MIN.

Facts

Atty. Marcos D. Risonar, Jr. (petitioner) was initially appointed as Dean of the Law School of Cor Jesu College (CJC) effective August 1, 2003 until May 31, 2004.[4] On June 7, 2004, his appointment as Law School Dean was renewed for a term of three years effective June 1, 2004.[5] His appointment letter, *inter alia*, provided that "if [CJC] does not intend to renew/extend [the petitioner's] appointment[,] he will be informed in writing 30 days before [the] term appointment ends."[6]

After his three-year term ended on May 31, 2007, the petitioner had not received any notice of termination from CJC. Thus, despite the lapse of the term of his appointment as Law School Dean, the petitioner continued to perform his duties and

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[1] *Rollo*, pp. 11-40.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Edgardo T. Lloren and Leoncia R. Dimagiba concurring; *id.* at 42-68.

[3] *Id.* at 70-71.

[4] *Id.* at 13.

[5] *Id.*

[6] *Id.* at 14.

proceeded to prepare for the forthcoming first semester of school year 2007-2008.[7]

In June 2007, Edgardo S. Escuril (Escuril) assumed office as President of CJC. On June 11, 2007, during a party held in honor of the retired President of CJC, the petitioner was introduced to Escuril, but they did not discuss the status of the petitioner's appointment. On June 25, 2007, the petitioner met with Escuril. During the said meeting, they discussed the situation of the law school; the termination of the petitioner's services was not discussed.[8]

On July 12, 2007, the petitioner received a letter from Escuril informing him that his services as Law School Dean was already terminated and that the new Dean will report on July 13, 2007 for a formal turn-over of office and responsibilities. The petitioner then immediately called Escuril to express his disappointment as regards the manner of terminating his services as Law School Dean.[9]

On July 13, 2007, the petitioner wrote Escuril to protest the termination of his services. He pointed out that, pursuant to the stipulations in his appointment letter, it is required for CJC to give him a written notice informing him that the administration does not intend to renew/extend his appointment as Law School Dean within 30 days prior to the expiration of the term of his previous appointment. He pointed out that the written notice of termination he received from Escuril was sent and received by him well beyond the 30-day period indicated in his appointment letter. The petitioner sent a copy of his letter to the Board of Trustees of CJC. Escuril and CJC (collectively, the respondents) ignored the petitioner's protest.[10]

On July 20, 2007, the petitioner filed a complaint for illegal dismissal and damages with the Regional Arbitration Branch

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[7] *Id*. at 15.

[8] *Id*.

[9] *Id*. at 16.

[10] *Id*. at 17.

of the National Labor Relations Commission (NLRC) in Davao City against the respondents. He claimed that the respondents violated the express provision in his appointment letter as regards the written notice of termination sent within 30 days prior to the expiration of the term of his appointment in case the respondents do not desire to renew or extend his services. He likewise claimed that no just or authorized cause exists to warrant his dismissal.[11]

The petitioner further posited that he should have been considered as a regular employee since he had continuously and uninterruptedly worked for CJC for four years and that he performed activities which are necessary and desirable in the usual business or trade of CJC. Moreover, the petitioner averred that the respondents' failure to send him the required written notice of termination resulted in the automatic renewal of his appointment as Law School Dean for another three-year term starting from June 1, 2007.[12]

For their part, the respondents claimed that the petitioner's appointment is a term employment which presupposes that a day certain has been agreed upon by the parties for the commencement and termination of the employment contract. They claimed that the petitioner's appointment as Law School Dean expired on May 31, 2007 and, thus, he was not illegally dismissed.[13]

They also claimed that the petitioner was informed that his term as Law School Dean would no longer be renewed, albeit orally in a meeting. They averred that Escuril, during the said meeting, informed the petitioner that he was already being replaced in view of the expiration of his contract. They further alleged that while the petitioner continued to hold office as Law School Dean, he however knew that he only holds that office temporarily and in hold-over capacity. In any case, the

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[11] *Id.* at 44.

[12] *Id.*

[13] *Id.* at 45.

respondents averred that the lack of a written notice of termination is inconsequential since the petitioner's employment was terminated by reason of the expiration of the period stated in the appointment letter.[14]

Ruling of the Labor Arbiter

On February 28, 2008, the Labor Arbiter (LA) rendered a Decision declaring the petitioner's dismissal as valid, but directed the respondents to pay the petitioner the following amounts: (1) ₱50,000.00 as nominal damages; (2) ₱100,000.00 as moral and exemplary damages; and (3) an amount equivalent to 15% of the total monetary award as attorney's fees.[15] The LA opined that notwithstanding that the petitioner's employment was a fixed-term employment, the parties were nevertheless bound by the contract of employment which indicated that CJC should send the petitioner a written notice of termination 30 days prior to the expiration of the term of appointment. The LA held that when CJC failed to send the petitioner the required written notice of termination, it violated the petitioner's right to due process, thus, making it liable to pay nominal, moral and exemplary damages.[16]

Both parties elevated their cases to the NLRC on partial appeal.[17] The petitioner insisted that his dismissal is illegal and, thus, prayed, in addition to the damages awarded by the LA, that his reinstatement be ordered plus backwages, inclusive of allowances and benefits.[18] On the other hand, the respondents maintained that the termination of the petitioner's employment was valid as it was only a fixed-term employment; they asked the NLRC to delete the award of nominal, moral and exemplary damages, and attorney's fees.[19]

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[14] *Id.* at 45-46.

[15] *Id.* at 46.

[16] *Id.* at 18-19.

[17] *Id.* at 46.

[18] *Id.* at 47.

[19] *Id.*

Ruling of the NLRC

On January 30, 2009, the NLRC issued a Resolution reversing the LA's disposition. The NLRC declared the petitioner's dismissal as illegal and, thus, directed the respondents to reinstate the petitioner to his former position as Law School Dean and to pay him full backwages. However, if reinstatement is no longer possible, the NLRC directed the respondents to instead pay the petitioner's wages equivalent to three years. The NLRC affirmed the awards for moral and exemplary damages, but deleted the award of nominal damages. The NLRC likewise reduced the award of attorney's fees to 10% of the total monetary awards granted.[20]

The NLRC held that in view of the respondents' failure to comply with the written notice of termination requirement stipulated in the letter of appointment, and considering that the petitioner was allowed to continue to serve as Law School Dean more than a month after the stipulated end of his appointment, his appointment was deemed renewed and extended under such terms and conditions set forth in his original appointment.[21] Accordingly, the NLRC ruled that the petitioner has the right to tenurial security at least within the same period of three years and his employment cannot be terminated except for a just or an authorized cause provided by law or in his appointment letter.[22]

The respondents filed a motion for partial reconsideration, but it was denied by the NLRC in its Resolution dated March 31, 2009.[23] Aggrieved, the respondents filed a petition for review on *certiorari* with the CA alleging that the NLRC committed grave abuse of discretion when it ruled that the petitioner's appointment was deemed renewed and extended on account of their failure to send him the required written notice of termination.

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[20] *Id*.

[21] *Id*. at 20.

[22] *Id*. at 21.

[23] *Id*. at 22.

They also claimed that the NLRC's award of nominal and exemplary damages and attorney's fees is without factual and legal basis.[24]

Ruling of the CA

On December 9, 2010, the CA rendered the herein assailed Decision[25] reversing the NLRC's Resolutions dated January 30, 2009 and March 31, 2009. The CA pointed out that the petitioner's employment with CJC is a fixed-term employment and, thus, the petitioner cannot be considered as a regular employee.[26] The CA further held that the respondents' failure to send the petitioner the required written notice of termination, contrary to the NLRC's ruling, does not result in the automatic renewal or extension of the petitioner's appointment as Law School Dean. The CA stressed that the petitioner's appointment is clearly and categorically fixed for a period of three years effective June 1, 2004 until May 31, 2007 only.[27] Nevertheless, the CA opined that respondents' failure to afford the 30-day notice amounts to violation of the due process requirement making them liable to pay the petitioner nominal damages. Accordingly, the CA directed the respondents to pay the petitioner the amount of ₱30,000.00 as nominal damages.

The petitioner sought reconsideration of the Decision dated December 9, 2010, but it was denied by the CA in its Resolution[28] dated July 28, 2011.

In this petition for review on *certiorari*, the petitioner claims that the NLRC did not abuse its discretion when it ruled that he was illegally dismissed from his employment.[29] He insists that the respondents' duty to send him a written notice of

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[24] *Id*. at 48.

[25] *Id*. at 42-68.

[26] *Id*. at 56.

[27] *Id*. at 59.

[28] *Id*. at 70-71.

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

termination 30 days prior to the expiration of the term of his appointment is a contractual duty; the respondents' failure to send him the required written notice of termination resulted in the automatic renewal of his original appointment for another three years.[30] Further, the petitioner insinuates that he should be considered a regular employee of CJC since he was allowed to work after the expiration of his term of employment and that he performs activities which are usually necessary or desirable in the usual business or trade of CJC.[31]

On the other hand, the respondents, in their Comment,[32] maintain that the petitioner's dismissal was valid since his fixed-term contract of employment with CJC had already expired. The respondents likewise aver that the petitioner cannot be considered as a regular employee of CJC considering that he has not been in the continued service of CJC for more than two years after the expiration of the term of his appointment as Law School Dean.[33]

Issue

Essentially, the issue for the Court's resolution is whether the petitioner was illegally dismissed.

Ruling of the Court

The petition is granted.

The petitioner's appointment as Law School Dean is a fixed-term employment.

At the outset, it bears stressing that the nature of the petitioner's employment with CJC, contrary to his assertion, is not a regular employment, but a fixed-term employment. The validity of a fixed-term employment, as aptly pointed out by the CA, had

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

[31] *Id.* at 32.

[32] *Id.* at 143-149.

[33] *Id.* at 147-148.

long been settled by the Court. Indeed, where the duties of the employee consist of activities which are necessary or desirable in the usual business of the employer, the parties are not prohibited from agreeing on the duration of employment.[34] Article 280[35] of the Labor Code does not proscribe or prohibit an employment contract with a fixed period. There is nothing essentially contradictory between a definite period of employment and the nature of the employee's duty.[36]

A contract of employment with a fixed period necessitates that: (1) the fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress or improper pressure being brought to bear on the employee and without any circumstances vitiating consent; or (2) it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter.[37]

It is indisputable that the petitioner and CJC knowingly and voluntarily agreed upon the petitioner's fixed period of employment as the Law School Dean and, in doing so, they dealt with each other on equal terms. Verily, appointments to

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[34] See *Labayog v. M.Y. San Biscuits, Inc.*, 527 Phil. 67, 72 (2006).

[35] Art. 280. *Regular and casual employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[36] See *AMA Computer College, Parañaque, and/or Amable C. Aguiluz IX v. Austria*, 536 Phil. 745, 757 (2007).

[37] See *Caparoso v. Court of Appeals*, 544 Phil. 721, 728 (2007).

the position of Dean of an educational institution involves an employment contract to which a fixed term is an essential and natural appurtenance.[38]

The fixed-term employment of the petitioner was impliedly renewed after its expiration.

In reversing the NLRC's resolutions, the CA opined that the petitioner's dismissal was valid since the cause thereof was the lapse of the term of the petitioner's appointment as the Law School Dean. The CA held that there is nothing in the petitioner's appointment letter that expressly or impliedly allowed an automatic renewal or extension of the term of office. It declared that the petitioner's fixed-term contract ended automatically after its expiration.[39]

The Court does not agree.

The pertinent portion of the petitioner's appointment letter reads:

> *You will serve the entire duration of this appointment. However, if you decide to discontinue your services before the term ends, you must submit a written notice, at least, 30 days before the effectivity of such discontinuance of service.* ***Likewise, if the administration does not intend to renew/extend this appointment[,] you will be informed in writing 30 days before this term appointment ends***.[40] (Emphasis ours and italics in the original)

The foregoing *proviso* in the petitioner's appointment letter is clear; the petitioner will serve as the Law School Dean for the entire duration of his appointment, *i.e.* from June 1, 2004 to May 31, 2007. However, should CJC no longer wish to employ the petitioner's services after the term of the initial appointment, it shall send him a written notice informing him that the administration no longer intends to renew/extend his appointment

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[38] *Brent School, Inc. v. Zamora*, 260 Phil. 747, 761 (1990).

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

[40] *Id.* at 14.

at least 30 days prior to the expiration of the term of his initial appointment.

Should CJC fail to send the petitioner the required written notice of termination 30 days prior to the expiration of the term of the original appointment, as what happened in this case, it can be logically and necessarily inferred that CJC intended to renew the petitioner's appointment as Law School Dean under such terms and conditions set forth in his original appointment. A contrary interpretation would render inutile the requirement on the part of CJC to send the petitioner a written notice informing him that his appointment would no longer be renewed. Indeed, CJC would not have imposed the said requirement on itself if the expiration of the term of the petitioner's original appointment does not result in the automatic renewal of the latter's appointment.

Further, as aptly pointed out by the NLRC, the petitioner's appointment letter is the contract of labor between him and CJC; any ambiguity in the stipulation or doubt in the interpretation thereof, pursuant to Article 1377[41] of the Civil Code, shall not favor the party who caused the obscurity.[42]

The foregoing conclusion is bolstered by the fact that notwithstanding the lapse of the term of the petitioner's original appointment, the respondents allowed the petitioner to still assume his office as the Law School Dean. If indeed the respondents no longer intended to renew the petitioner's appointment, they should not have allowed the petitioner to serve as the Law School Dean after the lapse of the term of his original appointment.

Concomitantly, the respondents' claim that the petitioner was merely allowed to assume his office as the Law School Dean after the lapse of the term of his original appointment on a hold-over capacity deserves scant consideration. On this point, the NLRC correctly observed that:

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[41] Article 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

[42] *Rollo*, p. 20.

Respondents[’] argument that [the petitioner] held the position on a “hold[-]over” capacity after the expiration of his appointment cannot thus be sustained. “*Commodum ex injuria sua nemo habere debet*.” No one should obtain an advantage from his own wrong doing. It is [CJC] that prepared the appointment and obligated upon itself to notify [the petitioner] in writing thirty (30) days prior to its expiration if it no longer wanted to renew or extend said appointment. [CJC] should not be allowed to have an advantage arising [from] its own mistake or negligence.

Moreover, [the petitioner’s] appointment does not contain any stipulation that he will continue to serve on a “hold-over” capacity in case [CJC] forgets to inform him that it no longer wants to renew or extend his appointment until such time when it can decide to ease him out of the service.[43]

The CA, nevertheless, pointed out that, while the term of the petitioner’s original appointment was about to lapse on May 31, 2007, Escuril was only appointed as President of CJC on May 25, 2007, which the Board of Trustees made effective only on June 1, 2007. The CA pointed out that Escuril could not have been expected to comply with the 30-day notice requirement in the petitioner’s appointment letter. Thus, the CA insinuated that the respondents were not at fault when they failed to send the petitioner the required written notice of termination 30 days prior to the expiration of the term of his original appointment.[44]

What the CA failed to consider was that the appointment letter, which is the contract of employment between the parties, was executed by and between the petitioner and CJC. The fact that Escuril’s appointment was only made effective on June 1, 2007, or after the lapse of the term of the petitioner’s original appointment, is immaterial. To stress, if indeed CJC never intended to renew the petitioner’s appointment, CJC, through its previous President, should have sent the petitioner the required written notice of termination in accordance with the appointment letter.

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[43] *Id.* at 20-21.

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

The petitioner was illegally dismissed and is entitled to payment of backwages and separation pay.

Fixed-term employees are akin to project employees. The period of employment of fixed-term employees has been fixed prior to engagement while the project employees' employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined likewise at the time of the engagement.

A project employee enjoys security of tenure; he may not be dismissed prior to the completion or termination of the project or undertaking except for a just or authorized cause provided by law and after due process has been properly complied with.[45] Similarly, fixed-term employees also enjoy security of tenure albeit limited to the duration of the term indicated in the employment contract. Thus, a fixed-term employee, prior to the expiration of the term specified in the employment contract, may not be dismissed except for a just or an authorized cause provided by law or the employment contract and after due process has been afforded to the employee.

As already discussed, the petitioner's appointment as the Law School Dean was automatically renewed under the same terms and conditions of the original appointment, since the respondents failed to send him the required written notice. Accordingly, the petitioner's second term as the Law School Dean was for another three years or from June 1, 2007 until May 31, 2010. In the termination letter[46] sent to the petitioner, which he received on July 12, 2007, the respondents merely indicated that the petitioner was about to be replaced as the Law School Dean; they did not provide any reason for the petitioner's dismissal. Clearly, the petitioner was illegally dismissed since there was no just or authorized cause for his dismissal.

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[45] See *Archbuild Masters and Construction, Inc. v. NLRC*, 321 Phil. 869, 877 (1995).

[46] *Rollo*, pp. 63-64.

The normal consequences of an illegal dismissal are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.[47]

However, considering that the petitioner's second term as the Law School Dean was only for three years or from June 1, 2007 until May 31, 2010, the monetary awards to which he is entitled as a consequence of his illegal dismissal are only limited to such period. The petitioner is, thus, entitled to backwages computed from the time his compensation was withheld until May 31, 2010. Further, considering that reinstatement is no longer feasible not only because the relationship between the parties has already been strained, but also the term of the petitioner's second appointment had already lapsed, he is entitled to separation pay equivalent to one (1) month salary for every year of service.

The petitioner is further entitled to attorney's fees in the amount of ten percent (10%) of the total monetary awards pursuant to Article 111[48] of the Labor Code. It is settled that where an employee was forced to litigate and, thus, incurred expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[49]

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[47] See *Macasero v. Southern Industrial Gases Philippines and/or Lindsay*, 597 Phil. 494, 501 (2009), citing *Mt. Carmel College v. Resuena*, 561 Phil. 620, 644 (2007).

[48] Article 111. *Attorney's Fees*.

(1) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(2) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the wages recovered.

[49] *Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira*, 639 Phil. 1, 16 (2010).

Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from the finality of the Decision in this case until fully paid.[50]

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **GRANTED**. The Decision dated December 9, 2010 and the Resolution dated July 28, 2011 issued by the Court of Appeals in CA-G.R. SP No. 02957-MIN are hereby **REVERSED** and **SET ASIDE**.

Respondent Cor Jesu College is hereby declared guilty of illegal dismissal and is **ORDERED** to pay petitioner Atty. Marcos D. Risonar, Jr. the following: (a) separation pay in lieu of actual reinstatement equivalent to one (1) month pay for every year of service; (b) full backwages from the time of his illegal dismissal up to May 31, 2010; and (c) attorney's fees equivalent to ten percent (10%) of the total monetary awards. The monetary awards herein granted shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid. The case is **REMANDED** to the Labor Arbiter for the computation of the petitioner's monetary awards.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 199397. September 14, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DARWIN GITO *y* CORLIN,** *accused-appellant.*

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[50] *Garza v. Coca-Cola Bottlers Philippines, Inc., et al.*, 725 Phil. 41, 64-65 (2014); *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHERE THE ISSUE IS ONE OF CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES, THE FINDINGS OF THE TRIAL COURT ARE NOT TO BE DISTURBED UNLESS THE CONSIDERATION OF CERTAIN FACTS OF SUBSTANCE AND VALUE, WHICH HAVE BEEN PLAINLY OVERLOOKED, MIGHT AFFECT THE RESULT OF THE CASE; RATIONALE.— It is axiomatic that where the issue is one of credibility of witnesses, and in this case their testimonies as well, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case. *People v. Abat* expounded on the rationale behind this principle, thus: It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "[t]here is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court." We find no valid reason to depart from the abovementioned

doctrine especially when both the lower courts found AAA's testimony categorical and positive.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; LUST IS NO RESPECTER OF TIME AND PLACE, AS RAPE MAY BE COMMITTED IN THE SAME ROOM WHERE OTHER FAMILY MEMBERS ALSO SLEEP.—** AAA's failure to shout for help can be attributed to the fact that she was threatened by Jonery with a knife while she was being ravished. This continuing intimidation had certainly cowed AAA into submission. The failure of Alexander to wake up to come to AAA's aid was sufficiently explained by his intoxication. Alexander had in fact admitted that he drank gin before going to the house of AAA to sleep. Finally, we have repeatedly held that lust is no respecter of time and place. Rape may even be committed in the same room where other family members also sleep.

3. **ID.; ID.; ID.; "SWEETHEART THEORY"; BEING SWEETHEARTS DOES NOT NEGATE THE COMMISSION OF RAPE BECAUSE SUCH FACT DOES NOT GIVE APPELLANT LICENSE TO HAVE SEXUAL INTERCOURSE AGAINST THE VICTIM'S WILL, AND WILL NOT EXONERATE HIM FROM THE CRIMINAL CHARGE OF RAPE.—** The "sweetheart" theory of appellant cannot prosper. The alleged love letter presented by the defense was disregarded by the lower court in view of AAA's denial of writing the same. Moreover, we emphasized the doctrine that being sweethearts does not negate the commission of rape because such fact does not give appellant license to have sexual intercourse against her will, and will not exonerate him from the criminal charge of rape. Being sweethearts does not prove consent to the sexual act.

4. **ID.; ID.; ID.; PROPER PENALTY.—** Under the second paragraph of Article 266-B, the penalty of *reclusion perpetua* to death shall be imposed if the crime of rape is committed with the use of a deadly weapon. Since there was no other aggravating circumstance alleged in the Informations and proven during the trial, the imposed penalty of *reclusion perpetua* for each count of rape is proper.

5. **ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. —** [A] modification of damages is in order. We deem it proper to award exemplary damages in favor of AAA. The award of exemplary damages is justified under Article 2230 of the Civil

Code if there is an aggravating circumstance, whether ordinary or qualifying. Pursuant to *People v. Jugueta*, civil indemnity, moral damages and exemplary damages should be increased to ₱100,000.00 each. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Resolution until fully paid.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

Before us for review is the Court of Appeals' Decision[1] promulgated on 26 May 2011 in CA-G.R. CR-HC No. 03464. The Decision affirmed the Regional Trial Court (RTC), Branch 63, Camarines Sur's conviction of appellant Darwin Gito *y* Corlin for rape.

Appellant, together with one Jonery Arabaca *y* Salufraña (Jonery) are charged with rape in the following Information:

Criminal Case No. 03-884

That on or about 11th day of May, 2003, at around 1:00 o'clock in the morning in [XXX] and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, willfully, unlawfully and feloniously through force and intimidation had carnal knowledge with [AAA],[2] fourteen years old, against her will, and to her damage and prejudice.[3]

Criminal Case No. 03-884

That on or about 11th day of May, 2003, around 1:00 o'clock in the morning in [XXX] and within the jurisdiction of this Honorable

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[1] *Rollo*, pp. 2-10; Penned by Associate Justice Mario L. Guarina III with Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios concurring.

[2] The real name of the victim and her address are withheld to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

[3] Records (Crim. Case No. RTC-'03-884), p. 1.

Court, the above-named accused, conspiring, confederating and mutually helping one another, willfully, unlawfully and feloniously through force and intimidation had carnal knowledge with [AAA], fourteen years old, against her will, and to her damage and prejudice.

The crime is committed with the following attendant aggravating/qualifying circumstances:

The crime is committed with the use of a deadly weapon.[4] (Emphasis omitted)

Appellant was arrested in 28 August 2006 while the other accused, Jonery remained at large.

Upon arraignment, appellant pleaded not guilty.

The prosecution's version of the rape incident goes:

AAA, then fourteen years old, lived with her partner, Alexander Arabaca (Alexander), at the house of her grandmother. They slept in a portion of the house separated only by a plastic sack as partition while AAA's grandmother and two minor cousins slept on the other part of the house. On 11 May 2003 at around 1:00am, AAA was sleeping beside Alexander when she was awakened to see the latter's brother, Jonery and appellant standing beside her. After waking her up, Jonery told AAA that he wanted to talk, then forcibly pulled her out from the bed. AAA tried to resist and even called for Alexander, but the latter was too intoxicated to wake up. Jonery and appellant dragged AAA out and into the back of the house. Appellant pushed AAA to the ground. Thereat, AAA was raped first by Jonery and followed by appellant. While doing their bestial act, Jonery threatened AAA with a knife while appellant pricked her skin with his long fingernail. After satisfying their lust, Jonery and appellant fled the scene. AAA then went back to bed and woke Alexander up. She told Alexander what had happened but the latter did not believe her. AAA just kept crying and eventually fell asleep. When she woke up the following day, Alexander was no longer around. She immediately saw Tia Lita Bugate and told her that she was raped. She reported

[4] Records (Crim. Case No. RTC-'03-885), p. 1.

the incident to the *barangay*[5] and underwent a medical examination on 15 May 2003 where she was found to have healed lacerations in her genital area.[6] AAA was certified by the Municipal Civil Registrar's Office to be fourteen years old at the time of the alleged rape.

Bugate is AAA's neighbor. Her house is located at about two (2) meters away from AAA's house. Bugate testified that on even date and time, she heard AAA calling for "Alex" numerous times. On the following morning, AAA told her that Jonery and appellant raped her.[7]

Alexander testified that he slept in the house of AAA's grandmother from 10 to 11 May 2003. He woke up at around 1:00 a.m. and went back to sleep after thirty (30) minutes. AAA was sleeping beside him. He finally woke up at 4:00 a.m. and went to his parent's house. Upon reaching his parents' house, Jonery, who just woke up, showed Alexander a letter from AAA manifesting her love for Jonery. Alexander confirmed that the handwriting on the letter was that of AAA.[8]

Appellant testified on his behalf. He claimed that on the alleged date of the crime, he was in the public market of Naga City with his mother. They waited for the arrival of fruits until 12:00 o'clock midnight of 10 May 2003. When the fruits arrived, they inspected them before buying. They then hired a tricycle and arrived at the jeepney terminal at 2:00 a.m of 11 May 2003. They slept at the terminal until 9:00 a.m.[9] On 12 May 2003, AAA confronted appellant and accused him of spreading stories about her relationship with Jonery. Appellant surmised that he was falsely accused of rape because AAA held a grudge against him.[10]

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[5] TSN, 6 December 2006, pp. 2-11.

[6] Records (Crim. Case No. RTC-'03-885), p. 6.

[7] TSN, 13 December 2006, pp. 14-17.

[8] TSN, 19 June 2007, pp. 3-8.

[9] TSN, 28 August 2007, pp. 4-6.

[10] *Id.* at 10.

In a Decision[11] dated 24 June 2008, the trial court found appellant guilty beyond reasonable doubt of two counts of rape. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused Darwin Gito *y* Corlin beyond reasonable doubt of the offense of rape as charged, defined and penalized under Article 266-A I relation to Article 266-B, as amended by Republic Act 8353, accused Darwin Gito y Corlin is hereby sentenced to suffer the following penalties:
>
> 1. In Crim. Case No. RTC'03-884, accused Darwin Gito y Corlin is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay the victim [AAA] civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00 and to pay the costs.
>
> 2. In Crim. Case No. RTC'03-885, accused Darwin Gito y Corlin is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay the victim [AAA] civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00 and to pay the costs.
>
> Considering that accused Darwin Gito *y* Corlin has undergone preventive imprisonment, he shall be credited in the service of his sentence with the time he has undergone preventive imprisonment subject to the conditions provided for by law. Accused is likewise meted the accessory penalty of perpetual absolute disqualification as provided for under Article 41 of the Revised Penal Code.
>
> The records insofar as accused Jonery Arabaca y Salufrana is concerned, who is still at large, is hereby ordered sent to the archives without prejudice of reviving the same in the event that said accused is arrested. Meanwhie, let an alias warrant of arrest be issued for the arrest of accused Jonery Arabaca *y* Salufraña.[12]

The trial court gave full credence to the testimony of AAA that she was raped by Jonery and appellant. The trial court dismissed appellant's sweetheart defense considering that a mere

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[11] Records (Crim. Case No. RTC-'03-884), pp. 120-140.

[12] *Id*. at 139-140.

love letter is not sufficient to prove that AAA had a relationship with Jonery. The trial court did not give weight to the alleged motive of revenge proffered by appellant. The trial court considered appellant's flight as an indication of guilt.

On 26 May 2011, the Court of Appeals affirmed the decision of the trial court. It ruled that AAA was able to positively identify the perpetrators.

In his Brief,[13] appellant reiterates that he was at the Naga City public market buying fruits with his mother at around 1:00 a.m. making it impossible for him to have committed the crime charged. Appellant claims that AAA's testimony is fraught with incredulity as evidenced by her behavior before and during the rape incident. First, appellant argues that if AAA was certain that he and Jonery raped her, then she could have easily told Alexander to run after them. Second, AAA could have easily shouted for help from her grandmother and cousins, who were also sleeping inside the same house. Third, it was impossible for Alexander not to wake up when AAA tried to wake him up by calling for him and touching his feet.

The Office of the Solicitor-General maintains AAA had described in unmistakable clarity that she was raped and said fact was corroborated by the medical findings. The OSG points out that appellant's denial and alibi cannot prevail over the positive declaration of the victim.

Simply put, the credibility of AAA is being assailed in this case.

It is axiomatic that where the issue is one of credibility of witnesses, and in this case their testimonies as well, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case.[14] *People v. Abat*[15] expounded on the rationale behind this principle, thus:

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[13] CA *rollo*, pp. 45-62.

[14] *People v. Mangune*, 698 Phil. 759, 769 (2012).

[15] G.R. No. 202704, 2 April 2014, 720 SCRA 557.

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "[t]here is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."[16]

We find no valid reason to depart from the abovementioned doctrine especially when both the lower courts found AAA's testimony categorical and positive.

AAA categorically narrated in court her harrowing experience in the hands of appellant and Jonery, to wit:

Q: While you were there at around 1:00 o'clock in the morning, what incident if any, has occurred?
A: While we were already asleep, Darwin and Jonery arrived and this Jonery tried to wake me up.

Q: You said Darwin and Jonery, will you please tell us what is the surname of this Darwin?
A: Gito.

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[16] *Id*. at 564-565 citing *People v. Banzuela,* 723 Phil. 797, 815 further citing *People v. Sapigao, Jr.*, 614 Phil. 589, 599 (2009).

Q: What about Jonery?
A: Arabaca.

Q: You said you were asleep. Where were you sleeping?
A: I was sleeping together with my husband.

Q: Will you please describe to us that place where you were sleeping?
A: The walls of the room are only made of sacks and it is only open. One of the portiom of the room is open.

PROS. CARINO:

May I make of record that the witness is already crying.

Q: What about your grandmother, in what part of the house is she sleeping with two of your cousins?
A: Just beside that place where we were sleeping.

Q: Is that another room?
A: Yes, ma'am.

Q: You said that Jonery woke you up and you said that his surname is Arabaca. How is he related to Alexander Arabaca whom you said your common-law husband?
A: They are brothers.

Q: After Jonery woke you up, what happened next, if any?
A: He called me and told me that he wanted to talk to me.

Q: What did he do after he called you and told you that he wanted to talk to you?
A: He suddenly pulled me forcibly.

Q: Where was he when he called you, how far was he from the place where you were sleeping with Alex?
A: He was standing on our right side, here.

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Q: When Jonery pulled you, what did you do, if any?
A: I fought him and I was calling Alex.

Q: Why were you calling Alex?
A: Because they were forcing me and Alex then was dr[u]nk that's why he did not wake up.

x x x x x x x x x

Q: After Jonery pulled you and you said you were trying to fight him and calling the name [of] Alex, what happened next?
A: I was parrying him with my hands, as demonstrated by the witness, and I was touching the feet of Alex with my other hand and this Darwin was pushing me.

Q: After Darwin has pushed you, what happened next after that?
A: I was brought at the back of our house.

Q: Will you please point to us the distance from the bed to the place where you [were] brought?

INTERPRETER:

The witness pointed to the door of the courtroom.

PROS. CARINO:

Which is about 8 meters more or less.

COURT:

More or less 8 meters as agreed upon by both counsels.

Q: How were you brought on that area?
A: They were pulling me.

Q: Who pulled you?
A: It was Darwin who was holding me until he made me lie down on the ground.

Q: After Darwin laid you down on the ground, what happened next?
A: He told Jonery to be the first one.

Q: When Darwin laid you down on the ground, what did you do, if any?
A: I tried to stand up.

Q: After Darwin said, you be the first to Jonery, what happened next?
A: Jonery immediately laid on top of me, so I could not move.

Q: After Jonery laid on top of you, what happened next, if any?
A: A fan knife was poked on me.

Q: And after he poked a knife at you, what happened next?
A: My panty and shorts were removed.

Q: And so, after they were removed, what happened next?
A: He pulled out his penis and inserted it into my vagina.

Q: From where did he pull it out?
A: To my vagina.

Q: After he inserted his penis into your vagina, what happened next, if any?
A: He made a push and pull movement.

Q: After he made a push and pull movement, Jonery, what happened next?
A: When he was already finished, he stood up and I tried to pull my panty up but Darwin, his very long fingernails pricked on my veins on my wrist.

COURT:

Q: Who made that?
A: Him.

Q: Who inserted his penis into your vagina?
A: It was Jonery who first inserted his penis into my vagina.

PROS. CARINO:

Q: After you said you were trying to pull your panty but Darwin pricked you with his long fingernails, what happened next after he pricked your wrist with that long fingernails?
A: I felt very weak. Even I wanted to stand up but I was not able to do so because he immediately pulled down my panty.

Q: After he pulled down your panty, what did Darwin do next, if any?
A: He immediately removed his brief and shorts.

Q: After he did that what happened next, if any?
A: He inserted his penis into my vagina.

Q: After he inserted his penis into your vagina, what did he do next, if any?
A: He had sexually molested me.

Q: After he did that what happened next?
A: They left me alone there.[17]

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[17] TSN, 6 December 2006, pp. 3-8.

The trial court correctly favored AAA's account as her testimony jived with other testimonial and physical evidence, thus:

> In the instant case, [AAA] had testified that she was raped on May 11, 2003 at about 1:00 o'clock in the early morning, first by Jonery Arabaca and afterwards by Darwin Gito. According to her, she was dragged from the place where she was then sleeping together with her common-law husband Alex who is the brother of Jonery Arabaca. A knife was poked at her and immediately Jonery Arabaca had removed her pants, shorts and panty and inserted his penis into her vagina and made a push and pull movement. Afterwards, Darwin Gito also followed wherein he also sexually molested her. This happened at the back of their house where she was dragged by the two accused. This testimony of [AAA] was clear, straightforward and she never faltered even on cross, as a matter of fact, the following morning after the incident, she told her Tia Lita Bugate, one of their neighbors about the incident that she was raped on that night in the early morning of May 11, 2003 by the two accused and that she then called Alex, her common-law husband but he had not waken up because at that time he was dr[u]nk. This testimony of [AAA] that she was calling Alex was corroborated by her Tia Lita Bugate that she had heard her calling Alex at about 1:00 o'clock early morning of May 11, 2003 while she was at their residence drinking coffee together with her husband but they did not mind when they heard [AAA] calling her husband because they thought they were just having a discussion. Immediately she made a report to the barangay authorities and on May 15, 2003, she reported for medical examination and having examined by Dr. Ursolino Primavera and then on May 19, she reported to the police authorities of what happened to her. Dr. Pimavera then corroborated the testimony of [AAA] that indeed she had examined [AAA] on May 15, 2003 and in his examination, he found out that her vagina admits two fingers, meaning there were lacerations on the hymen and healed laceration. He further explained that what he had stated in his findings was that the healed laceration could be either an old or fresh laceration. Old healed laceration could be already a month ago while fresh healed laceration could be two weeks below. He concluded that when he had examined the patient she has a menstrual cycle usually last from 5 to 7 days. This therefore, corroborated the testimony of [AAA] that indeed she had immediately submitted herself to medical examination. The reporting made by [AAA] of what happened to her shows that indeed she was telling

the truth that she was allegedly raped by both accused Darwin Gito and Jonery Arabaca who is still at large.[18]

Appellant points out to incredulities in AAA's statements such as her failure to shout for help; the failure of Alexander to wake up to her aid; and the fact that AAA's relatives did not notice anything when they were sleeping in the same house as AAA.

AAA's failure to shout for help can be attributed to the fact that she was threatened by Jonery with a knife while she was being ravished. This continuing intimidation had certainly cowed AAA into submission. The failure of Alexander to wake up to come to AAA's aid was sufficiently explained by his intoxication. Alexander had in fact admitted that he drank gin before going to the house of AAA to sleep. Finally, we have repeatedly held that lust is no respecter of time and place. Rape may even be committed in the same room where other family members also sleep.[19]

Based on the testimony of AAA, there was carnal knowledge first, between her and Jonery and second, between her and appellant. Conspiracy was correctly appreciated by the trial court when it ruled in this wise:

> In these particular cases, it was proven by the prosecution that [AAA] was being dragged by Jonery Arabaca and pushed by Darwin Gito at about 1:00 0'clock in the morning of May 11, 2003 towards the back of their kitchen and upon reaching outside of the house where [AAA] was staying at that time, Jonery Arabaca poked a knife at her and pushed her down and removed her panty and shorts and laid on top of her, inserted his penis into her vagina and make a push and pull movement while Darwin Gito was watching Jonery Arabaca doing the act and after Jonery Arabaca had finished doing the act Darwin Gito also laid on top of her and inserted his penis into her vagina. These acts therefore of the two accused connotes the existence of conspiracy. There was an intentional participation on the part of the two accused to furtherance of their common design and purpose

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[18] Records (Crim. Case No. RTC-'03-884), pp. 129-130.

[19] *People v. Rubio*, 683 Phil. 714, 726 (2012).

of raping [AAA]. An aggravating circumstances of using deadly weapon was duly proven by the prosecution as well as stated in the information itself.[20]

Appellant's alibi and denial did not escape the trial court's scrutiny and it found that they cannot stand against the overwhelming evidence of the prosecution.

The "sweetheart" theory of appellant cannot prosper. The alleged love letter presented by the defense was disregarded by the lower court in view of AAA's denial of writing the same. Moreover, we emphasized the doctrine that being sweethearts does not negate the commission of rape because such fact does not give appellant license to have sexual intercourse against her will, and will not exonerate him from the criminal charge of rape. Being sweethearts does not prove consent to the sexual act.[21]

Under the second paragraph of Article 266-B, the penalty of *reclusion perpetua* to death shall be imposed if the crime of rape is committed with the use of a deadly weapon. Since there was no other aggravating circumstance alleged in the Informations and proven during the trial, the imposed penalty of *reclusion perpetua* for each count of rape is proper.

Finally, a modification of damages is in order. We deem it proper to award exemplary damages in favor of AAA. The award of exemplary damages is justified under Article 2230 of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying.[22] Pursuant to *People v. Jugueta*,[23] civil indemnity, moral damages and exemplary damages should be increased to ₱100,000.00 each. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Resolution until fully paid.

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[20] Records (Crim. Case No. RTC-'03-884), p. 138.

[21] *People v. Olesco*, 663 Phil. 15, 25 (2011) citing *People v. Magbanua*, 576 Phil. 642, 647-648 (2008).

[22] *People v. Tabayan*, 736 Phil. 543, 562 (2014).

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

WHEREFORE, the assailed 26 May 2011 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03464 finding appellant Darwin Gito y Corlin guilty beyond reasonable doubt of the crime of rape is **AFFIRMED with MODIFICATION**. Appellant shall pay AAA civil indemnity of ₱100,000.00; moral damages of ₱100,000.00; and exemplary damages of ₱100,000.00; and all monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Resolution until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 201320. September 14, 2016]

WILSON T. LIM, *petitioner, vs.* **OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES (MOLEO) and P/S INSP. EUSTIQUIO FUENTES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; THE LIBERALITY IN THE INTERPRETATION AND APPLICATION OF THE RULES APPLIES ONLY IN PROPER CASES AND UNDER JUSTIFIABLE CAUSES AND CIRCUMSTANCES.—Under the Rules of Procedure of the OMB, a motion for reconsideration of an approved order or resolution shall be filed within five (5) days from notice.

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[*] Additional Member per Raffle dated 14 September 2016.

Settled is the rule that procedural rules are tools designed to facilitate the adjudication of cases, thus, courts and litigants alike are enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, it must be emphasized once again that the same was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances.

2. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; MOTION TO WITHDRAW INFORMATION; BEFORE GRANTING OR DENYING THE MOTION TO WITHDRAW INFORMATION, THE COURT MUST ITSELF MAKE ITS OWN ASSESSMENT OF THE EVIDENCE IN THE HANDS OF THE PROSECUTION AND BE CONVINCED AS TO THE PRESENCE OR LACK OF SUFFICIENT EVIDENCE AGAINST THE ACCUSED. — It must be pointed out that in the present case, the criminal action had already been instituted by the filing of the Information with the court. Once that happens, the court acquires jurisdiction and is given the authority to determine whether to dismiss the case or convict or acquit the accused. However, when the prosecution is convinced that the evidence is insufficient to establish the guilt of an accused, it may move for the withdrawal of the Information, which the court cannot simply ignore. But the court must judiciously evaluate the evidence in the hands of the prosecution before granting or denying the motion to withdraw. The court's exercise of judicial discretion in such a case is not limited to the mere approval or disapproval of the stand taken by the prosecution. The court must itself make its own assessment of said evidence and be convinced as to the presence or lack of sufficient evidence against the accused.

3. POLITICAL LAW; CONSTITUTIONAL LAW; OMBUDSMAN ACT OF 1989 (R.A. 6770); THE COURTS WILL NOT GENERALLY INTERFERE WITH THE OMBUDSMAN'S FINDINGS AND WILL RESPECT THE INITIATIVE AND INDEPENDENCE INHERENT IN ITS OFFICE; HOWEVER, WHEN THE RULING OF THE OMBUDSMAN IS TAINTED WITH GRAVE ABUSE OF DISCRETION, THE AGGRIEVED PARTY MAY RESORT TO *CERTIORARI* FOR CORRECTION.—The present

Constitution and R.A. 6770, otherwise known as *The Ombudsman Act of 1989*, have endowed the OMB with wide latitude, in the exercise of its investigatory and prosecutorial powers, to pass upon criminal complaints involving public officials and employees. Hence, the courts will not generally interfere with its findings and will respect the initiative and independence inherent in its office. However, when the OMB's ruling is tainted with grave abuse of discretion, the aggrieved party may resort to *certiorari* for correction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or an obstinate refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROBABLE CAUSE; WHEN IT EXISTS; IN ORDER TO ENGENDER A WELL-FOUNDED BELIEF THAT A CRIME HAS BEEN COMMITTED, AND TO DETERMINE IF THE SUSPECT IS PROBABLY GUILTY OF THE SAME, THE ELEMENTS OF THE CRIME CHARGED SHOULD BE PRESENT, AS EVERY CRIME IS DEFINED BY ITS ELEMENTS, WITHOUT WHICH THERE SHOULD BE NO CRIMINAL OFFENSE.— [T]he Court finds that the Deputy Ombudsman gravely abused its discretion when it unjustifiably turned a blind eye to the essential facts and evidence in ruling that there was no probable cause against Fuentes for the crimes of Violation of Section 3(e), R.A. 3019 and Estafa Through Falsification. For the purpose of filing a criminal information, probable cause exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. In order to engender such well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.

5. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019); SECTION 3(e) THEREOF; ELEMENTS; PRESENT.— For violation of Section 3(e), R.A.

3019, the elements are as follows: (a) the offender must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. Clearly, facts abound pointing to Fuentes, head of Iligan TMG, as probably guilty of having acted with manifest partiality, evident bad faith, or gross inexcusable negligence in issuing the MVCCs in question which caused undue injury to Lim and Lazo, and gave Salvo and the other car agents unwarranted benefits or advantage in the discharge of his functions, and therefore should be held for trial.

6. ID.; REVISED PENAL CODE; ESTAFA THROUGH FALSIFICATION OF A PUBLIC DOCUMENT; REQUISITES; PRESENT.—For the crime of Estafa through Falsification of a Public Document, the following requisites must concur: (1) the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (2) the false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud; (3) the false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; (4) that as a result thereof, the offended party suffered damage; (5) that the offender is a private individual or a public officer or employee who took advantage of his official position; (6) that he committed any of the acts of falsification enumerated in Article 171 of the Revised Penal Code (which in this case involves making untruthful statements on the details of the vehicles); and (7) that the falsification was committed in a public or official or commercial document. There is reasonable ground to believe that Fuentes made false pretenses or fraudulent misrepresentations to Lim and Lazo that the subject vehicles were legally acquired. Relying on the ORs, CRs, and MVCCs which Pangandag and Fuentes issued, Lim and Lazo decided to buy said motor vehicles thinking that they were free from any legal encumbrance or liability.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROBABLE CAUSE; A

PUBLIC PROSECUTOR'S DETERMINATION OF PROBABLE CAUSE, FOR THE PURPOSE OF FILING AN INFORMATION IN COURT, IS ESSENTIALLY AN EXECUTIVE FUNCTION AND, THEREFORE, GENERALLY LIES BEYOND THE PALE OF JUDICIAL SCRUTINY, EXCEPT WHEN SUCH DETERMINATION IS TAINTED WITH GRAVE ABUSE OF DISCRETION AND PERFORCE BECOMES CORRECTIBLE THROUGH THE EXTRAORDINARY WRIT OF *CERTIORARI*; RATIONALE.—As a general rule, a public prosecutor's determination of probable cause — that is, one made for the purpose of filing an Information in court — is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function, while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution to determine whether or not grave abuse of discretion has been committed amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. While defying precise definition, grave abuse of discretion generally refers to a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Corollarily, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. [T]he underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government.

8. ID.; ID.; ID.; ID.; PROBABLE CAUSE DOES NOT REFER TO ACTUAL AND POSITIVE CAUSE NOR DOES IT

IMPORT ABSOLUTE CERTAINTY; IT IS MERELY BASED ON OPINION AND REASONABLE BELIEF AND, AS SUCH, DOES NOT REQUIRE AN INQUIRY INTO WHETHER THERE IS SUFFICIENT EVIDENCE TO PROCURE A CONVICTION, FOR IT IS ENOUGH THAT IT IS BELIEVED THAT THE ACT OR OMISSION COMPLAINED OF CONSTITUTES THE OFFENSE CHARGED.— [T]he Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. In particular, case law states that probable cause, for the purpose of filing a criminal Information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. It does not refer to actual and positive cause nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged.

APPEARANCES OF COUNSEL

Teruel Law Office for petitioners.
Allen P. Evasan for private respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for *Certiorari* under Rule 65 assailing the Order[1] of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (*MOLEO*) dated March 31, 2011 and its Joint Order[2] dated September 7, 2011 in OMB-P-C-05-1361-K.

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[1] Penned by Graft Investigation and Prosecution Officer Yvette Marie S. Evaristo, with Director Eulogio S. Cecilio, concurring; *rollo*, pp. 52-56.

[2] Penned by Graft Investigation and Prosecution Officer II Lyn L. Llamansares, with Director Dennis L. Garcia, concurring; *id*. at 57-61.

The pertinent factual and procedural antecedents of the case are as follows:

Petitioner Wilson Lim and Rex Lazo were engaged in the business of buying and selling second-hand vehicles in Iloilo City, where Lim agreed to be the financier. In November and December 2002, they bought pre-owned cars in Iloilo and Manila, and sold them at their Wheels to Go showroom in Iloilo. In March 2003, Lim learned from his neighbor that he had bought a second-hand Mitsubishi Adventure for only ₱332,000.00 through a car agent named Raquim Salvo based in Iligan City. He then became interested in buying similar cars so he contacted Salvo and sent Lazo to Iligan to check the units and examine the documents of ownership. On or about April 7, 2003, Lim sent Lazo to Iligan again. Lazo then personally met Salvo and other second-hand car agents who all assured him that the units were properly documented and cleared by the Iligan Traffic Management Group (*TMG*). Salvo likewise introduced Lazo to the supposed owners of the vehicles and showed him the alleged original copies of Certificates of Registration (*CRs*) and Motor Vehicle Registration Renewal (*MVRR*) Official Receipts (*ORs*) issued by Rex Pangandag, Head of Land Transportation Office (*LTO*) Tubod Extension Office, Iligan, and affidavits of ownership of the registered owners. Salvo further brought Lazo to the office of the Iligan TMG, headed by respondent Philippine National Police (*PNP*) Police Senior Inspector (*PSI*) Eustiquio Fuentes, who was the one who issued the PNP Motor Vehicle Clearance Certificates (*MVCCs*), one of the LTO requirements for the transfer of ownership to the buyer. On the basis of the CRs and ORs issued by the LTO Tubod Extension Office and the TMG Clearance issued by Fuentes, Lim and Lazo purchased two (2) units of Isuzu XUV Crosswind at a total purchase price of ₱1,150,000.00. They then displayed and sold the vehicles at Wheels to Go. Subsequently, the ownership over the vehicles was transferred to the buyers using the aforementioned CRs, ORs, and TMG Clearance.

Shortly thereafter, Lazo again went to Iligan and, following the same procedure, purchased three (3) more vehicles through

Salvo: two (2) units of Isuzu XUV Crosswind and one (1) unit of Isuzu XT Crosswind. Said vehicles were likewise sold at their car shop in Iloilo. For their next purchase, Salvo was able to convince Lim and Lazo to simply transact from Iloilo and leave the verification of the documents to him in order to save time and money. The car agents assured them that all their vehicles were supported with the necessary documents and cleared by the Iligan TMG. They also faxed copies of the CRs, ORs, MVCCs, and affidavits of the alleged registered owners of the cars. Fully relying on the veracity of said documents, Lim and Lazo purchased through Salvo several second-hand vehicles for a total of ₱6,075,000.00. Lim made the payments to the owners through bank deposits after the bills of lading for the vehicles had been confirmed. Upon receipt of the vehicles and their supporting documents, they then sold the vehicles at Wheels to Go. The ownership over the vehicles was later transferred to the buyers using the original copies of the CRs and ORs issued by Pangandag, and the TMG Clearance issued by Fuentes.

However, in June 2003, Lim and Lazo decided to stop buying from Iligan when the Iloilo TMG informed them that one (1) Isuzu Crosswind was actually stolen or carnapped. Unfortunately, this had already been sold to Lim's brother-in-law, Frederick Chua, in Zamboanga. Lim then immediately contacted Salvo and demanded a refund for the alleged carnapped unit. Salvo told him he could not refund the purchase price so he simply replaced the Crosswind with an old model of a Mitsubishi Pajero instead. Consequently, the Iloilo TMG ordered them to submit the registration papers and documents of all the units at Wheels to Go.

In September 2004, Lim and Lazo started receiving complaints from their buyers that the Iloilo TMG had seized and impounded their vehicles at Camp Delgado since these allegedly had fake plate numbers, the motor and chassis numbers were tampered, or for being "hot cars," as these were supposedly stolen or carnapped. Shocked, Lim and Lazo tried to contact Salvo and confront him but the latter and the other car agents could no longer be reached.

Thereafter, the Iloilo TMG filed criminal complaints against Lim and Lazo for Carnapping, Anti-Fencing, Estafa, and Violation of Presidential Decree (*P.D.*) 1730. However, finding that they acted in good faith and were, in fact, victims themselves, the Iloilo Prosecutor's Office dismissed the criminal complaints. To protect their names and reputation as legitimate businessmen, and to show their good faith in buying and selling pre-owned cars, Lim refunded the purchase price to the buyers on installment basis.

Subsequently, Lim and Lazo filed a complaint against Pangandag and Fuentes before the Office of the Ombudsman (*OMB*) for defrauding them through false pretenses and falsification of documents, in conspiracy with Salvo and the other car agents, and the persons who represented or agreed to be represented as the lawful owners of the seized vehicles.

For their defense, Fuentes asserted that he issued and signed only the MVCC pertaining to one (1) unit of Mitsubishi Pajero with Plate Number No. UEH-951, the engine and chassis numbers of which had been certified by the Iligan PNP Crime Laboratory Service as real and not tampered as of June 17, 2003, and said vehicle was likewise not included in the list of wanted or stolen cars as of June 18, 2003. He maintained that he had no participation in the issuance of the other MVCCs, and that he could not have conspired with Salvo and the other car agents since he had not met any one of them.

On February 24, 2009, the Deputy Ombudsman for MOLEO found probable cause and recommended the filing of Informations for violation of Section 3(e), Republic Act (*R.A.*) No. 3019 and Estafa Thru Falsification against Fuentes and his co-respondents in OMB-P-C-05-1361-K.[3]

Thus, Pangandag and Fuentes filed separate Motions for Reconsideration (*MRs*). On March 31, 2011, the Deputy Ombudsman denied Pangandag's MR but granted that of Fuentes, to wit:

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[3] Penned by Graft Investigation and Prosecution Officer Julius A. Java, with Director Eulogio S. Cecilio, concurring; *rollo*, pp. 42-51.

WHEREFORE, in view of the aforesaid discussions, respondent-movant Fuentes' Motion for Reconsideration is hereby **GRANTED**. Accordingly, the criminal charges for violation of Republic Act 3019, Sec. 3(e) and Estafa Thru Falsification against said respondent-movant are hereby **DISMISSED**.

Respondent-movant Pangandag's Motion for Reconsideration, on the other hand, is hereby **DENIED** and the charges for violation of Republic Act 3019, Sec. 3(e) and Estafa Thru Falsification against said respondent-movant, together with his co-respondents Raquim Salvo, Sanakira Dianaton, Azis Lagundab, Potri Utak, Avelino Intal, Fred Simbrano, Alicia Estoque, Ramon Bongaros, Michael Sandoval, Adela Pasbal Marabong, Marlon Hamoy, Hindawi Yonos and Miguel Mejos **AFFIRMED**.

SO ORDERED.[4]

Lim and Lazo, therefore, moved for partial reconsideration. On September 7, 2011, the Deputy Ombudsman denied their motion and affirmed its March 31, 2011 Order.[5] However, since Lazo had already left the country, Lim filed the petition on April 23, 2012 by himself.

The petition is meritorious.

Lim alleges that the Deputy Ombudsman committed grave abuse of discretion when it disregarded its own Rules of Procedure in granting Fuentes's Motion for Reconsideration and dismissing the criminal complaint against him. Under the Rules of Procedure of the OMB,[6] a motion for reconsideration of an approved order or resolution shall be filed within five (5) days from notice. Settled is the rule that procedural rules are tools designed to facilitate the adjudication of cases; thus, courts and litigants alike are enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, it must be emphasized once again

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[4] *Rollo*, p. 55.

[5] *Id*. at 57-61.

[6] Administrative Order No. 07, as amended by Administrative Order No. 09.

that the same was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. In general, procedural rules, like all rules, should be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure. The rules were instituted to be faithfully complied with, and allowing them to be ignored or lightly dismissed to suit the convenience of a party should not be condoned. Such rules, often derided as merely technical, are to be relaxed only in the furtherance of justice and to benefit the deserving. Their liberal construction in exceptional situations should then rest on a showing of justifiable reasons and of at least a reasonable attempt at compliance with them.[7] The Court wishes to stress that the bare invocation of "for the interest of substantial justice" is not a magic wand that will automatically compel the suspension of the existing applicable rules.[8] Here, Fuentes failed to present such exceptional justification. Fuentes only had until November 27, 2010 to file his MR since he received a copy of the Resolution on November 22, 2010. However, he filed his MR only on December 2, 2010, which was already outside the required reglementary period.

Even assuming, for argument's sake, that the Deputy Ombudsman was justified in taking cognizance of the belatedly filed MR, it still acted with grave abuse of discretion in not finding probable cause against Fuentes and dismissing the criminal charges against him.

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[7] *Magsino v. De Ocampo*, G.R. No. 166944, August 18, 2014, 733 SCRA 202, 220.

[8] *Id*.

It must be pointed out that in the present case, the criminal action had already been instituted by the filing of the Information with the court. Once that happens, the court acquires jurisdiction and is given the authority to determine whether to dismiss the case or convict or acquit the accused. However, when the prosecution is convinced that the evidence is insufficient to establish the guilt of an accused, it may move for the withdrawal of the Information, which the court cannot simply ignore. But the court must judiciously evaluate the evidence in the hands of the prosecution before granting or denying the motion to withdraw. The court's exercise of judicial discretion in such a case is not limited to the mere approval or disapproval of the stand taken by the prosecution. The court must itself make its own assessment of said evidence and be convinced as to the presence or lack of sufficient evidence against the accused.[9]

The present Constitution and R.A. 6770, otherwise known as *The Ombudsman Act of 1989*, have endowed the OMB with wide latitude, in the exercise of its investigatory and prosecutorial powers, to pass upon criminal complaints involving public officials and employees. Hence, the courts will not generally interfere with its findings and will respect the initiative and independence inherent in its office. However, when the OMB's ruling is tainted with grave abuse of discretion, the aggrieved party may resort to *certiorari* for correction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or an obstinate refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[10]

Applying the foregoing principles to the case at bar, the Court finds that the Deputy Ombudsman gravely abused its discretion when it unjustifiably turned a blind eye to the essential facts and evidence in ruling that there was no probable cause against

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[9] *Fuentes, Jr. v. Sandiganbayan*, 527 Phil. 58, 65 (2006).

[10] *Garcia v. Office of the Ombudsman*, G.R. No. 197567, November 19, 2014, 714 SCRA 172, 183.

Fuentes for the crimes of Violation of Section 3(e), R.A. 3019 and Estafa Through Falsification. For the purpose of filing a criminal information, probable cause exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. In order to engender such well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.[11]

For violation of Section 3(e), R.A. 3019, the elements are as follows: (a) the offender must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[12] Clearly, facts abound pointing to Fuentes, head of Iligan TMG, as probably guilty of having acted with manifest partiality, evident bad faith, or gross inexcusable negligence in issuing the MVCCs in question which caused undue injury to Lim and Lazo, and gave Salvo and the other car agents unwarranted benefits or advantage in the discharge of his functions, and therefore should be held for trial. For the crime of Estafa through Falsification of a Public Document, the following requisites must concur: (1) the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (2) the false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud; (3) the false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; (4) that as a result thereof, the offended party suffered damage; (5) that the offender is a

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[11] *Id*. at 184.

[12] *Id*. at 184-185.

private individual or a public officer or employee who took advantage of his official position; (6) that he committed any of the acts of falsification enumerated in Article 171 of the Revised Penal Code (which in this case involves making untruthful statements on the details of the vehicles); and (7) that the falsification was committed in a public or official or commercial document.[13] There is reasonable ground to believe that Fuentes made false pretenses or fraudulent misrepresentations to Lim and Lazo that the subject vehicles were legally acquired. Relying on the ORs, CRs, and MVCCs which Pangandag and Fuentes issued, Lim and Lazo decided to buy said motor vehicles thinking that they were free from any legal encumbrance or liability.

The Deputy Ombudsman explained in its assailed Orders that the issuance of an MVCC is a purely ministerial function. As such, Fuentes did not actually exercise discretion or judgment. He relied primarily on the Macro Etching Examination conducted by the PNP Crime Laboratory and the latter's certification that the chassis and motor numbers of the vehicle submitted for clearance had not been tampered with. Also, Fuentes would have no way of knowing if the subject Pajero with Plate No. UEH-951 was a stolen or carnapped vehicle because then its details would already have been modified and thus, would not match the original details of the car reported as stolen. However, under Memorandum Circular No. 2002-012,[14] motor vehicles applying for MVCC shall undergo physical examination jointly conducted by the TMG personnel and crime laboratory technicians. The physical examination and macro-etching result shall be used only where the MVCC is to be secured and shall be conducted at the TMG designated area. The clearance officer, Fuentes in this case, is likewise responsible for the effective implementation of the motor vehicle clearance system.[15] Therefore, as the clearance officer, Fuentes is accountable in

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[13] *Ansaldo v. People*, 630 Phil. 549, 557 & 561 (2010).

[14] *Re: Amending Memorandum Circular 2001-011 Streamlining the PNP Motor Vehicle Clearance Procedure*.

[15] *Rollo*, p. 34.

a situation where a person was able to obtain clearance for a stolen vehicle from the Iligan TMG since then the system could not be considered as having been effectively and faithfully implemented. Indubitably, Fuentes's function was not purely ministerial as he, in fact, had to exercise good judgment in issuing vehicle clearances. Moreover, there is no truth to Fuentes's asseveration that there was no other means of determining whether the Pajero with Plate No. UEH-951 was stolen or carnapped. His office could have simply utilized the plate number, as what the TMG Iloilo did, to trace and identify the car as stolen based on the computerized Vehicle Management Information System. It thus becomes clear that the Deputy Ombudsman erroneously failed to consider significant pieces of evidence which should not have been casually ignored. The Deputy Ombudsman should have, at the very least, explained its reasons as to why the aforesaid Memorandum Circular was not followed in this case.[16]

The Deputy Ombudsman likewise contends that Fuentes acted in good faith in relying upon the certification of his subordinates. Hence, he could not have acted with evident bad faith and defrauded Lim and Lazo by means of deceit or abuse of confidence. It further held that to drag Fuentes into a criminal conspiracy simply because he did not personally examine every single detail and go beyond the certified macro-etching result would be to set a bad precedent. However, as head of the office responsible for the issuance of motor vehicle clearances, Fuentes must be held liable for any act committed in violation of the purpose for which the office was made. Had it not been for the clearances issued by Fuentes declaring that the cars being sold were indeed acquired through legitimate means, Lim and Lazo would not have parted with their hard-earned money. It must be stressed that the TMG clearance is specifically intended to protect the buyer from buying stolen/carnapped vehicles. To uphold the Deputy Ombudsman's ruling would defeat the very purpose why a motor vehicle clearance is issued and the public could no longer rely on the clearance issued by the TMG.

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[16] *Garcia v. Office of the Ombudsman*, *supra* note 10, at 190.

As a general rule, a public prosecutor's determination of probable cause – that is, one made for the purpose of filing an Information in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari.* The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function, while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution to determine whether or not grave abuse of discretion has been committed amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. While defying precise definition, grave abuse of discretion generally refers to a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Corollarily, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government.[17]

In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. In particular, case law states that probable cause, for the purpose of filing a criminal Information, exists when the

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[17] *Aguilar v. Department of Justice, et al.*, 717 Phil. 789, 799 (2013).

facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. It does not refer to actual and positive cause nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged.[18] In the case of *Reyes v. Pearlbank Securities, Inc.*,[19] the Court declared that a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He simply relies on common sense. Apropos thereto, for the public prosecutor to determine if there exists a well-founded belief that a crime has been committed, and that the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.

Considering the mandate of Memorandum Circular No. 2002-012, which both Fuentes and the Deputy Ombudsman have clearly disregarded, the Court believes, therefore, that all the elements of the crimes charged are, in all reasonable likelihood, present with respect to Fuentes's participation in the case at bar and that the Deputy Ombudsman committed grave abuse of discretion when it dismissed the criminal charges against him.

WHEREFORE, the petition is **GRANTED.** The Order dated March 31, 2011 and the Joint Order dated September 7, 2011

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[18] *Id.* at 799-800.

[19] 582 Phil. 505, 519 (2008).

of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices in OMB-P-C-05-1361-K dismissing the criminal charges against respondent PNP Police Senior Inspector Eustiquio Fuentes for violation of Section 3(e), Republic Act No. 3019, or the *Anti-Graft and Corrupt Practices Act*, and Estafa Through Falsification are hereby **REVERSED** and **SET ASIDE**, and the Resolution dated February 24, 2009 finding probable cause and recommending the filing of the necessary Informations against Fuentes is **AFFIRMED**. The Deputy Ombudsman is **ORDERED** to file in the proper court the necessary Informations for violation of Section 3(e), Republic Act No. 3019 and Estafa Through Falsification against respondent.

SO ORDERED.

Velasco, Jr. (Chairperson), del Castillo,[*] *Perez,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 203576. September 14, 2016]

NAGA CENTRUM, INC., represented by AIDA KELLY YUBUCO, *petitioner, vs.* **SPOUSES RAMON J. ORZALES and NENITA F. ORZALES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A PARTY CANNOT INVOKE THE JURISDICTION OF A COURT TO SECURE AFFIRMATIVE RELIEF AGAINST HIS OPPONENT AND, AFTER OBTAINING OR FAILING TO OBTAIN SUCH RELIEF, REPUDIATE OR QUESTION

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 14, 2016.

THAT SAME JURISDICTION.—The Court finds no irregularity in the assumption of the case by Judge Formaran III. On the contrary, he decided the case after his colleagues recused themselves. His re-assumption of the case is not without valid reason. Even assuming, but only for the sake of argument, that there is a hint of validity in petitioner's legal argument in this respect, Judge Formaran III's Decision cannot be nullified, as it is deemed accepted by petitioner. It did not take issue with the OCA's findings when they came out. Moreover, if petitioner did not agree with Judge Formaran III's continued handling of the case, it should have registered its timely objection, that is, after receiving the pairing judge's order declaring that he will resolve the case. And, when Judge Santos inhibited himself from deciding the case and the new judge to whom the case was raffled likewise refused to take over, nothing was heard from petitioner even at this juncture. And even after the case was finally accepted by Judge Formaran III, but not without the sanction of the November 9, 2008 OCA Memorandum citing OCA Circular No. 90-2004 as basis for Judge Formaran III to decide the case, petitioner kept silent. It was only after the unfavorable December 23, 2008 Decision came out that it moved to vacate the same on the ostensible ground that Judge Formaran III had no authority as pairing judge to decide the case. In short, petitioner had multiple opportunities to quell its doubts; by not seizing upon these opportunities, it confirmed that it did not have any. . . . A party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction x x x.

2. ID.; ID.; ID.; ID.; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN AND THE FACTUAL FINDINGS OF THE TRIAL AND APPELLATE COURTS ARE CONCLUSIVE TO THE COURT; PRINCIPLE APPLIES IN EASEMENT CASES.— Regarding the substantive issues raised, the Court finds that they involve a review of the trial and appellate courts' factual findings, which are conclusive to this Court. Only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure; this principle applies just as well in easement cases x x x The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing errors of law, the findings of fact of the appellate court being conclusive. We have emphatically declared that it is not the

function of this Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that may have been committed by the lower court. At any rate, even assuming that the errors raised in this Petition may be passed upon, the Court finds that there is nothing wrong with the assailed dispositions of the lower courts.

3. **CIVIL LAW; PROPERTY AND OWNERSHIP; EASEMENT; EASEMENT OF RIGHT OF WAY; REQUISITES.—**To be entitled to an easement of right of way, the following requisites should be met: 1. An immovable is surrounded by other immovables belonging to other persons, and is without adequate outlet to a public highway; 2. Payment of proper indemnity by the owner of the surrounded immovable; 3. The isolation of the immovable is not due to its owner's acts; and 4. The proposed easement of right of way is established at the point least prejudicial to the servient estate, and insofar as consistent with this rule, where the distance of the dominant estate to a public highway may be the shortest.

4. **ID.; ID.; ID.; ID.;A PARTY CANNOT BE ALLOWED TO INFLUENCE AND MANIPULATE THE COURTS' DECISIONS BY PERFORMING ACTS UPON THE DISPUTED PROPERTY DURING THE PENDENCY OF THE CASE, WHICH WOULD ALLOW IT TO ACHIEVE THE OBJECTIVES IT DESIRES.—** Petitioner x x x acknowledged respondents' right to use Rizal Street. It should have known from familiarity not only with its own land, but with those adjoining it, and from the ongoing proceedings in the case, that respondents had no other way to and from Valentin Street than through its property. For this reason, it is guilty of gross and evident malice and bad faith when, even while Civil Case No. 2004-0036 was pending, it deliberately blocked respondents' access to Rizal Street by constructing a building thereon, dumping filling materials and junk on the main gate of respondents' home, and converting portions of the road into an auto repair shop and parking space, making it difficult and inconvenient, if not humiliating, for respondents to traverse the path to and from their home. Under Article 19 of the Civil Code, "(e)very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." Under Article 26, "(e)very person shall respect the dignity, personality, privacy

and peace of mind of his neighbors."Petitioner's action betrays a perverse and deliberate intention to hurt and punish respondents for legally demanding a right of way which it nevertheless knew was forthcoming, and which, considering the size of its land, it may give without the least prejudice to its own rights.The Court cannot therefore accept petitioner's argument that since there are permanent structures already erected on the appointed right of way, then the parties should negotiate a different location therefor. To allow this would be tantamount to rewarding malice, cunning, and bad faith. Quite the contrary, petitioner deserves a lesson in not trifling with the rights of others, the law, and the courts. A party cannot be allowed to influence and manipulate the courts' decisions by performing acts upon the disputed property during the pendency of the case, which would allow it to achieve the objectives it desires.

APPEARANCES OF COUNSEL

Junnel M. Relativo for petitioner.
Simando & Associates for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

A party cannot be allowed to influence and manipulate the courts' decisions by performing acts upon the disputed property – during the pendency of the case – which would allow it to achieve the objectives it desires.

This Petition for Review on *Certiorari*[1] seeks to set aside: a) the May 23, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 93926 affirming the December 23, 2008 Decision[3] of the Regional Trial Court of Naga City, Branch 22

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[1] *Rollo*, pp. 9-22.

[2] *Id*. at 24-37; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Samuel H. Gaerlan.

[3] Records, pp. 348-364; penned by Pairing Judge Pablo Cabillan Formaran III.

in Civil Case No. 2004-0036, which in turn granted herein respondents – spouses Ramon and Nenita Orzales – an easement of right of way; and b) the CA's August 28, 2012 Resolution[4] denying herein petitioner Naga Centrum Inc.'s Motion for Reconsideration.

Factual Antecedents

The undisputed facts of this case involving easement of right of way are best summed up by the appellate court, as follows:

> The plaintiffs-appellees[5] own a house and lot situated at No. 28-B Valentin Street, Sabang, Naga City which is surrounded on the North by the property of Aurora dela Cruz; on the West, by the property of Bernardo Tawagon; and on the East and South, by the property of the defendant-appellant.[6] The plaintiffs-appellees alleged that when they acquired their property in 1965, their access to the public highway (Valentin Street) was through Rizal Street, which forms part of a property now owned by the defendant-appellant. But when the squatters inhabiting said place were evicted, the defendant-appellant caused Rizal Street to be closed by enclosing its property with a concrete fence. Although the plaintiffs-appellees were allowed to pass through the steel gate of the defendant-appellant, the same is subject to the schedule set by the latter. This prompted the plaintiffs-appellees to ask for a permanent right of way through the intervention of the court after the defendant-appellant refused their offer to buy the portion where the proposed right of way is sought to be established.
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> The defendant-appellant, however, alleged that there is an existing passageway leading to Valentin Street along Lot 1503 of Cad-290 which is available to the plaintiffs-appellees. Accordingly, it argued that the plaintiffs-appellees' cause of action should be against the owner of the said property. But since the said owner of Lot 1503 was not impleaded, the instant complaint is defective for failure to implead indispensable party. It also denied that it granted the plaintiffs-appellees right of way on its property stating that the use by the latter of Rizal Street as access to Valentin Street is unauthorized and illegal. Moreover, it said that the property of the plaintiffs-appellees

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[4] *Rollo*, pp. 39-40.

[5] Herein respondents.

[6] Herein petitioner, represented by Aida Kelly Yubuco.

became isolated due to their own acts. As a counterclaim, the defendant-appellant asked for damages in the form of litigation expenses, attorney's fees, and nominal damages.

In the course of the proceedings, the trial court, through an order dated August 26, 2005, granted the plaintiffs-appellees' petition for the issuance of a writ of preliminary injunction and ordered the defendant-appellant 'to clear the [plaintiffs-appellees'] access from the latter's residence towards the former Rizal Street to Valentin Street of junks and other materials or vehicles for repair that blocks [sic] or obstructs [sic] the same during the pendency of the instant case' after it found out during an ocular inspection that:

> '[I]ndeed,… the plaintiffs['] property is surrounded by other persons' properties and has no other access from their residence except through the defendant[']s property going to Valentin Street. Plaintiffs' residence and main gate faces the east. Previously,… a cemented path walk extends towards what used to be Rizal Street which appears as a long stretch [of] cemented road inside the defendant's property… Upon ocular inspection, however, the path walk from the plaintiffs' main gate is now covered by earth fill or gravel which is about one (1) foot high from the level ground inside the plaintiffs' property. The earth-fill or gravel covers the whole of the path walk such that the said path walk have [sic] totally disappeared. Truck-loads of earth-fill or gravel appears to have been dumped thereat without leveling the same making it extremely difficult to pass through it considering that some junks have also been scattered at the place not to mention the fact that it has been converted into a parking space for vehicles under repair. At the time of the ocular inspection, a jeep, a speed boat, an old mushroom-like *bahay kubo* and the junks were found at the place which used to be the plaintiffs [sic] access towards Valentin Street.'

On December 23, 2008, the trial court rendered judgment in favor of the plaintiffs-appellees. The trial court found based on the two ocular inspections conducted that the property of the plaintiffs-appellees is indeed isolated, and that an outlet to a public road could be most conveniently and practically established along the property of the defendant-appellant which is considerably bigger in size at 1.9 hectares than that of the other surrounding adjacent owners, like Bernardo Tawagon, whose property measures only 140 square meters, Felisa Estela, 90 square meters, and Aurora dela Cruz, 116 square meters, and which would provide the shortest route from the public

road to the former's property[; t]hat the isolation of their property was not due to their own act[; t]hat the easement would be established on the portion least prejudicial to the property of the defendant-appellant, that is, alongside the boundary of its property and that of Felisa Estela and Aurora dela Cruz[; and t]hat the plaintiffs-appellees were willing to pay the corresponding damages provided for by law if the right of way would be granted.

The trial court held that since the plaintiffs-appellees have an existing sufficient outlet to a public road through Rizal Street when they bought their property in 1965, it was not necessary for them to demand a right of way from the vendor of their property as suggested by the defendant-appellant. It opined that had the plaintiffs-appellees known that Rizal Street would someday be closed by the defendant-appellant, they 'would never built [sic] a house whose access would be towards the skies'. As to the concrete structure constructed by the defendant-appellant along the proposed right of way, the trial court held that the portion which extends or obstructs the said proposed right of way should be considered an illegal structure because it was placed after the instant complaint had already been filed.[7]

Ruling of the Regional Trial Court

The trial court's December 23, 2008 Decision decreed, thus:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

1. GRANTING unto plaintiffs spouses Ramon and Nenita Orzales a LEGAL EASEMENT OF RIGHT OF WAY with a width of two (2) meters and length of Twenty (20) meters, or a total area of Forty (40) square meters, to be established as defendant Naga Centrum, Inc.'s property covered by Transfer Certificate of Title (TCT) No. 45221 and Tax Declaration No. 010200772, particularly alongside its boundary line and the properties of Felisa Estela and Aurora de la Cruz towards Valentin Street as proposed and indicated in the sketch (Exhibits E and 17 found in page 191 of the records) and specially marked as Exhibit E-4;

2. ORDERING the said plaintiffs to PAY the defendant the amount of Two Hundred Thousand Pesos (₱200,000.00), as and by way of the reasonable indemnity for the value of the said land affected by

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[7] *Rollo*, pp. 25-28.

the easement of right of way, plus Ten Thousand Pesos (₱10,000.00) representing the reasonable amount to answer for the damages to be suffered by the said servient estate as a consequence of such easement; and

3. ORDERING the defendant to VOLUNTARILY REMOVE and/or DEMOLISH all the portion of its building on the subject property which extends or obstructs the said easement of right of way at its expense within fifteen (15) days upon compliance [by] the plaintiffs of the immediately preceding paragraph.

SO ORDERED.[8]

Ruling of the Court of Appeals

Petitioner filed an appeal before the CA, docketed as CA-G.R. CV No. 93926. It argued that the trial court's December 23, 2008 Decision was void as it was issued by a pairing judge even after the regular judge for the sala had already been appointed; that even assuming that the pairing judge had jurisdiction to render the decision, he should have held that respondents should have sought a right of way from the seller when they bought the property; that the judge disregarded the fact that Felisa Estela (Estela) and Aurora dela Cruz (Dela Cruz) should have also been impleaded in the case, since respondents were using their properties for ingress and egress as well; that for failing to implead Estela and Dela Cruz, Civil Case No. 2004-0036 should have been dismissed instead; and that it was error for the trial court to have ordered the establishment of the easement at the boundary of petitioner, Estela, and Dela Cruz's respective lots.

On May 23, 2012, the CA rendered the assailed Decision containing the following pronouncement:

As it appears, Judge Pablo Formaran III was the Presiding Judge of RTC-Naga City, Branch 21 and the Pairing Judge of Branch 22. After the case was submitted for decision, Judge Efren G. Santos was appointed as the new Presiding Judge of Branch 22. However, he inhibited himself from deciding the case. Hence, the case was

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[8] *Id*. at 24-25; Records, pp. 363-364.

raffled anew to Branch 26. But the Presiding Judge of Branch 26 refused to take cognizance of the case, instead he remanded it to the Raffle Committee and suggested that the case should be decided upon by Judge Pablo Formaran III pursuant to OCA Circular No. 20-2004, which governs the *Guidelines In The Inventory And Adjudication Of Cases Assigned To Judges Who Are Promoted Or Transferred To Other Branches In The Same Court Level Of The Judicial Hierarchy*, specifically paragraph 5 thereof which states:

> *'5. Should any case be left undecided by the transferred/detailed/assigned judge, the judge conducting the inventory shall cause the issuance to the parties of a notice of transfer/detail/assignment of the judge to which the case had been assigned, with a directive for the plaintiff/s to manifest, within five (5) days from receipt of such notice, whether or not he/she desires that the transferred judge should decide the case. The desire of the plaintiff, who may opt to have the case decided by the new judge, shall be respected. However, should the defendant oppose the manifestation of the plaintiff, the new judge shall resolve the matter in accordance with these Guidelines. Should the plaintiff fail to submit such manifestation within the said 5-day period, the presumption is that he/she desires that the case be decided by the transferred judge.'*

Pursuant to the said memorandum, the plaintiffs-appellees were ordered to manifest in writing whether they want their case to be decided by Judge Pablo Formaran III who was the one who heard the case until it was submitted for decision. In their manifestation, the plaintiffs-appellees opted for Judge Pablo Formaran III to decide their case.

But Judge Pablo Formaran III himself had expressed his apprehensions about the coverage of OCA Circular No. 90-2004 stating that the same only applies to judges who were transferred, detailed or assigned to another branch and not to a pairing judge like him. So for clarification, the matter was brought *en consulta* to the Office of the Court Administrator. In a memorandum issued by the Office of the Court Administrator dated November 9, 2008 and addressed to Judge Pablo Formaran III, the latter was directed to decide the case with dispatch clarifying that OCA Circular No. 90-2004 equally applies to a pairing judge, hence, the case is within his competence to decide. Having been confirmed that he has the authority to decide the case, Judge Pablo Formaran III issued an order declaring that he would now resolve the merits of the case.

On February 2, 2009, or after Judge Pablo Formaran III issued the assailed decision on December 23, 2008, the defendant-appellant filed a *Motion To Vacate Judgment And Supplement To Opposition To The Motion for Execution Pending Appeal* on the ground of lack of authority of the said judge, but which was denied by the trial court in its *Omnibus Order* dated April 16, 2009. x x x

x x x x x x x x x

This Court could not agree more with the trial court. Indeed, the defendant-appellant did not file any motion for reconsideration on the order issued by Judge Pablo Formaran III regarding the confirmation of his authority to decide the case. The same therefore became final and executory. Hence, it is too late for the defendant-appellant to still make issue about it now. The defendant-appellant was fully aware, even before the judgment is (sic) rendered, that the authority of Judge Pablo Formaran III to render judgment on the case was being clarified. But when it was finally made known that Judge Pablo Formaran III would be the one to decide the case, the defendant-appellant did not think that it was wrong or irregular. But when the decision proved to be adverse to the defendant-appellant, only then did it realize that Judge Pablo Formaran III is [sic] not clothed with power to decide the case. The wait-and-see stance exhibited by the defendant-appellant is something that this Court should not countenance. Only the vigilantes [sic] deserve the sympathy of the court.

Moving on to the merits of the case, the defendant-appellant maintains that the plaintiffs-appellees bought their property knowing fully well that it was surrounded by other properties, and that it has no adequate outlet to a public highway. That being the case, a right of way should have been asked from the seller and not from the defendant-appellant which was not in any way privy to the said contract of sale. It contends that the plaintiffs-appellees cannot feign ignorance that Rizal Street is a private road within a private property which may be closed at anytime by the actual owner.

As for the plaintiffs-appellees, they stressed that when they bought their property, Rizal Street was already existing. That was before the defendant-appellant could even buy the property where the said Rizal Street was laid. That it never occurred to them that Rizal Street would be closed in the future as part of the defendant-appellant's property.

As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement.

Easement of right of way finds its bearing under Articles 649 and 650 of the Civil Code which thus provide:

> 'Art. 649. The owner, or any person who by virtue of a legal right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.'x x x
>
> 'Art. 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.'

Pursuant to the above provisions, the owner of an estate may claim a legal or compulsory right of way only after he has established the existence of these four (4) requisites: (a) the estate is surrounded by other immovables and is without adequate outlet to a public highway; (b) after payment of the proper indemnity; (c) the isolation was not due to the proprietor's own acts; and (d) the right of way claimed is at a point least prejudicial to the servient estate.

Here, we find that these four requisites have been satisfied.

First, the defendant-appellant does not dispute the fact that when it closed Rizal Street, the property of the plaintiffs-appellees has become isolated depriving them of any outlet to the public road. The contention of the defendant that there are other available outlets to the public road from their property is belied by the ocular inspections conducted on the place by the trial court. The defendant-appellant had consistently insisted from the beginning that a right of way traversing the properties of Felisa Estela and Aurora de la Cruz was being used by the plaintiffs-appellees. But nothing of such sort surfaced during the ocular inspections. Hence, the said two adjacent owners need not be impleaded in the case as the defendant-appellant would want to impress upon the court.

Second, the plaintiffs-appellees have expressed their willingness to pay the proper indemnity for the easement of right of way.

Third, we agree with the trial court that the isolation of the property of the plaintiffs-appellees could not be attributable to them. On the contrary, it was the closure of the Rizal Street by the defendant-appellant which was being used by the plaintiffs-appellees since 1965 that caused their property to be isolated.

Fourth, the easement would prove least prejudicial if established on the property of the defendant-appellant. The condition of the properties of the adjacent owners would show that the easement could be best established along the property of the defendant-appellant. It is not disputed that the property of Bernardo Tawagon is only 140 square meters; that of Aurora de la Cruz, 116 square meters; Felisa Estela, 90 square meters; and that of the defendant-appellant, 1.9 hectares. Verily, an improvident imposition of the easement on the lots of Bernardo Tawagon, Aurora de la Cruz, and Felisa Estela may unjustly deprive them of the optimum use and enjoyment of their properties, considering that their already small areas would be further reduced by the easement. Worse, it may even render the property useless for the purpose for which the said adjacent owners purchased the same. It is also observed by the trial court that:

> '. . . in the case of Felisa Estela and Aurora de la Cruz, their respective two-storey concrete residential houses stand tall and cover almost entirely their own individual small lots. While in the case of Bernardo Tawagon, his property, which is completely divided by a high rise fire wall at the back of plaintiff's property, extends up to P. Garcia Street with an adjoining property belonging to the Cecilio family.'

The trial court also found out that the easement sought is the shortest outlet to the public road from the property of the plaintiffs-appellees. Moreover, the easement, which would consist of 20 square meters by 40 square meters [sic],[9] would be established alongside the boundary line of the property of the defendant-appellant so it would not entail great damage to the property of the latter.

It is worthy to note that the owner of a landlocked property has the right to demand a right of way through the neighboring estates. The easement must be established at the point which is least prejudicial to the servient estate and, whenever possible, the shortest to the highway. If these two conditions exist on different properties, the

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[9] Should be 20 meters (length) by 2 meters (width).

land where the establishment of the easement will cause the least prejudice, should be chosen. Thus, it has been held that 'where the easement may be established on any of several tenements surrounding the dominant estate, the one where the way is shortest and will cause the least damage should be chosen. However,… if these two (2) circumstances do not concur in a single tenement, the way which will cause the least damage should be used, even if it will not be the shortest.'[10]

The conditions of 'least damage' and 'shortest distance' are both established in one estate – the defendant-appellant's property.

Verily, we see no reason to reverse the assailed decision of the trial court.

WHEREFORE, premises considered, the instant appeal is DISMISSED. Accordingly, the assailed judgment of the trial court is AFFIRMED.

SO ORDERED.[11]

Petitioner filed a Motion for Reconsideration, which the CA denied in its subsequent August 28, 2012 Resolution. Hence, the present Petition.

Issues

In a November 12, 2014 Resolution,[12] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

WHETHER [THEN] HONORABLE PAIRING JUDGE OF BRANCH 22 HAS JURISDICTION TO RENDER THE ASSAILED DECISION[.]

WHETHER X X X PLAINTIFF HAS THE RIGHT TO DEMAND RIGHT OF WAY[.]

ASSUMING THERE IS THE RIGHT TO DEMAND RIGHT OF WAY, WHETHER X X X THE CHOSEN RIGHT OF WAY IS THE LEAST PREJUDICIAL TO THE PETITIONER[.]

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[10] Citing *Almendras v. Court of Appeals*, 336 Phil. 506 (1997).

[11] *Rollo*, pp. 29-36.

[12] *Id*. at 78-79.

THE HONORABLE COURT OF APPEALS ERRONEOUSLY APPLIED ART. 650 OF THE NEW CIVIL CODE TO THE FACTS PROVEN IN THE CASE.[13]

Petitioner's Arguments

In its Petition and Reply,[14] petitioner seeks reversal of the assailed CA dispositions as well as the trial court's December 23, 2008 Decision, and the consequent dismissal of Civil Case No. 2004-0036. Alternatively, it asks the Court to require the parties to mediate with a view to settling the dispute, citing its willingness to provide an "alternative outlet" within its property.

Petitioner argues that Judge Formaran III, then RTC Branch 22 pairing judge, had no jurisdiction to issue the December 23, 2008 Decision since a regular judge (Judge Santos) for the sala had already been appointed and in fact assumed office; that for this reason, the December 23, 2008 Decision is null and void; that since respondents are at fault for failing to secure a right of way from the seller when they bought the property knowing that it was surrounded by private properties and thus had no means of ingress and egress, then petitioner should not be obliged to provide the easement; that on account of Article 649 of the Civil Code, which provides in part that "easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts," respondents cannot demand an easement since they are responsible for isolating their property from the highway; that if an easement should be established, it ought to be on Estela and Dela Cruz's properties, which are nearest to the highway and were freely used in the past by respondents owing to the fact that Estela and Dela Cruz are respondents' aunts; that the real reason why respondents are trying to secure an easement from petitioner is that they are no longer in good terms with their aunts; that since they failed to implead Estela and Dela Cruz, who are indispensable parties, the trial court should have dismissed Civil Case No. 2004-0036 – and for this, all the court's actions in said case are rendered

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

[14] *Id*. at 72-75.

void for want of authority to act;[15] that despite the fact that there are unobstructed portions within petitioner's property where an easement could have been established, the trial court and CA designated another where a building stood; and that petitioner offered an alternative portion of its property where no permanent structure would be demolished – although it is a longer route to the public highway, but respondents refused the offer.

Respondents' Arguments

Pleading affirmance, respondents argue in their Comment[16] that prior to the issuance of the trial court's Decision on December 23, 2008 in Civil Case No. 2004-0036, the authority of the pairing judge – Judge Formaran III – to decide the case had been questioned before the Office of the Court Administrator (OCA) on *consulta*, and on November 9, 2008, the OCA issued a memorandum affirming Judge Formaran III's authority to decide the case based on OCA Circular No. 90-2004; that petitioner did not question the OCA's findings, and it was only on February 2, 2009, or after the unfavorable December 23, 2008 Decision came out, that it filed a motion to vacate the same on the pretense that Judge Formaran III was not authorized to decide the case; and that petitioner's actions in this regard are a mere afterthought which the trial court and the CA themselves did not fail to notice.

Respondents add that there is no basis for the application of Article 649 of the Civil Code, in that the isolation of their property is not of their own doing but of petitioner's, since it unduly closed Rizal Street, blocked the same, and built concrete structures thereon even when Civil Case No. 2004-0036 was already pending; that the right of way sought via the old Rizal Street, which already existed even before petitioner bought the property from its previous owner, who allowed the creation of said street for the benefit of the residents within the vicinity, including the previous owner of the property which respondents bought, is located at a point nearest to the public road, Valentin

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[15] Citing *Carandang v. Heirs of Quirino A. de Guzman*, 538 Phil. 319 (2006).

[16] *Rollo*, pp. 40-68.

Street; that petitioner's claim that respondents may claim a right of way on the properties of Estela and Dela Cruz since they used to pass through their lands to get to Valentin Street is a blatant misrepresentation as it has been established during trial through the testimonies of respondents' witnesses, who are longtime residents of the area, and the testimony of petitioner's witness Aida Kelly Yubuco that respondents have never used these lots as a means to access Valentin Street, and for this reason, there should be no need to implead them in the case; that contrary to petitioner's claim, it has been established by the evidence and from the two ocular inspections conducted during trial that there is no other feasible alternative location where a right of way from respondents' property to Valentin Street may be created other than through the court-approved route, which is the shortest route to Valentin Street; that the improvements constructed by petitioner right upon the very right of way granted by the court were built in bad faith as they were intentionally constructed during the pendency of Civil Case No. 2004-0036 knowing that the area was then the proposed right of way and despite the fact that petitioner's land was large enough (1.9 hectares) to accommodate these improvements within any portion thereof other than the area for the proposed right of way; and that to establish a right of way other than through the court-approved route would result in tension between the parties as this would entail respondents' passing through petitioner's property instead of at the boundary thereof.

Our Ruling

The Court denies the Petition.

On the procedural issue raised, the Court finds the CA's following pronouncement to be sound:

> As it appears, Judge Pablo Formaran III was the Presiding Judge of RTC-Naga City, Branch 21 and the Pairing Judge of Branch 22. After the case was submitted for decision, Judge Efren G. Santos was appointed as the new Presiding Judge of Branch 22. However, he inhibited himself from deciding the case. Hence, the case was raffled anew to Branch 26. But the Presiding Judge of Branch 26 refused to take cognizance of the case, instead he remanded it to the

Raffle Committee and suggested that the case should be decided upon by Judge Pablo Formaran III pursuant to OCA Circular No. 20-2004, which governs the *Guidelines In The Inventory And Adjudication Of Cases Assigned To Judges Who Are Promoted Or Transferred To Other Branches In The Same Court Level Of The Judicial Hierarchy*, specifically paragraph 5 thereof which states:

> *'5. Should any case be left undecided by the transferred/detailed/assigned judge, the judge conducting the inventory shall cause the issuance to the parties of a notice of transfer/detail/assignment of the judge to which the case had been assigned, with a directive for the plaintiff/s to manifest, within five (5) days from receipt of such notice, whether or not he/she desires that the transferred judge should decide the case. The desire of the plaintiff, who may opt to have the case decided by the new judge, shall be respected. However, should the defendant oppose the manifestation of the plaintiff, the new judge shall resolve the matter in accordance with these Guidelines. Should the plaintiff fail to submit such manifestation within the said 5-day period, the presumption is that he/she desires that the case be decided by the transferred judge.'*

Pursuant to the said memorandum, the plaintiffs-appellees were ordered to manifest in writing whether they want their case to be decided by Judge Pablo Formaran III who was the one who heard the case until it was submitted for decision. In their manifestation, the plaintiffs-appellees opted for Judge Pablo Formaran III to decide their case.

But Judge Pablo Formaran III himself had expressed his apprehensions about the coverage of OCA Circular No. 90-2004 stating that the same only applies to judges who were transferred, detailed or assigned to another branch and not to a pairing judge like him. So for clarification, the matter was brought *en consulta* to the Office of the Court Administrator. In a memorandum issued by the Office of the Court Administrator dated November 9, 2008 and addressed to Judge Pablo Formaran III, the latter was directed to decide the case with dispatch clarifying that OCA Circular No. 90-2004 equally applies to a pairing judge, hence, the case is within his competence to decide. Having been confirmed that he has the authority to decide the case, Judge Pablo Formaran III issued an order declaring that he would now resolve the merits of the case.[17]

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

The Court finds no irregularity in the assumption of the case by Judge Formaran III. On the contrary, he decided the case after his colleagues recused themselves. His re-assumption of the case is not without valid reason. Even assuming, but only for the sake of argument, that there is a hint of validity in petitioner's legal argument in this respect, Judge Formaran III's Decision cannot be nullified, as it is deemed accepted by petitioner. It did not take issue with the OCA's findings when they came out. Moreover, if petitioner did not agree with Judge Formaran III's continued handling of the case, it should have registered its timely objection, that is, after receiving the pairing judge's order declaring that he will resolve the case. And, when Judge Santos inhibited himself from deciding the case and the new judge to whom the case was raffled likewise refused to take over, nothing was heard from petitioner even at this juncture. And even after the case was finally accepted by Judge Formaran III, but not without the sanction of the November 9, 2008 OCA Memorandum citing OCA Circular No. 90-2004 as basis for Judge Formaran III to decide the case, petitioner kept silent. It was only after the unfavorable December 23, 2008 Decision came out that it moved to vacate the same on the ostensible ground that Judge Formaran III had no authority as pairing judge to decide the case. In short, petitioner had multiple opportunities to quell its doubts; by not seizing upon these opportunities, it confirmed that it did not have any.

> . . . a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice cannot be tolerated — obviously for reasons of public policy.
>
> Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction

> or power of the court . . . And in Littleton *vs*. Burges, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

Elaborating on this ruling, the Court in *Crisostomo v. CA*, G.R. No. L-27166, March 25, 1970, 32 SCRA 54, 60, stated that:

x x x x x x x x x

> The petitioners, to borrow the language of Mr. Justice Bautista Angelo (People vs. Archilla, G.R. No. L-15632, February 28, 1961, 1 SCRA 699, 700-701), cannot adopt a posture of double-dealing without running afoul of the doctrine of estoppel. The principle of estoppel is in the interest of a sound administration of the laws. It should deter those who are disposed to trifle with the courts by taking inconsistent positions contrary to the elementary principles of right dealing and good faith (People vs. Acierto, 92 Phil. 534, 541 [1953]). For this reason, this Court closes the door to the petitioners' challenge against the jurisdiction of the Court of Appeals and will not even honor the question with a pronouncement.

A reading of the above-quoted statements may give the impression that the doctrine applies only to the plaintiff or the party who, by bringing the action, initially invoked but later repudiated the jurisdiction of the court. But while the rule has been applied to estop the plaintiff from raising the issue of jurisdiction [Tolentino v. Escalona, G.R. No. L-26886, January 24, 1969, 26 SCRA 613; Rodriguez v. Court of Appeals, G.R. No. L- 29264, August 29, 1969, 29 SCRA 419; Crisostomo v. Reyes, G.R. No. L-27166, March 25, 1970, 32 SCRA 54; Ong Ching v. Ramolete, G.R. No. L-35356, May 18, 1973, 51 SCRA 13; Capilitan v. Dela Cruz, G.R. Nos. L-29536-7, February 28, 1974, 55 SCRA 706; Florendo v. Coloma, G.R. No. 60544, May 19, 1984, 129 SCRA 304; Solicitor General v. Coloma, Adm. Matter No. 84-3-886-0, July 7, 1986, 142 SCRA 511; Sy v. Tuvera, G.R. No. 76639, July 16, 1987, 152 SCRA 103] it has likewise been applied to the defendant [Carillo v. Allied Worker's Association of the Phils., G.R. No. L-23689, July 31, 1968, 24 SCRA 566; People v. Munar, G.R. No. L-37642, October 22, 1973, 53 SCRA 278; Solano v. Court of Appeals, G.R. No. L-41971, November 29,1983,126 SCRA 122; Royales v. Intermediate Appellate Court, G.R. No. 65072, January 31, 1984, 127 SCRA 470] and more specifically, to the respondent

employer in a labor case x x x. The active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction.[18]

Indeed, far from nullifying his actions, the Court lauds Judge Formaran III for his prudence and careful handling of his affairs in general, and the instant case in particular.

Regarding the substantive issues raised, the Court finds that they involve a review of the trial and appellate courts' factual findings, which are conclusive to this Court. Only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure; this principle applies just as well in easement cases.[19]

x x x The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing errors of law, the findings of fact of the appellate court being conclusive. We have emphatically declared that it is not the function of this Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that may have been committed by the lower court.[20]

At any rate, even assuming that the errors raised in this Petition may be passed upon, the Court finds that there is nothing wrong with the assailed dispositions of the lower courts.

The evidence shows that when respondents bought their property in 1965,[21] they passed through the open spaces within Estela and Dela Cruz's lots to get from their lot to the public road, Valentin Street.[22] When Rizal Street was created as a

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[18] *Marquez v. Secretary of Labor*, 253 Phil. 329, 334-336 (1989).

[19] *Spouses Sta. Maria v. Court of Appeals*, 349 Phil. 275 (1998).

[20] *Cristobal v. Court of Appeals*, 353 Phil. 320, 326 (1998).

[21] *Rollo*, pp. 10, 51.

[22] *Id.* at 11, 107.

passageway to and from Valentin Street by informal settlers who occupied portions of the subject 1.9-hectare property, which was then owned by Felix Ledda,[23] respondents began using the same as well, after having personal disagreements with Estela and Dela Cruz.[24] Petitioner acquired the property from the Leddas only on July 7, 1980.[25] In 2003, petitioner evicted the informal settlers and closed Rizal Street,[26] except to respondents, who were allowed to use the same as access to and from Valentin Street, although on a limited schedule, or from 6:00 a.m. to 9:00 p.m. daily.[27] Burdened by this imposition, respondents made a formal demand to acquire a portion of petitioner's property to serve as access to Valentin Street, which petitioner rejected.[28] Respondents then instituted Civil Case No. 2004-0036.

The evidence further indicates that during the pendency of Civil Case No. 2004-0036, petitioner unduly blocked Rizal Street by deliberately constructing a residential building thereon, dumping filling materials and junk on the main gate of respondents' home, and converting portions of the street into an auto repair shop and parking space.[29] For this reason, the trial court was constrained to issue injunctive relief against it.[30]

The records also reveal that respondents' landlocked property is bounded on the north by Dela Cruz's 116-square meter lot and Estela's 90-square meter lot; on the west, by Bernardo Tawagon's (Tawagon) 140-square meter lot and a lot owned by the Cecilio family; and on the northeast, east, and south, by petitioner's 1.9-hectare lot. Dela Cruz's property has been sealed

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[23] *Id*. at 11-12, 106.

[24] *Id*. at 11, 107.

[25] *Id*. at 11, 106.

[26] *Id*. at 11, 51-52,

[27] *Id*. at 11, 25, 52, 106.

[28] *Id*. at 10-11, 52.

[29] Records, pp. 206-212.

[30] *Rollo*, pp. 26-27, 53.

by a firewall; the same is true with Tawagon's.[31] Dela Cruz and Estela's respective two-storey homes, on the other hand, cover their respective lots almost entirely.[32]

To be entitled to an easement of right of way, the following requisites should be met:

1. An immovable is surrounded by other immovables belonging to other persons, and is without adequate outlet to a public highway;

2. Payment of proper indemnity by the owner of the surrounded immovable;

3. The isolation of the immovable is not due to its owner's acts; and

4. The proposed easement of right of way is established at the point least prejudicial to the servient estate, and insofar as consistent with this rule, where the distance of the dominant estate to a public highway may be the shortest.[33]

The only issues raised by petitioner in this case relate to the third and fourth requisites. It claims that respondents should be faulted for the isolation of their property, as they failed to secure a right of way from their seller when they bought the same in 1965; that respondents should obtain their right of way from Estela and Dela Cruz instead; and that the designated right of way granted by the trial court to respondents already contains permanent structures, which thus requires the appointment of another; and in this regard, petitioner is willing to negotiate with respondents as to location and price.

However, respondents may not be blamed for the isolation they are now suffering. By its very location, their property is isolated, and this is not their fault. Suffice it to say further that the Court agrees with the findings of the lower courts that the closure of Rizal Street by the petitioner caused their property to be isolated.

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[31] *Id.* at 62.

[32] *Id.* at 35; Records, 208-212.

[33] *Reyes v. Valentin*, G.R. No. 194488, February 11, 2015, 750 SCRA 379, 390.

On the second claim that respondents should seek a right of way from Estela and Dela Cruz instead, the Court finds this to be unnecessary. As they are, Dela Cruz's 116-square meter lot and Estela's 90-square meter lot are not sizeable enough to accommodate a road right of way for respondents; besides, their homes almost entirely cover their lots, such that there is none left for a road. On the other hand, petitioner's land is large enough, at 19,000 square meters; a reduction thereof by 40 square meters – 2 meters wide by 20 meters long for respondents' road right of way, would hardly be felt by it.

All in all, the location of the easement as depicted and illustrated in the sketch approved by the trial court (Exhibit "17")[34] appears to be legal, reasonable, and just.

Significantly, respondents have been using Rizal Street for so long; petitioner knew of this, and it even granted access to respondents. At the very least, respondents have been using Rizal Street for 23 years (or from 1980 up to 2003). While petitioner may have allowed access by the informal settlers to Rizal Street through tolerance, the same cannot be said of respondents; they are not informal settlers on petitioner's land.

In the case at bar, TCT No. 96886, issued in the name of Joaquin Limense, does not contain any annotation that Lot No. 12-D was given an easement of right of way over Lot No. 12-C. However, Joaquin Limense and his successors-in-interests are fully aware that Lot No. 12-C has been continuously used and utilized as an alley by respondents and residents in the area for a long period of time.

Joaquin Limense's Attorney-in-Fact, Teofista L. Reyes, testified that respondents and several other residents in the area have been using the alley to reach Beata Street since 1932. Thus:

x x x x x x x x x

In *Mendoza v. Rosel*, this Court held that:

> Petitioners claim that inasmuch as their transfer certificates of title do not mention any lien or encumbrance on their lots, they are purchasers in good faith and for value, and as such

[34] Records, p. 191.

> have a right to demand from respondents some payment for the use of the alley. However, the Court of Appeals found, as a fact, that when respondents acquired the two lots which form the alley, they knew that said lots could serve no other purpose than as an alley. ***The existence of the easement of right of way was therefore known to petitioners who must respect the same, in spite of the fact that their transfer certificates of title do not mention any burden or easement. It is an established principle that actual notice or knowledge is as binding as registration.***

Every buyer of a registered land who takes a certificate of title for value and in good faith shall hold the same free of all encumbrances except those noted on said certificate. It has been held, however, that 'where the party has knowledge of a prior existing interest that was unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him.'

In the case at bar, Lot No. 12-C has been used as an alley ever since it was donated by Dalmacio Lozada to his heirs. It is undisputed that prior to and after the registration of TCT No. 96886, Lot No. 12-C has served as a right of way in favor of respondents and the public in general. We quote from the RTC's decision:

> x x x It cannot be denied that there is an alley which shows its existence. It is admitted that this alley was established by the original owner of Lot 12 and that in dividing his property the alley established by him continued to be used actively and passively as such. Even when the division of the property occurred, the non-existence of the easement was not expressed in the corresponding titles nor were the apparent sign of the alley made to disappear before the issuance of said titles.
>
> The Court also finds that when plaintiff acquired the lot (12-C) which forms the alley, he knew that said lot could serve no other purpose than as an alley. That is why even after he acquired it in 1969 the lot continued to be used by defendants and occupants of the other adjoining lots as an alley. x x x

Thus, petitioners are bound by the easement of right of way over Lot No. 12-C, even though no registration of the servitude has been made on TCT No. 96886.[35]

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[35] *Heirs of the late Joaquin Limense v. Rita Vda. De Ramos*, 619 Phil. 592, 606-609 (2009).

Petitioner thus acknowledged respondents' right to use Rizal Street. It should have known from familiarity not only with its own land, but with those adjoining it, and from the ongoing proceedings in the case, that respondents had no other way to and from Valentin Street than through its property. For this reason, it is guilty of gross and evident malice and bad faith when, even while Civil Case No. 2004-0036 was pending, it deliberately blocked respondents' access to Rizal Street by constructing a building thereon, dumping filling materials and junk on the main gate of respondents' home, and converting portions of the road into an auto repair shop and parking space, making it difficult and inconvenient, if not humiliating, for respondents to traverse the path to and from their home. Under Article 19 of the Civil Code, "(e)very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." Under Article 26, "(e)very person shall respect the dignity, personality, privacy and peace of mind of his neighbors." Petitioner's action betrays a perverse and deliberate intention to hurt and punish respondents for legally demanding a right of way which it nevertheless knew was forthcoming, and which, considering the size of its land, it may give without the least prejudice to its own rights.

The Court cannot therefore accept petitioner's argument that since there are permanent structures already erected on the appointed right of way, then the parties should negotiate a different location therefor. To allow this would be tantamount to rewarding malice, cunning, and bad faith. Quite the contrary, petitioner deserves a lesson in not trifling with the rights of others, the law, and the courts. A party cannot be allowed to influence and manipulate the courts' decisions by performing acts upon the disputed property during the pendency of the case, which would allow it to achieve the objectives it desires.

WHEREFORE, the Petition is **DENIED**. The May 23, 2012 Decision and August 28, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 93926 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 204423. September 14, 2016]

PHILIPPINE SCIENCE HIGH SCHOOL – CAGAYAN VALLEY CAMPUS, *petitioner, vs.* **PIRRA CONSTRUCTION ENTERPRISES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; AS A RULE, FINDINGS OF FACT OF QUASI-JUDICIAL BODIES, WHICH HAVE ACQUIRED EXPERTISE ON SPECIFIC MATTERS WITHIN THEIR JURISDICTION, ARE GENERALLY ACCORDED RESPECT AND FINALITY.—** Settled is the rule that the findings of fact of quasi-judicial bodies, which have acquired expertise on specific matters within their jurisdiction, are generally accorded respect and finality, especially when affirmed by the CA. As such, in this case, the Court upholds the factual findings of the Construction Industry Arbitration Commission (CIAC), a quasi-judicial body that has jurisdiction over construction disputes, that are affirmed by the CA and are fully supported by the evidence on record.

2. **CIVIL LAW; CONTRACTS; PRINCIPLE OF *QUANTUM MERUIT*; IN AN ACTION FOR WORK AND LABOR, PAYMENT SHALL BE MADE IN SUCH AMOUNT AS THE PLAINTIFF REASONABLY DESERVES, AS IT IS UNJUST FOR A PERSON TO RETAIN BENEFIT WITHOUT PAYING FOR IT; CASE AT BAR.—** The Court, nonetheless, agrees with the CA that PIRRA is entitled to the value of the work done on Project C pursuant to the principle of *quantum meruit* and to avoid unjust enrichment on the part of PIRRA. "*Quantum meruit* means that, in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves x x x as it is unjust for a person to retain any benefit without paying for it." Here, records show that PIRRA had a 25.25% accomplishment on Project C. To deny payment thereof would result in unjust enrichment of PSHS at the expense of PIRRA. Hence, PSHS must pay PIRRA the value of the work done on Project C.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Pasamonte Pascua & Associates Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the January 20, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 118152, which modified the January 26, 2011 Final Award[2] of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 11-2010. Also challenged is the July 23, 2012 CA Resolution[3] denying Philippine Science High School-Cagayan Valley Campus' (PSHS) Motion for Reconsideration.

Factual Antecedents

PIRRA Construction Enterprises (PIRRA) is a business engaged in general contracting and a licensed contractor registered with the Philippine Domestic Construction Board. On the other hand, PSHS is a government academic institution under the Department of Science and Technology (DOST) and is located in Bayombong, Nueva Vizcaya. Artemio R. Perez is the owner of PIRRA[4] while Dir. Salvador Romo (Dir. Romo) is PSHS' Campus Director.[5]

On April 19, 2010, PIRRA filed with the CIAC a Complaint[6] for Damages against PSHS relative to the construction contracts

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[1] CA *rollo*, pp. 1138-1171; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Franchito N. Diamante.

[2] *Id*. at 11-53; penned by Sole Arbitrator Roberto N. Dio.

[3] *Id*. at 1278-1280.

[4] *Id*. at 631.

[5] *Id*. at 127.

[6] *Id*. at 318-344.

for PSHS' Project A (Academic Building I – Phases IV and V, and Girls' Dormitory Building I – Phase IV); and its Project C (Academic Building II – Phase I, Boys' Dormitory Building – Phase I, and School Canteen – Phase I).

On Project A

On October 27, 2008, PIRRA participated in and won the bidding for Project A for a total contract price of ₱24,290,854.10. On December 8, 2008, PSHS issued a Notice of Award[7] to PIRRA. Thereafter, the parties entered into a Contract Agreement[8] and a Notice to Proceed[9] was issued to PIRRA. The duration of Project A was for 180 days from December 20, 2008,[10] with approved 65-day extension until August 22, 2009.[11] As mobilization fee, PSHS paid PIRRA 15% of the contract price.[12] Thereafter, it paid PIRRA its Partial Billing (PB) Nos. 1 to 4[13] amounting to ₱23,194,020.95.[14]

On July 29, 2009, PIRRA requested payment for its PB No. 5.[15] On August 6, 2009, it sent PSHS a letter[16] requesting for substantial acceptance and completion of Project A and submitted its Summary of Accomplishment Report[17] stating that as of July 24, 2009, the accomplishment for Project A was already at 94.09%. In its reply,[18] PSHS reminded PIRRA that the due

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[7] *Id*. at 346.

[8] *Id*. at 177-180.

[9] *Id*. at 347.

[10] *Id*. at 232. It is, however, noted that under the CIAC's Final Award, it is stated that the contract for Project A commenced on December 10, 2008; *id*. at 20.

[11] *Id*. at 181-182.

[12] *Id*. at 187.

[13] *Id*. at 183-197.

[14] *Id*. at 633.

[15] *Id*. at 361.

[16] *Id*. at 199.

[17] *Id*. at 200.

[18] *Id*. at 201.

date of the contract was August 22, 2009 but the power distribution activities had not yet been installed.

Meanwhile, PSHS created an Inspectorate Team, which conducted punch listing on Academic Building I, Phases IV and V on August 25, 2009, and on Dormitory Building I, Phase IV on September 1, 2009.[19]

On September 23, 2009, PSHS replied to PIRRA's request for substantial acceptance and completion of Project A, and for payment of PB No. 5. It stated that the payment thereof could not yet be made pending correction of the noted defects and remaining work activities, the final inspection of the concerned agencies, among other reasons. At the same time, PSHS declared that it considered PB No. 5 as PIRRA's final billing such that it had to account PIRRA's liabilities relating to Project A.[20]

On September 25, 2009, PSHS informed PIRRA that the Commission on Audit (COA) would inspect Project A on September 29, 2009 to validate PIRRA's accomplishment thereon.[21] On September 29, 2009, the COA proceeded with the inspection. PIRRA admitted that it failed to attend the inspection as it allegedly received PSHS' September 25, 2009 letter only on October 5, 2009.[22]

On October 2, 2009, PIRRA and PSHS entered into a Joint Inspection Agreement[23] before DOST Assistant Secretary for Administration, Legal and Financial Affairs, Mario P. Bravo.[24] They agreed that the inspection date must be mutually agreed upon by the parties; and that representatives from the COA, the DOST and the Consultant (D&D Engineering Co.) shall be invited for the inspection.

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[19] *Id*. at 202.

[20] *Id*. at 205.

[21] *Id*. at 207.

[22] *Id*. at 223.

[23] *Id*. at 208.

[24] *Id*. at 321.

On October 30, 2009, PSHS informed PIRRA that its PB No. 5 could not be processed yet as it was awaiting the COA Report.[25] On the same day, the COA sent its Inspection Report dated October 7, 2009 to PSHS.[26]

Because of failure to abide by the October 2, 2009 Joint Inspection Agreement, the parties entered into another Joint Agreement[27] on November 20, 2009 and agreed to jointly request the COA for a re-inspection of Phase IV of Project A.

On January 6, 2010, PSHS informed PIRRA that it would take over Project A in the interest of the government, and to prepare for its occupancy for School Year 2010-2011. It also stated that it would implement the repair of the identified defects through a third party, the expenses of which would be deducted from PIRRA's final billing. It declared that the disallowances indicated in the COA Report (particularly its Findings Nos. 3 and 7) and its construction materials, which PIRRA allegedly used without permission would also be deducted from the final billing.[28] Said COA Findings Nos. 3 and 7 are as follows:

> FINDINGS #3
>
> The steel awning windows which were replaced by glass framed sliding windows were not presented during the course of the inspection, thereby disallowing it[s] cost equivalent computed as follows:
>
> Total Area of steel awning windows X bid price per area
> 115.96 X 3,450.33/sq.m.
> Php400,099.73
>
> x x x x x x x x x
>
> FINDINGS #7
>
> The item for Power distribution lines amounting to Php1,955,000.00 were not implemented at the time of the inspection, the contract time have elapsed on August 22, 2009, no request

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[25] *Id*. at 301.

[26] *Id*. at 210-218.

[27] *Id*. at 209.

[28] *Id*. at 219.

for time extension has been requested/presented hence, liquidated damages should be imposed with computation as shown below:

1 of 1% (1,955,000.00) (39 days) Php76,245.00[29]
10

In a letter dated January 25, 2010, PIRRA questioned PSHS' takeover of the project; it pointed out that the parties already agreed to jointly request the COA for the re-inspection of Phase IV of Project A.[30] PIRRA claimed that PSHS' takeover of Project A is violative of its rights as the winning contractor. It argued that COA's inspection on Project A was conducted without the presence of PIRRA; and, the findings of the COA are subject to protest for being one-sided. It added that PSHS agreed to having a COA re-inspection done as it was aware that the September 29, 2009 COA Inspection was invalid[31] since PIRRA was not properly notified thereof.

On Project C

On December 2, 2008, PIRRA participated in and won the bidding for Project C for a contract price of ₱9,945,361.85. On January 29, 2009, PSHS issued a Notice of Award[32] to PIRRA. On June 22, 2009, the parties entered into a Contract Agreement.[33] On July 9, 2009, PIRRA received a Notice to Proceed.[34] The project duration was 150 days, from July 20, 2009 until December 17, 2009.[35] PSHS paid PIRRA 15% of the contract price as mobilization fee.[36]

On July 24, 2009, PIRRA requested the suspension of the construction of the canteen because PSHS decided to relocate

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[29] *Id*. at 218.

[30] *Id*. at 222-225.

[31] *Id*. at 334-336.

[32] *Id*. at 265.

[33] *Id*. at 261-264.

[34] *Id*. at 266.

[35] *Id*. at 289.

[36] *Id*. at 267-268.

the canteen site to a difficult place of construction.[37] PSHS granted this request.[38]

On August 3, 2009, PIRRA requested a time suspension on Project C because of affected footings, columns, and footing tie beams.[39] On August 19, 2009, PSHS informed PIRRA that suspension was not the solution, there being no changes in the structural design. Instead, it directed PIRRA to file a variation order (VO) with time extension.[40]

As cited above, on October 2, 2009, the parties entered into a Joint Inspection Agreement.[41] As regards Project C, they agreed that PIRRA shall submit to the Consultant the shop drawing for the foundation; in turn, the Consultant shall submit the cross-sections of the foundation and evaluate PIRRA's claim.

On October 12, 2009, PIRRA sent a letter[42] to PSHS stating that delay was incurred on Project C because it received no response from PSHS or from the Consultant on its request for time suspension. In the same letter, PIRRA requested a total time suspension on Project C. In its reply,[43] PSHS alleged that it found out that as of October 12, 2009, PIRRA suspended work on Project C without its approval.

As previously stated, on November 20, 2009, the parties entered into a Joint Agreement.[44] As regards Project C, they agreed, among others, that PSHS, along with the Consultant, would visit the site and that the Consultant will prepare a detailed drawing (for the VO) to be submitted to PIRRA. After more

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[37] *Id*. at 269.

[38] *Id*. at 270.

[39] *Id*. at 271-272.

[40] *Id*. at 279.

[41] *Id*. at 208.

[42] *Id*. at 300.

[43] *Id*. at 301.

[44] *Id*. at 209.

than two months from said Joint Agreement, and through a letter[45] dated February 8, 2010, PSHS informed PIRRA that it was terminating the Project C contract because of the latter's delay, default, and abandonment. On February 23, 2010, it issued an Order of Termination against PIRRA.[46]

PIRRA contended that the termination of the contract is unjustified. It stressed that PSHS failed to give it the intended revisions of the building plan for Project C as well as the necessary documents to secure a building permit for the project; and, as a result, Project C was stopped and PIRRA incurred a slippage of 75.99%.[47]

For its part, PSHS countered that it a) validly took over Project A, and b) validly terminated the contract for Project C.

On Project A

PSHS explained that it put on hold PB No. 5 as there were still works that must first be resolved and final inspection must first be carried out on the project.[48] It further alleged that after signing the November 20, 2009 Joint Agreement, PSHS received no communication from PIRRA so that they could jointly prepare a communication addressed to COA; thereafter, upon inquiry to the COA, PSHS learned that if there was no subsequent accomplishment or rectification in Project A, then there was no more reason for a re-inspection.[49] It stated that the contract for Project A ended on August 22, 2009 but only at about 92% completion;[50] thus, it took over the same.

On Project C

PSHS claimed that after inspecting Project C and evaluating the scope of a supposed VO, the shop drawings were finished and

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[45] *Id*. at 281.

[46] *Id*. at 317.

[47] *Id*. at 337-339.

[48] *Id*. at 458-459.

[49] *Id*. at 462, 464-465.

[50] *Id*. at 453.

ready for submission to PIRRA but it did not release it as PIRRA's owner and even his representative no longer communicated with them, as well as refused to receive communication from PSHS. Despite the meeting before the DOST, PIRRA still filed a complaint against PSHS' officers with the Ombudsman, among other reasons.[51]

PSHS insisted that it validly terminated the contract for Project C since PIRRA had abandoned its work thereon since October 12, 2009; on December 17, 2009, the contract for Project C expired and through PIRRA's own fault, it incurred a negative slippage of 75.99%. PSHS added that the continued refusal of PIRRA to receive communication from PSHS was a clear showing of abandonment and sabotage of a government project.[52]

On July 30, 2010, the CIAC appointed Engr. Potenciano A. Leoncio, Jr. as Technical Expert who would conduct ocular and technical inspection on Projects A and C.[53]

Subsequently, PIRRA filed its Supplemental Complaint[54] maintaining that the delay in Project C was due to PSHS' failure to submit the new design plan based on the change of elevation. It argued that for such breach, PSHS should pay PIRRA its lost profits, overhead contingency miscellaneous expense if Project C was completed, and a performance bond.

On December 8, 2010, the Technical Expert submitted his Final Report[55] on Project Ocular and Technical Inspection and Subsequent Technical Conference.

Ruling of the Construction Industry Arbitration Commission

On January 26, 2011, the CIAC rendered its Final Award, the dispositive portion of which reads:

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[51] *Id*. at 465-466.

[52] *Id*. at 484-487.

[53] *Id*. at 659.

[54] *Id*. at 602-609.

[55] *Id*. at 667-679.

WHEREFORE, the Tribunal renders its award in favor of Claimant (PIRRA) and against Respondent (PSHS), (a) holding it liable for delay in paying partial Billing No. 5 and in taking over Project A without any legal basis; (b) holding it liable for delay in submitting the revised drawings and extra work order to Claimant the following sums:

1. ₱1,273,001.64 as residual value of Partial Billing No. 5 for Project A;
2. ₱2,050,176.59 as reasonable compensation and actual damages due for the wrong termination of the Project C Contract;
3. ₱300,000.00 in moral damages;
4. ₱200,000.00 in exemplary damages;
5. ₱100,000.00 as attorney's fees; and
6. Costs of arbitration, including professional fee of the Technical Expert and transcription costs.

Within five (5) working days from his receipt of the Final Award, Claimant shall deliver to Respondent the following finished or fabricated items due to Respondent:

(a) 61.86 square meters of steel awning windows that were replaced by glass frame sliding windows, valued at ₱400,099.73; and

(b) fabricated steel bars, steel awnings, windows with security grills and steel railings for Academic Building II, Phase I with a total value of ₱202,925.18.

Claimant shall submit his Compliance within five (5) working days from notice of this Final Award, showing proof of delivery to or receipt by Respondent of the finished or fabricated items. Respondent shall receive the same items upon delivery by the Claimant.

If Claimant fails to deliver or to tender delivery of the finished or fabricated items to Respondent within the period stated, the value of such items shall be deducted from the sums due to Claimant.

SO ORDERED.[56]

The CIAC decreed that PSHS had no basis in taking over Project A. It stressed that during the pendency of said project,

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

PIRRA requested payment of its PB No. 5 based on substantial acceptance and completion with 94.09% accomplishment; in turn, PSHS created an Inspectorate Team for the turnover of the project. It noted that the punch listings of the Inspectorate Team, the COA inspection and its Report, were all made beyond the project completion date on August 22, 2009.

The CIAC also stressed that the COA inspection is not a condition precedent for the payment of any progress billing or for the acceptance of Project A; thus, the COA Report cannot be used to refuse or delay payment of PB No. 5. It likewise declared that the contract for Project A did not specify that the completion date on August 22, 2009 was due to the opening of classes in June 2010, and the notice of takeover did not cite PIRRA's purported delay as the cause of the takeover.

As regards Project C, the CIAC stated that PSHS failed to comply with the November 20, 2009 Joint Agreement that PSHS would submit revised drawings and issue a VO on Project C. It thus held that PSHS breached its obligations and invalidly terminated the contract for Project C. However, despite such invalid termination, the CIAC explained that PSHS may withdraw at will the construction of work, subject to indemnification for the expenses, work, and the uselessness PIRRA may have obtained, and damages.

The CIAC held that PIRRA was also entitled to moral damages as PSHS committed bad faith in refusing to submit the revised drawings and to issue the VO for Project C. It likewise awarded exemplary damages because of PSHS' bad faith in refusing to perform its obligations under Project A and C contracts, in challenging the CIAC's jurisdiction, and in objecting to arbitrate. Lastly, it awarded attorney's fees on the ground that PIRRA was compelled to arbitrate to protect its interests; and that since exemplary damages was awarded, the costs of the arbitration, including the fee of the Technical Expert, and the transcription costs were granted to PIRRA.

Ruling of the Court of Appeals

Unsatisfied, PSHS filed with the CA a Petition for Review assailing the CIAC's Final Award.

Anent Project A, PSHS denied that it incurred delay in paying PB No. 5. It clarified that it never treated Project A as substantially completed as the creation of the Inspectorate Team was only to determine the work done and the project specifications that were implemented. It added that the parties may treat a project as substantially completed only when it reached a 95% accomplishment; since Project A showed a 94.09% accomplishment only, and after its supposed validation, such accomplishment was reduced to 92.21%, then it was justified in refusing to pay PB No. 5.

With regard to Project C, PSHS maintained that for PIRRA's abandonment of work and failure to comply with a valid instruction of the procuring entity, it terminated the contract for Project C. It also averred that PIRRA's claims for rental income (for the standby cost of its equipment affected by PSHS' supposed delay), fabricated steel bars, steel awnings windows with security grills and steel railings were without basis.

Moreover, PSHS argued that it is not liable for moral and exemplary damages as it had legal bases for refusing to pay PB No. 5 for Project A, and for terminating the contract for Project C. It likewise insisted that it is not liable for attorney's fees, and it should be PIRRA which should pay arbitration costs, the fee of the Technical Expert, and transcription costs.

PIRRA, on its end, countered that PSHS treated Project A as substantially completed when it received its request for substantial acceptance and completion on August 6, 2009. Such date was 13 days earlier than the completion date of the project (August 22, 2009). It also asserted that an Inspectorate Team is required only in cases of substantial compliance; and that PSHS must pay PB No. 5 since the items therein were already completed by PIRRA.

Furthermore, PIRRA alleged that PSHS did not validly terminate the contract for Project C. It maintained that PSHS breached the contract when it failed to submit the revised drawing and issue a VO on Project C, giving rise to PIRRA's entitlement to damages.

On January 20, 2012, the CA rendered the assailed Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition for review is PARTIALLY GRANTED. Accordingly, the January 26, 2011 Final Award of the Construction Industry Arbitration Commission (CIAC) is MODIFIED as follows:
>
> 1. Petitioner (PSHS) is ordered to pay respondent (PIRRA) the residual value of Partial Billing No. 5 in the amount of ₱706,077.28;
> 2. Petitioner is ordered to pay respondent the amounts of ₱1,019,399.59 representing the value of the 25.25% accomplishment of Project C, and ₱202,925.18 representing the value of fabricated steel bars, steel awnings, windows with security grills and steel railings;
> 3. The awards for rental income and lost profits from project C are deleted;
> 4. The awards for moral and exemplary damages are deleted;
> 5. The award for attorney's fees in the amount of ₱100,000.00 is affirmed; and
> 6. Petitioner is exempt from payment of the cost of filing fee and transcription cost; however, it shall jointly pay with the respondent the fees for the arbitrator and the technical expert.
>
> In all other respects, the Final Award is hereby AFFIRMED.
>
> SO ORDERED.[57]

With regard to Project A, the CA ruled that when PSHS created an Inspectorate Team and ordered an inspection for punch listing, it treated Project A as substantially completed. It noted that even the COA Report indicated that Project A was practically 100% complete, save for some minor deficiencies. Thus, it held that PSHS should be held liable for the PB No. 5 less the defective works.

Anent Project C, the CA decreed that PSHS validly terminated the contract for it. It held that during the pendency of Project

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[57] *Id.* at 1170-1171.

C contract, PIRRA requested the suspension of work due to the relocation of the canteen site; PSHS approved this request. PIRRA requested another suspension, this time, for time suspension; PSHS denied this second request.

The CA reasoned that since there was no showing that the affected work fell on critical path, there was no reason for the second suspension of work. It noted that without PSHS' approval, PIRRA suspended work on Project C on October 12, 2009; thus, even before the November 20, 2009 Agreement (which CIAC used as basis in justifying PIRRA's work suspension), PIRRA already incurred delay on Project C. The CA added that PIRRA not only incurred delay but was also guilty of refusing to accept correspondences from PSHS and of failing to comply with the requirements for a VO.

Furthermore, the CA ruled that the CIAC erred in awarding rental income for PIRRA's equipment. It explained that PIRRA was the one which proceeded with the suspension of work on Project C; if its equipment became idle, PIRRA should bear the loss caused by their use or non-use. Also, it found PSHS not guilty of any act that would support the grant of moral and exemplary damages. It likewise held that both parties were liable for the fees of the Arbitrator and the Technical Expert as their respective claims were partly meritorious.

Nonetheless, the CA affirmed that PSHS is liable for the value of the work done on Project C because otherwise there would be unjust enrichment on the part of PSHS. It also sustained the award of the value of fabricated steel bars, steel awnings, windows with grills and steel railings to PIRRA as there was no showing that the CIAC misappreciated facts in arriving at this technical finding. Lastly, it agreed that PIRRA was entitled to attorney's fees since it was compelled to litigate to protect its rights.

On July 23, 2012, the CA denied[58] PSHS' Motion for Reconsideration.

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[58] *Id.* at 1278-1280.

Thus, PSHS filed this Petition raising these grounds:

I.
WHEN THE JUDGMENT OF THE COURT OF APPEALS IS BASED ON A MISAPPREHENSION OF FACTS AND WHEN IT MANIFESTLY OVERLOOKED CERTAIN RELEVANT FACTS NOT DISPUTED BY THE PARTIES, WHICH, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION, THE HONORABLE COURT MAY UNDERTAKE THE REVIEW AND RE-APPRECIATION OF THE EVIDENCE.

II.
THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER TREATED PROJECT A AS SUBSTANTIALLY COMPLETED AND THAT IT IS LIABLE FOR THE RESIDUAL VALUE OF PARTIAL BILLING NO. 5.

III.
ALTHOUGH THE COURT OF APPEALS CORRECTLY HELD THAT PETITIONER VALIDLY TERMINATED THE CONTRACT FOR PROJECT C, IT, HOWEVER, ERRED WHEN IT FOUND PETITIONER LIABLE TO PAY RESPONDENT THE VALUE OF THE WORK DONE SO FAR FOR PROJECT C IN THE AMOUNT OF ₱1,019,399.59.

IV.
THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER IS LIABLE FOR THE VALUE OF THE FABRICATED STEEL BARS, STEEL AWNING WINDOWS WITH SECURITY GRILLS AND STEEL RAILINGS IN THE AMOUNT OF ₱202,925.18 FOR PROJECT C.

V.
THE COURT OF APPEALS ERRED IN AWARDING ATTORNEY'S FEES IN FAVOR OF RESPONDENT.

VI.
THE FUNDS OF PETITIONER ARE EXEMPT FROM EXECUTION.[59]

Petitioner's Arguments

PSHS contends that the CA Decision is based on a misapprehension of facts, such that a recourse to the Court, through a Rule 45 Petition, is proper.

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[59] *Rollo*, pp. 36-37.

PSHS reiterates that it did not consider Project A as substantially completed, and that it is not liable for the residual value of PB No. 5. It further asserts that even assuming that there was substantial completion of Project A, it is still not liable for the residual value of PB No. 5. It insists that after deducting from PB No. 5 the 30% mobilization fee, withholding tax; awning windows, liquidated damages, and plywood and lumber, PIRRA still owed PSHS ₱487,315.02.

As regards Project C, PSHS asserts that it already paid the value of the work done for Project C. It likewise claims that it is not liable for the value of the fabricated steel bars, steel awning windows with security grills and steel railings being claimed by PIRRA.

Finally, PSHS alleges that attorney's fees should not be awarded to PIRRA since the latter has no valid claim as far as PB No. 5 on Project A is concerned; and PSHS already paid the value of work done on Project C. It also posits that even if it is ultimately held liable for the residual value of PB No. 5 for Project A, and of the value of the work done on Project C, its funds, being government funds, cannot be seized under a writ of execution.

Respondent's Arguments

PIRRA counters that PSHS should be held liable for PB No. 5 because when PSHS created the Inspectorate Team, PSHS treated Project A as substantially completed. It also questions PSHS' belated submission of the Summary of Progress Billings when it filed a Motion for Reconsideration with the CA, and argues that PSHS' claim for overpayment is without merit. In fine, PIRRA argues that PSHS never contested its Monthly Certificate of Payment attached to its letter dated July 29, 2009, and which was submitted during the proceedings with the CIAC.

With regard to Project C, PIRRA maintains that PSHS invalidly terminated the contract as the latter failed to submit the required drawings and to issue a VO for the project. It insists that it was PSHS which incurred delay and breached the contract for Project C.

Lastly, PIRRA claims that it is entitled to moral and exemplary damages as PSHS unjustifiably failed to pay its PB No. 5 for Project A, and invalidly terminated the contract for Project C as well. It also claims that it is entitled to the value of the fabricated steel bar, awning windows with security grills and railing as well attorney's fees awarded by the CIAC, and which awards were affirmed by the CA.

Issues

The Petition seeks a review of the factual findings of the CIAC and the CA on: a) whether PSHS treated Project A as substantially completed such that it is liable for the residual value of PB No. 5; b) whether PSHS validly terminated the contract for Project C; c) whether PSHS is liable for the value of the steel bars, awning windows with security grills and railings fabricated by PIRRA; and for attorney's fees.

Our Ruling

The Court denies the Petition.

Settled is the rule that the findings of fact of quasi-judicial bodies, which have acquired expertise on specific matters within their jurisdiction, are generally accorded respect and finality, especially when affirmed by the CA.[60] As such, in this case, the Court upholds the factual findings of the CIAC, a quasi-judicial body that has jurisdiction over construction disputes, that are affirmed by the CA and are fully supported by the evidence on record.[61]

First, the Court sustains the finding that PSHS accepted and treated Project A as a substantially completed project, and for which reason, PSHS' takeover thereof is of no moment.

When PIRRA requested substantial acceptance and completion of Project A, PSHS did not object to such a request. It acted

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[60] *Malayan Insurance Co., Inc. v. St. Francis Square Realty Corporation*, G.R. Nos. 198916-17 & 198920-21, January 11, 2016.

[61] *National Housing Authority v. First United Constructors Corporation*, 672 Phil. 621, 658, 666 (2011).

upon it and even created an Inspectorate Team for punch listing, and for the purpose of determining PIRRA's PB No. 5. Notably, PSHS repeatedly referred to PB No. 5 as the final billing for Project A. In fact, PSHS initially expressed its willingness to pay only to put it on hold because of the COA Report. Nonetheless, as correctly explained by the CIAC, such Report cannot affect PSHS' obligation to pay PIRRA because the "existence of the defective or undelivered items was not an excuse to avoid payment of the progress billing, as the payment was due on the performed items that were completed or were otherwise performed, save for the defects."[62]

In addition, as provided for under Article 1234 of the Civil Code, if the obligation had been substantially performed in good faith, the obligor, in this case, PIRRA, may recover as if it had strictly and completely fulfilled its obligation, less the damages suffered by the obligee or in this instance, PSHS.[63]

More importantly, consistent with the foregoing rule that the Court accords respect and finality on the factual findings of the CIAC, as affirmed by the CA, the Court sustains the finding that PSHS treated Project A as substantially completed; thus, it is liable to pay PIRRA the residual value of PB No. 5, computed by the CA as follows:

(a)	10% retention for defective items	[₱]127,300.16
(b)	Partial payment on power distribution line that claimant (PIRRA) failed to deliver	391,000.00
(c)	20 deleted/uninstalled lighting fixtures at ₱2,431.21 each	48,624.20
	Total deductions	[₱]566,924.36
	Net Due to Claimant on Partial Billing No. 5	**706,077.29**
	Value of Partial Billing No. 5	₱1,273,001.64[64]

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[62] CA *rollo*, p. 32.

[63] See *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, 572 Phil. 494, 509 (2008).

[64] CA *rollo*, pp. 1156-1157; emphasis supplied.

The foregoing computation is consistent with that contained in the body of the CIAC's Final Award. However, as noted by the CA, in the dispositive portion of its Final Award, the CIAC indicated the value of PB No. 5 without deductions. As a result, the CA correctly modified the amount due, which is the Net Value of PB No. 5 amounting to ₱706,077.29.

Second, the Court affirms the finding that PSHS is liable to pay the value of the steel bars, steel awning windows with security grills and steel railings fabricated by PIRRA. It being apparent that the CIAC arrived at this finding only after a thorough consideration of the adduced evidence, and which finding was in fact duly affirmed by the CA, the same may no longer be reviewed by the Court.[65]

Additionally, as discussed by the CA, "[t]here is likewise no showing of competent evidence to prove that the [CIAC] misappreciated certain facts in arriving at this technical finding. We thus give weight also to such factual finding of the [CIAC]."[66] Since the CIAC possesses such expertise in construction arbitration, and its finding on this issue is well supported by evidence and was sustained by the CA, the Court sees no reason to disturb the same.[67]

Third, the Court agrees with the CA that the contract for Project C was validly terminated.

It is worth stressing that the CIAC and the CA arrived at varying conclusions on whether PSHS validly terminated the contract for Project C. On one hand, the CIAC opined that PSHS breached its obligation under this contract when it failed to submit the revised drawings and to issue the VO per the parties' Agreement on November 20, 2009. On the other hand, the CA ruled that PSHS validly terminated the contract because PIRRA

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[65] *National Housing Authority v. First United Constructors Corporation, supra* note 61 at 666.

[66] CA *rollo*, p. 1168.

[67] *Philippine Race Horse Trainer's Association, Inc. v. Piedras Negras Construction and Development Corporation*, G.R. No. 192659, December 2, 2015.

suspended work on the project as early as October 12, 2009 without any approval from PSHS, and as such, PIRRA was in default even prior to the November 20, 2009 Agreement.

In the November 20, 2009 Agreement, the parties agreed on how to proceed with the contract for Project C, and the pertinent portions of their Agreement read:

1. [PSHS] together with its consultant shall visit the project site and the latter shall prepare a detailed drawing for the variation order to be submitted to [PIRRA].

2. [PIRRA], based on the detailed drawing submitted by Consultant, shall prepare a proposal for variation order.

3. [PSHS] shall evaluate the variation order.

4. [PIRRA] shall submit revised payment schedule (Bar Chart) for [PSHS]'s approval.

5. [PSHS] shall process Billing 1 and 2 of the project.[68]

While records reveal that PSHS failed to submit the revised drawing for the preparation of a VO, PIRRA, on its end, is not entirely faultless. This is because after the November 20, 2009 Agreement, PIRRA no longer coordinated with PSHS. Neither did it explain why it did not demand from PSHS the submission of the needed drawing, as observed by the CA as follows:

> Moreover, We take note of petitioner's (PSHS) allegations that it already prepared the required drawings but did not release them to respondent (PIRRA) because (a) the respondent did not anymore communicate with the petitioner and refused to receive written communications from the latter; (b) respondent refused to receive petitioner's instruction to explain why a sagged beam should not be demolished or corrected; (c) the negative attitude of respondent; and (d), the respondent already filed a complaint against the officials of petitioner before the Ombudsman. Indeed, the record shows that several letters from the petitioner were refused acceptance by the respondent.[69]

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[68] CA *rollo*, p. 209.

[69] *Id.* at 1164.

Thus, similar to their non-compliance with their October 2, 2009 Joint Agreement, both parties failed to abide by their November 20, 2009 Agreement. Such being the case, PIRRA and PSHS were brought back to their previous situation as if the November 20, 2009 Agreement was not entered. Thus, the suspension of work as of October 12, 2009 made by PIRRA on Project C, without PSHS' approval, cannot be ignored.

Pursuant to the General Conditions of Contract, PSHS may terminate the contract if PIRRA incurs delay, abandons the project, causes stoppage of work without the authority of PSHS, among other grounds, *viz.*:

15. Termination for Default of Contractor

15.1. The Procuring Entity shall terminate this Contract for default when any of the following conditions attend its implementation:

15.2 Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870, regardless of whether or not previous warnings and notices have been issued for the contractor to improve his performance;

15.3 Due to its own fault and after this Contract time has expired, the Contractor incurs delay in the completion of the Work after this Contract has expired; or

15.4. The Contractor:

(a) abandons the contract Works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity[.]

x x x x x x x x x

17. Termination for Other Causes

x x x x x x x x x

17.2 The Procuring Entity or the Contractor may terminate this contract if the other party causes a fundamental breach of this Contract:

17.3 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

(a) The Contractor stops work for twenty eight (28) days when no stoppage of work is shown on the current Program of Work and the stoppage has not been authorized by the Procuring Entity's Representative;[70]

Indeed, by reason of PIRRA's delay, suspension of work without any approval from PSHS, and abandonment of the project, PSHS has sufficient basis to terminate the contract for Project C.

The Court, nonetheless, agrees with the CA that PIRRA is entitled to the value of the work done on Project C pursuant to the principle of *quantum meruit* and to avoid unjust enrichment on the part of PIRRA. "*Quantum meruit* means that, in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves x x x as it is unjust for a person to retain any benefit without paying for it."[71] Here, records show that PIRRA had a 25.25 % accomplishment on Project C. To deny payment thereof would result in unjust enrichment of PSHS at the expense of PIRRA. Hence, PSHS must pay PIRRA the value of the work done on Project C.

Fourth, the Court affirms the award of attorney's fees since PIRRA was compelled to file this case to recover what is rightfully due to it and to protect its interests relating to its contracts with PSHS.[72]

Finally, the Court holds that PSHS' contention – that even if it is held liable for the residual value of PB No. 5 for Project A, and of the value of the work done on Project C, its funds cannot be seized as they are government funds – is untenable. The State, through PSHS, had received and accepted the services rendered by PIRRA. It should therefore be held liable to pay the latter for otherwise a grave injustice would be caused to

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[70] *Id.* at 831-833;

[71] *Rivelisa Realty, Inc. v. First Sta. Clara Builders Corporation* (Resolution), 724 Phil. 508, 518 (2014).

[72] *Department of Public Works and Highways v. Foundation Specialists, Inc.,* G.R. No. 191591, June 17, 2015.

PIRRA, and there would be unjust enrichment on the part of the State. Indeed, justice and equity demand that contractors be duly paid for the construction work they had done on government projects.[73]

In view of the foregoing, the Court finds that the CA committed no reversible error in ruling that PSHS is liable to pay PIRRA (a) the residual value of PB No. 5 for Project A; (b) the value of the fabricated steel bars, steel awning windows with security grills and steel railings, and of the work done for Project C; and (c) attorney's fees. Pursuant to prevailing jurisprudence, the Court imposes interest on all monetary awards at six percent (6%) *per annum* computed from the time they attained finality until full payment thereof.[74]

WHEREFORE, the Petition is **DENIED**. The Decision dated January 20, 2012 and Resolution dated July 23, 2012 of the Court of Appeals in CA-G.R. SP No. 118152 are **AFFIRMED with MODIFICATION** that the monetary awards shall earn interest at the rate of 6% *per annum* from the time the awards become final until their full satisfaction.

SO ORDERED.

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

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[73] *Department of Health v. C.V. Canchela & Associates Architects (CVCAA)*, 511 Phil. 654, 678-681 (2005).

[74] *ACS Development & Property Managers, Inc. v. Montaire Realty and Development Corp.*, G.R. No. 195552 (Resolution), April 18, 2016.

SECOND DIVISION

[G.R. No. 204891. September 14, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REYNALDO ABAYON *y* APONTE**, *appellant.*

SYLLABUS

1. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1613, AS AMENDED (AMENDING THE LAW ON ARSON); ARSON; THERE IS NO COMPLEX CRIME OF ARSON WITH HOMICIDE BECAUSE OF THE CRIME OF ARSON ABSORBS THE RESULTANT DEATH OR IS A SEPARATE CRIME ALTOGETHER; CASE AT BAR.— In *People v. Malngan*, we held that there is no complex crime of arson with homicide because the crime of arson absorbs the resultant death or is a separate crime altogether, x x x From the body of the information filed, Abayon is charged with the crime of arson because his intent was merely to destroy his family's apartment through the use of fire. The resulting deaths that occurred, therefore, should be absorbed by the crime of arson and only increases the imposable penalty to *reclusion perpetua* to death, pursuant to Section 5 of P.D. 1613.

2. ID.; ID.; ID.; IN PROSECUTING ARSON, WHETHER DESTRUCTIVE OR SIMPLE, THE *CORPUS DELICTI* RULE IS GENERALLY SATISFIED BY PROOF THAT A FIRE OCCURRED, AND THAT IT WAS INTENTIONALLY CAUSED.— Simple arson, defined and punished under Section 1 of P.D. No. 1613, is essentially the destruction of property by fire that is not under the circumstances enumerated under Article 320 of the Revised Penal Code, as amended by R.A. No. 7659. In prosecuting arson, whether destructive or simple, the *corpus delicti* rule is generally satisfied by proof that a fire occurred, and that it was intentionally caused.

3. ID.; ID.; ID.; CONVICTION; IN THE ABSENCE OF DIRECT EVIDENCE, CIRCUMSTANTIAL EVIDENCE MAY BE SUFFICIENT TO SUSTAIN CONVICTION; *REQUISITES*.— It is settled that in the absence of direct evidence, circumstantial evidence may be sufficient to sustain a conviction

provided that: "(a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who has committed the crime. Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in a way that would leave no reasonable doubt as to the guilt of the accused.

4. ID.; ID.; ID.; IMPOSABLE PENALTY.— The penalty for arson resulting to death under Section 5 of P.D. No. 1613 is *reclusion perpetua* to death. Since there was no aggravating circumstance alleged in the information, the CA correctly sentenced Abayon to suffer the penalty of *reclusion perpetua* only.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BRION, *J.*:

We resolve the appeal of accused-appellant Reynaldo Abayon *y* Aponte (*Abayon*) assailing the July 20, 2012 decision[1] of the Court of Appeals (*CA*), docketed as CA-G.R. CR-H.C. No. 03195. The CA decision affirmed the July 31, 2007 decision[2] of the Regional Trial Court (*RTC*), Branch 275, Las Piñas City, and ordered him to pay death indemnity to the heirs of Lourdes Chokilo, Aiza Delos Angeles, and Zenaida Velos.

THE CASE

In an information dated July 29, 2002,[3] Abayon was formally charged as follows:

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[1] *Rollo*, pp. 2-15; penned by Associate Justice Myra V. Garcia–Fernandez, and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

[2] *CA rollo,* pp. 27-34; by Presiding Judge Bonifacio Sanz Maceda.

[3] *RTC records*, p. 1.

"That on or about the 26th day of July 2002, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to cause damage to property, did then and there willfully, unlawfully and feloniously and deliberately burn or set fire to the house and/or dwelling of ROBERTO IGNACIO Y ANTONIO and TEODORO DELOS ANGELES Y GOIS causing it to be burned and turned into ashes and as a result of said fire, victims Lourdes Chokilo, Zenaida Velos and Aiza Delos Angeles who were then sleeping inside the said house were also burned to death.

CONTRARY TO LAW."

Abayon entered a plea of not guilty when he was arraigned on August 20, 2002.

Trial on the merits followed the pre-trial where Abayon entered into stipulations regarding specified documentary evidence presented by the prosecution.

The evidence for the prosecution showed that in the evening of July 25, 2002, Abayon and his wife, Arlene, quarreled outside their residence. Since they rented an apartment adjacent to others, their neighbors witnessed the entire incident. When Arlene shouted for help because Abayon was strangling her, Corazon Requitillo (*Corazon*) and her husband pacified them. Thereafter, Corazon took Arlene's two (2) children and offered them the safety of her apartment as Abayon was still drunk.

At around 11:00 P.M. of the same day, Abayon's neighbors heard a hissing sound and smelled leaking gas. When they came out of their houses to check, they saw Abayon holding an LPG gas tank outside his apartment. Robert Ignacio Antonio (*Robert*), one of his neighbors and his best friend, approached Abayon to ask what he was doing. He heard Abayon say, "*Putang ina, wala pala ako silbi! Inutil pala ako!*"[4] He also noticed that Abayon was holding an unlit cigarette inserted between his left index and middle fingers, that a match was on his left palm, and that his right hand was turning on and off the gas tank. When he figured out what Abayon was trying to do, Robert scolded him and said, "*Putang ina mo, Boy! Magsusunog ka,*

[4] TSN, October 27, 2004, pp. 12-13.

idadamay mo pa kami!"[5] After that, he turned off the regulator of the gas tank and brought it to Corazon's house for safekeeping.

At past midnight of July 26, 2002, the house (containing the units where Abayon and his neighbors live) started to catch fire. The neighbors came out of their respective units because of the thick smoke and the heat coming from the fire. As a result, the house was completely burned down along with the personal effects of the residents. Three (3) persons also died because of the fire, namely: Lourdes Chokilo, the owner of the house; Aiza Delos Angeles; and Zenaida Velos.

Expectedly, Abayon denied that he had caused the fire and raised the defense of alibi. He admitted that he had an altercation with his wife and that he had left after he was pacified by his neighbors. When he came back, Abayon realized that his wife and children were not at home, so he decided to look for them at his sister-in-law's place at Trece. Before he left, he brought inside his apartment the LPG tank and the kitchen stove that had been placed outside. When Abayon saw Robert, he asked him to look after his house while he searched for his family.

Abayon allegedly left for Trece at around 9 p.m. only to find out when he got there that his family was not there. He then proceeded to his sister's house in Makati at around 4 a.m. Again, he did not find his family there. He opted to stay at his sister's place until 8:00 p.m. of July 26, 2002. He was arrested later when he showed up at his residence.

In its July 31, 2007 decision, the RTC found Abayon guilty beyond reasonable doubt of the crime of *arson resulting in multiple homicide*, defined and punished under Sec. 1, in relation to Sec. 5 of P.D. No. 1613, as amended by R.A. No. 7659. The trial court held that the prosecution successfully established the elements of the crime charged through circumstantial evidence. It gave no credence to Abayon's denial because his neighbors – especially his best friend – positively identified him as the person who had earlier attempted

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[5] *Id*. at 12.

to burn his place down using an LPG gas tank; the fire broke out later and razed the rooms they were renting.

On appeal, Abayon assailed the RTC decision on the ground that there was no direct evidence showing that he had started the fire that burned down the house.

In its July 20, 2012 decision, the CA upheld Abayon's conviction based on the RTC's appreciation of the circumstances proven by the prosecution. The CA held that the proven circumstantial evidence sufficiently pointed to Abayon as the perpetrator of the crime charged. The CA included an award of death indemnity worth ₱50,000.00 each in favor of the heirs of the three (3) victims.

Abayon filed the present appeal to challenge the CA decision.

OUR RULING

We affirm the conviction of Abayon and order him to pay civil damages on top of the death indemnity.

There is no complex crime of arson with (multiple) homicide.

In *People v. Malngan*,[6] we held that there is no complex crime of arson with homicide because the crime of arson absorbs the resultant death or is a separate crime altogether, *to wit*:

> Accordingly, in cases where both burning and death occur, in order to determine what crime/crimes was/were perpetrated – whether arson, murder or arson and homicide/murder, it is *de rigueur* to ascertain the main objective of the malefactor: (a) if the main objective is the burning of the building or edifice, but death results by reason or on the occasion of arson, the crime is simply *arson*, and the resulting homicide is absorbed; (b) if, on the other hand, the main objective is to kill a particular person who may be in a building or edifice, when fire is resorted to as the means to accomplish such goal the crime committed is *murder* only; lastly, (c) if the objective is, likewise, to kill a particular person, and in fact the offender has already done so, but fire is resorted to as a means to cover up the killing, then there are two separate and distinct crimes committed – *homicide/murder and arson.*

[6] G.R. No. 170470, September 26, 2006, 503 SCRA 294, 315-318.

From the body of the information filed, Abayon is charged with the crime of arson because his intent was merely to destroy his family's apartment through the use of fire. The resulting deaths that occurred, therefore, should be absorbed by the crime of arson and only increases the imposable penalty to *reclusion perpetua* to death, pursuant to Section 5 of P.D. No. 1613.

The prosecution established the elements of the crime of simple arson through circumstantial evidence.

Simple arson, defined and punished under Section 1 of P.D. No. 1613, is essentially the destruction of property by fire that is not under the circumstances enumerated under Article 320 of the Revised Penal Code, as amended by R.A. No. 7659. In prosecuting arson, whether destructive or simple, the *corpus delicti* rule is generally satisfied by proof that a fire occurred, and that it was intentionally caused.[7]

We point out that no one among the prosecution's witnesses actually saw Abayon start the fire. The lower courts had to resort to circumstantial evidence since there was no direct evidence proving his guilt.

It is settled that in the absence of direct evidence, circumstantial evidence may be sufficient to sustain a conviction provided that: "(a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who has committed the crime. Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in a way that would leave no reasonable doubt as to the guilt of the accused."[8]

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[7] *People v. Luminda*, G.R. No. 200954, October 14, 2015, citing *People v. Gutierrez*, G.R. No. 100699, July 5, 1996, 258 SCRA 70, 76.

[8] *People v. Macabando*, G.R. No. 188708, July 31, 2013, 702 SCRA 694, 699-700, citing *Buebos v. People*, G.R. No. 163938, March 28, 2008, 550 SCRA 210, 223, and *People v. Casitas*, G.R. No. 137404, February 14, 2003, 397 SCRA 382.

In the present case, the RTC enumerated the following circumstances leading to the unavoidable conclusion that Abayon set the fire that engulfed not only his apartment but his neighbors' as well:

1. The quarrel of the accused with his wife who must have hurt the accused when she told him that he was good-for-nothing "*walang silbi, inutil;*" and shouting at him to leave the house (*lumayas ka*);
2. His having muttered audibly, "*walang silbi pala ako, inutil pala,*" indicative of his having harbored intense hatred for his wife against whom he evidently wanted to get back at by burning the house;
3. While holding a match, and having opened the gas tank, such that leaking gas smelled strongly, indicating that plenty of it leaked out when he opened the gas tank;
4. His having been berated by his neighbor and best friend about his intention to burn the house and his fear that his house, too, will be burned;
5. The failure of the accused's sister to corroborate his defense of alibi;
6. The fact that his best friend, Robert Ignacio, not only did not corroborate his claim that he entrusted his house to Ignacio, but also and most importantly the testimonial of his best friend that he opened the gas tank while muttering the words already mentioned, and while holding a match and unlighted cigarette.[9]

The CA, for its part, enumerated the following circumstances pointing to Abayon's guilt, as follows:

1. On July 25, 2002, at about 9:00 in the evening, neighbors/witnesses heard accused Reynaldo Abayon y Aponte and his wife Arlene by the road of Block 5, Lot 4, Champaca Street, Paramount Village, Las Piñas, having a heated argument with the latter shouting at the accused: "*Putang ina mo! Walang silbi! Inutil ka! Lumayas ka dito*."

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[9] CA *rollo*, pp. 33-34.

2. Neighbors Corazon Requyitillo and her husband Eduardo came to the aid of the distressed Arlene when she yelled "*saklolo*!", as the accused began to strangle her.

3. Thereafter, at around 11:00 in the evening, next room-neighbor Roberto Ignacio y Antonio and his wife Helen heard a hissing sound and sensed a robust stench of leaking gas indicating that an abundance of such had indeed seeped out.

4. Roberto Ignacio then proceeded to the place of the accused and saw the latter holding an unlit cigarette and a match at his left hand while twisting on and off the valve of the gas tank with his right and slurring the words: "*Putang ina, wala pala akong silbi! Inutil pala ako!*" Seeing this, Roberto scolded the latter and took the gas tank away.

5. A few moments later, at about twelve o'clock midnight of the same night, a fire broke out. Said fire began at the room occupied by the accused Reynaldo Abayon. The fire engulfed the whole house, killing Lourdes Chokilo, Zenaida Veluz and Aiza delos Angeles.

6. During the trial, accused put up an alibi. However, he failed to produce any witnesses to corroborate his defense notwithstanding the fact that said witness were supposed to be with his own sister and sister-in-law. To make matters worse, his "supposed best friend", Roberto Ignacio, testified against him.

x x x x x x x x x[10]

We note that these circumstances all point out to the incidents from around 9:00 p.m. (when the quarrel between Abayon and his wife started) until 11 p.m. (the time when Abayon's alleged attempt to burn the houses was thwarted). The courts *a quo* did not mention any circumstance that clearly links Abayon to the fire that broke out at past midnight.

The records, however, also revealed that **Abayon bought a match from Edmund Felipe at around 12:15 a.m. When Edmund asked what the match was for, Abayon uttered, "*Wala, may susunugin lang ako*."**[11]

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[10] *Rollo*, pp. 13-14.

[11] Records, p. 167.

To our mind, Edmund's statement clinches the case against Abayon insofar as establishing his clear link to the fire that broke out at past 12 a.m.; it also makes all the more significant the pieces of circumstantial evidence enumerated by both the RTC and the CA especially in proving the motive for the crime, *i.e.*, what led Abayon to burn his and his neighbors' houses. The combination of all these circumstances, vis-à-vis the statement of Edmund, leads to no other conclusion than that Abayon deliberately started the fire that resulted in the death of three (3) innocent victims. There could be no doubt on this conclusion: **Abayon had the motive (*i.e.*, he was characterized as a 'good-for-nothing husband' by his wife during a violent quarrel); he had made a previous attempt to start a fire (by turning on and off the gas tank's regulator, while holding an unlighted cigarette and match); and he bought a match at past midnight, stating to the vendor that he will use it to burn something**.

Denial cannot prevail over positive and categorical identification of the accused.

On the credibility of witnesses, we note the well-settled rule that the trial court is in the best position to assess the credibility of witnesses. In the absence of any showing of a fact or circumstance of weight and influence which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of a witness made by the trial court remain binding on an appellate tribunal.[12]

In *People v. Gallarde*,[13] we distinguished the two types of positive identification of a perpetrator of a crime and discussed their legal importance, thus:

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[12] *People v. Gonzales*, G.R. No. 180448, July 28, 2008, 560 SCRA 419, 425, citing *Bricenio v. People,* G.R. No. 157804, 20 June 2006, 491 SCRA 489, 496.

[13] G.R. No. 133025, February 17, 2000, 325 SCRA 835, 849-850.

Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime. **There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to the only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others.** If the actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. **If resort to circumstantial evidence would not be allowed to prove identity of the accused on the absence of direct evidence, then felons would go free and the community would be denied proper protection.** [emphasis supplied]

Without any showing of ill motive on the part of his neighbors (especially Robert, who is his best friend) to falsely testify against Abayon, their categorical and positive identification should prevail over alibi and denial. Corazon testified that he was a neighbor of Abayon and that she saw him fighting with his wife before seeing him outside her house holding an LPG tank. Robert, who was able to retrieve the LPG tank from Abayon, actually tried to talk him out of what he was doing. Two (2) other witnesses for the prosecution, who were likewise his neighbors, corroborated what Corazon and Robert narrated.

As the RTC and the CA did, we view Abayon's denial to be self-serving and undeserving of any credence in view of the

testimonies of the eyewitnesses' categorical, positive, and forthright identification of him the night the burning incident happened.

The proper penalty and the awarded indemnities

The penalty for arson resulting to death under Section 5 of P.D. No. 1613 is *reclusion perpetua* to death. Since there was no aggravating circumstance alleged in the information, the CA correctly sentenced Abayon to suffer the penalty of *reclusion perpetua* only.

We also point out that the CA awarded ₱50,000.00 death indemnity in favor of the heirs of the three (3) victims. We increase this award to ₱75,000.00 pursuant to *People v. Jugueta*;[14] we also direct Abayon to further pay the victim's heirs ₱75,000.00 as moral damages and ₱75,0000.00 as exemplary damages.[15]

The records show rough estimates of the properties the families lost during the fire.[16] In the absence of a showing that these estimated amounts had been actually expended in a manner capable of substantiation by any document or receipt, the valuation remains a mere estimate, and could not be the measure of an award for actual damages.[17] The failure to present competent proof of actual damages should not deprive Abayon's neighbors of some degree of indemnity for the substantial economic damage and prejudice they had suffered.[18]

According to Article 2224 of the Civil Code, temperate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds

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

[15] *Id*.

[16] RTC records, pp. 196-209.

[17] See *Bacolod v. People*, G.R. No. 206236, July 15, 2013, 701 SCRA 229, 238-239. See also *People v. Murcia*, G.R. No. 182460, March 9, 2010, 614 SCRA 741, 753-754.

[18] *Id*.

that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. For this purpose, the determination of the temperate damages rests in the sound discretion of the courts.[19]

Thus, we find it proper to award temperate damages to the Chokilo family in the amount of ₱100,000.00; to the Ignacio family in the amount of ₱50,000.00; and to the Balbas family in the amount of ₱50,000.00.

In addition, the civil indemnity, moral damages, exemplary damages, and temperate damages payable by the appellant are subject to interest at the rate of six percent (6%) per annum from the finality of this decision until fully paid

WHEREFORE, the July 20, 2012 decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03195 is **AFFIRMED** with the following **MODIFICATIONS**:

(a) the awarded civil indemnity is **INCREASED** from ₱50,000.00 to ₱75,000.00;

(b) Reynaldo Abayon is directed to **FURTHER PAY** each of the victims' heirs the amounts of ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages;

(c) he is also **DIRECTED to PAY** temperate damages in the amounts of ₱100,000.00 to the Chokilo Family; ₱50,000.00 to the Ignacio Family; and ₱50,000.00 to the Balbas Family; and

(d) Reynaldo Abayon is also **ORDERED** to **PAY** interest at the rate of six percent (6%) per annum from the time of finality of this decision until fully paid,

SO ORDERED.

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

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[19] *Id.*

THIRD DIVISION

[G.R. No. 205721. September 14, 2016]

HARTE-HANKS PHILIPPINES, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; REPUBLIC ACT NO. 9282 (THE LAW EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS); THE COURT OF TAX APPEALS, BEING A COURT OF SPECIAL JURISDICTION, HAS THE JUDICIAL POWER TO REVIEW THE DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE (CIR); NOT APPLICABLE IN CASE AT BAR.—** The CTA, being a court of special jurisdiction, has the judicial power to review the decisions of the CIR. Concomitantly, the CTA also has the power to decide an appeal because the CIR's inaction within the 120-day waiting period shall be deemed a denial of the taxpayer's application for refund or tax credit. In the instant case, the petition for review is considered premature because the 120-day **mandatory** period was not observed before an appeal was elevated to the CTA. Either the CTA or this Court could also legitimize such procedural infirmity because it would run counter to Article 5 of the Civil Code unless a law exists that would authorize the validity of said petition. Regrettably, such law is wanting in the instant case.

2. **ID.; REPUBLIC ACT NO. 8424 (THE TAX REFORM ACT OF 1997); VALUE ADDED TAX (VAT); CLAIM FOR TAX REFUND; UNDER THE VAT SYSTEM THE TAXPAYER WILL ALWAYS HAVE 30 DAYS TO FILE THE JUDICIAL CLAIM WITH THE COURT OF APPEALS EVEN IF THE COMMISSIONER OF INTERNAL REVENUE (CIR) ACTS ONLY ON THE 120th DAY, OR DOES NOT ACT AT ALL DURING THE 120-DAY PERIOD.—** Tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. A refund is not a matter of right by the mere fact that a taxpayer has undisputed excess input VAT or that such tax was admittedly illegally, erroneously or excessively collected.

> Corollarily, a taxpayer's non-compliance with the mandatory 120-day period is fatal to the petition even if the CIR does not assail the numerical correctness of the tax sought to be refunded. Otherwise, the mandatory and jurisdictional conditions impressed by law would be rendered useless. Additionally, the 30-day appeal period to the CTA "was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the CIR acts only on the 120th day, or does not act at all during the 120-day period." In effect, the taxpayer should wait for the 120th day before the 30-day prescriptive period to appeal can be availed of. Hence, the non-observance of the 120-day period is fatal to the filing of a judicial claim to the CTA, the non-observance of which will result in the dismissal of the same due to prematurity.

APPEARANCES OF COUNSEL

Salvador & Perez for petitioner.
BIR Legal Division for respondent.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Court which seeks to reverse and set aside the Decision[2] dated September 7, 2012 and Resolution[3] dated February 4, 2013 of the Court of Tax Appeals (CTA) *en banc* in C.T.A. EB No. 748 (C.T.A. Case No. 8050) regarding the claim for Value-Added Tax (VAT) refund of Harte-Hanks Philippines, Inc. (HHPI) in the amount of ₱3,167,402.34.

Facts of the Case

HHPI is a domestic corporation engaged in the business of providing outsourcing customer relationship management

[1] *Rollo*, pp. 11-46.

[2] *Id*. at 50-77.

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

solutions through inbound and outbound call services to its customers. It is located in Bonifacio Global City in Taguig and, as such, pays VAT to the Bureau of Internal Revenue (BIR) using the calendar year (CY) system.[4]

During the first quarter of CY 2008, HHPI received income for services rendered within the Philippines for clients abroad. On April 25, 2008, it filed its original Quarterly VAT Return with the BIR through the BIR Electronic Filing and Payment System. The return was amended on May 29, 2008 showing that HHPI had no output VAT liability for the first quarter of CY 2008 as it had no local sales subject to 12% VAT but it has unutilized input VAT of ₱3,167,402.34 on its domestic purchases of goods and services on its zero-rated sales of services.[5]

On March 23, 2010, HHPI filed a claim for refund of its unutilized input VAT of ₱3,167,402.34 before the BIR. Asserting that there was inaction on the part of the Commissioner of Internal Revenue (CIR) and in order to toll the running of the two-year period prescribed by law, HHPI elevated its claim to the CTA on March 30, 2010.[6]

On May 25, 2010, the CIR sought the dismissal of HHPI's claim for refund due to the prematurity of the appeal. According to the CIR, the 120-day period under Section 112(C)[7] of the National Internal Revenue Code (NIRC) of 1997 for the CIR to act on the matter had not yet lapsed. Therefore, HHPI failed

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[4] *Id*. at 51.

[5] *Id*. at 52.

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

[7] **SEC. 112.** *Refunds or Tax Credits of Input Tax.* –

x x x x

(C) *Cancellation of VAT Registration.* – A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

to exhaust administrative remedies before it appealed before the CTA.[8]

On July 14, 2010, HHPI filed its comment praying for the denial of the motion to dismiss because: (1) it was procedurally infirm for having been addressed to the Clerk of Court instead of the party litigant; (2) it lacked basis that HHPI failed to exhaust administrative remedies; (3) the two-year prescriptive period under Section 229[9] of the 1997 NIRC was not applicable; (4) the duty imposed in Section 112(C) of the 1997 NIRC was upon the CIR and not upon HHPI; (5) the motion was violative of HHPI's right to seek refund within the two-year period; and (6) HHPI failed to take action on its administrative claim.[10]

In a Resolution[11] dated November 30, 2010, the CTA Third Division granted the motion to dismiss in view of the prematurity of the petition. Citing the case of *CIR v. Aichi Forging Company of Asia, Inc.*,[12] the CTA explained the mandatory 120-day period under Section 112(D) of the 1997 NIRC reckoned from the

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[8] *Rollo*, p. 53.

[9] **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[10] *Rollo*, pp. 53-54.

[11] *Id.* at 152-157.

[12] 646 Phil. 710 (2010).

date of submission of the complete documents in support of the application for refund, and the 30-day period to appeal to be reckoned either from the lapse of the 120-day period without any decision rendered by the CIR on the application or, upon receipt of the CIR's decision before or after the 120-day period has expired. The CTA Third Division also stressed that the two-year period refers to the period for the filing of the claim before the CIR and was never intended to include the period for filing the judicial claim.[13]

HHPI's motion for reconsideration[14] thereof was denied in the CTA's Resolution[15] dated March 14, 2011 after finding no cogent reason to deviate from its ruling.

Undaunted, HHPI filed a petition for review[16] before the CTA *en banc* which, however, denied the same in the assailed Decision[17] dated September 7, 2012, and accordingly, affirmed the resolution of the CTA Third Division. It was declared that the crucial nature of the mandatory 120 and 30-day periods and that non-observance thereof will deprive the court of competence to entertain the appeal;[18] that the 120 and 30-day periods in Section 112(C) of the 1997 NIRC refer to the taxpayer's discretion on whether or not to appeal the CIR's decision or inaction with the CTA; and, that the said periods are indispensable even if the claim is lodged within the two-year prescriptive period.[19]

HHPI sought for reconsideration but the same was denied in the Resolution[20] dated February 4, 2013.

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[13] *Rollo*, pp. 155-157.

[14] *Id*. at 164-190.

[15] *Id*. at 192-196.

[16] *Id*. at 201-245.

[17] *Id*. at 50-77.

[18] *Id*. at 66.

[19] *Id*. at 70.

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

Hence, this petition anchored on the following arguments, to wit:

1. In *CIR v. San Roque Power Corporation*,[21] the Court held that taxpayers who filed their judicial claims after the issuance of BIR Ruling No. DA-489-03 but before *Aichi*[22] cannot be faulted for filing such claims prematurely;[23]
2. The failure to comply with the 120-day period under Section 112(C) of the 1997 NIRC is not jurisdictional;[24]
3. CIR's motion to dismiss was fatally defective and should have been disregarded;[25] and
4. Sections 112 and 229 of the 1997 NIRC should be reconciled.[26]

Ruling of the Court

The petition has no merit.

It should be noted that the petition for review was filed before the CTA on March 30, 2010, or merely seven days after the administrative claim for refund was filed before the BIR on March 23, 2010. Evidently, HHPI failed to wait for the lapse of the 120-day period which is expressly provided for by law for the CIR to grant or deny the application for refund.

In *San Roque*,[27] it has been held that the compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No.

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[21] 703 Phil. 310 (2013).

[22] *Supra* note 12.

[23] *Rollo*, p. 17.

[24] *Id.* at 24.

[25] *Id.* at 28.

[26] *Id.* at 32.

[27] *Supra* note 21.

273, which took effect on January 1, 1988. The waiting period was extended to 120 days effective January 1, 1998 under Republic Act No. 8424 or the Tax Reform Act of 1997. **The 120-day period under Section 112(C) has been in the statute books for more than 15 years before respondent San Roque filed its judicial claim**.[28]

Moreover, a taxpayer's failure to comply with the prescribed 120-day waiting period would render the petition premature and is violative of the principle on exhaustion of administrative remedies. Accordingly, the CTA does not acquire jurisdiction over the same. This being so, "[w]hen a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the [CIR], there is no 'decision' of the [CIR] to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal."[29]

The CTA, being a court of special jurisdiction, has the judicial power to review the decisions of the CIR. Concomitantly, the CTA also has the power to decide an appeal because the CIR's inaction[30] within the 120-day waiting period shall be deemed a denial of the taxpayer's application for refund or tax credit.

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[28] *Id*. at 354.

[29] *Id*. at 355.

[30] *Republic Act No. 9282*, or AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS, ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, approved on March 30, 2004, Section 7 states:

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

In the instant case, the petition for review is considered premature because the 120-day **mandatory** period was not observed before an appeal was elevated to the CTA. Either the CTA or this Court could also legitimize such procedural infirmity because it would run counter to Article 5[31] of the Civil Code unless a law exists that would authorize the validity of said petition. Regrettably, such law is wanting in the instant case.

Tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[32] A refund is not a matter of right by the mere fact that a taxpayer has undisputed excess input VAT or that such tax was admittedly illegally, erroneously or excessively collected. Corollarily, a taxpayer's non-compliance with the mandatory 120-day period is fatal to the petition even if the CIR does not ssail the numerical correctness of the tax sought to be refunded. Otherwise, the mandatory and jurisdictional conditions impressed by law would be rendered useless.

Additionally, the 30-day appeal period to the CTA "was adopted precisely to do away with the old rule,[33] so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the CIR acts only on the 120th day, or does not act at all during the 120-day period."[34] In effect, the taxpayer should wait for the 120th day before the 30-day prescriptive period to appeal can be availed of. Hence, the non-observance

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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[.]

x x x x x x x x x

(Emphasis ours)

[31] **ART. 5.** Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

[32] *CIR v. Bank of the Philippine Islands*, 609 Phil. 678, 693 (2009).

[33] A taxpayer may file a judicial claim without waiting for the CIR's decision if the two-year period is about to expire. *CIR v. San Roque Power Corporation*, *supra* note 21, at 370.

[34] *Id*.

of the 120-day period is fatal to the filing of a judicial claim to the CTA, the non-observance of which will result in the dismissal of the same due to prematurity. In fine, the premature filing of the judicial claim for refund of the excess input VAT of HHPI in the amount of ₱3,167,402.34 warrants a dismissal of the petition because the latter acquired no jurisdiction over the same.

WHEREFORE, in view of the foregoing, the Decision dated September 7, 2012 and Resolution dated February 4, 2013 of the Court of Tax Appeals *en banc*, in C.T.A. EB No. 748, are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 206629. September 14, 2016]

NARCISO T. MATIS, *petitioner, vs.* **MANILA ELECTRIC COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; THE RELAXATION OR SUSPENSION OF PROCEDURAL RULES, OR THE EXEMPTION OF A CASE FROM THEIR OPERATION, IS WARRANTED WHEN THE PURPOSE OF JUSTICE REQUIRES IT; CASE AT BAR.— It is settled that the rules of procedure are meant to be tools to facilitate a fair and orderly conduct of proceedings. The relaxation or suspension of procedural rules, or the exemption of a case from their operation, is warranted when the purpose of justice requires it. However

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[*] Additional Member per Raffle dated October 22, 2015 *vice* Associate Justice Francis H. Jardeleza.

We held in the case of *Sebastian v. Hon. Morales* that: x x x Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules. xxx We resolve to allow the instant petition and decide on the merits of the case as petitioner adequately explained in his petition the reason for his belated filing, and given that he promptly sought for extensions of time for cogent grounds before the expiration of the time sought to be extended.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; NEGLECT OF DUTY; TO BE A GROUND FOR DISMISSAL, THE NEGLECT OF DUTY MUST BE BOTH GROSS AND HABITUAL.—** To be a ground for dismissal, the neglect of duty must be both gross and habitual. The case stemmed from a single incident which occurred on May 25, 2006, thus, he cannot be validly dismissed from employment. Gross negligence connotes want of care in the performance of one's duties. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Fraud and willful neglect of duties imply bad faith on the part of the employee in failing to perform his job to the detriment of the employer and the latter's business. On the other hand, habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. x x x Assuming Matis were negligent, his inaction can only be regarded as a single or isolated act of negligence which cannot be considered as gross and habitual, hence, cannot be considered as a just cause for his dismissal.

3. **ID.; ID.; ID.; LOSS OF CONFIDENCE, AS A GROUND; THE ESSENCE OF THE OFFENSE FOR WHICH AN EMPLOYEE IS PENALIZED IS THE BETRAYAL OF TRUST PLACED BY MANAGEMENT UPON THE EMPLOYEE WHO HOLDS A POSITION OF GREATER TRUST AND FROM WHOM GREATER FIDELITY TO DUTY IS CORRESPONDINGLY EXPECTED.—** Article 282 (c) of the Labor Code provides that an employer may terminate an employment for fraud or wilful breach by the employee of the trust reposed in him by his employer or duly-authorized representative. It is stressed that loss of confidence as a just cause for the termination of employment is based on the premise that the employee holds a position where greater trust is placed

by management and from whom greater fidelity to duty is correspondingly expected. The essence of the offense for which an employee is penalized is the betrayal of such trust. Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature. A breach is wilful if its done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. x x x Loss of confidence applies to: (1) employees occupying positions of trust and confidence, the managerial employees; and (2) **employees who are routinely charged with the care and custody of the employer's money or property which may include rank-and-file employees,** *e.g.,* cashiers, auditors, property custodians, or those who, in the normal routine exercise of their functions, regularly handle significant amounts of money or property.

4. **ID.; ID.; ID.; ID.; ENUMERATION OF THE GUIDELINES WHICH MUST BE OBSERVED FOR AN EMPLOYER TO VALIDLY DISMISS AN EMPLOYEE ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE.—** In the case of *Apo Cement Corp. v. Baptisma*, it was held that for an employer to validly dismiss an employee on the ground of loss of trust and confidence, the following guidelines must be observed: (1) loss of confidence should not be simulated; (2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith. More importantly, the loss must be founded on clearly established facts sufficient to warrant the employee's separation from work.

5. **ID.; ID.; ID.; ID.; PROOF BEYOND REASONABLE DOUBT IS NOT NEEDED TO JUSTIFY THE LOSS OF CONFIDENCE AS LONG AS THE EMPLOYER HAS REASONABLE GROUND TO BELIEVE THAT THE EMPLOYEE IS RESPONSIBLE FOR THE MISCONDUCT AND HIS PARTICIPATION THEREIN RENDERS HIM UNWORTHY OF TRUST AND CONFIDENCE DEMANDED OF HIS POSITION.—** Proof beyond reasonable doubt is not needed to justify the loss of confidence as long as

> the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position. x x x Additionally, an employee's acquittal in a criminal case does not automatically preclude a determination that he has been guilty of acts inimical to the employer's interest resulting in loss of trust and confidence. An acquittal in criminal prosecution does not have the effect of extinguishing liability for dismissal on the ground of breach of trust and confidence. x x x To be sure, length of service is taken into consideration in imposing the penalty to be meted upon an erring employee. However, in cases of breach of trust and loss of confidence, the length of time, if considered at all, shall be taken against the employee, as his involvement in dishonest acts reflects a regrettable lack of loyalty which should have been strengthened, instead of betrayed. Unlike other just causes for dismissal, trust in an employee, once lost is difficult, if not impossible, to regain.

APPEARANCES OF COUNSEL

Law Office of Fernandez Fernandez & Associates for petitioner.
Dela Rosa & Nograles for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* filed by petitioner Narciso T. Matis (*Matis*) assailing the Decision[1] and Resolution,[2] dated June 11, 2012 and March 1, 2013, respectively, of the Court of Appeals (*CA*), which affirmed with modification the Decision[3] dated July 22, 2009 and

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[1] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring, *rollo,* pp. 36-50.

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

[3] Penned by Commissioner Perlita B. Velasco, with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go, concurring, CA *rollo,* pp. 40-54.

Resolution[4] dated December 28, 2009 of the National Labor Relations Commission (*NLRC*).

The antecedents follow.

Respondent Manila Electric Company (*Meralco*) hired petitioner Matis, and complainants Nemencio Hipolito, Jr. (*Hipolito*), Raymundo M. Zuñiga[5] (*Zuñiga*), Gerardo de Guia (*De Guia*), and Ricardo Ignacio (*Ignacio*) on various dates and in various capacities.[6] At the time of their dismissal, Matis was a foreman; Hipolito and Zuniga were acting foremen; De Guia was a stockman/driver; and Ignacio was a leadman.

On July 27, 2006, Matis and the others were dismissed on the grounds of serious misconduct, fraud or willful breach of trust, commission of a crime or offense against the employer and other causes analogous to the foregoing.[7] They were dismissed for their alleged cooperation in the pilferages of Meralco's electrical supplies by one Norberto Llanes (*Llanes*), a non-Meralco employee, particularly, in an incident which took place on May 25, 2006. On that same day, Matis and the rest of the crew of Trucks 1837 and 1891 were replacing a rotten pole in Pacheco Subdivision, Dalandan, Valenzuela City.[8]

At around 10:30 in the morning while the Meralco crew were working at a distance, Llanes was hanging around the work site. He appeared familiar with the crew as he was handing tools and drinking water with them. He nonchalantly boarded the truck in the presence of Zuñiga and De Guia, and rummaged through the cargo bed for tools and materials and stashed them in his backpack without being stopped by any of the crew. Thereafter, Matis and the other crew manning Truck 1891 arrived. Llanes boarded Truck 1891 and filched materials while Matis

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[4] *Rollo,* pp. 219-221.

[5] Also spelled as "Zuniga" elsewhere in the records.

[6] *Rollo,* p. 37.

[7] *Id.* at 38.

[8] *Id.* at 224.

was around. For more than two hours, Llanes was walking around, boarding the trucks, freely sorting and choosing materials and tools inside the trucks then putting them in his backpack, talking casually with the crew, and even drinking water from the crew's jug.[9]

Unknown to them, a Meralco surveillance team, composed of Joseph Aguilar (*Aguilar*), Ariel Dola (*Dola*) and Frederick Riano (*Riano*), was monitoring their activities and recording the same with a Sony Video 8 camera. Due to reports of alleged pilferages occurring in Trucks 1837 and 1891, Meralco was prompted to create the said team or "task force" to tail and monitor Matis and the others.

In a Memorandum dated June 16, 2006, Meralco required them to appear before Meralco's counsel for an investigation relative to the incident on May 25, 2006. Matis and the others denied any involvement in the stealing of the company properties. Subsequently, they were dismissed.

Matis and the other complainants alleged that Meralco's dismissal of their employment violated their constitutional right to property protection, social justice and security of tenure. They denied any complicity or participation in the pilferage. They claimed that the affidavits presented by Meralco have weak probative value. They also alleged that Meralco did not observe due process in their termination.

Meralco, on the other hand, maintained that petitioner and the complainants were validly dismissed on the ground of serious misconduct. Meralco presented the affidavits of Aguilar, Dola and the probationary employees who were members of the crew, and the video showing the incident on May 25, 2006 to show that complainants had knowledge, direct participation and complicity in the stealing. Meralco insisted that there is evidence to support that it was not the first instance that Llanes has been stealing supplies and materials, and that such were done in the presence of, and with clear knowledge of the dismissed crew.

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[9] *Id.* at 224-225.

In a Decision[10] dated April 11, 2007, the Labor Arbiter (*LA*) ruled that Matis and the others were not illegally dismissed. The LA considered their dismissal from service too harsh when suspension would have sufficed given that they were not entirely faultless. The charge of serious misconduct cannot prosper as there is no substantial evidence of their alleged cooperation and participation in the theft. Likewise, the LA rejected respondent's claim that complainants are guilty of gross negligence since there was no evidence of complainants' habitual neglect of duty. The dispositive portion of the decision reads:

> WHEREFORE, all foregoing premises considered, judgment is hereby rendered finding complainants' dismissal too harsh a penalty being not commensurate with their simple neglect of duties as earlier discussed above. Accordingly, complainants are hereby ordered to immediately report back to work within ten (10) working days from receipt of this decision without loss of seniority rights and benefits but without the payment of backwages. As clarified above, this return-to-work order is NOT a reinstatement order within the ambit of Article 279 of the Labor Code since there is NO finding of illegal dismissal herein.
>
> For being a nominal party, Mr. Manuel M. Lopez is hereby ordered dropped as party-respondent in these consolidated cases.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[11]

On appeal, the NLRC ruled that Matis and the other complainants were validly dismissed. Their suspicious leniency and laxity in allowing Llanes to board the trucks, conversing with him intimately, permitting him to return to the trucks with empty sacks in tow, and the quantity of materials stolen, all video-taped and described in detail by the surveillance team, belie their denial of involvement.[12] Even assuming that they were not conspirators in the crime of theft, their dismissal is

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[10] Penned by Labor Arbiter Napoleon M. Menese; *id.* at 223-234.

[11] *Id.* at 234.

[12] CA *rollo,* pp. 50-51.

still justified for they were guilty of gross negligence. Considering the circumstances surrounding the pilferage, the willful inaction of the complainants when there is a duty to stop the stealing amounted to gross negligence.[13] The complainants were also validly dismissed on the ground of loss of trust and confidence. Their gross negligence amounted to a breach of trust and confidence reposed upon them as employees entrusted with properties of respondent. However, the NLRC held that Ignacio was illegally dismissed in the absence of evidence showing his complicity or participation in the theft. The decretal portion of the decision reads:

> WHEREFORE, the appeals are PARTIALLY GRANTED and the Decision appealed from is hereby MODIFIED as follows:
>
> 1) Complainants Narciso Matis, Nemencio Hipolito, Jr., Raymund Zuñiga and Gerardo De Guia were validly terminated from their employment, hence they are not entitled to the relief of "returning to work" and their complaint is DISMISSED for lack of merit.
> 2) Complainant Ricardo Ignacio was illegally terminated and, therefore, he is entitled to full backwages from the time of his termination until his actual reinstatement.
>
> The dropping of Mr. Manuel M. Lopez as party-respondent is AFFIRMED.
>
> SO ORDERED.[14]

Finding no cogent reason to disturb the findings of the NLRC, the CA denied the petition for *certiorari* filed by Matis and the others, and affirmed the decision of the NLRC. The CA held that the ruling of the NLRC deserves respect since the same was based on factual findings supported by clear and convincing evidence and accepted jurisprudence. The *fallo* of the decision reads:

> WHEREFORE, PREMISES CONSIDERED, the herein petition for *certiorari* is DENIED. The assailed Decision of the National Labor Relations Commission, First Division, in NLRC CA No 052667-07

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[13] *Id.* at 51.

[14] *Id.* at 53.

dated July 22, 2009 and the Resolution promulgated on 28 December 2009 STAND.

SO ORDERED.[15]

Upon the denial of the motion for reconsideration, Matis filed before this Court the instant petition raising the following issues:

I. WHETHER THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THERE WAS NO DISMISSAL IN THE INSTANT CASE.
II. WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION.

In essence, the issue to be resolved by this Court is whether petitioner Matis was illegally dismissed.

This Court resolves to deny the instant petition.

Matis prays that this Court relax the application of the Rules where strong considerations of substantial justice are manifest in the petition. He avowed that his counsel informed him of the denial by the CA of his Motion for Reconsideration only on April 12, 2013.

Section 2, Rule 45 of the Rules of Court provides:

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**. (Emphasis supplied)

It is settled that the rules of procedure are meant to be tools to facilitate a fair and orderly conduct of proceedings.[16] The

[15] *Supra* note 1, at 49.

[16] *People v. Court of Appeals,* G.R. No. 183652, February 25, 2015, 751 SCRA 675, 693.

relaxation or suspension of procedural rules, or the exemption of a case from their operation, is warranted when the purpose of justice requires it.[17] However We held in the case of *Sebastian v. Hon. Morales*[18] that:

> Litigation is not a game of technicalities, but every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules.

We note that in his statement of material dates, Matis alleged that his counsel received the denial of his Motion for Reconsideration on April 11, 2013, while he asseverated in his statement of the matters and in his verification and certification of non-forum shopping that his counsel received the same on March 11, 2013.

This Court, in a Resolution[19] dated July 22, 2013, granted a 30-day extension within which to file his petition for review on *certiorari*, counted from the expiration of the reglementary period, and granted his second motion for extension of fifteen (15) days to file the petition filed by his new counsel. Thus, Matis filed his petition for review on *certiorari* on May 30, 2013.

We resolve to allow the instant petition and decide on the merits of the case as petitioner adequately explained in his petition the reason for his belated filing, and given that he promptly sought for extensions of time for ogent grounds before the expiration of the time sought to be extended.

As to the substantive issue, Matis maintains that Meralco failed to prove that he was legally dismissed based on the ground

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[17] *Id*.

[18] 445 Phil. 595, 605 (2003).

[19] *Rollo,* pp. 515-516.

that he was grossly negligent which constituted breach of trust as provided by the Labor Code. To be a ground for dismissal, the neglect of duty must be both gross and habitual. The case stemmed from a single incident which occurred on May 25, 2006, thus, he cannot be validly dismissed from employment.

Gross negligence connotes want of care in the performance of one's duties.[20] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[21] Fraud and willful neglect of duties imply bad faith on the part of the employee in failing to perform his job to the detriment of the employer and the latter's business. On the other hand, habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.

Records reveal that it was not only on May 25, 2006 that Llanes, the pilferer, was seen during a Meralco operation as he was previously noticed by Meralco employees in past operations. Also, the evidence ascertained the presence of Matis in the worksite where the pilferage took place, and his familiarity with Llanes. Matis's tolerance of the activities of Llanes demonstrates his complicity in the theft, and not a mere want of care in the performance of his duty or gross negligence.

Assuming Matis were negligent, his inaction can only be regarded as a single or isolated act of negligence which cannot be considered as gross and habitual, hence, cannot be considered as a just cause for his dismissal. Nevertheless, such finding will not warrant the reversal of the instant case.

Article 282 (c) of the Labor Code provides that an employer may terminate an employment for fraud or willful breach by the employee of the trust reposed in him by his employer or duly-authorized representative. It is stressed that loss of confidence as a just cause for the termination of employment is based on the premise that the employee holds a position where greater trust is placed by management and from whom greater

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[20] *Nissan Motors Phils., Inc. v. Angelo,* 673 Phil. 150, 162 (2011).

[21] *Century Iron Works, Inc., et al. v. Bañas,* 711 Phil. 576, 589 (2013).

fidelity to duty is correspondingly expected.[22] The essence of the offense for which an employee is penalized is the betrayal of such trust.

Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature.[23] A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[24]

Matis alleges that he may not be removed on the ground of breach of trust and confidence as he was not a managerial employee or an employee primarily entrusted with the handling of company funds or property.

We are not persuaded. Loss of confidence applies to: (1) employees occupying positions of trust and confidence, the managerial employees; and (2) **employees who are routinely charged with the care and custody of the employer's money or property which may include rank-and-file employees**, *e.g.*, cashiers, auditors, property custodians, or those who, in the normal routine exercise of their functions, regularly handle significant amounts of money or property.[25]

It is established that Matis was a foreman with a monthly salary of ₱57,000.00 at the time of his dismissal.[26] The vehicles being utilized in the repair and maintenance of Meralco's distribution lines ordinarily carried necessary equipment, tools, supplies and materials. Thus, Matis, as the foreman, is routinely

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[22] *Cocoplans, Inc., et al. v. Ma. Socorro R. Villapando,* G.R. No. 183129, May 30, 2016.

[23] *Manarpiis v. Texan Philippines, Inc.,* G.R. No. 197011, January 28, 2015, 748 SCRA 511, 529.

[24] *Cocoplans, Inc, et al.. v. Ma. Socorro R. Villapando*, *supra* note 22.

[25] *Century Iron Works, Inc., et al. v. Bañas, supra* note 21, at 588.

[26] *Rollo,* p. 224.

entrusted with the care and custody of Meralco's properties in the exercise of his function.

In the case of *Apo Cement Corp. v. Baptisma,*[27] it was held that for an employer to validly dismiss an employee on the ground of loss of trust and confidence, the following guidelines must be observed: (1) loss of confidence should not be simulated; (2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith. More importantly, the loss must be founded on clearly established facts sufficient to warrant the employee's separation from work.[28]

Contrary to his allegation that he failed to notice the thievery because he and the crew were preoccupied with the replacement of the rotting post, Matis lingered, by his admission, to supposedly look after the truck.[29] As established, the crew exhibited familiarity with the culprit during the entire operations. Based on the testimonies of the witnesses, Llanes was seen picking up unused supplies and materials that were not returned to the company in the past operations. He was casually boarding the trucks despite the same being prohibited from non-Meralco employees. Matis was seen conversing intimately with Llanes inside Truck 1891. Thereafter, Llanes was able to filch Meralco properties in the presence of Matis. Thus, Matis was complicit in the pilferage by being familiar with Llanes, by his inaction while the looting was being perpetrated, and by not reporting the same to the authorities and to Meralco. The totality of the circumstances convinces this Court that Matis is guilty of breach of trust.

We reiterate this Court's ruling about the very same incident on May 25, 2006 in the case of *Meralco v. Gala*,[30] that to Our

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[27] 688 Phil. 468, 480-481 (2012).

[28] *Manarpiis v. Texan Philippines, Inc., supra* note 23.

[29] *Sinumpaang Salaysay* of Narciso Matis, *rollo,* p. 255.

[30] 683 Phil. 356 (2012).

mind, the Meralco crew (the foremen and the linemen) allowed or could have even asked Llanes to be there during their operations for one and only purpose — to serve as their conduit for pilfered company supplies to be sold to ready buyers outside Meralco worksites. As held in the *Gala* case:

> **The established fact that Llanes, a non-Meralco employee, was often seen during company operations, conversing with the foremen, for reason or reasons connected with the ongoing company operations, gives rise to the question: what was he doing there?** Apparently, he had been visiting Meralco worksites, at least in the Valenzuela Sector, not simply to socialize, but to do something else. **As testified to by witnesses, he was picking up unused supplies and materials that were not returned to the company. From these factual premises, it is not hard to conclude that this activity was for the mutual pecuniary benefit of himself and the crew who tolerated the practice.** For one working at the scene who had seen or who had shown familiarity with Llanes (a non-Meralco employee), not to have known the reason for his presence is to disregard the obvious, or at least the very suspicious.[31]

Proof beyond reasonable doubt is not needed to justify the loss of confidence as long as the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position.[32] Meralco was able to establish through substantial evidence that it has reasonable ground to believe that Matis's involvement in the incident rendered him unworthy of the trust and confidence reposed upon him as a foreman of Meralco.

As settled in *Vergara v. NLRC,*[33] the filing of the complaint by the public prosecutor is sufficient ground for a dismissal of an employee for loss of trust and confidence. The evidence supporting the criminal charge, found sufficient to show *prima facie* guilt after preliminary investigation, constitutes just cause

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[31] *Id.* at 366-367.

[32] *Manarpiis v. Texan Philippines, Inc., supra* note 23.

[33] 347 Phil. 161 (1997).

for termination based on loss of trust and confidence.[34] In this case, the Assistant City Prosecutor of Valenzuela City recommended the filing of information for qualified theft against Matis and the others.[35]

Additionally, an employee's acquittal in a criminal case does not automatically preclude a determination that he has been guilty of acts inimical to the employer's interest resulting in loss of trust and confidence.[36] An acquittal in criminal prosecution does not have the effect of extinguishing liability for dismissal on the ground of breach of trust and confidence.[37] The trial court acquitted Matis and the others due to insufficiency of evidence to warrant conviction beyond reasonable doubt.[38] While the evidence presented failed to satisfy the quantum of proof required in criminal cases, the same substantially proved the dishonest act of Matis which warranted his dismissal from employment.

To be sure, length of service is taken into consideration in imposing the penalty to be meted upon an erring employee.[39] However, in cases of breach of trust and loss of confidence, the length of time, if considered at all, shall be taken against the employee, as his involvement in dishonest acts reflects a regrettable lack of loyalty which should have been strengthened, instead of betrayed.[40] Unlike other just causes for dismissal, trust in an employee, once lost is difficult, if not impossible, to regain.[41] In the case at bar, Matis's involvement in the pilferage

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[34] *Id.* at 174.

[35] *Rollo,* pp. 350-351.

[36] *Vergara v. NLRC, supra* note 33, at 174.

[37] *Amadeo Fishing Corporation v. Nierra,* 509 Phil. 13, 29-30 (2005).

[38] Order dated July 8, 2013, penned by Presiding Judge Maria Nena J. Santos; *rollo,* pp. 575-582.

[39] *Salvador v. Philippine Mining Service Corp.*, 443 Phil. 878, 892 (2003).

[40] *Id.* at 893.

[41] *Id*. at 892.

of Meralco's properties resulted in respondent's loss of confidence in him. If considered, petitioner's length of service should be taken against him as his familiarity with Llanes, his disregard of the company rules, and passivity during the thievery echo his disloyalty with his employer which he served for thirty-one years. As such, fairness dictates that Matis, who has breached the confidence reposed on him, should not be allowed to continue his employment with Meralco.

WHEREFORE, the petition for review on *certiorari* filed by petitioner Narciso T. Matis is hereby **DENIED.** The Decision and Resolution, dated June 11, 2012 and March 1, 2013, respectively, of the Court of Appeals affirming with modification the Decision dated July 22, 2009 and Resolution dated December 28, 2009 of the National Labor Relations Commission are hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 207147. September 14, 2016]

EMELITA BASILIO GAN, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES**, *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL PROCEEDINGS; CHANGE OF NAME; IN GRANTING OR DENYING PETITIONS FOR CHANGE OF TIME, THE QUESTION OF PROPER AND REASONABLE CAUSE IS LEFT TO THE SOUND

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated April 20, 2015 .

DISCRETION OF THE COURT.— A change of name is a privilege and not a matter of right; a proper and reasonable cause must exist before a person may be authorized to change his name. "In granting or denying petitions for change of name, the question of proper and reasonable cause is left to the sound discretion of the court. x x x What is involved is not a mere matter of allowance or disallowance of the request, but a judicious evaluation of the sufficiency and propriety of the justifications advanced in support thereof, mindful of the consequent results in the event of its grant and with the sole prerogative for making such determination being lodged in the courts.

APPEARANCES OF COUNSEL

Gloriosa S. Navarro for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated April 26, 2013 issued by the Court of Appeals (CA) in CA-G.R. CV No. 98112.

Facts

Emelita Basilio Gan (petitioner) was born on December 21, 1956 out of wedlock to Pia Gan, her father who is a Chinese national, and Consolacion Basilio, her mother who is a Filipino citizen.[3] The petitioner's birth certificate,[4] which was registered in the Office of the Local Civil Registrar (LCR) of Libmanan, Camarines Sur, indicates that her full name is Emelita Basilio.

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[1] *Rollo*, pp. 4-18.

[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Francisco P. Acosta and Angelita A. Gacutan concurring; *id.* at 21-29.

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

[4] *Id*. at 30-31.

On June 29, 2010, the petitioner filed a Petition[5] for correction of name with the Regional Trial Court (RTC) of Libmanan, Camarines Sur. The petitioner sought to change the full name indicated in her birth certificate from "Emelita Basilio" to "Emelita Basilio Gan." She claimed that she had been using the name "Emelita Basilio Gan" in her school records from elementary until college, employment records, marriage contract, and other government records.[6]

Ruling of the RTC

On July 15, 2010, the RTC issued an Order, which noted that the petition filed sought not merely a correction of entry in the birth certificate, but a change of name. Accordingly, the RTC ordered the petitioner to make the necessary amendment to her petition to conform to the requirements of Rule 103 of the Rules of Court.[7]

The petitioner filed with the RTC an Amended Petition[8] dated August 3, 2010 for change of name. The amended petition contained substantially the same allegations as in the petition for correction of entry in the birth certificate. On August 10, 2010, the RTC set the initial hearing of the petition in a newspaper of general circulation. The Office of the Solicitor General (OSG), as counsel of the Republic of the Philippines (respondent), filed its notice of appearance. The OSG authorized the Office of the Provincial Prosecutor of Libmanan, Camarines Sur to appear and assist the OSG in the proceedings before the RTC.[9]

On July 19, 2011, after due proceedings, the RTC of Libmanan, Camarines Sur, Branch 29, issued an Order[10] granting the petition for change of name. The RTC, thus, directed the LCR of

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[5] *Id*. at 33-35.

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

[7] *Id*. at 22.

[8] *Id*. at 36-38.

[9] *Id*. at 23-24.

[10] Issued by Presiding Judge Cecilia R. Borja-Soler; *id*. at 39-41.

Libmanan, Camarines Sur to change the petitioner's name in her birth certificate from "Emelita Basilio" to "Emelita Basilio Gan." The RTC opined that, from the evidence presented, the said petition was filed solely to put into order the records of the petitioner and that changing her name in her birth certificate into Emelita Basilio Gan would avoid confusion in her personal records.[11]

The respondent sought a reconsideration[12] of the RTC Order dated July 19, 2011, alleging that the petitioner, who is an illegitimate child, failed to adduce evidence that she was duly recognized by her father, which would have allowed her to use the surname of her father.[13] On October 17, 2011, the RTC issued an Order[14] denying the respondent's motion for reconsideration.

Ruling of the CA

On appeal, the CA, in its Decision[15] dated April 26, 2013, reversed and set aside the RTC Orders dated July 19, 2011 and October 17, 2011. The CA opined that pursuant to Article 176 of the Family Code, as amended by Republic Act No. 9255,[16] the petitioner, as an illegitimate child, may only use the surname of her mother; she may only use the surname of her father if their filiation has been expressly recognized by her father.[17] The CA pointed out that the petitioner has not adduced any evidence showing that her father had recognized her as his

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[11] *Id.* at 41.

[12] *Id.* at 42-49.

[13] *Id.* at 43.

[14] *Id.* at 50-52.

[15] *Id.* at 21-29.

[16] 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.

[17] *Rollo*, p. 26.

illegitimate child and, thus, she may not use the surname of her father.[18]

In this petition for review, the petitioner maintains that the RTC correctly granted her petition since she only sought to have her name indicated in her birth certificate changed to avoid confusion as regards to her personal records.[19] She insists that her failure to present evidence that her father recognized her as his illegitimate child is immaterial; a change of name is reasonable and warranted, if it is necessary to avoid confusion.[20]

Ruling of the Court

The petition is denied.

A change of name is a privilege and not a matter of right; a proper and reasonable cause must exist before a person may be authorized to change his name.[21] "In granting or denying petitions for change of name, the question of proper and reasonable cause is left to the sound discretion of the court. x x x What is involved is not a mere matter of allowance or disallowance of the request, but a judicious evaluation of the sufficiency and propriety of the justifications advanced in support thereof, mindful of the consequent results in the event of its grant and with the sole prerogative for making such determination being lodged in the courts."[22]

After a judicious review of the records of this case, the Court agrees with the CA that the reason cited by the petitioner in support of her petition for change of name, *i.e.* that she has been using the name "Emelita Basilio Gan" in all of her records, is not a sufficient or proper justification to allow her petition. When the petitioner was born in 1956, prior to the enactment and effectivity of the Family Code, the pertinent provisions of

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[18] *Id.* at 27.

[19] *Id.* at 13.

[20] *Id.* at 11.

[21] See *Oan v. Republic of the Philippines*, 102 Phil. 468, 469-470 (1957).

[22] *Julian Lin Wang v. Cebu City Civil Registrar*, 494 Phil. 149, 158 (2005).

the Civil Code then regarding the petitioner's use of surname provide:

> Article 366. A natural child acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, a natural child shall employ the surname of the recognizing parent.
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> Article 368. Illegitimate children referred to in Article 287 shall bear the surname of the mother.

In her amended petition for change of name, the petitioner merely stated that she was born out of wedlock;[23] she did not state whether her parents, at the time of her birth, were not disqualified by any impediment to marry each other, which would make her a natural child pursuant to Article 269 of the Civil Code. If, at the time of the petitioner's birth, either of her parents had an impediment to marry the other, she may only bear the surname of her mother pursuant to Article 368 of the Civil Code. Otherwise, she may use the surname of her father provided that she was acknowledged by her father.

However, the petitioner failed to adduce any evidence that would show that she indeed was duly acknowledged by his father. The petitioner's evidence consisted only of her birth certificate signed by her mother, school records, employment records, marriage contract, certificate of baptism, and other government records. Thus, assuming that she is a natural child pursuant to Article 269 of the Civil Code, she could still not insist on using her father's surname. It was, thus, a blatant error on the part of the RTC to have allowed the petitioner to change her name from "Emelita Basilio" to "Emelita Basilio Gan."

The petitioner's reliance on the cases of *Alfon v. Republic of the Philippines*,[24] *Republic of the Philippines v. Coseteng-Magpayo*,[25]

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[23] *Rollo*, p. 36.

[24] 186 Phil. 600 (1980).

[25] 656 Phil. 550 (2011).

and *Republic of the Philippines v. Lim*[26] to support her position is misplaced.

In *Alfon*, the name of the petitioner therein which appeared in her birth certificate was Maria Estrella Veronica Primitiva Duterte; she was a legitimate child of her father and mother. She filed a petition for change of name, seeking that she be allowed to use the surname "Alfon," her mother's surname, instead of "Duterte." The trial court denied the petition, ratiocinating that under Article 364 of the Civil Code, legitimate children shall principally use the surname of the father. The Court allowed the petitioner therein to use the surname of her mother since Article 364 of the Civil Code used the word "principally" and not "exclusively" and, hence, there is no legal obstacle if a legitimate child should choose to use the mother's surname to which he or she is legally entitled.[27]

In contrast, Articles 366 and 368 of the Civil Code do not give to an illegitimate child or a natural child not acknowledged by the father the option to use the surname of the father. Thus, the petitioner cannot insist that she is allowed to use the surname of her father.

In *Coseteng-Magpayo*, the issue was the proper procedure to be followed when the change sought to be effected in the birth certificate affects the civil status of the respondent therein from legitimate to illegitimate. The respondent therein claimed that his parents were never legally married; he filed a petition to change his name from "Julian Edward Emerson Coseteng Magpayo," the name appearing in his birth certificate, to "Julian Edward Emerson Marquez-Lim Coseteng." The notice setting the petition for hearing was published and, since there was no opposition thereto, the trial court issued an order of general default and eventually granted the petition of the respondent therein by, *inter alia*, deleting the entry on the date and place of marriage of his parents and correcting his surname from

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[26] 464 Phil. 151 (2004).

[27] *Alfon v. Republic of the Philippines*, *supra* note 24, at 603.

"Magpayo" to "Coseteng."[28] The Court reversed the trial court's decision since the proper remedy would have been to file a petition under Rule 108 of the Rules of Court. The Court ruled that the change sought by the respondent therein involves his civil status as a legitimate child; it may only be given due course through an adversarial proceedings under Rule 108 of the Rules of Court. The Court's pronouncement in *Coseteng-Magpayo* finds no application in this case.

Finally, *Lim* likewise finds no application in this case. In *Lim*, the petition that was filed was for correction of entries under Rule 108 of the Rules of Court; the petition sought, among others, is the correction of the surname of the respondent therein from "Yo" to "Yu." Further, the respondent therein, although an illegitimate child, had long been using the surname of her father. It bears stressing that the birth certificate of the respondent therein indicated that her surname was the same as her father albeit misspelled. Thus, a correction of entry in her birth certificate is appropriate.[29]

Here, the petitioner filed a petition for change of name under Rule 103 and not a petition for correction of entries under Rule 108. Unlike in *Lim*, herein petitioner's birth certificate indicated that she bears the surname of her mother and not of her father.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED**.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Bersamin,*[**] and *Perez, JJ.,* concur.

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[28] *Republic of the Philippines v. Coseteng-Magpayo*, *supra* note 25, at 552-554.

[29] *Republic of the Philippines v. Lim, supra* note 26, at 155.

[*] Designated additional Member per Raffle dated October 13, 2014 *vice* Associate Justice Francis H. Jardeleza.

[**] Designated additional Member per Raffle dated February 17, 2016 *vice* Associate Justice Diosdado Peralta.

SECOND DIVISION

[G.R. No. 208067. September 14, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RONNIE R. LIBRIAS**, *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; RAPE; THE CONVICTION OR ACQUITTAL OF THE ACCUSED DEPENDS ALMOST ENTIRELY ON THE CREDIBILITY OF THE COMPLAINANT'S TESTIMONY AS SELDOM IS THERE AN EYEWITNESS, OTHER THAN THOSE INVOLVED, TO THE COMMISSION OF THE OFFENSE.—** By their very nature, crimes against chastity, as well as the crime of rape, usually involve only two persons; the victim-complainant and the alleged offender. As a consequence, the conviction or acquittal of the accused depends almost entirely on the credibility of the complainant's testimony as seldom is there an eyewitness, other than those involved, to the commission of the offense. It is for this reason that we should examine with greatest care the complainant's story and subject it to a thorough scrutiny to determine its veracity *in the light of human nature and experience.* x x x We likewise emphasized in *People v. Fabito* that in reviewing rape cases on appeal, we consider the reality that rape is a very serious accusation and, at the same time, a charge is not that hard to lay against another. x x x Contrary to the findings of the lower courts, we find AAA's testimony – which the prosecution heavily relied on – that raise serious doubts in the truthfulness of her statements.

2. **ID.; ID.; THE QUANTUM OF PROOF REQUIRED IN CRIMINAL CASES IS PROOF BEYOND REASONABLE DOUBT IN ORDER TO CONVICT THE ACCUSED.—** We are reminded that the quantum of proof required in criminal cases is proof beyond reasonable doubt in order to convict the accused. Because of the constitutional presumption of innocence, the burden, therefore, lies with the prosecution to meet this quantum of proof. In the case at bar, the prosecution failed to discharge this burden since AAA's testimony was not credible

enough to establish with moral certainty that Librias abducted AAA and raped her.

3. ID.; ID.; ID.; EQUIPOISE RULE; WHERE THE EVIDENCE IN A CRIMINAL CASE IS EVENLY BALANCED, THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE TILTS THE SCALE IN FAVOR OF THE ACCUSED.— Faced with two conflicting versions, we are guided by the equipoise rule: *where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scale in favor of the accused.* Thus, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. Applying this rule in the present case would properly lead us to conclude that AAA did not try to escape or call for help because **she wanted to go** to wherever Librias was planning to bring her.

4. ID.; ID.; CREDIBILITY OF WITNESSES; GENERALLY, THE SUPREME COURT WILL NOT DISTURB THE FACTUAL FINDINGS OF THE TRIAL COURTS; EXCEPTION; ESTABLISHED IN CASE AT BAR.— The lower courts' conclusion that AAA could think of a way to escape because she was afraid is a *mere conjecture* that cannot support a conviction. As a general rule, we are bound by the trial court's findings of fact and evaluation of the credibility of witnesses, especially when affirmed by the appellate court. However, this time-honored doctrine admits exceptions, such as when the trial court overlooked, misunderstood, or misapplied facts or circumstances of weight and substance that would affect the result of the case. x x x AAA's statements as to how Librias brought her to the taxicab buttress our conclusion that she voluntarily went with him. Holding her arms and tying them are completely different ways of restricting a person's movements. Thus, for AAA to narrate that Librias was simply holding her, then later say that her arms were tied with a towel is very unusual for a person who is supposed to be telling the truth. While rape victims are not required or expected to remember all the details of their harrowing experience, this inconsistency drawn from AAA's contradicting testimonies cannot be considered as minor that would not affect her

credibility. x x x While we generally do not disturb the factual findings of the lower courts, we cannot help but examine AAA's testimony critically and, based on this examination, conclude that what she had declared was not the entire and actual truth. All told, we conclude that the evidence for the prosecution does not prove beyond reasonable doubt that Librias is guilty of the crime charged.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We resolve the appeal of accused-appellant Ronnie R. Librias (*Librias*) assailing the May 22, 2013 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CEB-CR-H.C. No. 01130. The assailed decision affirmed the ruling of the Regional Trial Court (*RTC*), Branch 28, Mandaue City, Cebu, finding Librias guilty beyond reasonable doubt of the crime of forcible abduction with rape.

THE FACTUAL ANTECEDENTS

Librias was charged with Forcible Abduction with Rape in relation to R.A. No. 7610 in an information that reads:

That sometime on the 14th day of September 2003, in Mandaue City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused did then and there willfully, unlawfully and feloniously with lewd designs, abduct one, AAA,[2] who is a 17-yr. old minor, against her will, taking and carrying her to a place

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[1] *Rollo*, pp. 3-19; penned by Associate Justice Ramon Paul L. Hernando, and concurred by Associate Justice Carmelita Salandanan-Manahan and Associate Justice Ma. Luisa C. Quijano-Padilla.

[2] The real name of the victim and the immediate family members are withheld pursuant to A.M. No. 04-11-09-SC and our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

somewhere in Colon Street, Cebu City, and away from her residence, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of her against her will.

CONTRARY TO LAW.[3]

He pleaded not guilty to the charge during his arraignment.[4]

When AAA was presented by the prosecution, she testified that on September 14, 2003, at around 9:00 P.M., she was at the Mandaue Plaza while waiting for her cousin, who did not show up.[5] While waiting, AAA was approached by Librias who threatened to kill her if she would not go with him.[6] Librias and AAA thereafter left the plaza and boarded a taxi.[7]

While they were inside the taxi, Librias instructed the driver to bring them to Colon Street in Cebu City.[8] AAA, on the other hand, was trying to open the door of the taxi but Librias held her hands down.[9]

Upon reaching Colon Street, Librias and AAA walked towards a house where they were given their own private room with its own bed.[10] When they were already inside, Librias slowly started taking off AAA's clothes.[11] AAA struggled but was overpowered as Librias held her hands and pinned her down with his legs.[12] After taking off his pants, Librias inserted his penis into AAA's vagina while on top of her.[13] Although AAA was not able to

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[3] RTC records, p. 1.

[4] *Id*. at 10.

[5] TSN, March 11, 2004, pp. 3-4.

[6] *Id*. at 5.

[7] *Ibid*.

[8] TSN, August 12, 2004, p. 4.

[9] *Id*. at 5.

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

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

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

[13] *Id*. at 9-10; TSN, August 17, 2004, pp. 2-4.

see how Librias was able to insert his penis, she said that it went into her vagina because she felt pain inside and outside her private parts.[14]

Shortly after his sexual advances, Librias fell asleep which gave AAA an opportunity to get dressed and to escape.[15] AAA then flagged down a taxi and proceeded to the Barangay Hall of Ibabao and reported the matter to the barangay officials.[16] Noticing that Librias had followed her and was sitting at a bar nearby, AAA requested the barangay tanods to arrest him.[17] Librias was thereafter brought to the nearest police station.[18]

In his defense, Librias insisted that he did not force or threaten AAA to have sexual intercourse with him; much less did he hold her against her will when he brought her to the Hidden Lounge in Cebu City.

Librias testified that after lighting a candle at the nearby church, he proceeded to Mandaue Plaza anticipating his ex-girlfriend to arrive and hoping that they would talk.[19] While he was seated in the park, Librias noticed a woman – who was also seated alone right across him – smiling at him.[20] After a while, Librias stood up and decided to leave, passing by the woman who smiled at him again.[21] This time, Librias smiled back and asked her why she was smiling at him.[22] The woman replied and said that he looked familiar, and so Librias asked for her name;[23] the woman was AAA.

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[14] TSN, August 17, 2004, p. 5.

[15] *Id*. at 6.

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

[17] *Ibid*.

[18] *Ibid*.

[19] TSN, April 18, 2005, pp. 4-5.

[20] *Id*. at 6.

[21] *Id*. at 7.

[22] *Ibid*.

[23] *Ibid*.

After introducing themselves to one another, Librias and AAA started flirting and strolled around the plaza for a good hour and a half. AAA thereafter invited Librias if he wanted to join her in meeting her friend at a disco.[24] At first, Librias declined as he had to work that night, but he eventually decided not to go to work and invited AAA to go with him to a videoke bar instead.[25] AAA acceded; so they boarded a taxi and proceeded to Colon Street in Cebu City.[26]

When they alighted from the taxi, Librias took AAA to his cousin's store.[27] However, since his cousin was not there, Librias offered to take AAA home and said that he would just sleep somewhere nearby.[28] AAA refused and insisted that she would just stay with him.[29] Thus, the two walked to Hidden Lounge where they checked in for two (2) hours.[30]

After getting settled the room, AAA approached Librias who said, "*Whatever will happen to us now, don't worry because I will be responsible for it.*"[31] In response, AAA embraced Librias.[32]

Librias, then, narrated that they indulged in foreplay before having sexual intercourse.[33] He alleged that he did not force himself upon AAA, much less threaten to kill her to have sex with him.[34]

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[24] *Id.* at 8.

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

[26] *Id.* at 12.

[27] *Ibid.*

[28] *Id.* at 13.

[29] *Id.* at 14.

[30] *Id.* at 14-17.

[31] *Id.* at 18.

[32] *Ibid.*

[33] *Id.* at 19-20.

[34] *Ibid.*

After their intimate act, Librias and AAA fell asleep, but were shortly woken up by the roomboy.[35] They left the room together and went downstairs. To Librias' surprise, AAA asked him for money so that she could go home.[36] Librias told her to wait as he had to go to the comfort room and that he was going to bring her home.[37]

When Librias came out of the comfort room, he saw AAA leave the motel and board a taxi.[38] Recalling where AAA said she lived, he proceeded to her residence.[39] While waiting for AAA to possibly come outside of her house, Librias waited in a nearby bar.[40] Minutes later, AAA came out and instructed the barangay tanods to arrest Librias.[41]

In its September 25, 2009 judgment,[42] after careful consideration of the evidence of both parties, the RTC found that Librias, with the use of force and intimidation, had taken away AAA from Mandaue Plaza to a house on Colon Street, Cebu City, where they had sexual intercourse. The trial court did not give much credence to his denial in the light of AAA's positive declaration that Librias had held her against her will and raped her. Accordingly, applying Article 48 of the Revised Penal Code, the RTC imposed the more serious penalty for rape, which is *reclusion perpetua*, and ordered him to pay AAA ₱50,000.00 for civil indemnity and ₱15,000.00 for moral damages.

On appeal, the CA affirmed Librias' conviction *in toto* after finding no compelling reason to depart from the factual findings

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

[36] *Id.* at 24.

[37] *Ibid.*

[38] *Id.* at 25.

[39] *Id.* at 27.

[40] *Ibid.*

[41] *Id.* at 28.

[42] CA *rollo*, pp. 30-45.

of the trial court. Simply, it held that AAA's version of what transpired was more credible and believable. The appellate court was likewise not persuaded by Librias' assertion that AAA could have easily shouted for help because her reaction to the force and intimidation could have varied and that she could have been paralyzed with fear. Like the trial court, the CA found Librias' denial unacceptable considering that denial is an inherently weak defense, and that it was not buttressed by strong evidence of non-culpability.

OUR RULING

We hold that the accused should be acquitted.

By their very nature, crimes against chastity, as well as the crime of rape, usually involve only two persons: the victim-complainant and the alleged offender. As a consequence, the conviction or acquittal of the accused depends almost entirely on the credibility of the complainant's testimony as seldom is there an eyewitness, other than those involved, to the commission of the offense. It is for this reason that we should examine with greatest care the complainant's story and subject it to a thorough scrutiny to determine its veracity *in the light of human nature and experience*.[43]

In *People v. Aballe*[44] we said:

> It is the peculiarity of rape cases that conviction or acquittal of the accused depends almost entirely on the credibility of the complaining witness. It may well then be that the testimony of the victim, to bear upon its face the brand of moral certainty demanded by the due process clause, **must involve a narrative that is plausible under the circumstances as recounted before the court**. The mere fact that there are contradictions and inconsistencies in her testimony will not in itself acquit an accused as long as the story of the complaining witness is not inherently impossible or suspect of prejudice

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[43] See *People v. Ilagan*, G.R. No. L-36560, May 28, 1975, 64 SCRA 170, cited in *People v. Lacuna*, G.R. No. L-38463, December 29, 1978, 87 SCRA 364, 366.

[44] G.R. No. 133997, May 17, 2001, 357 SCRA 802.

and ill motive. Still and all, credence should only be given to trustworthy testimonies capable of supporting a guilty verdict.[45] [emphasis and underscoring ours]

We likewise emphasized in *People v. Fabito*[46] that in reviewing rape cases on appeal, we consider the reality that rape is a very serious accusation and, at the same time, a charge is not that hard to lay against another, to *wit*:

> The review of a criminal case opens up the case in its entirety. The totality of the evidence presented by both the prosecution and the defense are weighed, thus, avoiding general conclusions based on isolated pieces of evidence. *In the case of rape, a review begins with the reality that rape is a very serious accusation that is painful to make; at the same time, it is a charge that is not hard to lay against another by one with malice in her mind.* Because of the private nature of the crime that justifies the acceptance of the lone testimony of a credible victim to convict, it is not easy for the accused, although innocent, to disprove his guilt. These realities compel us to approach with great caution and to scrutinize the statements of a victim on whose sole testimony conviction or acquittal depends.[47] [citations omitted; italics ours]

Contrary to the findings of the lower courts, we find AAA's testimony – which the prosecution heavily relied on – that raise serious doubts in the truthfulness of her statements.

We are reminded that the quantum of proof required in criminal cases is proof beyond reasonable doubt in order to convict the accused.[48] Because of the constitutional presumption of innocence, the burden, therefore, lies with the prosecution to meet this quantum of proof.[49] In the case at bar, the prosecution

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[45] *Id.* at 803-804.

[46] G.R. No. 179933, April 16, 2009, 585 SCRA 591.

[47] *Id.* at 603-604.

[48] See *People v. Delabajan*, G.R. No. 192180, March 21, 2012, 668 SCRA 859, 860, 861.

[49] See *People v. Patentes*, G.R. No. 190178, February 12, 2014, sc.judiciary.gov.ph.

failed to discharge this burden since AAA's testimony was not credible enough to establish with moral certainty that Librias abducted AAA and raped her.

First, AAA's narration that Librias forcibly took her from Mandaue Plaza to a house on Colon Street, Cebu City, is very unlikely considering that AAA could have easily escaped or, at least, have called for help. After reviewing the records of the case, we discovered that Librias did not have a weapon nor did he threaten to use one should AAA not accede to his demands. Without a weapon of any sort, AAA could have broken free and run away – without any risk to her life – as the plaza was an open space where she could have run in any direction.

Admittedly, the plaza was not completely deserted as AAA testified that there were a few people around, thus:

Q. You said that on September 14, 2003, you went to the plaza here in Mandaue City?
A. Yes.

Q. What time was that?
A. 8:00 [P.M.]

x x x x x x x x x

Q. So, what were you doing when you arrived at the Mandaue Plaza?
A. I was roaming around.

Q. You were alone?
A. Yes.

Q. You would agree with me that there were many others who were also doing the same thing as you were walking around the plaza at that time?
A. There were only few.

Q. When you arrived at around 8:00 [P.M.] there were still many people at that time?
A. Yes.

Q. Where exactly at the plaza did you go?
A. Near city hall.

Q. You walked around for about how many minutes?
A. **Around two hours**.[50] [emphases ours]

From her testimony, we gather that AAA could have called for help and anyone around the vicinity would have noticed. In fact, any person at the plaza could have easily noticed that she was in some kind of danger had she tried to struggle to break free. Hence, the foregoing statements would suggest that AAA was not really held against her will.

The lower courts' conclusion that AAA could think of a way to escape because she was afraid is a *mere conjecture* that cannot support a conviction. As a general rule, we are bound by the trial court's findings of fact and evaluation of the credibility of witnesses, especially when affirmed by the appellate court. However, this time-honored doctrine admits exceptions, such as when the trial court overlooked, misunderstood, or misapplied facts or circumstances of weight and substance that would affect the result of the case.

Faced with two conflicting versions, we are guided by the equipoise rule: *where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scale in favor of the accused*.[51] Thus, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[52] Applying this rule in the present case would properly lead us to conclude that AAA did not try to escape or call for help because **she wanted to go** to wherever Librias was planning to bring her.

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[50] TSN, August 17, 2004, pp. 10-11.

[51] *People v. Erguiza*, G.R. No. 171348, November 26, 2008, 571 SCRA 634, 635, citing *People v. Lagmay*, G.R. No. 125310, April 21, 1999, 306 SCRA 157, 158.

[52] *People v. Poras*, G.R. No. 177747, February 16, 2010, 624 SCRA 626-627.

Second, AAA gave different statements as to how she was held back by Librias during the taxi ride going to Colon Street, Cebu City. In her direct testimony, she said that Librias was holding her hands the whole time while he was flagging down a taxi cab and when he pushed her inside it, *viz*:

Q. In the last hearing you testified that while you were at the Mandaue City plaza somebody held your hand and said, "*kuyog ka nako*."[53] Was this correct?
A. Yes.

Q. Is that all he said?
A. Yes.

Q. So, what happened after that?
A. He flagged down a taxi.

Q. While he flagged down a taxi what did he do to you?
A. He was holding on me.

Q. Was he able to flag down a taxi?
A. Yes.

Q. Then what happened after that?
A. He opened the door of the taxi and pushed me inside.

Q. So, what happened after you were pushed inside the taxi?
A. I told the driver of the taxi to go back to Ibabao.

Q. So the taxi then moved on?
A. Yes.

Q. And you told the driver of the taxi to return to Ibabao?
A. Yes.

Q. Then what happened after that?
A. He brought me to Colon St.

Q. Have you gone to this place, Colon St.?
A. No.

Q. How did you know it was Colon?
A. Because he said Colon.

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[53] Which means "come with me."

Q. To whom was the word directed?
A. The taxi driver.[54]

However, upon further cross examination, she stated that Librias tied her hands with a towel to restrict her movement, to *wit*:

Q. You said you were able to flag down a taxi which you rode, who flagged down the taxi?
A. He did.

Q. And how did he flag down the taxi if he was holding both your hands?
A. *He was bringing a towel and he tied my hands with the towel.*

Q. He tied both your hands with the towel while you were walking?
A. When he was already about to flag down a taxi.

Q. So, you had to stop because he had to tie your hands with the towel?
A. Yes, at the side of the road.

AAA's statements as to how Librias brought her to the taxicab buttress our conclusion that she voluntarily went with him. Holding her arms and tying them are completely different ways of restricting a person's movements. Thus, for AAA to narrate that Librias was simply holding her, then later say that her arms were tied with a towel is very unusual for a person who is supposed to be telling the truth. While rape victims are not required or expected to remember all the details of their harrowing experience, this inconsistency drawn from AAA's contradicting testimonies cannot be considered as minor that would not affect her credibility.[55]

Also, AAA again could have easily asked help from the taxi driver if she was really being held against her will. We find it

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[54] TSN, August 12, 2004, pp. 3-5.

[55] See *People v. Perez*, G.R. No. 172875, August 15, 2007, 530 SCRA 376. See also *People v. Salazar*, G.R. No. 122479, December 4, 2000, 346 SCRA 735.

strange that AAA asked the taxi driver to take her to a specific place when she could have simply said she was being taken away by Librias. The close proximity of the taxi driver should have already triggered AAA's instinct to call for help.

Third, AAA's version on how she was raped likewise raises doubt as to whether the sexual intercourse initiated by Librias was against her will. Allegedly, Librias was able to insert his penis inside AAA's vagina at the same time he was using his hands to restrain her hands and his legs to hold her down. This means that AAA's legs were pinned underneath the legs of Librias. To our mind, this position would make it very difficult to insert a man's penis inside a woman's vagina when the entry to the latter would be closed with her legs supposedly pinned and thus restrained from opening.

While we generally do not disturb the factual findings of the lower courts, we cannot help but examine AAA's testimony critically and, based on this examination, conclude that what she had declared was not the entire and actual truth.

What we have in this case is a double plus in favor of the defense.[56] The first plus factor is the weakening of the prosecution's case for almost solely relying on the testimony of AAA which, as discussed above, has raised serious doubts that would not support a conviction. The second plus for the defense is Librias' denial, which was straightforward and needed no elaborate analysis to understand. He was walking around Mandaue Plaza where he met this girl who caught his attention. They were initially attracted to each other; hence, they started flirting. Not long after, they did not want the night to end so soon and wanted to take their newly found attraction further. This is simply a case of a one-night stand that went bad. Given these facts and the shaky evidence presented by the prosecution, Librias' denial is all that is needed to acquit him.

All told, we conclude that the evidence for the prosecution does not prove beyond reasonable doubt that Librias is guilty

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[56] See *People v. Fabito*, *supra* note 46.

of the crime charged. On the other hand, Librias' evidence for his defense – *i.e.,* his testimony which, to our mind, is more sensible and real – raises serious questions as to the credibility of AAA's allegations. Given that the prosecution failed to meet the degree of moral certainty required, acquittal becomes our constitutional duty, for fear that we be tortured with the thought that we could possibly imprison an innocent man.[57]

WHEREFORE, premises considered, we **REVERSE** and **SET ASIDE the** May 22, 2013 decision of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 01130. Accused-appellant Ronnie R. Librias is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention unless he is otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Director, Bureau of Corrections, Muntinlupa City, for immediate implementation. Said director is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

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

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[57] *People v. Erguiza*, *supra* note 51, at 364, citing *People v. Aballe*, *supra* note 44, at 803.

THIRD DIVISION

[G.R. No. 210798. September 14, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BEVERLY VILLANUEVA *y* MANALILI @ BEBANG,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; AS A RULE, FINDINGS OF FACTS AND ASSESSMENT OF CREDIBILITY OF WITNESSES ARE MATTERS BEST LEFT TO THE TRIAL COURT EXCEPT WHEN THERE ARE FACTS AND CIRCUMSTANCES WHICH IF PROPERLY APPRECIATED, COULD ALTER THE OUTCOME OF THE CASE.—** This Court is not unaware of the longstanding doctrine that findings of facts and assessment of credibility of witnesses are matters best left to the trial court, which is in the best position to observe the witnesses' demeanor while being examined. However, we take exception from such rule, considering that there are facts and circumstances which if properly appreciated, could alter the outcome of the case. That the defense witnesses are closely related to accused-appellant — one being the brother and manager of the videoke bar and the other being an employee — is not a sufficient reason to disregard their testimonies. The declaration of interested witnesses is not necessarily biased and incredible. More importantly, there was no evidence suggesting that the testimonies of the witnesses were untruthful to begin with.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9208 (ANTI-TRAFFICKING IN PERSONS ACT OF 2003), AS AMENDED BY R.A. NO. 10364; TRAFFICKING IN PERSONS; ELEMENTS; RECRUITING, HARBORING, OR MAINTAINING A PERSON FOR THE PURPOSE OF EXPLOITATION ARE ACTS PERFORMED BY PERSONS WHO MAY OR MAY NOT BE REGISTERED OWNERS OF ESTABLISHMENTS.—** The elements of trafficking in persons, derived from the expanded definition found in Section 3(a) of R.A. No. 9208 as amended by R.A. No. 10364, are as follows: (1) The act of "recruitment, obtaining, hiring, providing,

offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;" (2) The means used include "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;" and (3)The purpose of trafficking includes "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." The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall still be considered "trafficking in persons" even if it does not involve any of the means set forth in the first paragraph of Sec. 3(a) of R.A. No. 9208. x x x Recruiting, harboring, or maintaining a person for the purpose of exploitation are acts performed by persons who may or may not be registered owners of establishments. Thus, being the registered owner *per se* does not make one criminally liable for the acts of trafficking committed in the establishment. What the prosecution should have done was to prove the act of trafficking by other means, and not by mere showing that accused-appellant was the registered owner. x x x Nowhere in the text of R.A. No. 9208 can it be inferred that a presumption arises by the mere fact of presence of a child in a videoke bar or similar establishment. Our survey of jurisprudence likewise does not reveal such established presumption. More to the point, the constitutive crime of trafficking through harboring or receipt of a person must be specifically for purposes of exploitation. In other words, establishing mere presence without establishing the purpose therefor cannot be considered as an element of trafficking. In this case, the private complainant's affidavit of desistance categorically explained the child's presence in the videoke bar—for humanitarian reasons of providing shelter to a runaway minor.

3. ID.; ID.; ID.; A REVIEW OF THE SCARCE JURISPRUDENCE ON HUMAN TRAFFICKING, TO A CERTAIN EXTENT, RELIES GREATLY ON THE ENTRAPMENT OPERATION, THUS, THE TESTIMONIES OF THE APPREHENDING OFFICERS REGARDING THE ENTRAPMENT OPERATION ARE CRUCIAL FOR A CONVICTION; CASE AT BAR.— A review of the scarce jurisprudence on

human trafficking would readily show that a successful prosecution for human trafficking, to a certain extent, relies greatly on the entrapment operation. In entrapment, ways and means are resorted to by the authorities for the purpose of capturing the perpetrator *in flagrante delicto.* Thus, it can be said that testimonies of the apprehending officers regarding the entrapment operation are crucial for a conviction, most especially in cases where the victim is unable to testify. x x x Similarly, the prosecution in the case at bar built their case around the entrapment operation and the successful rescue of AAA; but unfortunately for the prosecution, both PO2 Abas and PCI Balbontin are incompetent to testify as to matters which occurred during the actual execution of the rescue and entrapment because both witnesses were not present during the operation. x x x In the absence of any evidence categorically showing that a crime was being committed *in flagrante delicto* or that AAA was performing the tasks of a GRO when she approached the table, this Court cannot uphold accused-appellant's conviction based on the rescue operation alone.

4. ID.; ID.; ID.; CONVICTION BASED ON CIRCUMSTANTIAL EVIDENCE; IT IS ESSENTIAL THAT THE CIRCUMSTANTIAL EVIDENCE PRESENTED CONSTITUTES AN UNBROKEN CHAIN WHICH LEADS TO ONLY ONE FAIR AND REASONABLE CONCLUSION POINTING TO THE ACCUSED, TO THE EXCLUSION OF OTHERS, AS THE GUILTY PERSON; FAILURE TO ESTABLISH IN CASE AT BAR.— Circumstantial evidence is deemed sufficient for conviction only if : (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. It is essential that the circumstantial evidence presented constitutes an unbroken chain which leads to only one fair and reasonable conclusion pointing to the accused, to the exclusion of others, as the guilty person. x x x Nothing is more settled in criminal law jurisprudence than that the Constitution presumes a person is innocent until he is proven guilty by proof beyond reasonable doubt. Countless times, this Court has elucidated that the evidence of the prosecution must stand on its own weight and not rely on the weakness of the defense. The prosecution cannot be allowed to draw strength from the weakness of the defense's evidence for it has the *onus*

probandi in establishing the guilt of the accused. In this case, the circumstantial evidence presented by the prosecution failed to pass the test of moral certainty necessary to warrant accused-appellant's conviction. From the foregoing, we rule that the prosecution failed to discharge its burden of proving accused-appellant's guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Arcangelita M. Romillo-Lontok for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] dated 10 May 2013 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05027. The CA affirmed the 28 January 2011 Decision[2] of the Regional Trial Court (RTC) of Las Piñas City, Branch 254 in Criminal Case No. 07-0417, finding accused-appellant, Beverly Villanueva y Manalili, guilty beyond reasonable doubt of violation of Section 6 of Republic Act (R.A.) No. 9208.

On 18 May 2007, an Information for the violation of Sec. 6 of R.A. 9208 was filed against accused-appellant. The accusatory portion of the Information reads:

That sometime during the period from April 25, 2007 up to May 17, 2007, in the city of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the owner/manager of ON TAP VIDEOKE, did then and there willfully, unlawfully and feloniously recruit and hire [AAA],[3] a 13- year old

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[1] *Rollo*, pp. 3-27; Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Francisco P. Acosta and Angelita A. Gacutan concurring.

[2] Records, pp. 381-391; Penned by Presiding Judge Gloria Butay Aglugub.

[3] The real name of the victim is withheld to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

minor, to work as a Guest Relations Officer (GRO) of said establishment, thereby exploiting and taking advantage of her vulnerability as a child.[4]

On arraignment, accused-appellant entered a plea of NOT GUILTY.[5] A Petition for Bail was granted and accused-appellant was allowed to post bail. The public prosecutor manifested that they will adopt the evidence presented during the hearing of the Petition for Bail as the same evidence in the main case, with the further manifestation that other witnesses will be presented by the prosecution.[6] Trial on the merits ensued thereafter.

The Facts

The antecedent facts as culled from the CA decision and records of the case are summarized as follows:

On 25 April 2007, AAA ran away from home after finding out that she was adopted and after being scolded by her mother, who became the private complainant in this case. The friends of AAA informed private complainant that AAA was staying at the On Tap Videoke Bar, working as a Guest Relations Officer. Private complainant sought assistance from the Channel 2 TV program "XXX" to regain custody over AAA. Private complainant, accompanied by the TV crew, lodged a preliminary complaint with the Southern Police District (SPD) Headquarters of Taguig City against On Tap Videoke Bar and a task force was created for the rescue of AAA. Police Officer 1 Ariel Sullano (PO1 Sullano), accompanied by private complainant was tasked to go inside the videoke bar to talk to AAA. PO2 Thaddeus Abas (PO2 Abas) and the other police officers were stationed outside the bar, awaiting the predetermined signal. After the operation, AAA was taken to the SPD headquarters, together with accused-appellant and five (5) other videoke bar employees who were without the necessary Mayor's and Health Permits.

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[4] Records, p. 1.

[5] *Id*. at 85.

[6] *Id*. at 172-175.

Private complainant executed a complaint-affidavit against On Tap Videoke Bar and AAA was endorsed to the Social Development Center of the Department of Social Welfare and Development (DSWD)-Las Piñas. Accused-appellant and the five (5) apprehended employees were booked, investigated and underwent medical examinations. On 17 May 2007, accused-appellant and the five (5) employees were referred to the inquest prosecutor with charges for violation of R.A. No. 7610[7] and working without Mayor's/ Health Permit, respectively. The Office of the City Prosecutor charged accused-appellant with human trafficking under R.A. 9208, instead of violation of R.A. 7610 for the reason that accused-appellant "recruited and exploited AAA, a 13-year old minor, to work as a GRO in her bar by taking advantage of her vulnerability as a child."[8]

On 24 May 2007, a Petition for Bail was filed by accused-appellant, alleging that the evidence of guilt was not strong. The prosecution presented the testimonies of PO2 Abas and the private complainant to prove otherwise.

Meanwhile, on 31 May 2007, an Affidavit of Desistance[9] was executed by private complainant, which formed part of the exhibits. The Affidavit of Desistance was executed after the private complainant had the opportunity to talk to AAA after the rescue operation and after AAA revealed that she was merely allowed to stay at the videoke bar after she ran away from home.[10]

PO2 Abas testified as to the filing of the complaint and the entrapment and rescue operation conducted. He narrated that during the operation, he was stationed a couple of blocks from

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[7] An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes; otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

[8] Records, p. 2.

[9] *Id*. at 133-134.

[10] TSN, 3 July 2007, p. 25.

the videoke bar;[11] and that upon the execution of the pre-arranged signal, he and his companion officers rushed to the bar to take custody of AAA and other girls working without permits.[12] On cross-examination, PO2 Abas admitted that he was only acting based on the preliminary complaint filed by private complainant;[13] and that he was not aware of why AAA was in the videoke bar or who had custody over AAA.[14] When asked about the other details of the investigation and the operation, he failed to give coherent answers and insisted that his only designation was to secure the GROs and the other persons in the videoke bar.[15]

The prosecution then presented private complainant as the second witness. She recounted the details of the rescue operation and the subsequent filing of the complaint against accused-appellant. On cross-examination, she clarified that she had never been to the videoke bar before the rescue operation;[16] and that when she saw her daughter in the videoke bar, she was neither drinking, singing, nor smoking.[17] When asked about the conversation she had with her daughter after the rescue, private complainant revealed that AAA claimed that she was neither hired nor recruited as a GRO at the videoke bar.[18] Private complainant further narrated that she signified her lack of intention to pursue her complaint against accused-appellant after hearing the side of her daughter.[19] Unfortunately, while the trial was ongoing, AAA absconded from DSWD custody, resulting in the prosecution's failure to obtain her testimony.

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[11] TSN, 19 June 2007, p. 18.

[12] *Id*. at 19.

[13] *Id*. at 52.

[14] *Id*. at 51.

[15] *Id*. at 50.

[16] TSN, 3 July 2007, p. 16.

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

[18] *Id*. at 21.

[19] *Id*. at 22.

The Petition for Bail was granted by the court and accused-appellant was allowed to post bail. To supplement the testimonies of the witnesses presented during the bail hearing, the prosecution offered the testimony of P/Chief Insp. Jerome Balbontin (PCI Balbontin). He narrated that on May 16, 2007, the private complainant, accompanied by the TV crew, reported that her missing 13-year old daughter was seen working as a GRO at the On Tap Videoke Bar.[20] According to the witness, he was not present during the operation[21] but he sent SPO1 Camaliga, PO2 Andador, PO1 Sullano, PO2 Abas, PO2 Espinosa, among others, to conduct the surveillance and rescue.[22] He further narrated that after the rescue operation, the TV crew interviewed the child at the police station;[23] and that unfortunately, the footage of said interview and the rescue operation could not be obtained.[24]

The defense presented Wilfred Aquino (Aquino), the videoke bar waiter, as first witness. He testified as to the events which transpired during the rescue operation. He narrated that two male individuals asked him to call AAA; that AAA approached their table to speak with them; and that after five minutes, the policemen announced the rescue operation.[25] The witness insisted that accused-appellant was not aware of AAA's stay in the videoke bar because it was her father, Rosito Villanueva, Sr., who allowed AAA to stay in the videoke bar.[26] Wilfred also insisted that AAA has been staying in the videoke bar for two weeks before the rescue operation; and that during such stay; she was always in the kitchen helping them wash glasses.[27] On cross-examination, he testified that his immediate superior was

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[20] TSN, 4 September 2007, p. 6.

[21] *Id*. at 19.

[22] *Id*. at 9.

[23] *Id*. at 10.

[24] *Id*. at 16.

[25] TSN, 11 June 2009, p. 12.

[26] *Id*. at 25.

[27] *Id*. at 22.

Rosito Villanueva, Jr., (Villanueva, Jr.) accused-appellant's brother, who was the one managing the videoke bar.[28]

Villanueva, Jr. was the second witness for the defense. He testified as to the circumstances surrounding AAA's stay in the videoke bar. He claimed that while he was on vacation, his father took over the management of the videoke bar and allowed the temporary stay of AAA, upon the request of their employee.[29] Like Aquino, Villanueva, Jr. claimed that accused-appellant was unaware of AAA's stay in the videoke bar because accused-appellant had no hand in the daily operations and management. On cross-examination, he testified that the videoke bar was merely registered under his sister's name; and that all earnings belonged to him because the videoke bar was put up by his sister for him.[30]

Accused-appellant maintained that at the time the raid was conducted, she was at her sister's house. Her brother called her to apprise her of the situation, prompting her to rush to the bar to handle the situation. She went with the authorities to the SPD Headquarters and presented herself as the registered owner of the videoke bar. Accused-appellant vehemently denied hiring and/or recruiting AAA as a GRO, insisting that she was not involved in the day-to-day operations. Asserting that she was unaware that AAA was staying at the bar, accused-appellant explained that she merely provided capital for the business and that her brother, Villanueva, Jr., was the one managing the same. Both accused-appellant and her brother aver that it was their father who allowed AAA to stay at the videoke bar upon the request of one of the waiters.

Ruling of the Regional Trial Court

The RTC found accused-appellant's denial unavailing and incredible, considering that the corroborating testimonies came from witnesses who were not disinterested. The court found it

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[28] *Id.* at 29.

[29] TSN, 3 December 2009, p. 11.

[30] *Id.* at 24-25.

impossible for accused-appellant unaware of AAA's stay in the videoke bar, given that she was the registered owner thereof. The RTC gave weight on the successful rescue operation conducted by the police and the TV crew. In sum, the court ruled that despite the failure of the prosecution to present AAA in court, the circumstantial pieces of evidence were sufficient to establish accused-appellant's guilt beyond reasonable doubt, for the reason that a direct link between accused-appellant's commission of the crime and the minor victim was established.[31] The dispositive portion of the decision reads:

> WHEREFORE, finding accused BEVERLY VILLANUEVA y MANALILI @ "BEBANG" GUILTY of *Qualified Trafficking in Persons* under Section 6 of Republic Act 9208, the Court hereby sentences her to suffer the penalty of *Life Imprisonment* and to pay a fine of 3 Million pesos. Her license/permit to operate the ON TAP VIDEOKE BAR is ordered cancelled.[32]

Ruling of the Court of Appeals

Accused-appellant challenged the RTC decision on appeal, alleging that the lower court relied on the weakness of the defense rather than on the strength of the evidence for the prosecution. Accused-appellant argued that the same set of evidence, which was the basis for granting the petition for bail, was merely adopted in the main case. Thus, accused-appellant contends that there can be no conclusion other than that the prosecution failed to substantiate the allegations in the Information. Moreover, accused-appellant insisted that the lower court erred in not giving the private complainant's Affidavit of Desistance due weight and consideration.

The appellate court found the appeal bereft of merit. Enumerating the different circumstantial evidence presented, the CA ruled that the conviction was warranted. The appellate court held that the "[affidavit of desistance is] not the sole consideration that can result to an acquittal"[33] hence, in view

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[31] Records, p. 391.

[32] *Id*.

[33] *Rollo*, p. 25.

of the lack of circumstances to support the Affidavit of Desistance, acquittal was not warranted. The pertinent and dispositive portions of the decision read:

> Thus, the trial court did not err in imposing upon accused-appellant the penalty of life imprisonment and fine of ₱3,000,000.00. The order for the cancellation of her permit to operate the ON TAP VIDEOKE BAR is also correct. x x x
>
> x x x x x x x x x
>
> **WHEREFORE**, the trial court's Decision dated January 28, 2011 is **AFFIRMED**.[34]

In a Resolution[35] dated 3 October 2013, the Court of Appeals gave due course to accused-appellant's Notice of Appeal.

On 19 February 2014,[36] we required the parties to submit their respective supplemental briefs. Accused-appellant filed a supplemental brief;[37] whereas the Office of the Solicitor General adopted all the arguments raised in its brief, in lieu of filing a supplemental brief.

Our Ruling

The crux of the controversy is whether the circumstantial pieces of evidence presented by the prosecution inexorably lead to the conclusion that accused-appellant is guilty beyond reasonable doubt of the crime of Qualified Trafficking. After a thorough review of the facts and evidence on record, we rule for accused-appellant's acquittal.

Qualified Trafficking

The elements of trafficking in persons, derived from the expanded definition found in Section 3(a) of R.A. No. 9208 as amended by R.A. No. 10364, are as follows:

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

[35] CA *rollo*, p. 237.

[36] *Rollo*, pp. 40-41; Resolution dated 19 February 2016.

[37] *Id*. at 51-71.

(1) The act of "recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;"

(2) The means used include "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;" and

(3) The purpose of trafficking includes "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."

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall still be considered "trafficking in persons" even if it does not involve any of the means set forth in the first paragraph of Sec. 3(a) of R.A. No. 9208.[38] Given that the person allegedly trafficked in the case at bar is a child, we may do away with discussions on whether or not the second element was actually proven.

In an attempt to prove the first element, the prosecution stresses the fact that accused-appellant is the registered owner of the On Tap Videoke Bar. The prosecution insists that by merely

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[38] **Section 3**. *Definition of Terms.*— As used in this Act:

(a) *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.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph.

being the registered owner, accused-appellant necessarily committed the act of recruiting, maintaining or harboring AAA. Such contention is misplaced. Recruiting, harboring, or maintaining a person for the purpose of exploitation are acts performed by persons who may or may not be registered owners of establishments. Thus, being the registered owner *per se* does not make one criminally liable for the acts of trafficking committed in the establishment. What the prosecution should have done was to prove the act of trafficking by other means, and not by mere showing that accused-appellant was the registered owner. The defense, on the other hand, countered the allegation by presenting testimonies of Aquino, an employee of the videoke bar; Villanueva, Jr., manager of the videoke bar and brother of accused-appellant; and accused-appellant herself. The RTC found accused-appellant's denial and the corroborating testimonies as unavailing and incredible, for the reason that such testimonies did not come for disinterested witnesses. This Court is not unaware of the longstanding doctrine that findings of facts and assessment of credibility of witnesses are matters best left to the trial court, which is in the best position to observe the witnesses' demeanor while being examined.[39] However, we take exception from such rule, considering that there are facts and circumstances which if properly appreciated, could alter the outcome of the case. That the defense witnesses are closely related to accused-appellant —one being the brother and manager of the videoke bar and the other being an employee—is not a sufficient reason to disregard their testimonies. The declaration of interested witnesses is not necessarily biased and incredible.[40] More importantly, there was no evidence suggesting that the testimonies of the witnesses were untruthful to begin with.

The prosecution likewise failed to prove the third element—that the recruiting, maintaining or harboring of persons is for the purpose of exploitation. Curiously, AAA was seen by the

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[39] *Cirera v. People of the Philippines*, G.R. No. 181843, 14 July 2014, 730 SCRA 27, 43.

[40] *People v. Sison*, 267 Phil. 679, 684 (1990).

prosecution witnesses at the videoke bar only on the day the rescue operation was conducted. That AAA was exploited could not be proven by her mere presence at the videoke during the rescue operation. The prosecution should have presented evidence as to the nature of work done by AAA, if any. Testimonies as to how often AAA was seen in the bar while entertaining customers could have also lent credence to the prosecution's contention that she was in the videoke bar because she was being exploited.

Lack of Direct Evidence

Since AAA was not presented in court, the prosecution was not able to offer direct evidence showing that accused-appellant actually recruited, harbored or maintained AAA in the videoke bar for the purpose of exploiting her. Neither can private complainant's testimony which merely revolved around the filing of the complaint be considered direct evidence. Private complainant's testimony, if considered in light of all the other evidence, is weak. Private complainant testified roughly a month after the Affidavit of Desistance was executed and filed; thus, she had every opportunity to deny the execution of the Affidavit during the cross-examination. Instead of denying the veracity of such Affidavit, private complainant confirmed its truthfulness and accuracy.[41] Though it can be said that private complainant's affirmative answers were only prompted by the leading questions asked by the defense lawyer during cross-examination, it cannot be denied that the prosecution did not even bother to rebuild its case during re-direct examination. On re-direct examination, private complainant merely testified as to matters regarding AAA's adoption.[42] She also claimed that she came to know of accused-appellant's trafficking activities through AAA's friends whose identities she cannot remember.[43] However, on re-cross examination, private complainant admitted that she did not

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[41] *Id*. at 36.

[42] *Id*. at 27-34.

[43] *Id*. at 34.

validate such information before she reached out to the TV program and the authorities.[44]

A review of the scarce jurisprudence on human trafficking would readily show that a successful prosecution for human trafficking, to a certain extent, relies greatly on the entrapment operation.[45] In entrapment, ways and means are resorted to by the authorities for the purpose of capturing the perpetrator *in flagrante delicto*.[46] Thus, it can be said that testimonies of the apprehending officers regarding the entrapment operation are crucial for a conviction, most especially in cases where the victim is unable to testify. In *People v. Casio*,[47] the conviction for Qualified Trafficking was brought about by the categorical testimonies of the authorities who conducted the entrapment, on top of the victim's testimony. In the said case, the police operatives testified as to the actual unfolding of circumstances which led them to believe that a crime was being committed *in flagrante delicto*, to wit:

> During trial, PO1 Luardo and PO1 Velosa testified that their conversation with accused went as follows:
>
> Accused: *Chicks mo dong*? (Do you like girls, guys?)
>
> PO1 Luardo: *Unya mga bag-o? Kanang batan-on kay naa mi guests naghulat sa motel. (Are they new*? They must be young because we have guests waiting at the motel)
>
> Accused: *Naa, hulat kay magkuha ko*. (Yes, just wait and I'll get them)
>
> At that point, PO1 Luardo sent a text message to PSI Ylanan that they found prospective subject.
>
> After a few minutes, accused returned with AAA and BBB, private complainants in this case.

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[44] TSN, July 3, 2007, p. 36.

[45] See *People v. Casio*, G.R. No. 211465, 3 December 2014, 744 SCRA 113, 124.

[46] *People v. Gatong-O*, 250 Phil. 710, 711 (1988).

[47] *Supra* note 45.

Accused: *Kining duha kauyon mo ani*? (Are you satisfied with these two?)

PO1 Veloso: *Maayo man na kaha na sila modala ug kayat*? (Well, are they good in sex?)

Similarly, the prosecution in the case at bar built their case around the entrapment operation and the successful rescue of AAA; but unfortunately for the prosecution, both PO2 Abas and PCI Balbontin are incompetent to testify as to matters which occurred during the actual execution of the rescue and entrapment because both witnesses were not present during the operation. The testimonies of PO2 Abas and the Chief Inspector pale in comparison with the testimonies of the police operatives in *Casio*.[48] Oddly, the prosecution failed to present witnesses who could testify as to the actual conversation that transpired between the undercover authorities and AAA. The testimony of defense witness Aquino, the waiter, is the only evidence on record which narrated certain details surrounding the unfolding of the rescue operation. Aquino merely observed that upon being called by the two men, who turned out to be undercover policemen, AAA approached their table and after five minutes, policemen announced the operation.[49] AAA's act of approaching the table of the customers after being called is not unequivocal enough as to dispel any other possible scenarios that could have occurred during their 5-minute conversation. In the absence of any evidence categorically showing that a crime was being committed *in flagrante delicto* or that AAA was performing the tasks of a GRO when she approached the table, this Court cannot uphold accused-appellant's conviction based on the rescue operation alone.

Circumstantial evidence did not establish guilt beyond reasonable doubt

While it is recognized that the lack of direct evidence does not *ipso facto* bar the finding of guilt,[50] we still hold that acquittal

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[48] *Id*.

[49] TSN, 11 June 2009, pp. 32-36

[50] *People v. Biglete*, 688 Phil. 199, 207 (2002).

is in order for the reason that the circumstantial evidence presented does not lead to the inescapable conclusion that accused-appellant committed the crime. Circumstantial evidence is deemed sufficient for conviction only if: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[51] It is essential that the circumstantial evidence presented constitutes an unbroken chain which leads to only one fair and reasonable conclusion pointing to the accused, to the exclusion of others, as the guilty person.[52] The appellate court anchored accused-appellant's conviction on the following circumstantial evidence:

> Firstly, AAA was at the On Tap Videoke when the police, accompanied by private complainant and the crew of the TV program XXX, conducted its rescue operation on May 16, 2007.
>
> Secondly, while accused-appellant denied recruiting AAA, she was wearing a sexy attire at the time of the rescue. Even defense witnesses Rosito Villanueva, Jr. and Wilfred Aquino admitted that AAA wore sexy attires at the videoke bar.
>
> Notably, AAA's attire was similar to the uniform of the videoke bar's GROs. x x x
>
> x x x x x x x x x
>
> Thirdly, accused-appellant showed propensity of hiring workers without permits. Although the purpose of the rescue operation was to recover AAA, five other (5) workers of the videoke bar were also arrested and booked because they were working thereat without the requisite Mayor's /Health permits.
>
> Fourthly, it appeared that AAA was doing some kind of work at the videoke bar. As testified by defense witness Willfred Aquino and Rosito Villanueva, Jr.:
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> Q: What was she doing there aside from staying there, Mr. Witness?

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[51] Sec. 4 Rule 133, Revised Rules of Court.

[52] *People v. Canlas*, 423 Phil. 665, 677 (2001); *People v. Calonge*, 637 Phil. 435, 454 (2010).

A: She was helping in the washing of the glasses in the kitchen, Sir.

x x x x x x x x x

Q: When the police arrived, AAA was there inside the Videoke Bar?

Witness:

A: She was at the back of the kitchen.

COURT:

What was she doing at the kitchen wearing that seductive dress, washing the dishes?

A: No, your honor. During that times she was just standing at the back and whenever we needed something like glass, she would hand us the glass.[53]

We rule that the circumstantial evidence cited by the appellate court does not lead to the inescapable conclusion that accused-appellant committed the crime, let alone that a crime was actually committed. As previously mentioned, the mere presence of AAA at the videoke bar does not prove that accused-appellant was maintaining or harboring her for the purpose of exploitation. In fact, such was the holding of the RTC when it granted accused-appellant's petition for bail. Nowhere in the text of R.A. No. 9208 can it be inferred that a presumption arises by the mere fact of presence of a child in a videoke bar or similar establishment. Our survey of jurisprudence likewise does not reveal such established presumption. More to the point, the constitutive crime of trafficking through harboring or receipt of a person must be specifically for purposes of exploitation. In other words, establishing mere presence without establishing the purpose therefor cannot be considered as an element of trafficking. In this case, the private complainant's affidavit of desistance categorically explained the child's presence in the videoke bar—for humanitarian reasons of providing shelter to a runaway minor.

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[53] *Rollo*, pp. 21-33.

That AAA was wearing skimpy clothing similar to those worn by the GROs at the videoke bar during the rescue operation is not inconsistent with the defense's position that AAA merely sought refuge and shelter at the bar after she ran away from home. It is highly possible that AAA borrowed clothes from the videoke bar employees, considering that she ran away from home and was unable to take all her belongings with her. That accused-appellant showed propensity for hiring workers without permits is irrelevant in the case at bar. One may be equipped with the proper permits and yet still be guilty of trafficking. Accused-appellant's propensity for not following ordinances does not necessarily prove commission of the crime of human trafficking. Lastly, even if it be conceded that AAA was washing dishes at the back of the kitchen, such circumstance is still not inconsistent with the defense's position. As a token of gratitude for allowing her to temporarily stay at the bar, AAA could have voluntarily done the chores. From the foregoing, it is obvious that the totality of circumstantial evidence will not lead to an inescapable conclusion that accused-appellant committed the crime charged. It bears stressing that "where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not meet or hurdle the test of moral certainty required for conviction."[54]

Reproduction at trial of evidence presented in the bail hearing

The prosecution manifested that they will adopt the evidence presented during the hearing of the Petition for Bail as the same evidence in the main case, with a further manifestation that other witnesses will be presented during the trial. In fact, a side by side comparison of the RTC Order granting accused-appellant's petition for bail and the RTC Decision convicting accused-appellant would reveal that summaries of witnesses' testimonies contained in the former were merely lifted and copied verbatim in the latter.

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[54] *Franco v. People*, G.R. No. 191185, 1 February 2016.

After an evaluation of the evidence and after hearing the testimonies of PO2 Abas and private complainant, the Petition for Bail was granted by the RTC, to wit:

> At this moment the prosecution failed to substantiate the allegations in the information that accused recruited and hired minor [AAA] to work as Guest Relations Officer (GRO) of her establishment, thereby exploiting and taking advantage of her vulnerability as a child. The mere presence of the minor at the establishment, cannot by itself, prove the fact of hiring and recruitment. It is unfortunate at this juncture, none of the prosecution witnesses was able to testify on this regard, and was only able to confirm the minor's presence at the videoke bar. Even the alleged mother of the minor testified that she never saw [AAA] drinking, smoking or singing at the establishment. She further testified that the minor admitted to her that she was never hired to work at the establishment and the she was only there in order for her to have a place to stay and reside.
>
> x x x This court is bound by the principle that in all criminal cases, all doubts should be resolved in favor of the accused. x x x From the evidence presented so far, without touching on the actual merits and proceedings of the instant case, this court cannot at this point say that the evidence against the accused is strong.[55]

It should be noted that when the prosecution witnesses were presented during the bail hearing, they were subjected to cross, re-direct and re-cross examinations, as well as inquiries by the court; thus, as expected, the court no longer recalled the witnesses for additional examination during the trial. Unfortunately for the prosecution, they were only able to present one more witness, PCI Balbontin, before they finally rested their case.

While the Court is aware that a bail hearing is merely for the purpose of determining whether the evidence of guilt is strong and that the same is not an adjudication upon the merits, we note that in the case at bar, the RTC Order granting the petition for bail casts doubt upon accused-appellant's conviction. In its Order granting the petition for bail, the RTC noted that none of the prosecution witnesses testified as to the fact of

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[55] Records, pp. 141-142.

hiring and recruitment. Considering that the only additional witness the prosecution presented during trial was PCI Balbontin, it baffles this Court why the RTC found accused-appellant guilty beyond reasonable doubt when the Chief Inspector's testimony was limited to procedural details regarding the filing of the complaint, forming of the task force and the interview conducted by the TV crew. If the Chief Inspector's additional testimony was only limited to those matters, it follows that when the prosecution rested its case, not one of their witnesses testified as to the fact of hiring and recruitment and neither did the documentary evidence submitted establish the same. Before this Court is essentially the same set of evidence that was evaluated by the RTC when it ruled that the evidence of guilt was not strong; we thus see no reason why the same set of evidence, only supplemented by a testimony regarding irrelevant procedural matters, would warrant a finding of guilt beyond reasonable doubt.

Ei incumbit probatio qui dicit, non qui negat — he who asserts, not he who denies, must prove

Nothing is more settled in criminal law jurisprudence than that the Constitution presumes a person is innocent until he is proven guilty by proof beyond reasonable doubt.[56] Countless times, this Court has elucidated that the evidence of the prosecution must stand on its own weight and not rely on the weakness of the defense. The prosecution cannot be allowed to draw strength from the weakness of the defense's evidence for it has the *onus probandi* in establishing the guilt of the accused. In this case, the circumstantial evidence presented by the prosecution failed to pass the test of moral certainty necessary to warrant accused-appellant's conviction. From the foregoing, we rule that the prosecution failed to discharge its burden of proving accused-appellant's guilt beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals dated 10 May 2013 in CA-G.R. CR-

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[56] *Franco v. People*, *supra* note 54.

H.C. No. 05027 is hereby **REVERSED** and **SET ASIDE.** For failure of the prosecution to prove her guilt beyond reasonable doubt, BEVERLY VILLANUEVA *y* MANALILI @ BEBANG is hereby **ACQUITTED** of the charge of violation of Section 6 of Republic Act No. 9208 or Qualified Trafficking. Her immediate **RELEASE** from detention is hereby **ORDERED**, unless she is being held for another lawful cause.

Let a copy of this Decision be furnished the Director of the Correctional Institution for Women, Mandaluyong City, by personal service, for immediate implementation. The Director shall submit to this Court, within five (5) days from receipt of the copy of the Decision, the action taken thereon.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), del Castillo,*[**] and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 214238. September 14, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ESMAEL ZACARIA *y* WAGAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SALE OF ILLEGAL DRUGS, ELEMENTS.— As correctly held by the lower courts, the elements of Section 5, Article II of R.A. No. 9165 or sale of illegal drugs: (1) the identities of

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[*] Additional Member per Raffle dated 14 September 2016.

[**] Additional Member per Raffle dated 2 September 2016.

the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it, are present.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [T]he prosecution adequately established the existence of all the elements of the offense of illegal possession of dangerous drugs under Section 11, Article II of the same Act, to wit: (1) the accused is in possession of the object identified as a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
De Vera Law Office for accused-appellant.

R E S O L U T I O N

PEREZ, *J.*:

This resolves an appeal from a conviction for sale of illegal drugs and possession of dangerous drugs punishable under Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." The Decision[1] of the Regional Trial Court (RTC), Branch 9, Davao City, dated 5 January 2009 convicting accused-appellant Esmael Zacaria *y* Wagas[2] (Zacaria) in the case entitled *People of the Philippines v. Esmael Zacaria y Wagas a.k.a. "Michael",* docketed as Criminal Case Nos. 54,425-2004 and 54,426-2004, was affirmed by the Court of Appeals (CA) in a Decision[3] dated 24 May 2013 in CA-G.R. CR-HC No. 00825-MIN.

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[1] *Rollo*, pp. 64-88; penned by Judge Romeo C. Albarracin.

[2] Accused-appellant's name is stated as Esmael Zacaria *y* Wangi a.k.a. "Michael" in other parts of the records.

[3] *Rollo*, pp. 145-156; penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Edgardo A. Camello and Jhosep Y. Lopez, concurring.

The Facts

On 15 May 2004 at around 3:30 p.m., upon a tip-off received by Senior Police Officer 2 Rito A. Montederamos (SPO2 Montederamos), Senior Police Officer 1 Allan B. Balingit (SPO1 Balingit), and Police Officer 1 Jesicar L. Maglacion (PO1 Maglacion) of the Philippine Drug Enforcement Agency (PDEA), Police Senior Inspector Christine S. Tan (S/Insp. Tan) formed a team of agents to conduct a buy-bust operation to entrap accused-appellant Zacaria.

Acting as poseur-buyers, SPO2 Montederamos, together with an informant, went to Victoria Plaza in Davao City to meet Zacaria. The informant first introduced Zacaria to SPO2 Montederamos. After SPO2 Montederamos showed the money to Zacaria, the latter handed one (1) plastic sachet containing white crystalline substance to SPO2 Montederamos, who immediately called the other police officers. SPO2 Montederamos then held Zacaria, but the latter managed to whisk away and board a taxi. The police officers chased Zacaria and when they were finally able to catch up with him at the back of Victoria Plaza, the police officers arrested Zacaria. During Zacaria's arrest, the police officers recovered another sachet containing white crystalline substance from him.

The police officers brought Zacaria to the PDEA Office for booking and documentation. SPO2 Montederamos turned over the seized items to Police Officer 1 Janmark V. Malibiran (PO1 Malibiran), the Desk Officer, for recording. After the recording, the seized items were returned to SPO2 Montederamos who taped, initialed, wrote the name of Zacaria, and placed it inside a cellophane before placing them in his locker in their office.

On 17 May 2004 at around 2:30 p.m., in the presence of Zacaria, an elected public official, media man, and representative from the Department of Justice (DOJ), the inventory of the seized items was conducted. Thereafter, the seized items were delivered to the PDEA Crime Laboratory in Davao City for examination, which tested positive for Methamphetamine Hydrochloride or *shabu*. Two sets of Information were filed against Zacaria: (1) Criminal Case No. 54,425-2004 for possession of

dangerous drugs; and (2) Criminal Case No. 54,426-2004 for sale and delivery of dangerous drugs.

The Information(s)

Criminal Case No. 54,425-2004

The undersigned accuses the above-named person for Possession of Dangerous Drugs, under Section 11 (sic) of Article II of Republic Act [No.] 9165, committed as follows:

> That on or about May 15, 2004, in the City of Davao, [Philippines,] and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, wilfully, unlawfully and consciously had in his possession one (1) big plastic sachet of Methamphetamine Hydrochloride, otherwise known as shabu, weighing 2.7133 grams, which is a dangerous drug.
>
> CONTRARY TO LAW.[4]

Criminal Case No. 54,426-2004

The undersigned accuses the above-named person for Sale [a]nd Delivery [o]f Dangerous Drugs, under Section 5, (sic) of Article II of Republic Act [No.] 9165, committed as follows:

> That on or about May 15, 2004, in the City of Davao, [Philippines,] and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and consciously sold and delivered one (1) big plastic sachet of Methamphetamine Hydrochloride, otherwise known as shabu , weighing 2.5409 grams, which is a dangerous drug.
>
> CONTRARY TO LAW.[5]

During arraignment, Zacaria pleaded not guilty. The defense filed a Motion for Admission to Bail which the RTC denied. Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses: (1) SPO2 Montederamos and (2) PO1 Maglacion, who testified on the

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[4] RTC records, p. 1 (Crim. Case No. 54,425-04).

[5] *Id*. at 1 (Crim. Case No. 54-426-04).

arrest, procedure of the inventory, and preservation of the seized items; and (3) Police Senior Inspector Ma. Julieta Gernel Razonable (S/Insp. Razonable), a Forensic Chemical Officer, who testified that the seized items tested positive for Methamphetamine Hydrochloride or *shabu*.

On the other hand, the defense presented the following witnesses: (1) accused-appellant Zacaria, (2) Bai Norma Saluang Al Hadja, and (3) Zacaria's wife, Guiaria Ingo Zacaria.[6]

Accused-appellant Zacaria testified that on 15 May 2004 at around 2:00 or 3:00 p.m., while walking around Victoria Plaza to buy some stocks for his ready-to-wear business, he was suddenly grabbed by a man in civilian clothes, forced to board a vehicle, blindfolded, and handcuffed. When the vehicle stopped, he was ordered to alight and was frisked. He was told that they were near a bridge and that if he fails to disclose the names of his companions, they will push him to the bridge and will be gunned down. When Zacaria was pushed, his stomach hit an object and he realized that he was inside a room. Zacaria was choked and his money worth Nine Thousand Pesos (₱9,000.00) and cellphone were taken from him. He was made to enter a room where his handcuffs were unlocked, then he was tied to a bar. Although blindfolded, Zacaria sensed there were people in the room due to the noise. After his blindfold was removed, he saw his companions and certain unknown women. He asked one of the women where they were and was told that they were at the barracks of PDEA.

Zacaria was transferred to a detention cell. During his investigation, he was asked to point his companions in exchange for his freedom, but he could not point anybody. He stayed at the PDEA for ten days. While at the PDEA, Zacaria used the cellphone of one of the visitors and texted his wife. The following day, his wife arrived.

Bai Norma Saluang Al Hadja corroborated Zacaria's testimony. She testified that on 15 May 2004, she saw Zacaria

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[6] Her name is also stated as Guiaria Inog Zacaria and Guaria Ingo Zacaria in other parts of the records.

at the ground floor of Victoria Plaza, who was suddenly pulled by a man in civilian clothes. She saw Zacaria run away, but the man chased Zacaria and the commotion ensued.

Zacaria's wife, Guiaria Ingo Zacaria, corroborated Zacaria's testimony. According to her, SPO2 Montederamos convinced her to point a person in exchange for Zacaria's freedom.

Ruling of the RTC

The RTC rejected Zacaria's contention that the allegations against him were baseless because the prosecution failed to prove that there was indeed a sale of *shabu* as there was no simultaneous actual exchange of the money and the *shabu.* According to Zacaria, the charges against him must fail because the prosecution failed to present the buy-bust money. Contrary to the averments of Zacaria, the RTC held that it is not necessary to present the buy-bust money.[7] As already held, proof of actual payment of the buy-bust money is not necessary.[8] Mere delivery of the drug purchased is sufficient.

Anent the non-compliance with Section 21 of R.A. No. 9165, the RTC ruled that the procedure laid down is not iron-clad. The implementing rules provide:

> x x x. Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.[9]

While the RTC acknowledged the presence of inconsistencies in some details of the prosecution's witnesses, the RTC resolved that it is by these inconsistencies which make the prosecution evidence more compelling. In any case, the RTC held that these inconsistencies are minor details which do not divest the substantial accuracy of the testimonies.

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[7] *People v. Dela Cruz*, 269 Phil. 165, 171 (1990).

[8] *People v. Balag-ey*, 471 Phil. 327, 354 (2004).

[9] *Rollo*, p. 85, CA *rollo*, p. 71; RTC Decision dated 29 January 2009.

With regard to the defense's allegation of extortion and violence against the arresting officers, the RTC held that the defense's bare allegation cannot prevail over the prosecution evidence. The defense did not file any case against the arresting officers or present any medical certificate to prove any maltreatment.

Based on the totality of evidence, the RTC found Zacaria guilty beyond reasonable doubt of violations of Sections 5 and 11 of R.A. No. 9165. On 5 January 2009, the RTC convicted Zacaria. The dispositive portion of the RTC Decision reads:

> WHEREFORE, in view of the foregoing premises, the Court declares ESMAEL WANGI ZACARIA, Filipino, 40 years old, and a resident of SK Pindatun (sic), Cotabato City, GUIILTY beyond reasonable doubt of the crime for Violation of Section 11, Article II of RA 9165 in Criminal Case No. 54,425-2004 and for Violation of Section 5, Article II of RA 9165 in Criminal Case No. 54,426-2004.
>
> ACCORDINGLY, said accused is hereby sentenced to wit:
>
> CRIMINAL CASE NO. 54,425-2004
>
> To suffer the penalty of an Imprisonment of TWELVE (12) YEARS and one (1) day to twenty (20) years and a fine of Three Hundred Thousand Pesos (Php300,000.00) Philippine Currency; and in
>
> CRIMINAL CASE NO. 54,426-2004
>
> To suffer the penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) Philippine Currency.
>
> If the prosecution finds that the substances involved in these cases will still be used by them in some other case/s, they must inform the Court immediately after the promulgation of the decision, but not later than five (5) days, otherwise the turn-over and destruction of the substances involved in these cases shall be carried out.
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> SO ORDERED.[10]

Ruling of the Court of Appeals

The CA affirmed the RTC Decision. The CA rejected Zacaria's contention that because there was no simultaneous actual

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[10] *Rollo*, pp. 87-88; CA *rollo*, pp. 73-74.

exchange of the money and *shabu*, and the prosecution failed to present in evidence the buy-bust money, an acquittal is in order. The CA held that contrary to the defense's averments, it is enough that the prosecution was able to present evidence that the transaction or sale actually took place, coupled with presentation in court of the *corpus delicti* as evidence. "What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence."[11] This has been complied with by the prosecution. As borne by the records, SPO2 Montederamos testified on the sale transaction and identified the *shabu* in court—SPO2 Montederamos identified Zacaria as the seller.

The CA averred that the fact that no money changed hands is not a fatal defect. There is no requirement that in buy-bust operations, there must be a simultaneous exchange of the marked money and the prohibited drug between the poseur-buyer and the pusher.

The failure to present the buy-bust money is likewise not fatal. "The marked money used in the buy-bust operation is not indispensable[,] but merely corroborative in nature. xxx Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation."[12]

With regard the arresting officers' failure to immediately conduct an inventory, take photographs, and conduct the same in Zacaria's presence or his representative, the CA held that the inventory and laboratory examination conducted on 17 May 2004 or two days after the arrest, which is beyond the 24-hour period required by law, were justifiable because the presence of a DOJ representative could not be met on the day of the arrest and the following days, being a Saturday and a Sunday. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items as these would be utilized in the determination of the guilt or innocence of the

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[11] *Id.* at 121.

[12] *Id.*

accused: (1) "When they arrived in the office, [SPO2 Montederamos] turned over the items to the Desk Officer, PO1 Malibiran, for recording; (2) After the recording, PO1 Malibiran returned the items to [SPO2 Montederamos] who then taped, initialed, wrote the name of the accused, and placed them inside a cellophane before placing them in his locker in their office; (3) The items were only brought out from the locker on May 17, 2004 for their inventory in the presence of Zacaria, an elected public official, a media man and the representative from the DOJ; (4) On the same date, the items were delivered to the PDEA Crime Laboratory in Davao City for examination; (5) The seized items from Zacaria tested positive for Methamphetamine Hydrochloride x x x."[13]

While the arresting officers failed to strictly comply with Section 21, the seized items were marked and kept to preserve their integrity before their inventory. There is nothing to indicate that the seized items were tampered.

Further, the positive identification of SPO2 Montederamos and PO1 Maglacion of the person of Zacaria as the seller and possessor of the seized items prevails over Zacaria's bare denials.

Finally, Zacaria's warrantless arrest as a product of a buy-bust operation is valid because he was caught *in flagrante delicto*.[14] And thus, the search and seizure pursuant to the valid warrantless arrest are also valid.[15]

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[13] *Id.* at 123.

[14] RULES OF COURT, Rule 113, Sec. 5 provides:

Section 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;

x x x x x x x x x

[15] RULES OF COURT, Rule 126, Sec. 13 provides:

Section 13. *Search incident to lawful arrest*. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. (12a)

Our Ruling

As correctly held by the lower courts, the elements of Section 5, Article II of R.A. No. 9165 or sale of illegal drugs: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it, are present. Also, the prosecution adequately established the existence of all the elements of the offense of illegal possession of dangerous drugs under Section 11, Article II of the same Act, to wit: (1) the accused is in possession of the object identified as a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

Finding no reversible error in the findings of fact and conclusions of law of the lower courts, the Court resolves to **AFFIRM** *in toto* the Decision of the Court of Appeals.

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision dated 24 May 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 00825-MIN affirming the conviction of **ESMAEL ZACARIA *y* WAGAS** by the Regional Trial Court of Davao City, Branch 9 in Criminal Case Nos. 54,425-2004 and 54,426-2004, which found him guilty beyond reasonable doubt of violation of Sections 5 (sale of illegal drugs) and 11 (possession of dangerous drugs), Article II of R.A. No. 9165, is **AFFIRMED** *in toto*. **ESMAEL ZACARIA *y* WAGAS** is therefore sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) for violation of Section 5, Article II, R.A. No. 9165 or sale of illegal drugs, and is therefore sentenced to suffer the penalty of Twelve (12) years and one (1) day to Twenty (20) years and a fine of Three Hundred Thousand Pesos (₱300,000.00) for violation of Section 11, Article II, R.A. No. 9165 or possession of dangerous drugs.

SO ORDERED.

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

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[*] In lieu of Associate Justice Francis H. Jardeleza, who takes no part, due to his prior action as Solicitor General per Raffle dated August 5, 2016.

THIRD DIVISION

[G.R. No. 219815. September 14, 2016]

J.O.S. MANAGING BUILDERS, INC. and EDUARDO B. OLAGUER, *petitioners, vs.* **UNITED OVERSEAS BANK PHILIPPINES (formerly known as Westmont Bank), EMMANUEL T. MANGOSING and DAVID GOH CHAI ENG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; MOTIONS; THREE-DAY NOTICE REQUIREMENT; WHEN THE ADVERSE PARTY HAD BEEN AFFORDED THE OPPORTUNITY TO BE HEARD, AS WELL AS TO HAVE TIME TO STUDY THE MOTION AND MEANINGFULLY OPPOSE OR CONTROVERT THE GROUNDS UPON WHICH IT IS BASED, THE PURPOSE BEHIND THE THREE-DAY NOTICE REQUIREMENT IS DEEMED REALIZED.— The general rule is that the three-day notice requirement in motions under Section 4 of the Rules is mandatory. It is an integral component of procedural due process. The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein. In *Cabrera v. Ng*, the facts of which are analogous to the present petition, we held that the three-day notice requirement is not a hard-and-fast rule. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority. x x x Thus, the test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. When the adverse party had been afforded such opportunity, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with.

2. ID.; ID.; MOTION TO DISMISS; THE PERIOD TO FILE A MOTION TO DISMISS DEPENDS UPON THE CIRCUMSTANCES OF THE CASE.— In *Obando v. Figueras*, we held that the period to file a motion to dismiss depends upon the circumstances of the case: x x x Section 1 of Rule 16 of the Rules of Court requires that, in general, a motion to dismiss should be filed within the reglementary period for filing a responsive pleading. Thus, a motion to dismiss alleging improper venue cannot be entertained unless made within that period. However, **even after an answer has been filed, the Court has allowed a defendant to file a motion to dismiss on the following grounds:** (1) lack of jurisdiction, (2) *litis pendentia*, (3) lack of cause of action, and **(4) discovery during trial of evidence that would constitute a ground for dismissal.** Except for lack of cause of action or lack of jurisdiction, the grounds under Section 1 of Rule 16 may be waived. If a particular ground for dismissal is not raised or if no motion to dismiss is filed at all within the reglementary period, it is generally considered waived under Section 1, Rule 9 of the Rules. x x x In the same manner, respondents' motion to dismiss was based on an event that transpired ***after*** it filed its Answer *Ad Cautelam*. Consequently, there was no violation of Section 1, Rule 16 of the Rules as they could not have possibly raised it as an affirmative defense in their answer.

3. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; PROCEEDINGS FOR INDIRECT CONTEMPT OF COURT REQUIRE NORMAL ADVERSARIAL PROCEDURES.— Section 5, Rule 71 of the Rules provides that where the charge for indirect contempt has been committed against a Regional Trial Court or a court of equivalent or higher rank, or against an officer appointed by it, the charge may be filed with such court. Here, the petition for indirect contempt was correctly filed with the RTC. The contempt case was however dismissed while it was only in the pre-trial stage and clearly before the parties could present their evidence. Proceedings for indirect contempt of court require normal adversarial procedures. It is not summary in character. The proceedings for the punishment of the contumacious act committed outside the personal knowledge of the judge generally need the observance of all the elements of due process of law, that is, notice, written charges, and an opportunity to deny and to defend such charges before guilt is adjudged and sentence imposed.

APPEARANCES OF COUNSEL

Nelson A. Clemente for petitioners.
Poblador Bautista & Reyes for respondents.

D E C I S I O N

JARDELEZA, *J.*:

Before us is a Petition for Review[1] assailing the October 7, 2014[2] and July 20, 2015[3] Orders of the Regional Trial Court (RTC) of Quezon City (RTC-QC), Branch 87 (RTC Br. 87) in Civil Case No. Q-11-69413. The first Order dismissed the petition for contempt filed by J.O.S. Managing Builders, Inc. (J.O.S.) and Eduardo B. Olaguer[4] (collectively, petitioners) against United Overseas Bank Philippines (UOBP), Emmanuel T. Mangosing and David Goh Chai Eng[5] (collectively, respondents) on the ground of mootness. The second Order expunged petitioners' motion for reconsideration of the October 7, 2014 Order from the record of the case due to violation of the three-day notice rule on motions.

Facts

On September 10, 1999, petitioners filed a Petition for Annulment of Extrajudicial Foreclosure Sale (annulment case) against UOBP and Atty. Ricardo F. De Guzman in RTC-QC.[6] The case was raffled to RTC-QC, Branch 98 (RTC Br. 98) and docketed as Civil Case No. Q-99-38701.[7] On May 17, 2000,

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[1] *Rollo*, pp. 22-41.

[2] *Id.* at 44-46; penned by Judge Aurora A. Hernandez-Calledo.

[3] *Id.* at 50-51.

[4] Olaguer is the President/Chief Executive Officer of J.O.S. *Id.* at 23.

[5] Mangosing and Goh Chai Eng are the President/Chief Executive Officer and Vice-President/Deputy General Manager, respectively, of UOBP. *Id.*

[6] Atty. De Guzman was the notary public who conducted the auction sale of the subject properties. *Rollo*, p. 62.

[7] *Id.* at 72.

RTC Br. 98 issued a writ of preliminary injunction (2000 writ) against respondents prohibiting them from: (a) consolidating title to the subject properties; and (b) committing any acts prejudicial to petitioners.[8] Eventually, on June 12, 2008, it also issued a decision annulling the extrajudicial foreclosure and public auction sale of the properties.[9] Respondents filed an appeal to the Court of Appeals (CA) docketed as CA-G.R. CV No. 92414.[10]

On May 5, 2008, while the annulment case was still pending, respondents sold the properties to Onshore Strategic Assets, Inc.[11] Thus, petitioners filed a Petition to Declare Respondents in Contempt of Court[12] (contempt case) in RTC-QC. The case was docketed as Civil Case No. Q-11-69413 and raffled to RTC, Branch 220 (RTC Br. 220). Petitioners averred that respondents' sale of the properties constitutes indirect contempt of court because it was done in violation of the 2000 writ issued by RTC Br. 98. Additionally, they prayed that respondents be ordered to pay actual, moral and exemplary damages including attorney's fees and cost of suit.

Respondents filed a Motion to Dismiss on the ground of failure to state a cause of action. They countered that the sale of the properties did not violate the 2000 writ because petitioners did not plead that the sale was prejudicial to them. Further, the petition did not allege that respondents consolidated title to the properties. RTC Br. 220 denied the motion to dismiss. Respondents moved for reconsideration, but it was denied.[13] They elevated the case to the CA via a petition for *certiorari*, but the CA also dismissed it.[14]

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[8] *Id.*

[9] *Id*. at 55.

[10] *Id.* at 117.

[11] *Id.* at 62.

[12] *Id.* at 53-60.

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

[14] *Id.* at 61-68. Docketed as CA-G.R. SP No. 128106; penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor P. Punzalan-Castillo and Florita S. Macalino, concurring.

Respondents then filed an Answer *Ad Cautelam*[15] in RTC Br. 220, contending that the 2000 writ merely prohibited UOBP from consolidating title to the properties and did not enjoin it from selling or transferring them to any person or entity.[16] Respondents also asserted that the sale is not prejudicial to the interest of petitioners because the 1997 Rules of Civil Procedure (the Rules) recognizes and allows transfers *pendente lite*.[17] By way of counterclaim, respondents prayed that petitioners be ordered to pay moral and exemplary damages and attorney's fees.[18]

In another turn of events, the contempt case was re-raffled to RTC Br. 87.[19] On May 8, 2014, respondents filed its second motion to dismiss.[20] They argued that the decision of RTC Br. 98 in the annulment case was reversed by the CA in its Decision dated November 28, 2013. They claimed that the CA's dismissal of the annulment case automatically dissolved or set aside the 2000 writ because a writ of preliminary injunction is merely ancillary to the main case.[21] Therefore, the contempt case which seeks to punish them for the alleged violation of the 2000 writ had become moot and academic.[22] Petitioners opposed the motion but RTC Br. 87, in its first assailed Order, granted respondent's motion and dismissed the case. It ruled that "the writ of preliminary injunction was rendered moot and academic with the [CA's dismissal of the annulment case] on the merits, which in effect automatically terminated the writ of preliminary injunction issued therein, even if an appeal is taken from said judgment."[23]

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[15] *Id.* at 89-97.

[16] *Id.* at 93.

[17] *Id.*

[18] *Id.* at 95-96.

[19] *Id.* at 114.

[20] Opposition To Declare Respondents in Default with Motion to Dismiss. *Id.* at 115-120.

[21] *Id.* at 117.

[22] *Id.* at 117-118.

[23] *Id.* at 46.

Petitioners filed a Motion for Reconsideration[24] (MR) of the order of dismissal. Respondents filed a Motion to Expunge[25] the MR on the ground that petitioners violated the three-day notice rule under Section 4, Rule 15 of the Rules. Respondents alleged that the hearing for petitioners' MR was set on November 7, 2014 but they received the notice only on November 6 or one (1) day before the scheduled hearing. In its second assailed Order, RTC Br. 87 granted respondent's motion to expunge.[26]

Petitioners now directly seek recourse to us via this petition for review on *certiorari* raising the following issues:

1. Whether RTC Br. 87 erred in expunging petitioners' MR from the record of the case;
2. Whether RTC Br. 87 erred in giving due course to respondents' motion to dismiss filed after their answer *ad cautelam*; and
3. Whether RTC Br. 87 erred in dismissing the contempt case on the ground of mootness.

Petitioners pray that we set aside the October 7, 2014 and July 20, 2015 Orders of RTC Br. 87, declare respondents guilty of contempt of court, and order them to pay damages.[27]

Our Ruling

We partially grant the petition and reverse the challenged Orders of RTC Br. 87.

At the outset, we find no merit in the claim of respondents that petitioners' direct resort to us violates the hierarchy of courts. Section 2(c), Rule 41 of the Rules provides that in all cases where only questions of law are raised or involved, the appeal shall be before us.[28] Petitioners question the grant of

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

[25] *Id.* at 128-132.

[26] *Id.* at 50-51.

[27] *Id.* at 38.

[28] See *Sevilleno v. Carilo*, G.R. No. 146454, September 14, 2007, 533 SCRA 385.

due course to respondents' motion to dismiss filed after the filing of their Answer *Ad Cautelam*, the grant of respondents' motion to dismiss the contempt case on the ground of mootness, and the grant of respondents' motion to expunge petitioners' MR on the ground of violation of the three-day notice rule. In order to resolve these issues, we need not examine or evaluate the evidence of the parties, but rely solely on what the law provides on the given set of undisputed facts.[29] Consequently, petitioners' remedy for assailing the correctness of the Orders of RTC Br. 87, involving as it does a pure question of law, indeed lies with us.[30]

RTC Br. 87 erred when it granted respondent's motion to expunge petitioner's MR from the records.

Section 4, Rule 15 of the Rules, provides that:

> Sec. 4. *Hearing of motion*. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

The general rule is that the three-day notice requirement in motions under Section 4 of the Rules is mandatory. It is an integral component of procedural due process. The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.[31]

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[29] See *Far Eastern Surety and Insurance Co., Inc. v. People*, G.R. No. 170618, November 20, 2013, 710 SCRA 358, 365.

[30] See *Dio v. Subic Bay Marine Exploratorium, Inc.,* G.R. No. 189532, June 11, 2014, 726 SCRA 244.

[31] See *Cabrera v. Ng*, G.R. No. 201601, March 12, 2014, 719 SCRA 199, 205.

In *Cabrera v. Ng*,[32] the facts of which are analogous to the present petition, we held that the three-day notice requirement is not a hard-and-fast rule. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority.[33] We ruled:

> It is undisputed that the hearing on the motion for reconsideration filed by the spouses Cabrera was reset by the RTC twice with due notice to the parties; it was only on October 26, 2007 that the motion was actually heard by the RTC. At that time, more than two months had passed since the respondent received a copy of the said motion for reconsideration on August 21, 2007. The respondent was thus given sufficient time to study the motion and to enable him to meet the arguments interposed therein. Indeed, the respondent was able to file his opposition thereto on September 20, 2007.
>
> Notwithstanding that the respondent received a copy of the said motion for reconsideration four days after the date set by the spouses Cabrera for the hearing thereof, his right to due process was not impinged as he was afforded the chance to argue his position. Thus, the RTC erred in denying the spouses Cabrera's motion for reconsideration based merely on their failure to comply with the three-day notice requirement.[34]

Thus, the test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.[35] When the adverse party had been afforded such opportunity, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with.[36]

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[32] G.R. No. 201601, March 12, 2014, 719 SCRA 199.

[33] *Id.* at 206.

[34] *Id.* at 207-208.

[35] *Id.* at 207.

[36] *Id.* at 206.

Here, respondents claimed to have actually received the notice for the November 7, 2014 hearing only on November 6, 2014.[37] On the supposed day of hearing, however, RTC Br. 87 issued a *Constancia*[38] resetting the hearing to December 5, 2014. Thereafter, on November 11, 2014, respondent filed a motion to expunge petitioners' MR.[39] Clearly, respondents' right to due process was not violated as they were able to oppose petitioner's MR in the form of their motion to expunge.

RTC Br. 87 did not err in giving due course to respondents' motion to dismiss.

Petitioners fault RTC Br. 87 for giving due course to respondents' motion to dismiss. Respondents filed their second motion to dismiss almost one (1) year and six (6) months after they submitted their Answer *Ad Cautelam*.[40] Thus, petitioners aver that respondents violated Section 1, Rule 16 of the Rules, stating that a motion to dismiss must be filed "within the time for but before filing the answer to the complaint or pleading asserting a claim."

Petitioners are incorrect. In *Obando v. Figueras*,[41] we held that the period to file a motion to dismiss depends upon the circumstances of the case:

> x x x Section 1 of Rule 16 of the Rules of Court requires that, in general, a motion to dismiss should be filed within the reglementary period for filing a responsive pleading. Thus, a motion to dismiss alleging improper venue cannot be entertained unless made within that period.
>
> However, **even after an answer has been filed, the Court has allowed a defendant to file a motion to dismiss on the following**

[37] *Rollo,* p. 155.

[38] *Id.* at 49.

[39] *Id.* at 50.

[40] The Answer *Ad Cautelam* was filed on November 27, 2012 (*id.* at 37) while the second motion to dismiss was filed on May 8, 2014 (*id.* at 115).

[41] G.R. No. 134854, January 18, 2000, 322 SCRA 148.

grounds: (1) lack of jurisdiction, (2) *litis pendentia*, (3) lack of cause of action, and **(4) discovery during trial of evidence that would constitute a ground for dismissal.** Except for lack of cause of action or lack of jurisdiction, the grounds under Section 1 of Rule 16 may be waived. If a particular ground for dismissal is not raised or if no motion to dismiss is filed at all within the reglementary period, it is generally considered waived under Section 1, Rule 9 of the Rules.

Applying this principle to the case at bar, the respondents did not waive their right to move for the dismissal of the civil case based on Petitioner Obando's lack of legal capacity. **It must be pointed out that it was only after he had been convicted of estafa through falsification that the probate court divested him of his representation of the Figueras estates. It was only then that this ground became available to the respondents. Hence, it could not be said that they waived it by raising it in a Motion to Dismiss filed after their Answer was submitted. Verily, if the plaintiff loses his capacity to sue during the pendency of the case, as in the present controversy, the defendant should be allowed to file a motion to dismiss, even after the lapse of the reglementary period for filing a responsive pleading.**[42] (Emphasis supplied.)

In the same manner, respondents' motion to dismiss was based on an event that transpired **after** it filed its Answer *Ad Cautelam*. Consequently, there was no violation of Section 1, Rule 16 of the Rules as they could not have possibly raised it as an affirmative defense in their answer.

While RTC Br. 87 did not err in giving due course to respondents' motion to dismiss, the propriety of granting it is an entirely different matter.

RTC Br. 87 erred when it dismissed the contempt case for being moot and academic.

In their motion to dismiss, respondents advance that the CA's reversal of RTC Br. 98's ruling is a supervening event that renders the contempt case moot and academic. They argue that it would now be absurd to restrain UOBP from exercising its rights under the Deed of Real Estate Mortgage when it was

[42] *Id.* at 156-157.

found to have proceeded lawfully in the foreclosure proceedings. Respondents maintain that it would be illogical to hold them in contempt for a lawful act.[43]

RTC Br. 87 agreed,[44] citing the cases of *Golez v. Leonidas*[45] and *Buyco v. Baraquia,*[46] where we held that a writ of preliminary injunction is deemed lifted upon dismissal of the main case, its purpose as a provisional remedy having been served, despite the filing of an appeal.

We are not persuaded. A case is moot when it ceases to present a justiciable controversy by virtue of supervening events so that a declaration thereon would be of no practical value.[47] Courts decline jurisdiction over it as there is no substantial relief to which petitioner will be entitled and which will anyway be negated by the dismissal of the petition.[48] Here, the consequent dissolution of the 2000 writ did not render the contempt case moot and academic. Foremost, RTC Br. 87's reliance in *Golez* and *Buyco* is misplaced. As correctly pointed out by petitioners, the facts and circumstances in the two cases differ from the present petition. In *Golez* and *Buyco*, the alleged acts in violation of the writ of preliminary injunction were committed AFTER the writ was lifted upon the dismissal of the main action, such that a case for contempt on the ground of violation of the writ would be unavailing. In the case before us, the sale of the properties—which is the act alleged to be in violation of the 2000 writ—was conducted while the 2000 writ was still

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[43] *Rollo*, p. 118.

[44] *Id.* at 45.

[45] G.R. No. 56587, August 31, 1981, 107 SCRA 187.

[46] G.R. No. 177486, December 21, 2009, 608 SCRA 699.

[47] *Mendoza v. Villas*, G.R. No. 187256, February 23, 2011, 644 SCRA 347, 356-357, citing *Gunsi, Sr. v. Commissioners, The Commission on Elections*, G.R. No. 168792, February 23, 2009, 580 SCRA 70, 76.

[48] *Philippine Ports Authority v. Coalition of PPA Officers and Employees*, G.R. No. 203142, August 26, 2015, 768 SCRA 280, 293, citing *Korea Exchange Bank v. Gonzales,* G.R. No. 139460, March 31, 2006, 486 SCRA 166, 176.

subsisting. In fact, the 2000 writ was issued on May 17, 2000, while the sale was made on May 5, 2008. RTC Br. 98 annulled the sale in favor of petitioners on June 12, 2008.[49]

The reversal by the CA of the ruling of RTC Br. 98 in the annulment case and the automatic dissolution of the 2000 writ will **not** protect respondents from an action ascribing a violation of the 2000 writ, which was committed while it was still in full force and effect. In *Lee v. Court of Appeals*,[50] we explained that:

> An injunction or restraining order which is not void must be obeyed while it remains in full force and effect, and has not been overturned, that is, in general, until the injunction or restraining order has been set aside, vacated, or modified by the court which granted it, or until the order or decree awarding it has been reversed on appeal or error. The injunction must be obeyed irrespective of the ultimate validity of the order, and no matter how unreasonable and unjust the injunction may be in its terms. Defendant cannot avoid compliance with the commands, or excuse his violation, of the injunction by simply moving to dissolve it, or by the pendency of a motion to modify it. The fact that an injunction or restraining order has been dissolved or terminated, or has expired, does not necessarily protect a person in a proceeding against him for a violation of the injunction or order while it was in force, as by acts between granting of the injunction and its termination, at least where the proceeding is one to punish for a criminal contempt.[51]

Notably, this is **not** to say that respondents are already guilty of indirect contempt. Whether respondents violated the 2000 writ is not for us to decide. Section 5, Rule 71 of the Rules provides that where the charge for indirect contempt has been committed against a Regional Trial Court or a court of equivalent or higher rank, or against an officer appointed by it, the charge may be filed with such court. Here, the petition for indirect contempt was correctly filed with the RTC. The contempt case was however dismissed while it was only in the pre-trial stage and clearly before the parties could present their evidence.

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[49] *Rollo*, p. 55.

[50] G.R. No. 147191, July 27, 2006, 496 SCRA 668.

[51] *Id.* at 687-688.

Proceedings for indirect contempt of court require normal adversarial procedures. It is not summary in character. The proceedings for the punishment of the contumacious act committed outside the personal knowledge of the judge generally need the observance of all the elements of due process of law, that is, notice, written charges, and an opportunity to deny and to defend such charges before guilt is adjudged and sentence imposed.[52]

In this regard, we cannot grant petitioners' prayer to declare respondents guilty of contempt of court and order them to pay damages.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The October 7, 2014 and July 20, 2015 Orders of the Regional Trial Court of Quezon City, Branch 87 in Civil Case No. Q-11-69413 are hereby **REVERSED**. The case is **REMANDED** to the court *a quo* for continuance of the trial of the case.

SO ORDERED.

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

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[52] *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, G.R. No. 155849, August 31, 2011, 656 SCRA 331, 345, citing *Provenzale v. Provenzale*, 90 N.E. 2d 115, 339 Ill. App. 345; *People ex rel. Andrews v. Hassakis*, 129 N.E. 2d 9, 6 Ill. 2d 463; *Van Sweringen v. Van Sweringen*, 126 A. 2d 334, 22 N.J. 440, 64 A.L.R. 2d 593; *Ex parte Niklaus*, 13 N.W. 2d 655, 144 Neb. 503; *People ex rel. Clarke v. Truesdell*, 79 N.Y.S. 2d 413.

FIRST DIVISION

[G.R. No. 221047. September 14, 2016]

MICHAEL A. ONSTOTT, *petitioner, vs.* **UPPER TAGPOS NEIGHBORHOOD ASSOCIATION, INC.,** *respondent*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; JURISDICTION OVER THE DEFENDANTS IN A CIVIL CASE IS ACQUIRED EITHER THROUGH SERVICE OF SUMMONS UPON THEM OR THROUGH THEIR VOLUNTARY APPEARANCE IN COURT AND THEIR SUBMISSION TO ITS AUTHORITY; CONCEPT OF CONDITIONAL APPEARANCE, EXPLAINED.— Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority. In *Philippine Commercial International Bank v. Spouses Dy Hong Pi*, it was ruled that "[a]s a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, *for reconsideration of a default judgment*, and to lift order of default with motion for reconsideration, is considered *voluntary submission* to the court's jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. Prescinding from the foregoing, it is thus clear that: (1) Special appearance operates as an exception to the general rule on voluntary appearance; (2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, *i.e.*, set forth in an unequivocal manner; and (3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution."

2. CIVIL LAW; CIVIL CODE; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; PROOF OF ACQUSITION DURING THE COVERTURE IS A CONDITION *SINE QUA NON* FOR THE OPERATION OF THE PRESUMPTION IN FAVOR OF THE CONJUGAL PARTNERSHIP.— Article 160 of the New Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership, unless it is proved that it pertains exclusively to the husband or to the wife. However, the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage. Proof of acquisition *during* the coverture is a condition *sine qua non* for the operation of the presumption in favor of the conjugal partnership. The party who asserts this presumption must first prove the said time element. Needless to say, **the presumption refers only to the property acquired during the marriage and does not operate when there is no showing as to when the property alleged to be conjugal was acquired**. Moreover, this presumption in favor of conjugality is rebuttable, but only with strong, clear and convincing evidence; there must be a strict proof of exclusive ownership of one of the spouses.

3. POLITICAL LAW; REPUBLIC ACT 7160 (LOCAL GOVERNMENT CODE OF 1991); TAX DELINQUENCY PUBLIC AUCTION; MERE USE OR POSSESSION ALONE DOES NOT VEST THE OCCUPANTS OF THE SUBJECT PROPERTY WITH LEGAL INTEREST SUFFICIENT TO CLOTHE THEM LEGAL PERSONALITY TO REDEEM THE SUBJECT PROPERTY FROM THE HIGHEST BIDDER AT THE TAX DELINQUENCY PUBLIC AUCTION SALE; CASE AT BAR.— With respect, however, to the question of whether UTNAI has *legal interest* to redeem the subject property from the highest bidder at the tax delinquency public auction sale, the Court finds that the CA erred in its disquisition. Section 261 of RA 7160 provides: Section 261. *Redemption of Property Sold*. – **Within one (1) year from the date of sale, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax**. x x x "Legal interest" is defined as interest in property or a claim cognizable at law, *equivalent to that of a legal owner who has legal title to the property*. It must be one that is actual

and material, direct and immediate, not simply contingent or expectant. Moreover, although the taxable person who has actual and beneficial use and possession of a property may be charged with the payment of unpaid realty tax due thereon, such assumption of liability does not clothe the said person with the legal title or interest over the property. In this case and based on the above-given definition, UTNAI, whose members are the *occupants* of the subject property, has no *legal interest* to redeem the same. Mere use or possession of the subject property alone does not vest them with legal interest therein sufficient to clothe them with the legal personality to redeem it, in accordance with Section 261 above-quoted. To rule otherwise would be to defeat the true owner's rights by allowing lessees or other occupants of a property to assert ownership by the simple expedient of redeeming the same at a tax delinquency sale. Consequently, UTNAI's redemption of the subject property as well as the issuance of a Certificate of Redemption in its favor was erroneous. Since the redemption is of no legal effect, the said Certificate of Redemption must therefore be cancelled, without prejudice to the right of UTNAI to recover the full amount of the redemption price paid by it in the appropriate proceeding therefor.

APPEARANCES OF COUNSEL

Abbas Alejandro-Abbas Francisco for petitioner.
Leo B. Deocampo for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 7, 2015 and the Resolution[3] dated

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

[2] *Id*. at 34-45. Penned by Associate Justice Sesinando E. Villon with Associate Justices Rodil V. Zalameda and Carmelita Salandanan Manahan concurring.

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

October 8, 2015 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 98383, which reversed and set aside the Order[4] dated January 3, 2012 of the Regional Trial Court of Binangonan, Rizal, Branch 67 (RTC), insofar as it ordered the Register of Deeds of Binangonan, Rizal to cancel Transfer Certificate of Title (TCT) No. B-9655 in the name of respondent Upper Tagpos Neighborhood Association, Inc. (UTNAI) and to reinstate Original Certificate of Title (OCT) No. (-2645-) M-556 in the name of Albert W. Onstott (Albert).

The Facts

Albert, an American citizen, was the registered owner of a parcel of land with an approximate area of 18,589 square meters, covered by OCT No. (-2645-) M-556[5] situated in the Province of Rizal (subject property). Due to non-payment of realty taxes, the Provincial Government of Rizal sold the subject property at public auction to one Amelita A. De Sena (De Sena), the highest bidder, as evidenced by the Certificate of Sale[6] dated June 29, 2004.[7] Respondent UTNAI, an association representing the actual occupants of the subject property, subsequently redeemed[8] the same from De Sena.[9]

Thereafter, or on March 31, 2008, UTNAI filed a complaint[10] for cancellation of OCT No. (-2645-) M-556 and for the issuance of a new title in its name before the RTC against Albert and Federico M. Cas (Cas), the Register of Deeds for the Province of Rizal.[11] It alleged, among others, that it became the owner of the subject property upon redemption thereof from De Sena and that, consequently, it must be issued a new title. Moreover,

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[4] *Id*. at 145-146. Penned by Presiding Judge Dennis Patrick Z. Perez.

[5] *Id*. at 53-54-A.

[6] *Id*. at 76.

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

[8] See Certificate of Redemption, *id*. at 121.

[9] *Id*. at 35.

[10] *Id*. at 49-52.

[11] *Id*. at 35.

Albert was an American citizen who, under Philippine law, is not allowed to own a parcel of land in the Philippines.[12]

Efforts to serve summons upon Albert proved futile as he was not a resident of the Philippines. Thus, summons was served through publication.[13] Nonetheless, Albert still failed to file his answer. Hence, upon the motion of UTNAI, Albert was declared in default and UTNAI was allowed to present evidence *ex parte*.[14]

The RTC Ruling and Subsequent Proceedings

In a Decision[15] dated March 30, 2009, the RTC found that UTNAI was able to prove, by a preponderance of evidence, that it is the owner of the subject property after having legally redeemed the same from De Sena, the highest bidder at a public auction. Accordingly, it directed Cas to: (1) annotate its Decision on OCT No. (-2645-) M-556; (2) cancel the same; and (3) issue a new title in the name of UTNAI.[16]

In an Order[17] dated June 16, 2009, the RTC clarified that its March 30, 2009 Decision directing the cancellation of OCT No. (-2645-) M-556 and the issuance of a new one in its stead in the name of UTNAI necessarily includes a declaration that the owner's duplicate copy of OCT No. (-2645-) M-556 is void and of no effect.

The RTC Decision lapsed into finality. As a consequence, TCT No. B-9655 was issued in favor of UTNAI.[18]

On August 26, 2009, herein petitioner Michael Onstott (Michael), claiming to be the legitimate son[19] of Albert with a

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[12] *Id*. at 50.

[13] See Order dated July 9, 2008, *id*. at 64; See also pp. 67-72.

[14] *Id*. at 35.

[15] *Id*. at 80. Penned by Presiding Judge Dennis Patrick Z. Perez.

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

[17] See CA Decision, *id*. at 36-37.

[18] *Id*. at 36.

[19] See Certificate of Birth; *id*. at 109.

certain Josephine Arrastia Onstott (Josephine) filed a Petition for Relief from Judgment (Petition for Relief),[20] alleging that UTNAI, in its complaint, impleaded only Albert, notwithstanding knowledge of the latter's death.[21] He averred that, as parties to the case, UTNAI fraudulently and intentionally failed to implead him and Josephine in order to prevent them from participating in the proceedings and to ensure a favorable judgment.[22] He contended that his mother Josephine was an indispensable party to the present case, being the owner of half of the subject property, which he claimed to be conjugal in nature.[23] Moreover, he argued that UTNAI had no legal personality to redeem the subject property as provided for in Section 261[24] of Republic Act No. (RA) 7160, otherwise known as the "Local Government Code of 1991."[25]

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[20] *Id.* at 81-89.

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

[22] *Id.* at 83.

[23] *Id.*

[24] Section 261. *Redemption of Property Sold.* – Within one (1) year from the date of sale, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have the right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax, including the interest due thereon, and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the purchase price from the date of sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy.

From the date of sale until the expiration of the period of redemption, the delinquent real property shall remain in possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof.

The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Thereafter, the property shall be free from the lien of such delinquent tax, interest due thereon and expenses of sale.

[25] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," approved on October 10, 1991.

Later, Michael filed an Omnibus Motion:[26] (1) to recall and/or set aside the Certification of Finality of Judgment; (2) to set aside the Order dated June 16, 2009; and (3) to cancel TCT No. B-9655 and reinstate OCT No. (-2645-) M-556. He maintained that, based on the records, the Decision dated March 30, 2009 of the RTC was not served upon the defendant, Albert, by publication, as required under Section 9,[27] Rule 13 of the Rules of Court; hence, the same has not yet attained finality.[28] Accordingly, the Certification of Finality of the said Decision was prematurely issued and must therefore be set aside.[29] In addition, TCT No. B-9655 in favor of UTNAI must be cancelled and OCT No. (-2645-) M-556 in the name of Albert should be reinstated.

Treating the Petition for Relief as a motion for reconsideration[30] of its Decision, the RTC, in an Order[31] dated January 3, 2012, denied the same and ruled that UTNAI, having legal interest in the subject property and having redeemed the same from the highest bidder in a tax auction, must be issued a new title in its name. It added that the matters raised by Michael are best ventilated in a separate case for reconveyance. However, while the RTC denied the petition, it found that its March 30, 2009 Decision never attained finality for not having been served upon Albert by publication in accordance with Section 9, Rule 13 of the Rules of Court. Thus, the issuance of the certificate of finality was erroneous. Consequently, the cancellation of OCT No. (-2645-) M-556 in Albert's name and the issuance of

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[26] *Rollo*, pp. 90-93.

[27] Section 9. *Service of judgments, final orders or resolutions*. – Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

[28] *Rollo*, p. 91.

[29] *Id.* at 91-92.

[30] See Order dated December 28, 2009; *rollo*, p. 104.

[31] *Id.* at 145-146. Penned by Presiding Judge Dennis Patrick Z. Perez.

TCT No. B-9655 in UTNAI's name were premature; hence, it directed the Register of Deeds to cancel TCT No. B-9655 and to reinstate OCT No. (-2645-) M-556.[32]

Dissatisfied, both parties separately appealed[33] to the CA. In its appeal, UTNAI ascribed error to the RTC in finding that its March 30, 2009 Decision never attained finality for failure to publish the same and that it also erred in declaring that the cancellation of OCT No. (-2645-) M-556 in Albert's name and the issuance of TCT No. B-9655 in its name were premature.[34]

On the other hand, Michael insisted that at the time of the filing of the instant case in 2008, Albert was already dead, which means that the ownership of the subject property had already devolved to his compulsory heirs. Consequently, the latter should have been impleaded as defendants, failing which, the Decision rendered by the RTC was null and void for lack of jurisdiction. Moreover, he asserted that his mother Josephine was an indispensable party to this case, being a compulsory heir and the owner of the half portion of the subject property, which he claimed was conjugal in nature. He reiterated that UTNAI had no legal interest to redeem the subject property.[35]

The CA Ruling

In a Decision[36] dated May 7, 2015, the CA found UTNAI's appeal meritorious. Although it found that the March 30, 2009 Decision of the RTC did not attain finality, not having been served upon Albert by publication, the CA also held that UTNAI was entitled to the issuance of a new title in its name as a matter of right. It concurred with UTNAI's contention that the cancellation of Albert's OCT No. (-2645-) M-556 is the direct

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[32] *Id*.

[33] See Appellant's Brief dated October 30, 2012 *id*. at 147-184; See Appellee's Brief dated January 17, 2013; *id*. at 187-199.

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

[35] *Id*. at 39.

[36] *Id*. at 34-45.

legal consequence of UTNAI's redemption of the subject property from the highest bidder at the public auction sale. Thus, as the absolute owner of the subject property, UTNAI has the right to be placed in possession thereof following the consolidation of ownership in its name and the issuance of the corresponding title.[37]

On the other hand, the CA dismissed Michael's appeal and rejected his theory that his mother Josephine was an indispensable party to the complaint filed by UTNAI against Albert. It found that the subject property was registered in the name of "Albert Onstott, American citizen, married to Josephine Arrastia" which is merely descriptive of the civil status of Albert and does not show that Josephine co-owned the subject property. Hence, contrary to Michael's stance, the subject property was not conjugal in nature and it cannot be presumed to be conjugal in the absence of evidence showing that it was acquired during their marriage.[38]

Furthermore, the CA pointed out that if Michael were indeed Albert's compulsory heir, he could have transferred the subject property in his name by right of succession upon his father's death, or redeemed the same in 2005 after it was sold at public auction in 2004, or intervened in the proceedings before the RTC. Having failed to avail of any of the said legal remedies, he can no longer claim ownership of the subject property by the simple expedient of filing a petition for relief. Parenthetically, considering that the March 30, 2009 Decision of the RTC had not yet attained finality as of the filing of said petition for relief, the same was without legal basis.[39]

Meanwhile, it appears that UTNAI published a copy of the March 30, 2009 Decision of the RTC for two (2) consecutive weeks in a newspaper of general circulation.[40]

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

[38] *Id.* at 41-43.

[39] *Id.* at 43-44.

[40] *Id.* at 22.

In view of its findings, the CA reversed and set aside the Order dated January 3, 2012 rendered by the RTC, insofar as it directed the Register of Deeds to cancel TCT No. B-9655 issued in UTNAI's name and reinstate OCT No. (-2645-) M-556 in the name of Albert. It likewise declared the March 30, 2009 Decision of the RTC final and executory.[41]

Michael's motion for reconsideration[42] was denied in a Resolution[43] dated October 8, 2015; hence, this petition.

The Issue Before the Court

The issue to be resolved by the Court is whether or not the CA erred in directing the issuance of a title in favor of UTNAI notwithstanding (*a*) the lack of jurisdiction over the person of Albert, the registered owner of the subject property who has been dead prior to the institution of UTNAI'S complaint; (*b*) the failure to implead his mother, Josephine, as an indispensable party, since the subject property was allegedly conjugal in nature; and (*c*) the lack of legal interest on the part of UTNAI to redeem the subject property.

The Court's Ruling

The petition is partly meritorious.

Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority.[44]

In *Philippine Commercial International Bank v. Spouses Dy Hong Pi*,[45] it was ruled that "[a]s a general proposition, one

[41] *Id.* at 44.

[42] *Id.* at 262-273.

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

[44] *Chu v. Mach Asia Trading Corporation*, 707 Phil. 284, 290 (2013).

[45] 606 Phil. 615 (2009), cited in *Reicon Realty Builders Corp. v. Diamond Dragon Realty and Management, Inc.*, G.R. No. 204796, February 4, 2015, 750 SCRA 37, 52-53.

who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, *for reconsideration of a default judgment*, and to lift order of default with motion for reconsideration, is considered *voluntary submission* to the court's jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. Prescinding from the foregoing, it is thus clear that:

> (1) Special appearance operates as an exception to the general rule on voluntary appearance;
>
> (2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, *i.e.*, set forth in an unequivocal manner; and
>
> (3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution."[46]

In this case, records show that Albert, the defendant in UTNAI's complaint, died in the United States of America in 2004.[47] Thus, on the strength of his right as Albert's compulsory heir who has an interest in the subject property, Michael filed the Petition for Relief before the RTC, assailed the proceedings therein for failure to implead him and his mother, Josephine, as an indispensable party, and sought affirmative relief, *i.e.,* the reversal of the RTC's March 30, 2009 Decision and the reinstatement of OCT No. (-2645-) M-556.[48] The RTC, holding that its own Decision never attained finality for failure to publish the same, treated the Petition for Relief as a motion for reconsideration and after due proceedings, ruled upon its merits.

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[46] *Id.* at 633-634. Emphasis supplied.

[47] *Rollo*, p. 110.

[48] See Petition for Relief; *id.* at 82.

Based on the foregoing factual milieu, the Court finds that although it may be true that jurisdiction was not initially acquired over the person of the defendant,[49] *i.e.,* Albert in this case – whose death, notably, was never brought to the attention of the RTC until after it rendered judgment – the defect in the lack of jurisdiction over his person was effectively cured by the *voluntary appearance* of his successor-in-interest/compulsory heir, Michael, who sought affirmative relief before the RTC through the filing of the Petition for Relief which the RTC treated as a motion for reconsideration of its judgment. Michael voluntarily submitted to the jurisdiction of the RTC when, without any qualification, he directly and squarely challenged the RTC's March 30, 2009 Decision as aforementioned. Having sought positive relief from an unfavorable judgment, the RTC, therefore, acquired jurisdiction over his person, and the due process requirements of the law have been satisfied.

That the RTC Decision was null and void for failure to implead an indispensable party, Josephine, on the premise that the subject property is conjugal in nature, is likewise specious. Michael posits that Josephine, being Albert's wife, was entitled to half of the portion of the subject property, which was registered as "Albert Onstott, American citizen, married to Josephine Arrastia."

The Court is not convinced.

Article 160 of the New Civil Code[50] provides that all property of the marriage is presumed to belong to the conjugal partnership, unless it is proved that it pertains exclusively to the husband or to the wife. However, the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage. Proof of acquisition *during* the coverture is a condition *sine qua non* for the operation of the presumption in favor of the conjugal partnership. The party who asserts this presumption must first prove the said time element. Needless to say, **the presumption refers only to the property acquired**

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[49] See *Boston Equity Resources, Inc. v. CA*, 711 Phil. 451, 467 (2013).

[50] The law which would apply to Albert and Josephine's alleged marriage as may be inferred from the *rollo*, p. 112.

during the marriage and does not operate when there is no showing as to when the property alleged to be conjugal was acquired. Moreover, this presumption in favor of conjugality is rebuttable, but only with strong, clear and convincing evidence; there must be a strict proof of exclusive ownership of one of the spouses.[51]

As Michael invokes the presumption of conjugality, he must first establish that the subject property was acquired during the marriage of Albert and Josephine, failing in which, the presumption cannot stand. Indeed, records are bereft of any evidence from which the actual date of acquisition of the subject property can be ascertained. Considering that the presumption of conjugality does not operate if there is no showing when the property alleged to be conjugal was acquired,[52] the subject property is therefore considered to be Albert's exclusive property. Consequently, Michael's insistence that Josephine – who, the Court notes, has never personally appeared in these proceedings to directly challenge the disposition of the subject property *sans* her participation – is a co-owner thereof and necessarily, an indispensable party to the instant case, must therefore fail.

With respect, however, to the question of whether UTNAI has *legal interest* to redeem the subject property from the highest bidder at the tax delinquency public auction sale, the Court finds that the CA erred in its disquisition. Section 261 of RA 7160 provides:

> Section 261. *Redemption of Property Sold*. – **Within one (1) year from the date of sale, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax**, including the interest due thereon, and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the purchase price from the date of the sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property

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[51] *Dela Peña v. Avila, Co.*, 681 Phil. 553, 563-564 (2012).

[52] *Spouses Go v. Yamane*, 522 Phil. 653, 663 (2006).

or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy.

From the date of sale until expiration of the period of redemption, the delinquent real property shall remain in the possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof.

The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Thereafter, the property shall be free from the lien of such delinquent tax, interest due thereon and expenses of sale. (Emphasis supplied)

"Legal interest" is defined as interest in property or a claim cognizable at law, *equivalent to that of a legal owner who has legal title to the property.*[53] It must be one that is actual and material, direct and immediate, not simply contingent or expectant.[54] Moreover, although the taxable person who has actual and beneficial use and possession of a property may be charged with the payment of unpaid realty tax due thereon, such assumption of liability does not clothe the said person with the legal title or interest over the property.[55]

In this case and based on the above-given definition, UTNAI, whose members are the *occupants* of the subject property, has no *legal interest* to redeem the same. Mere use or possession of the subject property alone does not vest them with legal interest therein sufficient to clothe them with the legal personality to redeem it, in accordance with Section 261 above-quoted. To rule otherwise would be to defeat the true owner's rights by allowing lessees or other occupants of a property to assert ownership by the simple expedient of redeeming the same at a tax delinquency sale. Consequently, UTNAI's redemption of the subject property as well as the issuance of a Certificate

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[53] *National Power Corp. v. Province of Quezon*, 624 Phil. 738, 748 (2010).

[54] *Id*. at 745, citing *Cariño v. Ofilada*, G.R. No. 102836, January 18, 1993, 217 SCRA 206, 216.

[55] *Id*. at 751.

of Redemption[56] in its favor was erroneous. Since the redemption is of no legal effect, the said Certificate of Redemption must therefore be cancelled, without prejudice to the right of UTNAI to recover the full amount of the redemption price paid by it in the appropriate proceeding therefor.

As things stand, UTNAI's redemption should be deemed void for being contrary to law. As a result, all proceedings springing from the redemption ought to be nullified[57] and the *status quo* prior thereto should revert. Thus, as previously stated, UTNAI may recover the full amount it had paid for the redemption of the property subject of the public auction in the appropriate proceeding therefor. In the same vein, De Sena and the Provincial Government of Rizal, who have not been impleaded as parties in this case, may commence the appropriate proceedings to assert their rights under the law consequent to this disposition.

WHEREFORE, the petition is **PARTLY GRANTED**. The Certificate of Redemption issued by the Provincial Treasurer of the Provincial Government of Rizal in favor of respondent Upper Tagpos Neighborhood Association, Inc. is hereby declared **VOID** and of no legal effect, and Transfer Certificate of Title No. B-9655 issued in the latter's name shall be permanently **CANCELLED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, and *Caguioa, JJ.,* concur.

Bersamin, J., on official leave.

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[56] *Rollo*, p. 121.

[57] "All proceedings founded on the void judgment [or act] are themselves regarded as invalid. In other words, a void judgment [or act] is regarded as a nullity, and the situation is the same as it would be if there were no judgment [or act]. It, accordingly, leaves the parties litigants in the same position they were in before x x x" (*Republic v. CA*, 368 Phil. 412, 425 [1999]; words in brackets supplied.)

"All acts performed under a void order or judgment and all claims flowing out of it are also void, for like the spring that cannot rise above its source, a void order cannot create a valid and legally enforceable right." (*Caro v. CA*, 242 Phil. 1, 7 [1988].)

FIRST DIVISION

[G.R. No. 221241. September 14, 2016]

MARIO N. FELICILDA, *petitioner, vs.* **MANCHESTEVE H. UY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO JUSTIFY THE GRANT OF THE EXTRAORDINARY REMEDY OF *CERTIORARI*, PETITIONER MUST SATISFACTORILY SHOW THAT THE COURT OR QUASI-JUDICIAL AUTHORITY GRAVELY ABUSED THE DISCRETION CONFERRED UPON IT.—** To justify the grant of the extraordinary remedy of *certiorari*, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST; THE POWER OF THE EMPLOYER TO CONTROL THE WORK OF THE EMPLOYEE IS CONSIDERED THE MOST SIGNIFICANT DETERMINANT OF THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP.—** To ascertain the existence of an employer-employee relationship, jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." Verily, the power of the employer to control the work of the employee is considered the most

significant determinant of the existence of an employer-employee relationship. This is the so-called "control test," and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end. It must, however, be stressed that the "control test" merely calls for the existence of the right to control, and not necessarily the exercise thereof. To be clear, the test does not require that the employer actually supervises the performance of duties by the employee.

3. ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; FOR A DISMISSAL TO BE VALID, THE RULE IS THAT THE EMPLOYER MUST COMPLY WITH BOTH THE SUBSTANTIVE AND PROCEDURAL DUE PROCESS; VIOLATION IN CASE AT BAR.— For a dismissal to be valid, the rule is that the employer must comply with both the substantive and procedural due process requirements. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 297, 298, and 299 (formerly Articles 282, 283, or 284) of the Labor Code, as amended. Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected. In this case, suffice it to say that aside from respondent's averment that petitioner committed "serious transgressions and misconduct" resulting in the former's loss of trust and confidence, no other evidence was shown to substantiate the same. Such averment should be properly deemed as a self- serving assertion that deserves no weight in law. Neither was petitioner accorded procedural due process as he was merely informed by respondent's helper that he was already terminated from his job. Clearly, respondent illegally dismissed petitioner, and as such, the latter is entitled to backwages and separation pay in lieu of reinstatement, as correctly ruled by the labor tribunals.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Cesar B. Jimenea, Jr. 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 July 10, 2015 and the Resolution[3] dated October 21, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 129784, which set aside the Decision[4] dated November 16, 2012 and the Resolution[5] dated February 28, 2013 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 08-002277-12 / NLRC NCR Case No. 12-18409-11 and, instead, dismissed Mario N. Felicilda's (petitioner) complaint for illegal dismissal with money claims for lack of merit.

The Facts

Petitioner alleged that on October 29, 2010, respondent Manchesteve H. Uy (respondent) hired him as a truck driver for the latter's trucking service under the business name "Gold Pillars Trucking"[6] (GPT). In connection therewith, petitioner was issued a company identification card (ID), assigned in one of GPT's branches in Manila, and paid on a percentage basis.[7] On December 9, 2011, petitioner took a nap at the work station while waiting for his truck to be loaded with cargoes, all of which were delivered to respondent's clients on schedule. The next day, or on December 10, 2011, respondent's helper told

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[1] *Rollo*, pp. 11-24.

[2] *Id*. at 31-41. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion concurring.

[3] *Id*. at 43-44.

[4] *Id*. at 56-62. Penned by Commissioner Perlita B. Velasco with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go concurring.

[5] *Id*. at 63-64.

[6] "Goldpillars Trucking" or "Gold Pellars Trucking" in some parts of the *rollo*.

[7] *Rollo*, pp. 32. See also *id*. at 56-57.

petitioner that his employment was already terminated due to his act of sleeping while on the job.[8] Claiming that he was dismissed without just cause and due process, and that his act of taking a nap did not prejudice respondent's business, petitioner filed a complaint[9] for illegal dismissal with money claims against respondent, before the NLRC, docketed as NLRC NCR Case No. 12-18409-11.[10]

In his defense,[11]respondent denied the existence of an employer-employee relationship between him and petitioner, considering that petitioner was: (*a*) paid merely on a per trip "percentage" basis and was not required to regularly report for work; (*b*) free to offer his services to other companies; and (*c*) not under respondent's control with respect to the means and methods by which he performed his job as a truck driver. Respondent added that petitioner's company ID did not indicate that the latter was his employee, but only served the purpose of informing the GPT's clients that petitioner was one of respondent's authorized drivers. Finally, respondent averred that it no longer engaged petitioner's services due to the latter's "serious transgressions and misconduct."[12]

The Labor Arbiter's Ruling

In a Decision[13] dated June 29, 2012, the Labor Arbiter (LA) ruled in petitioner's favor and, accordingly, ordered respondent to pay the aggregate sum of ₱80,145.52 representing his backwages and separation pay.[14]

Finding that petitioner's service as truck driver was indispensable to respondent's business operations, the LA

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[8] *Id*. at 32 and 57.

[9] Dated December 12, 2011; *id*. at 65-67.

[10] See petitioner's Position Paper dated March 19, 2012; *id*. at 73.

[11] See respondent's Position Paper dated February 28, 2012; *id*. at 80-84.

[12] See *id*. at 33 and 57.

[13] *Id*. at 93-100. Penned by Labor Arbiter Virginia T. Luyas-Azarraga.

[14] *Id*. at 100.

concluded that petitioner was respondent's regular employee and, thus, may only be dismissed for just or authorized cause and with due process. Absent any showing of a clear and valid cause to terminate petitioner's employment, respondent was, therefore, guilty of illegal dismissal.[15]

Aggrieved, respondent appealed[16] to the NLRC, docketed as NLRC LAC No. 08-002277-12.

The NLRC Ruling

In a Decision[17] dated November 16, 2012, the NLRC affirmed the LA ruling. It ruled that an employer-employee relationship existed between the parties, considering that: (*a*) respondent engaged petitioner's services without the aid of a third party or a manpower agency; (*b*) the payment of wages on a percentage basis did not negate such existence; (*c*) respondent's power to dismiss petitioner was inherent in his selection and engagement of the latter as truck driver; and (*d*) respondent exercised control and supervision over petitioner's work as shown in the former's determination of the latter's delivery areas and schedules.[18] Considering that respondent failed to show a lawful cause for petitioner's dismissal, the NLRC sustained the order of payment of monetary awards in petitioner's favor.[19]

Respondent moved for reconsideration,[20]but was denied in a Resolution[21] dated February 28, 2013. Undaunted, respondent filed a petition for *certiorari*[22] before the CA.

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[15] See *id*. at 98-99.

[16] See Memorandum of Appeal dated August 3, 2012; *id*. at 101-106.

[17] *Id*. at 56-62.

[18] See *id*. at 58-59.

[19] *Id*. at 60-61.

[20] See motion for reconsideration dated December 11, 2012; *id*. at 108-111.

[21] *Id*. at 63-64.

[22] Dated May 1, 2013. *Id*. at 45-53.

The CA Ruling

In a Decision[23] dated July 10, 2015, the CA set aside the NLRC ruling and, instead, dismissed petitioner's complaint for illegal dismissal with money claims for lack of merit.[24] Contrary to the findings of the LA and the NLRC, the CA held that the elements of payment of wages and control in determining an employer-employee relationship were absent, considering that petitioner was not paid wages, but commissions only, which amounts varied depending on the kind of cargo, length of trip, and fuel consumption. The CA observed that there was no evidence to show that respondent exercised control over the means and methods by which petitioner was to perform his duties. Further, petitioner failed to refute the claims that: (*a*) the payment of his commission was dependent on his efficiency, discipline, and industry, which factors were beyond respondent's control; (*b*) he was not required to regularly report for work and may make himself available to other companies; and (*c*) the company ID was merely issued to him for the purpose of apprising respondent's clients that he was the authorized driver.[25]

Petitioner moved for reconsideration,[26] but was denied in a Resolution[27] dated October 21, 2015; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly ascribed grave abuse of discretion on the part of the NLRC in ruling that no employer-employee relationship existed between petitioner and respondent and, thus, the latter could not have illegally dismissed the former.

The Court's Ruling

The petition is impressed with merit.

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[23] *Id*. at 31-41.

[24] *Id*. at 40.

[25] See *id*. at 39-40.

[26] See motion for reconsideration dated August 18, 2015; *id.* at 126-136.

[27] *Id*. at 43-44.

At the outset, it should be mentioned that the jurisdiction of the Supreme Court in cases brought before it from the CA *via* Rule 45 of the Rules of Court is generally limited to reviewing errors of law and does not extend to a re-evaluation of the sufficiency of evidence upon which the courts *a quo* had based its determination. This rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the LA and the NLRC, on the one hand, and the CA, on the other, are contradictory, as in this case. There is therefore a need to review the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in finding grave abuse of discretion on the part of the NLRC in ruling that respondent was not illegally dismissed.[28]

To justify the grant of the extraordinary remedy of *certiorari*, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[29]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[30]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting respondent's

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[28] See *Tan Brothers Corporation of Basilan City v. Escudero*, 713 Phil. 392, 399-400 (2013).

[29] See *Cebu People's Multi-purpose Cooperative v. Carbonilla, Jr.*, G.R. No. 212070, January 27, 2016, citing *Bahia Shipping Services, Inc. v. Hipe, Jr.,* G.R. No. 204699, November 12, 2014, 740 SCRA 330, 339.

[30] See *Cebu People's Multi-purpose Cooperative v. Carbonilla, Jr.*, citing *Bahia Shipping Services, Inc. v. Hipe, Jr.*, *id.*

certiorari petition since the NLRC did not gravely abuse its discretion in ruling that petitioner was respondent's regular employee and, hence, was illegally dismissed by the latter. In this case, respondent disclaims any liability for illegal dismissal, considering that, in the first place, no employer-employee relationship existed between him and petitioner.

To ascertain the existence of an employer-employee relationship, jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test."[31] Verily, the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This is the so-called "control test," and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end.[32] It must, however, be stressed that the "control test" merely calls for the existence of the right to control, and not necessarily the exercise thereof. To be clear, the test does not require that the employer actually supervises the performance of duties by the employee.[33]

Contrary to respondent's submission, which was upheld by the CA, the Court agrees with the labor tribunals that all the four (4) elements are present in this case:

First. It is undisputed that respondent hired petitioner to work as a truck driver for his private enterprise, GPT.

Second. Petitioner received compensation from respondent for the services he rendered. Contrary to the findings of the

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[31] *South East International Rattan, Inc. v. Coming*, G.R. No. 186621, March 12, 2014, 718 SCRA 658, 666, citing *Atok Big Wedge Company, Inc. v. Gison*, 670 Phil. 615, 626-627 (2011).

[32] *Legend Hotel (Manila) v. Realuyo*, 691 Phil. 226, 240 (2012), citations omitted.

[33] See *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc.*, 655 Phil. 384 (2011).

CA, while the wages paid was determined on a "per trip" or commission basis, it has been constantly ruled that such does not negate employment relationship.[34] Article 97 (f) of the Labor Code broadly defines the term "wage" as "the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or *commission basis*, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered x x x."[35] That petitioner was paid on a "per trip" or commission basis is insignificant as this is merely a method of computing compensation and not a basis for determining the existence or absence of an employer-employee relationship.[36]

Third. Respondent's power to dismiss was inherent in the selection and engagement of petitioner as truck driver.

Fourth. The presence of the element of control, which is the most important element to determine the existence or absence of employment relationship, can be safely deduced from the fact that: (*a*) respondent owned the trucks that were assigned to petitioner; (*b*) the cargoes loaded in the said trucks were exclusively for respondent's clients; and (*c*) the schedule and route to be followed by petitioner were exclusively determined by respondent. The latter's claim that petitioner was permitted to render service to other companies was not substantiated and there was no showing that he indeed worked as truck driver for other companies. Given all these considerations, while petitioner was free to carry out his duties as truck driver, it cannot be pretended that respondent, nonetheless, exercised control over the means and methods by which the former was to accomplish his work. To reiterate, the power of control refers

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[34] "It should also be remembered that a regular status of employment is not based on how the salary is paid to an employee. An employee may be paid purely on commission and still be considered a regular employee." (*AGG Trucking v. Yuag*, 675 Phil. 108, 122 [2011].)

[35] Italics supplied.

[36] See *Chavez v. NLRC*, 489 Phil. 444, 456-457 (2005).

merely to the existence of the power. It is not essential for the employer to actually supervise the performance of duties of the employee, as it is sufficient that the former has a right to wield the power,[37] as in this case.

Having established that an employer-employee relationship exists between the parties, it is now incumbent for the Court to determine whether or not respondent validly terminated petitioner's employment.

For a dismissal to be valid, the rule is that the employer must comply with both the substantive and procedural due process requirements. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 297, 298, and 299 (formerly Articles 282, 283 or 284)[38] of the Labor Code, as amended.[39] Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.[40]

In this case, suffice it to say that aside from respondent's averment that petitioner committed "serious transgressions and misconduct" resulting in the former's loss of trust and confidence, no other evidence was shown to substantiate the same. Such averment should be properly deemed as a self-serving assertion that deserves no weight in law.[41] Neither was petitioner accorded

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[37] *Lirio v. Genovia*, 677 Phil. 134, 149 (2011), citing *Social Security System v. CA,* 401 Phil. 132, 151 (2000).

[38] As renumbered under Republic Act No. 10151 entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES" approved on June 21, 2011.

[39] See Department of Labor and Employment Department Advisory No. 01, Series of 2015 entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," approved on July 27, 2015.

[40] *ALPS Transportation v. Rodriguez*, 711 Phil. 122, 129 (2013), citations omitted.

[41] See *People of the Philippines v. Mangune*, 698 Phil. 759, 771 (2012), citing *People v. Espinosa*, 476 Phil. 42, 62 (2004).

procedural due process as he was merely informed by respondent's helper that he was already terminated from his job. Clearly, respondent illegally dismissed petitioner, and as such, the latter is entitled to backwages and separation pay in lieu of reinstatement, as correctly ruled by the labor tribunals.

WHEREFORE, the petition is **GRANTED**. The Decision dated July 10, 2015 and the Resolution dated October 21, 2015 of the Court of Appeals in CA-G.R. SP No. 129784 are hereby **REVERSED** and **SET ASIDE**. The Decision dated November 16, 2012 and the Resolution dated February 28, 2013 of the National Labor Relations Commission in NLRC LAC No. 08-002277-12/NLRC NCR Case No. 12-18409-11 are **REINSTATED**.

SO ORDERED.

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

Bersamin, J., on official leave.

SECOND DIVISION

[G.R. No. 221864. September 14, 2016]

CELERNA CALAYAG, AMELIA ORFIANO, MARILYN HIBE, ERNESTO CLARIN, NARCISO UNGSOD, BONIFACIO TORIDA, BOB ILLUT, EVELYN BAJET, ELORDE ILUSTRISIMO, ENRICO DETIQUEZ, JAIME CASTRO, JOSEFINA DAMALERIO, CARIDAD LERUM, NOVA FAJARDO, DANILO DELA CRUZ, ALBERTO FAUSTO, ESTELLA GELLI, KATHERINE DELA CRUZ, HEIDEE LAUREL, NISSAN LAUREL, VICENTE CHUA, ARMELA MARTIN, MELINDA BATIANCILA, GEMMA REBAYA, PRECIOUS ILUSTRISIMO, SOSAN LISBO, MARLON TRABALLO, NIMFA DANNUG, MARILYN LABORTE, SONIA

MANZANILLA, LOURDES PARBA, ADELINA ALIPIN, JONATHAN BASA, MARIA LIZA CABARQUIL, RICHARD FAJICULAY, RICARDO HILARIO and JONATHAN TESSLER, *petitioners, vs.* **SULPICIO LINES, INC. (now known as PHILIPPINE SPAN ASIA CARRIER CORPORATION, doing business under the name and style of "Span Asia Carrier") [Formerly: Sulpicio Lines, Inc.],** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISQUALIFICATION OF JUDICIAL OFFICERS; COMPULSORY AND VOLUNTARY DISQUALIFICATION, DISTINGUISHED.— Section 1, Rule 137 of the Rules of Court encapsulates the rules on the disqualification and the inhibition of judicial officials. x x x (T)he rule on disqualification and inhibition essentially involves two aspects, one being **compulsory disqualification** and the other being **voluntary inhibition.** *Compulsory disqualification* assumes that a judge cannot actively or impartially sit on a case for the reasons stated in the first paragraph of Section 1, Rule 137 of the Rules. It has been said that the rationale for the rule on the compulsory disqualification of a judge or judicial officer is predicated on the long-standing precept that no judge should preside in a case in which he or she is not wholly independent, disinterested or impartial. Judges should not handle cases in which they might be perceived, rightly or wrongly, to be susceptible to bias and partiality. The rule is aimed at preserving at all times the people's faith and confidence in our courts, which are essential to the effective administration of justice. On the other hand, the aspect of *voluntary inhibition*, as stated in the second paragraph, involves the use of discretion. Undoubtedly, it partakes of voluntariness and is a matter of conscience that is addressed primarily to the judge's sense of fairness and justice. This discretion is an acknowledgment of the fact that judges are in a better position to determine the issue of inhibition, as they are the ones who directly deal with the litigants in their courtrooms. The decision on whether he should inhibit himself, however, must be based on his rational and logical assessment of the circumstances prevailing in the case brought before him.

2. ID.; ID.; JUDGES; THE DISQUALIFICATION OF A JUDGE CANNOT BE BASED ON MERE SPECULATIONS AND SURMISES OR BE PREDICATED ON THE ADVERSE NATURE OF THE JUDGES RULINGS TOWARDS THE MOVANT FOR INHIBITION.— To guide the members of the bench, it should be stated that inhibition must be for just and valid causes. *Generally*, the mere imputation of bias, partiality and prejudgment will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. The disqualification of a judge cannot be based on mere speculations and surmises or be predicated on the adverse nature of the judges' rulings towards the movant for inhibition. In fact, this Court has, on several instances, ruled that to warrant the judge's inhibition from the case, bias or prejudice must be shown to have stemmed from an extra-judicial or extrinsic source. In other words, a judge must inhibit only if it is shown that a judge's evident leaning towards a party would result in a disposition on the merits on some basis other than what the judge learned from participating in the case. After all, the option given to a judge to choose whether or not to handle a particular case should be counterbalanced by the judge's sworn duty to administer justice without fear of repression. As with many rules, however, there are exceptions; such as -whenever it is shown that the consistency and regularity with which a judge issued the assailed directives give rise, not to a fanciful suggestion or to a superficial impression of partiality, but to a clear and convincing proof of bias and prejudice, a judge may be directed to inhibit himself from presiding over the case.

3. ID.; ID.; ID.; JUDGES SHOULD AVOID NOT JUST IMPROPRIETY IN THEIR CONDUCT BUT EVEN THE MERE APPEARANCE OF IMPROPRIETY FOR APPEARANCE IS AN ESSENTIAL MANIFESTATION OF REALITY.— Judges should avoid not just impropriety in their conduct but even the mere appearance of impropriety for appearance is an essential manifestation of reality. In insulating the Bench from unwarranted criticism, thus preserving a democratic way of life, it is essential that judges be above suspicion. It bears stressing that the duty of judges is not only to administer justice but also to conduct themselves in a manner that would avoid any suspicion of irregularity. This arises from

the avowed duty of members of the Bench to promote confidence in judicial system. Occupying an exalted position in the administration of justice, judges must pay a high price for the honor bestowed upon them. Hence, any act which would give the appearance of impropriety becomes, of itself, reprehensible.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
J.M. Vibar Law Office for respondent.

D E C I S I ON

MENDOZA, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails and seeks to set aside the September 21, 2015 Decision[1] and the December 18, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 138330, ordering Judge Daniel C. Villanueva *(Judge Villanueva)*, Presiding Judge of the Regional Trial Court, Branch 49, Manila *(RTC)*, to recuse himself from taking part and hearing Civil Case Nos. 08-119709 to 09-121989.

The subject petition stems from the 71 consolidated cases for civil damages filed by Celerna Calayag, et al. *(petitioners),* the survivors of the victims of the ill-fated *M/V Princess of the Stars,* which sank on June 20, 2008, against Sulpicio Lines, Inc. *(Sulpicio)*[3] and the owners, officers, ship captain, and ship master thereof.

Controversy arose when Sulpicio and its co-defendants suspected that Judge Villanueva was exhibiting bias in favor

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[1] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Ricardo R. Rosario and Ramon Paul L. Hernando, concurring; *rollo*, pp. 206-215; 1606-1615.

[2] *Id*. at 339-343.

[3] Now known as Philippine Span Asia Carrier Corporation.

of petitioners. Firm in their belief, Sulpicio and its co-defendants filed separate motions[4] for his inhibition on the basis of the following specific charges:

> (1) [Judge Villanueva] allowed witness Sosan Lisbo to testify on actual damages even if there was no claim for such in the Complaint filed by [petitioners];
>
> (2) [Judge Villanueva] allowed the presentation of a mere photocopy of the circular relating to the PISA minutes meeting of the shipowners despite the timely objection made by [Sulpicio] in view of the requirement under the Judicial Affidavit Rule that the originals of the document must be attached to the affidavit. Worse, [Judge Villanueva] declared that the "Best Evidence Rule" has no application before his Court;
>
> (3) [Judge Villanueva] committed misconduct when [he] admitted an opinion testimony from an ordinary witness, specifically, during the April 11, 2014 hearing wherein [Sulpicio] objected to the questions contained in the judicial affidavit of witness Celerna Calayag for being speculative as it intended to pass off the opinion of the said witness on the number of years her alleged missing relative would have lived without any concrete or factual basis for the same;
>
> (4) [Judge Villanueva's] *manifest partiality* towards [petitioners] by actively participating during the cross-examination in the form of questioning to test the credibility of the witness of [petitioners] and doing the objections for the latter. Worse, in disallowing the cross-examination to test the credibility of the witness, [Judge Villanueva] is even quoted by [Sulpicio] to have said: *"x x x don't use that test of credibility here in Branch 49;"*
>
> (5) [Judge Villanueva] prejudged the case by referring to [Sulpicio's] alleged "notoriety," having in mind the past maritime mishaps involving the former; and
>
> (6) [Judge Villanueva] showed *hostility* towards [Sulpicio's] counsel when he unfairly referred Atty. Dante Vargas, as a mere "*saling-pusa*."[5] [Italizations supplied]

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[4] *Id*. at 414-456; 457-458.

[5] CA Decision, *id*. at 209-210.

Petitioners opposed the motion.[6]

On September 2, 2014, Judge Villanueva denied the said motions for inhibition for the reasons 1) that the perceived errors committed by him and his use of the words *"saling pusa"* and/or "kibitzer" against the counsel of Sulpicio's co-defendants were totally taken out of context; and 2) that his rulings were simply meant to prevent delay.[7] Judge Villanueva opined that the many instances when counsel for the movants questioned his actuations were simply a deliberate attempt to "obfuscate the issues" and that their numerous objections during the trial amounted to "clear nitpicking."[8]

Sulpicio sought reconsideration,[9] but its motion was denied.[10]

Undeterred, Sulpicio initiated *certiorari* proceedings before the CA,[11] alleging that Judge Villanueva committed grave abuse of discretion when he refused to recuse himself from the case. In its Petition, dated November 6, 2014, Sulpicio was no longer joined by its co-defendants.

On September 18, 2015, while the petition before the CA was pending, Judge Villanueva handed down his Decision,[12] ordering Sulpicio and its co-defendants, jointly and severally, to pay damages to petitioners.

Aggrieved, Sulpicio filed its notice of appeal.[13]

On September 21, 2015, or three days following the promulgation of the RTC decision, the CA promulgated its assailed decision granting the petition for *certiorari* and directing

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[6] *Id*. at 10-11.

[7] *Id*. at 394-399.

[8] *Id*. at 398.

[9] *Id*. at 464-470.

[10] *Id.* at 401.

[11] *Id.* at 344-392.

[12] *Id*. at 84-170.

[13] *Id*. at 1562.

Judge Villanueva to recuse himself from hearing the civil cases for damages. In its decision, the CA faulted the presiding judge for allowing an ordinary witness to provide testimony of his own opinion in violation of the Judicial Affidavit Rule. The CA opined that this, coupled with his remarks in open court, cast doubt on his impartiality.[14]

Hoping that the CA would reverse itself, petitioners filed their Very Urgent Motion for Reconsideration[15] and their Supplemental Motion for Reconsideration with Manifestation.[16] On its part, Sulpicio sought to have Judge Villanueva cited for contempt for proceeding with hearing the main case and deciding the same while *certiorari* proceedings in the CA were ongoing. Sulpicio likewise prayed for the issuance of a temporary restraining order *(TRO)* and/or a writ of preliminary injunction to prevent the execution of the RTC Decision, dated September 18, 2015.

On December 18, 2015, the CA issued the assailed resolution[17] denying petitioners' motion for reconsideration for being moot and academic. The appellate court explained that the decision on the merits of the main case by Judge Villanueva rendered the inhibition proceedings moot and academic.[18]

The CA also saw no reason to cite Judge Villanueva in contempt because he had no reason not to proceed with the case and decide it on its merits while *certiorari* proceedings were pending. It explained that the remedy of Sulpicio was to appeal the judgment on the merits and incorporate therein the improprieties committed by Judge Villanueva during the trial.[19]

As for the prayer for TRO and/or injunction, the CA was of the view that a TRO or injunction was no longer necessary as it had already ordered Judge Villanueva to cease from further

[14] *Id*. at 213.

[15] *Id*. at 220-233.

[16] *Id*. at 235-242.

[17] *Id*. at 339-343.

[18] *Id*. at 340-341.

[19] *Id*. at 341.

performing acts relative to the civil cases for damages.[20] Thus, it was resolved:

> WHEREFORE, [petitioners'] Very Urgent Motion for Reconsideration, and Supplemental Motion for Reconsideration with Manifestation are hereby denied for being moot and academic. Likewise, [Sulpicio's] Motion to Cite [Judge Villanueva] in Contempt and Urgent Motion for Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary injunction to Stop Baseless and Unlawful Execution Pending Appeal of the RTC Decision are merely noted.
>
> Finally, in view of our September 21, 2015 Decision, this Court orders the following:
>
> a. [Judge Villanueva] is directed anew to recuse himself from the principal case (Civil Case Nos. 08-119709 to 09-121989) and REFRAIN from further executing acts in connection with these cases; and
>
> b. [Judge Villanueva] through his Branch Clerk of Court is directed to immediately FORWARD the entire records of the case to the Executive Judge of the Regional Trial Court of Manila who is hereby ordered to conduct a re-raffle of the same with dispatch and thereafter submit a REPORT to this Court within ten (10) days therefrom.
>
> SO ORDERED.[21]

Not in conformity, petitioners questioned the CA decision and resolution in this Rule 45 petition.

Subsequent Proceedings/Actions

In its Resolution,[22] dated April 20, 2016, this Court noted the Motion for Leave to Intervene[23] of Buenaventura Rabe, Jr. and thirteen others who were alleged relatives of the victims of *M/V Princess of the Stars* seeking to join the subject petition and adopting the abovementioned arguments raised by petitioners.[24]

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[20] *Id*. at 432.

[21] *Id*. at 343.

[22] *Id*. at 1534-1535.

[23] With herein Incorporated Manifestation; *id*. at 1485-1495.

[24] *Id*. at 1485-1495.

Thereafter, in the Order,[25] dated May 11, 2016, notwithstanding the receipt of the September 11, 2015 CA decision ordering him to recuse from further participating in the civil cases against Sulpicio, Judge Villanueva granted petitioners' motion for execution pending appeal. In light of this development, the Court issued a TRO,[26] dated June 22, 2016, to stay the implementation of the writ of execution pending appeal insofar as the grant of actual damages was concerned.

Issue

Whether there were sufficient grounds for the CA to order the inhibition of Judge Villanueva from the civil cases filed against Sulpicio.

The Arguments of Petitioners

Procedurally, petitioners contend that the CA erred in not dismissing the petition for *certiorari* because it failed to attach [1] the pertinent transcript of stenographic notes *(TSNs)* of the hearings before the trial court and [2] petitioners' comment on the motion for inhibition filed by Sulpicio, in violation of Section 1, Rule 65,[27] in relation to Section 3, Rule 46 of the Rules of Court.[28]

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[25] *Id.* at 1641-1645.

[26] *Id.* at 1671-1673.

[27] Section 1. *Petition for certiorari.* When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[28] Sec. 3. Contents and filing of petition; effect of non-compliance with requirements.

Subtantively, petitioners question the CA decision to overturn Judge Villanueva's prerogative not to voluntary inhibit from the case as it was in violation of Section 1, Rule 137 of the Rules of Court.[29] For petitioners, the CA ruling ordering the

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The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition. The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

[29] Sec. 1. *Disqualification of judges.*– No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

inhibition of Judge Villanueva was not warranted because his acts and remarks were just manifestions of his displeasure with the acts of the lawyers of the defendants which he characterized as dilatory schemes.

As for Judge Villanueva's use of the words *"saling pusa"* and/or "kibitzer" pertaining to the counsel of Sulpicio's co-defendants, petitioners claim that it was deliberately taken out of context by the respondent to suit its advantage of unduly disrupting a valid judicial proceeding.[30] They believe that Judge Villanueva only made such comments because he did not want the counsel of Sulpicio to take up the time of its co-defendants' counsel in the cross-examination of the witness.

As for the finding of the CA that Judge Villanueva violated the rule on judicial affidavits, petitioners argue that he merely allowed the witness to confirm her allegations in her complaint.

Petitioners also contend that the motion for reconsideration was not rendered moot and academic by the order of Judge Villanueva granting their motion for execution pending appeal because his participation in their said motion was crucial.

The Position of the Respondent

Respondent Sulpicio, aside from defending the correctness of the CA finding of partiality, contends that the Court should dismiss the subject petition on the ground that petitioners did not attach a certified true copy or legible duplicate copies of the assailed September 21, 2015 Decision of the CA to their petition before the Court. Sulpicio adds that a perusal of the "Statement of Material Dates" of the subject petition yields the fact that petitioners never mentioned the date when they did receive a copy of the said CA decision.[31]

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

[30] *Rollo*, p. 70.

[31] *Id.* at 1554-1555.

The Court's Ruling

Procedural Issues

Both petitioners and Sulpicio fault each other for failing to attach the pertinent documents to support their respective claims before the higher courts.

A cursory review of the pleadings filed by the parties before this Court reveals that the contentions of both parties have no merit. With respect to the alleged failure of petitioners to attach certified true copies of the September 21, 2015 Decision of the CA in their petition for review and the omission of material dates, the Court allowed the subject petition based on the following explanation made by petitioners:

> 1. On 21 September 2015, the Honorable Court of Appeals promulgated the decision sought to be reviewed. A copy of the same is, as of date, not yet officially received from the Court of Appeals by the PAO. Hence, in an *Omnibus Motion* dated 8 December 2015, Calayag, et al., through the PAO, prayed that they be furnished (anew) a copy of the said CA decision.
>
> Nonetheless, on 29 September 2015, Atty. Diana Zoe B. Guardiano, resident Public Attorney of the Regional Trial Court of Manila, Branch 49, from which the CA case arose, in the course of following up the status of the RTC case, chanced upon a Manifestation dated 23 September 2015 filed by Sulpicio with attached copy of the CA decision.
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> x x x x x x x x x
>
> 2. Thus, despite not having officially received a copy of the CA decision, Calayag, et al. filed a *Very Urgent Motion for Reconsideration* on 30 September 2015 and a *Supplemental Motion for Reconsideration with Manifestation* on 14 October 2015. x x x
>
> 3. On 4 January 2015, the PAO received a copy of the CA Resolution dated 18 December 2015 denying the foregoing motion, x x x
>
> 4. Hence, petitioners have fifteen (15) days, or until 19 January 2015, within which to file a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Procedure.

5. This Petition is being filed within the said period.[32]

In *Air Philippines Corporation v. Zamora*,[33] it was written:

Certiorari, being an extraordinary remedy, the party seeking it must strictly observe the requirements for its issuance. Some of these requirements are found in paragraph 2, Section 1 of Rule 65, which reads:

SECTION. 1. *Petition for certiorari.*

x x x x x x x x x

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto x x x.

These requirements are emphasized in Section 3, Rule 46, thus:

SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.*

x x x x x x x x x

[The petition] shall be x x x accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto x x x.

x x x x x x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

Note that the foregoing rules speak of two sets of documents to be attached to the petition. The first set consists of certified true copies of the judgment, order or resolution ***subject of the petition***. Duplicate originals or certified true copies thereof must be appended to enable the reviewing court to determine whether the court, body or tribunal, which rendered the same committed grave abuse of discretion. The second set consists of the pleadings, portions of the

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[32] *Id*. at 7.

[33] 529 Phil. 718 (2006).

case record and other documents ***which are material and pertinent to the petition***. **Mere photocopies thereof may be attached to the petition. It is this second set of documents which is relevant to this case.**

As a general rule, a petition lacking copies of essential pleadings and portions of the case record may be dismissed. This rule, however, is not petrified. As the exact nature of the pleadings and parts of the case record which must accompany a petition is not specified, **much discretion is left to the appellate court to determine the necessity for copies of pleading and other documents.** There are, however, guideposts it must follow.

First, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.

Second, even if a document is relevant and pertinent to the petition, **it need not be appended if it is shown that the contents thereof can also [be] found in another document already attached to the petition.** Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) **upon showing that petitioner later submitted the documents required**, or **that it will serve the higher interest of justice that the case be decided on the merits**.[34] [Emphases and Underscoring supplied]

The same liberality can likewise be accorded to petitioners because, eventually, they were able to remedy their lapses by submitting certified true copies of the September 21, 2015 Decision[35] and December 18, 2015 Resolution[36] of the CA.

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[34] *Id.* at 726-728.

[35] *Rollo*, pp. 1606-1615.

[36] *Id.* at 339-343.

The fundamental purpose of the rule in requiring the attachment of pertinent records submitted in every appeal or petition is to enable the appellate courts to judiciously and expeditiously resolve all controversies elevated to their jurisdiction. In this case, the Court finds that these requirements were met.

As regards the failure of Sulpicio to attach to its petition before the CA the pertinent TSNs highlighting the claimed bias of Judge Villanueva against them, the Court finds merit in its argument:

> It bears emphasizing that the inhibition petition filed by respondent before the Court of Appeals which led to the issuance of the 21 September 2015 Decision now being assailed in the instant petition was an original special civil action for *certiorari* brought under Rule 65 of the Rules of Court alleging grave abuse of discretion on the part of Judge Villanueva grounded on the latter's manifest bias, partiality and hostility against herein respondent exhibited during the trial of the 71 consolidated STARS civil cases pending in his sala.
>
> It likewise bears stressing that, as asseverated by the afore-quoted jurisprudence, the "nature" of "other pleadings and documents to be attached" in a petition for *certiorari* under Rule 65 has never been specified by the Rules.
>
> It is noteworthy to point out at this juncture that the inhibition petition filed by respondent before the Court of Appeals quoted relevant portions of the TSNs which highlighted parts of the proceedings before the trial court showing the bias and prejudice of Judge Villanueva against herein respondent, as earlier asseverated in the Counter-Statement of Matters Involved. Said quoted portions of the TSNs are likewise found in the Motion for Inhibition filed by respondent before the trial court and certified true copy of the aforesaid inhibition motion was ***appended*** by respondent as Annex "E" to the inhibition petition field before the Court of Appeals.[37]

At any rate, it should be remembered that dismissals based on technical grounds are abhorred. As the Court has expounded in *Aguam vs. Court of Appeals*:[38]

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[37] *Id.* at 1560.

[38] 388 Phil. 587 (2000).

x x x The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. **Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.**[39] [Emphasis supplied]

Substantive Issue

The Court resolves the substantive issue against the petitioners.

Section 1, Rule 137 of the Rules of Court encapsulates the rules on the disqualification and the inhibition of judicial officials. Thus:

Section 1. *Disqualification of judges.* No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor,

[39] *Id.* at 593-594.

administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, **in the exercise of his sound discretion**, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

From the above, the rule on disqualification and inhibition essentially involves two aspects, one being **compulsory disqualification** and the other being **voluntary inhibition**.

Compulsory disqualification assumes that a judge cannot actively or impartially sit on a case for the reasons stated in the first paragraph of Section 1, Rule 137 of the Rules. It has been said that the rationale for the rule on the compulsory disqualification of a judge or judicial officer is predicated on the long-standing precept that no judge should preside in a case in which he or she is not wholly independent, disinterested or impartial. Judges should not handle cases in which they might be perceived, rightly or wrongly, to be susceptible to bias and partiality. The rule is aimed at preserving at all times the people's faith and confidence in our courts, which are essential to the effective administration of justice.[40]

On the other hand, the aspect of *voluntary inhibition,* as stated in the second paragraph, involves the use of discretion. Undoubtedly, it partakes of voluntariness and is a matter of conscience that is addressed primarily to the judge's sense of fairness and justice.[41]

This discretion is an acknowledgment of the fact that judges are in a better position to determine the issue of inhibition, as they are the ones who directly deal with the litigants in their courtrooms.[42] The decision on whether he should inhibit himself,

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[40] *Perez v. Suller*, 320 Phil. 1, 8 (1995).

[41] *Gochan v. Gochan*, 446 Phil. 433, 447 (2003).

[42] *Chin v. Court of Appeals*, 456 Phil. 440, 450 (2003), citing *Gutang v. Court of Appeals*, 354 Phil. 77, 88 (1998).

however, must be based on his rational and logical assessment of the circumstances prevailing in the case brought before him.[43]

To guide the members of the bench, it should be stated that inhibition must be for just and valid causes.[44] *Generally*, the mere imputation of bias, partiality and prejudgment will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor.[45] The disqualification of a judge cannot be based on mere speculations and surmises or be predicated on the adverse nature of the judges rulings towards the movant for inhibition.[46] In fact, this Court has, on several instances, ruled that to warrant the judge's inhibition from the case, bias or prejudice must be shown to have stemmed from an extra-judicial or extrinsic source. In other words, a judge must inhibit only if it is shown that a judge's evident leaning towards a party would result in a disposition on the merits on some basis other than what the judge learned from participating in the case.

After all, the option given to a judge to choose whether or not to handle a particular case should be counterbalanced by the judge's sworn duty to administer justice without fear of repression.[47]

As with many rules, however, there are exceptions; such as – whenever it is shown that the consistency and regularity with which a judge issued the assailed directives give rise, not to a fanciful suggestion or to a superficial impression of partiality, but to a clear and convincing proof of bias and prejudice, a judge may be directed to inhibit himself from presiding over the case.[48]

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[43] *Id*. at 451, citing *Gacayan v. Pamintuan*, 373 Phil. 460, 478 (1999).

[44] *People v. Kho*, 409 Phil. 326, 335 (2001).

[45] *People v. Court of Appeals*, 369 Phil. 150, 158 (1999); *Go v. Court of Appeals*, G.R. No. 106087, April 7, 1993, 221 SCRA 397, 409-410.

[46] *Republic v. Gingoyon*, 514 Phil. 657, 711 (2005).

[47] *Dumo v. Espinas*, 515 Phil. 685, 696 (2006).

[48] *Ty v. Banco Filipino Savings Bank,* 467 Phil. 290, 306 (2004).

Thus, in *Peralta v. Judge George E. Omelio,*[49] this Court pronounced that:

> x x x, a presiding judge must maintain and preserve the trust and faith of the parties litigants. He must hold himself above reproach and suspicion.
>
> At the very first sign of lack of faith and trust to his actions, whether well grounded or not, the Judge has no other alternative but inhibit himself from the case. The better course for the Judge under such circumstances is to disqualify himself. That way, he avoids being misunderstood, his reputation for probity and objectivity is preserved. What is more important, the ideal of impartial administration of justice is lived up to.[50]

In the case at bench, the Court finds that the exception applies.

First. It appears that despite the timely objections of Sulpicio, Judge Villanueva allowed petitioners to introduce in evidence a document containing a summary of a witness' testimony, despite being a mere photocopy. In declaring that a photocopy of a document was an "authentic document," he disregarded one of the very elementary rules of evidence. The pertinent portion of the TSN reads:

> ATTY. AREZA: We have another witness Your Honor, Captain Teotimo R. Borja.
>
> x x x x x x x x x
>
> ATTY. LIM: Your Honor please, to avoid discussion and objection, I think it is [unavoidable] that the witness may have to come back because the circular relates to the PISA minutes meeting of ship owners that is the gist of his testimony and according to counsel here when he inquired from the witness, this minutes is with the BMI, BMI is part of the coastguard, the witness is from the coastguard so I would also appreciate an authenticated copy, Your Honor.
>
> COURT: Is it attached here?

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[49] 720 Phil. 60 (2013), citing *Madula v. Judge Santos*, 457 Phil. 625, 634 (2003).

[50] *Id*. at 100.

ATTY. LIM: **Yes, Your Honor. It is attached as a mere photocopy. x x x**

COURT: I think this is legible enough, you can conduct your cross if unless there is such an issue that this (sic) a Court's copy or spurious copy which I don't think counsel is prepared to say because if you say this is spurious, you must have basis.

ATTY. LIM: **Your Honor, my basis in questioning the authenticity, Your Honor, there are handwritten notations on the face of 'quadruple O-2' whereas on the face of the document there is a typewritten document, there is even a note here, sir, concerned staffs, I could not read, Your Honor.**

COURT: **It does not matter (sic) this kind of notations practically no probative value. The court is convinced that this is an authentic document, you can cross examine him on this.**

ATTY. LIM: **But this is a photocopy, Your Honor.**

COURT: **Yes, even then, even then, we are already in 2014, we (sic) had that technology and this court is very sure it will be upheld by the Supreme Court if there is no jurisprudence yet. These are authentic documents.**

ATTY. LIM: Just for clarification, Your Honor, the judicial affidavit rule I think, if I may recall correctly, requires the originals to be attached. If the counsel of the witness is not in a position to attach the originals, he should make the comparison in open Court.

COURT: Okay, lets ask counsel, where is the original of this one?

x x x x x x x x x

COURT: The Court has already expressed its view that if you want we can convert it into a ruling that the attachment is sufficient to be used as basis for the cross-examination. The authenticity of the document is not at issue here.

ATTY. LIM: Your Honor if that is the case then I will not deal with that on my cross-examination because I would not want to waive objection to the document attached to the judicial affidavit as not being compliant with the best evidence rule. In any event, I will proceed on other points, Your Honor.

COURT: **The Court would like to state that as far as the copy of the Court is concerned, it is a very legible copy. x x x It's only**

if its blurred; it could hardly be read, that we try to get the original of course but in this case, it's very legible. It can be read. There was supposed to be a public hearing and that's not been put in issue by counsel, are you trying to say this never happened, this meeting?

ATTY. LIM: Your Honor, if we will read carefully the judicial affidavit of the witness, there is an allegation in the offer of testimony of about the alleged negligence of the defendants and as far as this witness is concerned, that purpose is sought to be proven by certain documents whereat the defendant Sulpicio Lines is being made to appear as having participated in.

COURT: Did it not participate this James Go?

ATTY. LIM: I have no personal knowledge, Your Honor.

COURT: Since you have no personal knowledge, then you have to yield to this document.

ATTY. LIM: **But they are the ones presenting evidence, Your Honor.**

COURT: That is why they presented this showing prima facie that there was a James Go from Sulpicio Lines who participated and we will proceed upon that premise.

ATTY. LIM: My problem is that, Your Honor, since they are the plaintiffs with the burden of proof [maybe] this should be clarified already because this is always . . .

COURT: This will be a recurring issue, I think counsel is very well aware of the view of this representation.

ATTY. LIM: We respect your view, Your Honor.

COURT: **Unless, it is put in issue and that is part of the new rules that all come into effect, unless it is put in issue, <u>all attachments are considered authentic.</u>**

ATTY. LIM: **But that is not yet applicable.**

COURT: **<u>Yes, but then it will be, the new rule in the future, in the short future.</u>**

ATTY. LIM: The best evidence rule will be abolished?

COURT: No, well, we will see, it's up to the Supreme Court.

x x x x x x x x x

COURT: There are new technologies coming in. x x x Machine copies of (sic) document are already quite reliable. The reason why we have all this kind of…was omnibus during the time of antiquity when it's so difficult to make a copy, that a copy, the integrity of the copy may not be assure but right now for instance a meeting there are so many participants (sic) minutes that this witness who claimed that it was already submitted, that is already part of the official record. If you feel that there is something wrong with that, it was a total make believe pretend document (sic) the child would say, you verify and if you were able to show the Court, the Court may even rule to disregard the entire testimony of this witness. If you can just show the Court.

ATTY. LIM: That is very revolutionary, Your Honor.

COURT: No, that is not revolutionary. [Emphases supplied]

Second. Despite the objections of Sulpicio's counsel, Judge Villanueva allowed petitioners' witness to give her opinion on how long her husband could have lived.[51] On this point, the Rules on Evidence are clear:

Sec. 48 . *General rule*. — The opinion of witness is not admissible, except as indicated in the following sections. (42)

x x x x x x x x x

Sec. 50 . *Opinion of ordinary witnesses*. — The opinion of a witness for which proper basis is given, may be received in evidence regarding —

(a) the identity of a person about whom he has adequate knowledge;

(b) A handwriting with which he has sufficient familiarity; and

(c) The mental sanity of a person with whom he is sufficiently acquainted.

The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person. (44a)

Although the opinion of petitioners' witness might tend to prove Sulpicio's overall liability to petitioners for their loss,

[51] *Rollo*, pp. 1567-1568.

still, to arrive at such conclusion on the amount of its liability based on the testimony of an ordinary witness smacks of wanton disregard of procedural rules.

Uncontroverted also is the fact that Judge Villanueva denigrated and belittled the counsel for the co-defendants by calling him a mere "kibitzer" or "*saling-pusa*." The Court finds that the remark was uncalled for as it publicly humiliated him before everyone present in the courtroom. This open degrading description of the said counsel bares a state of mind of a partial trial judge. By his expression of his regard for a counsel of a litigant, he displayed his predisposition and propensity to partiality.

Ordinarily, the foregoing, even taken together, would not constitute a solid ground for the inhibition of a trial judge. His remarks could have been uttered in the excitement of the moment.

Such lapses, however, when coupled with his acting on the case after he was ordered by the CA to recuse himself, brought to fore his tendentious mind.

The most telling manifestation of his partiality was his Order, dated May 11, 2016, granting petitioners' motion for execution pending appeal. Despite receiving categorical orders from the CA to recuse himself from participating in the subject civil cases, Judge Villanueva acted on petitioners' motion for execution pending appeal and granted it.[52] The records even show that despite being directed by Executive Judge Reynaldo A. Alhambra on January 12, 2016 to transmit the records of the case for reraffle, Judge Villanueva failed to heed this directive.[53] In resolving the motion for execution pending appeal, he opined that while he was "not prepared to state at this time that whatever appeal that may be made by Sulpicio and co-defendants should automatically be characterized as frivolous and manifestly dilatory yet it would seem that a party that has no evidence on record could hardly expect to prevail in the

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[52] *Id*. at 1658-1662.

[53] *Id*. at 1637-1639.

appellate courts."[54] By his acts and statements, he confirmed his evident predisposition.

On this score, it bears mentioning that although judicial courtesy is indeed not mandatory, under such circumstances, Judge Villanueva should have been more circumspect in the exercise of his discretion and recused himself from further presiding over the said civil cases to remove any doubt on his neutrality. While Section 7 of Rule 65 provides the general rule that the mere pendency of a special civil action for *certiorari* does not stay the proceedings in the lower court in the absence of a writ of preliminary injunction or TRO, this Court in *Eternal Gardens Memorial Park v. Court of Appeals*[55] explained:

> Although this Court did not issue any restraining order against the Intermediate Appellate Court to prevent it from taking any action with regard to its resolutions respectively granting respondents' motion to expunge from the records the petitioner's motion to dismiss and denying the latter's motion to reconsider such order, upon learning of the petition, the appellate court should have refrained from ruling thereon because its jurisdiction was necessarily limited upon the filing of a petition for certiorari with this Court questioning the propriety of the issuance of the above-mentioned resolutions. Due respect for the Supreme Court and **practical and ethical considerations** should have prompted the appellate court to wait for the final determination of the petition before taking cognizance of the case and trying to render moot exactly what was before this court. x x x. [Emphasis and underscoring supplied]

Thus, while petitioners were correct in asserting that Judge Villanueva had yet to receive the CA decision ordering his inhibition when he handed down his decision on the civil cases, he should not have entertained the subsequent motion for execution pending appeal and recused himself from the case as he already received the September 21, 2015 CA Decision and December 18, 2015 Resolution ordering his inhibition. It

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[54] *Id.* at 1661.

[55] 247 Phil. 387, 394 (1988); also cited in *Republic v. Sandiganbayan (First Division)*, 525 Phil. 804, 809 (2006).

bears to reiterate that the Executive Judge even directed him to turn over the entire records of the case to the Clerk of Court of Manila. Despite this, he acted on the motion for execution pending appeal.

Petitioners cannot argue that no TRO or writ of preliminary injunction was issued by the CA enjoining Judge Villanueva from further acting on the case. In the same way that a lower court should readily comply with the provisional orders of a higher court, then it is with more reason that he should respect and comply with a higher court's final disposition of the case on the merits.

Taking into consideration the actions of Judge Villanueva during the trial and his overzealousness to have his decision executed despite clear directive from the CA, the Court finds that Sulpicio's right to have an impartial judge was clearly violated. Thus, the Court will let stand the ruling of the CA ordering Judge Villanueva to recuse himself from the case.

Clearly issued with grave abuse of discretion, the May 11, 2016 Order of Judge Villanueva granting petitioners' motion of execution pending appeal should be annulled. To let it be is to sanction and reward disrespect of a higher tribunal.

Judges should avoid not just impropriety in their conduct but even the mere appearance of impropriety[56] for appearance is an essential manifestation of reality.[57] In insulating the Bench from unwarranted criticism, thus preserving a democratic way of life, it is essential that judges be above suspicion.[58] It bears stressing that the duty of judges is not only to administer justice but also to conduct themselves in a manner that would avoid any suspicion of irregularity.[59] This arises from the avowed

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[56] *San Juan v. Bagalacsa*, 347 Phil. 696, 701 (1997).

[57] *Espiritu v. Jovellanos*, 345 Phil. 823, 835 (1997).

[58] *Concerned Employees of the RTC of Dagupan City v. Falloran-Aliposa*, 384 Phil. 168, 190 (2000).

[59] *Contreras v. Solis*, 329 Phil. 376, 380 (1996).

duty of members of the Bench to promote confidence in judicial system. Occupying an exalted position in the administration of justice, judges must pay a high price for the honor bestowed upon them. Hence, any act which would give the appearance of impropriety becomes, of itself, reprehensible.[60]

WHEREFORE, the petition is **DENIED**. Accordingly, the September 21, 2015 Decision and the December 18, 2015 Resolution of the Court of Appeals in CA-G.R. SP. No. 138330 are **AFFIRMED**.

The May 11, 2016 Order of the Regional Trial Court, Branch 49, Manila, in Civil Case Nos. 08-119709 to 09-121989, granting execution of its September 18, 2015 Decision, is **NULL** and **VOID** for being issued with grave abuse of discretion and in excess of jurisdiction.

Within 24 hours from receipt of this judgment, the Executive Judge of the Regional Trial Court in Manila is hereby ordered to re-raffle the consolidated cases to a new judge, who should act on the notice of appeal of the defendants and, in the exercise of its residual powers, resolve the motion for execution pending appeal filed by the petitioners, with deliberate dispatch.

SO ORDERED.

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

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[60] *Concerned Employees of the RTC of Dagupan City v. Falloran-Aliposa*, 384 Phil. 168, 181 (2000).

THIRD DIVISION

[G.R. No. 223852. September 14, 2016]

EDNA ROQUE ALEGUELA, FELIPE GONZALES, DOLORES COCHESA, LUISA CAGALINGAN, REYNALDO JUNSAY, BONIFACIA RODRIQUEZ, CONEY CERDENA, and all persons claiming rights under them, *petitioners, vs.* **EASTERN PETROLEUM CORPORATION and J&M PROPERTIES AND CONSTRUCTION CORPORATION**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE SETTLED RULE IS THAT ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT.—** The settled rule is that only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court. It is not the Court's function to analyze or weigh all over again evidence already presented in the proceedings below, since the Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect.

2. **LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 1517 (URBAN LAND REFORM ACT); ONLY LEGITIMATE TENANTS MAY BE EXTENDED THE PROTECTIVE MANTLE OF THE PRESIDENTIAL DECREE NO. 1517, TO THE EXCLUSION OF OTHERS; CASE AT BAR.—** The basic rule is that he who alleges a fact has the burden of proving it. Based on the records, the petitioners were only able to prove that they were the lots' possessors. Their possession, however, could be based on the other modes specifically excluded by P.D. No. 1517 from its cover, namely, tolerance, force or deceit. In *Medina v. Mayor Asistio, Jr.,* the Court emphasized that "only legitimate tenants may be extended the protective mantle of the decree cited to the exclusion of others." Where no contracts are presented to qualify persons as legitimate tenants, the protection afforded

therein cannot be rightfully invoked. The petitioners could not have simply relied on the testimonial and documentary evidence presented by Cagalingan and Flores to prove their tenancy. The nature of their possession was independent of the other defendants' own agreement or lease with the previous landowners.

APPEARANCES OF COUNSEL

Castillo Go and Associates Law Office for petitioner.
Andres Padernal & Paras for respondents.

R E S O L U T I O N

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court by Edna Roque Aleguela, Felipe Gonzales, Dolores Cochesa,[2] Luisa Cagalingan, Reynaldo Junsay, Bonifacia Rodriguez, Coney Cerdena (collectively, the petitioners), and all persons claiming rights under them against Eastern Petroleum Corporation (Eastern Petroleum) and J&M Properties and Construction Corporation (J&M Properties) (collectively, the respondents), assailing the Decision[3] dated April 6, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 103391. The assailed CA decision affirmed the Decision[4] dated June 11, 2014 of the Regional Trial Court (RTC) of Pasig City, Branch 166, in Civil Case No. 72273, that ordered the petitioners to vacate the disputed parcels of land registered under the names of the respondents, and to pay reasonable compensation for the lots' use.

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[1] *Rollo*, pp. 12-32.

[2] Also referred to as Dolores Cocheza in the records.

[3] Penned by Associate Justice Romeo F. Barza, with Associate Justices Amy C. Lazaro-Javier and Agnes Reyes-Carpio concurring; *rollo*, pp. 62-75.

[4] Rendered by Presiding Judge Rowena De Juan-Quinagoran; *id.* at 49-57.

The Antecedents

The petitioners are the occupants of the subject properties situated at J. B. Miguel Street, Barangay Bambang, Pasig City, particularly, the parcel of land covered by Title No. PT-130608 under the name of Eastern Petroleum, and the parcels of land covered by PT-140851 and PT-140844 under the name of J&M Properties. Prior to the issuance of the three certificates of title, the properties were covered by one title, TCT No. 314548. The respondents' titles were issued by the Register of Deeds following the presentation of a Deed of Absolute Sale dated January 27, 2006 that named them as the lots' purchasers.[5]

Subsequent to the sale, the respondents sought to take possession of the lots but the petitioners refused to vacate the premises notwithstanding a monetary offer for their relocation by the respondents. This prompted the respondents to institute ejectment suits with the Metropolitan Trial Court (MeTC) of Pasig City, although these were dismissed by the MeTC.[6]

Thereafter, the respondents filed with the RTC of Pasig City an action for recovery of possession with damages against the petitioners, along with their co-defendants Placido "Eddie" Cagalingan (Cagalingan) and Avelino Flores (Flores) who also occupied the subject lots.[7]

In their answer to the complaint, the petitioners contended that they had been occupying the lots for more than 50 years. The properties had been declared part of the Areas for Priority Development under Presidential Decree (P.D.) No. 1517, otherwise known as the Urban Land Reform Act. The issuance of the certificates of title under the respondents' names violated Sections 6 and 7 of P.D. No. 1517 and Section 2 of P.D. No. 2016,[8] which read:

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[5] *Id*. at 15, 63.

[6] *Id*. at 63-64.

[7] *Id*. at 16, 64.

[8] *Id*.

P.D. No. 1517

PROCLAIMING URBAN LAND REFORM IN THE PHILIPPINES AND PROVIDING FOR THE IMPLEMENTING MACHINERY THEREOF

Section 6. *Land Tenancy in Urban Land Reform Areas.* Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree.

Section 7. *Acquisition of Residential Lands for Existing Tenants and Residents.* In cases where the tenants and residents, referred to in Section 6 of this Decree, are unable to purchase the said lands, the Government shall acquire the land and/or improvements thereon by expropriation or other land acquisition technique provided for under Section 11 of this Decree.

x x x x x x x x x

P.D. No. 2016

PROHIBITING THE EVICTION OF OCCUPANT FAMILIES FROM LAND IDENTIFIED AND PROCLAIMED AS AREAS FOR PRIORITY DEVELOPMENT (APD) OR AS URBAN LAND REFORM ZONES AND EXEMPTING SUCH LAND FROM PAYMENT OF REAL PROPERTY TAXES

Section 2. No tenant or occupant family, residing for ten years or more reckoned from the date of issuance of Presidential Decree No. 1517 otherwise known as the Urban Land Reform Law, in land proclaimed as Areas for Priority Development or Urban Land Reform Zones or is a project for development under the ZIP in Metro Manila and the SIR Program in the regional cities shall be evicted from the land or otherwise dispossessed.

The petitioners contended that prior to the sale of the lots to the respondents, they were not afforded the opportunity to exercise their right of first refusal.[9]

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

The respondents presented their witnesses during trial. When it was the petitioners' turn to present their evidence, their counsel failed to appear and to submit a judicial affidavit, prompting the RTC to issue on November 11, 2013 an Order declaring the petitioners to have waived their right to present evidence. Only Cagalingan and Flores were able to present additional evidence to support their claims as possessors of the lots.[10]

Ruling of the RTC

On June 11, 2014, the RTC rendered its Decision[11] against the defendants. The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered x x x.
>
> Anent [the defendants], judgment is hereby rendered in favor of the [respondents] and against the [defendants] by ordering them:
>
> 1. To vacate the premises and surrender peaceful possession to the [respondents] within thirty (30) days from notice; and
>
> 2. To pay the amount of Php500.00 each defendant per month as reasonable compensation for the use of the property starting November 2009, the date this complaint was filed, until such time that they actually surrender possession of the properties to the [respondents].
>
> No pronouncement as to cost.
>
> **SO ORDERED**.[12]

The petitioners moved to reconsider, but their motion was denied by the RTC, in its Order[13] dated August 27, 2014. Dissatisfied, the petitioners appealed to the CA.

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[10] *Id*. at 56, 65.

[11] *Id*. at 49-57.

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

[13] *Id*. at 58-60.

Ruling of the CA

The CA, in its Decision[14] dated April 6, 2016, denied the appeal and affirmed the decision of the RTC.

The CA explained that while the petitioners were the occupants of the properties within an urban land reform zone, they failed to establish that they were legitimate tenants thereof. Section 3(f) of P.D. No. 1517 defines a tenant as the rightful occupant of land and its structures, but does not include those whose presence on the land is merely tolerated and without the benefit of contract, those who enter the land by force or deceit, or those whose possession is under litigation.[15]

The mere fact that the petitioners had been the occupants of the disputed lots for more than 50 years failed to suffice. They had to provide evidence that could establish a valid contract of lease with the lots' former owners, with proof of payment of rentals as tenants. Otherwise, it could be inferred that the petitioners' possession was by mere tolerance.[16]

Hence, this petition for review on *certiorari*.

Present Petition

The petitioners insist that their possession of the disputed lots is by virtue of a contract of lease with the person under whose name the disputed properties were formerly registered, specifically Carlos L. Asuncion, his heirs and successors-in-interest. Their possession under such nature has spanned more than 50 years already.[17] Pursuant to pertinent statutes, the lots should have been first offered for sale to them and in case a sale was not concluded, the government was to expropriate the properties.

Ruling of the Court

The petition is denied.

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[14] *Id*. at 62-75.

[15] *Id*. at 71-72.

[16] *Id*.

[17] *Id*. at 19.

Considering the arguments presented by the petitioners to support their petition, it is evident that they call upon the Court to make a review of the factual dispositions made by both the RTC and the CA. Both courts, in particular, have ruled negatively on the petitioners' ability to prove that they are tenants, as contemplated in P.D. No. 1517 and P.D. No. 2016, who are entitled to the benefits provided by law.

The settled rule is that only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court. It is not the Court's function to analyze or weigh all over again evidence already presented in the proceedings below, since the Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect.[18]

In any case, the Court finds no compelling reason to deviate from the factual findings of the RTC, as affirmed by the CA. The law that applies to the issue on the petitioners' entitlement to a right of first refusal over the disputed properties is P.D. No. 1517, which grants legitimate tenants in urban land reform areas certain benefits affecting land acquisition and ownership. In *Estreller, et al. v. Ysmael, et al.*,[19] the Court reiterated the rationale and the parameters that render P.D. No. 1517, along with P.D. No. 2016, applicable, to wit:

> Section 6 of P.D. No. 1517 grants preferential rights to landless tenants/occupants to acquire land within urban land reform areas, while Section 2 of P.D. No. 2016 prohibits the eviction of qualified tenants/ occupants.
>
> In *Dimaculangan v. Casalla,* the Court was emphatic in ruling that the protective mantle of P.D. No. 1517 and P.D. No. 2016 extends only to landless urban families who meet these qualifications: a) they are tenants as defined under Section 3(f) of P.D. No. 1517; b) they built a home on the land they are leasing or occupying; c) the land

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[18] *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, 687 Phil. 584, 590-591 (2012).

[19] 600 Phil. 292 (2009).

they are leasing or occupying is within an Area for Priority Development and Urban Land Reform Zone; and d) they have resided on the land continuously for the last 10 years or more.[20] (Citation omitted)

Section 3 of P.D. No. 1517 referred to in the foregoing qualifications limits the cover of "tenants" whom the law seeks to protect, particularly:

> Sec. 3. *Definitions*. x x x
>
> x x x x x x x x x
>
> (f) Tenant refers to the rightful occupant of land and its structures, but does not include those whose presence on the land is merely tolerated and without the benefit of contract, those who enter the land by force or deceit, or those whose possession is under litigation.
>
> x x x x x x x x x

There is no dispute that the subject properties fall within the scope of P.D. No. 1517, after the petitioners and their co-defendants, Cagalingan and Flores, supplied sufficient proof on the lots' nature. Maps and certifications issued by the Housing and Land Use Regulatory Board were presented before the RTC. However, unlike Cagalingan and Flores who were able to submit proofs of their respective tenancy arrangements with the lots' previous owners, the petitioners opted not to present their own contracts with the owners. Such failure was critical to their defense because proof of tenancy is a vital condition that could render P.D. No. 1517 applicable to a case.

The basic rule is that he who alleges a fact has the burden of proving it.[21] Based on the records, the petitioners were only able to prove that they were the lots' possessors. Their possession, however, could be based on the other modes specifically excluded by P.D. No. 1517 from its cover, namely, tolerance, force or

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[20] *Id*. at 301.

[21] *MZR Industries, et al. v. Colambot*, 716 Phil. 617, 626 (2013), citing *Machica v. Roosevelt Services Center, Inc. and/or Dizon,* 523 Phil. 199, 209 (2006).

deceit. In *Medina v. Mayor Asistio, Jr.*,[22] the Court emphasized that "only legitimate tenants may be extended the protective mantle of the decree cited to the exclusion of others."[23] Where no contracts are presented to qualify persons as legitimate tenants, the protection afforded therein cannot be rightfully invoked.[24]

The petitioners could not have simply relied on the testimonial and documentary evidence presented by Cagalingan and Flores to prove their tenancy. The nature of their possession was independent of the other defendants' own agreement or lease with the previous landowners.

Given the foregoing, the CA was correct in ruling in favor of the respondents. Their rights to possess, use and occupy the subject parcels of land, being the present registered owners thereof, have been sufficiently established. Not even the petitioners' reference to the prior dismissal by the MeTC of the ejectment suits first filed against them by the respondents supports their assertion.[25] The principle of *res judicata* does not apply because the ejectment suits and the present complaint covered different causes of action. Moreover, the ejectment suits were not decided on the merits. These were dismissed mainly on the ground that the ownership issue was raised by the respondents, a matter that was beyond the scope of the MeTC's jurisdiction.[26] The issue on the petitioners' tenancy was not resolved in the said cases.

WHEREFORE, the petition is **DENIED.** The Decision dated April 6, 2016 of the Court of Appeals in CA-G.R. CV No. 103391 is **AFFIRMED**.

SO ORDERED.

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

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[22] 269 Phil. 225 (1990).

[23] *Id*. at 234.

[24] *Id*.

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

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

THIRD DIVISION

[G.R. No. 204659. September 19, 2016]

JESTER MABUNOT, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 7610 (R.A. NO. 7610); APPLIES WHEN THE VICTIM WAS 14 YEARS OLD AND NOT THE REVISED PENAL CODE.—** Article 265 of the RPC punishes physical injuries in general. On the other hand, R.A. No. 7610 is intended to "*provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial to their development*." Child abuse refers to the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child. Physical injury includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe injury or serious bodily harm suffered by a child. It is clear that Shiva was 14 years old when she received the blow, which fractured her rib. Being a child, she is under the protective mantle of R.A. No. 7610, which punishes maltreatment of a child, whether the same be habitual or not. Moreover, the Implementing Rules and Regulations of R.A. No. 7610 even explicitly refer to fractured bones as falling within the coverage of physical injuries, which may be inflicted on a child, for which an accused shall be held liable. Further, under R.A. No. 7610, stiffer penalties are prescribed to deter and prevent violations of its provisions.

2. **ID.; ID.; PHYSICAL ABUSE OF A CHILD; PROPER PENALTY.—** In the petitioner's case, the maximum imposable penalty is *prision mayor* in its minimum period. The minimum period is further subdivided into three, to wit: (a) six (6) years and one (1) day to six (6) years and eight (8) months, as minimum; (b) six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months, as medium; and (c) seven (7) years, four (4) months and one (1) day to eight (8) years, as maximum. As there were no established attendant mitigating or aggravating circumstances, the CA properly imposed the penalty of six (6)

years, eight (8) months and one (1) day as the maximum of the indeterminate sentence. As to the minimum of the indeterminate sentence, Section 1 of the IS Law provides that it shall be within the range of the penalty next lower to that prescribed for the offense. The penalty next lower to *prision mayor* in its minimum period is *prision correccional* in its maximum period. The CA imposed four (4) years, nine (9) months and eleven (11) days of *prision correccional*, which falls within the maximum range thereof. The CA imposed the minimum indeterminate penalty within the allowable range, and the Court now finds no compelling reason to modify the same.

APPEARANCES OF COUNSEL

Sergio SJ Milan for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] and Resolution[3] dated April 20, 2012 and October 29, 2012, respectively, of the Court of Appeals (CA) in CA-G.R. CR No. 33353. The CA affirmed but modified only as to the penalty imposed and damages awarded the Judgment rendered on April 15, 2010 by the Regional Trial Court (RTC) of Bontoc, Mountain Province, Branch 36, in Criminal Case No. 2227, convicting Jester Mabunot (petitioner) of violation of Republic Act (R.A.) No. 7610,[4] Article VI, Section 10(a).[5]

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[1] *Rollo*, pp. 4-12.

[2] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Celia C. Librea-Leagogo and Ramon A. Cruz concurring; *id*. at 15-36.

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

[4] SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT.

[5] **Section 10.** ***Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*** **–**

Antecedents

The Information indicting the petitioner reads:

> That on or about Sept. 14, 2007, in the morning thereof, inside one of the classrooms at the Paracelis National High School, Butigue, Paracelis, Mountain Province, and within the jurisdiction of this Honorable Court, the [petitioner,] with intent to physically abuse and with cruelty, did then and there, wilfully, unlawfully and feloniously, box Shiva Baguiwan, a minor who is 14 years and 5 months old, on the left side below her ribs[,] which caused the latter to lose consciousness, to the damage and prejudice of the said minor-victim.
>
> CONTRARY TO LAW.[6]

Upon arraignment, the petitioner pleaded "*not guilty*."[7]

In the course of the trial, the prosecution offered the testimonies of: (a) private complainant Shiva Baguiwan (Shiva); (b) Mercy Baguiwan, Shiva's mother; (c) Melanie Lipawen (Melanie)[8] and James Aquino (James), students at Butigue National High School (BNHS); (d) PO2 Naida Dumalan, Women and Children's Desk Officer assigned to handle Shiva's complaint; and (e) Dr. Jessie Guimbatan, government doctor who provided Shiva with medical treatment.[9]

The evidence for the prosecution sought to establish that Shiva and the petitioner were classmates at BNHS. On September 14, 2007, at around 11:00 a.m., Shiva and her group were sewing inside the classroom when the petitioner, who was then under

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(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

x x x x x x x x x

[6] *Rollo*, p. 16.

[7] *Id.* at 17.

[8] Sometimes appears in the records as "*Melany.*"

[9] *Rollo*, p. 17.

the influence of alcohol, arrived. The petitioner twisted the arm of Michael Fontanilla, strangled James and boxed William Thomas (William). The rest of their classmates ran away, but the petitioner went after them. He boxed Shiva on her left flank leaving the latter with a fractured rib. Shiva passed out and was thereafter taken to Potia District Hospital, where she stayed for two days. Before finally leaving, the petitioner also boxed Dennis Kenept (Dennis). Back then, Shiva was 14 years old, while the petitioner was 19. The petitioner dropped out from BNHS after the incident.[10]

On its part, the defense presented the following as witnesses: (a) the petitioner; (b) Consolacion Saludo (Consolacion), teacher at BNHS; (c) Dennis; and (d) Eva Joy Malindao (Eva), also a student at BNHS.[11]

The testimonies of the defense witnesses tend to prove that on September 14, 2007, at around 10:30 a.m., the class, to which both Shiva and the petitioner belonged, was doing its Technology Livelihood Education project. William suddenly threw an object at the petitioner's back. The petitioner reacted by boxing William. When the petitioner stepped out of the room, Dennis followed him and a fist fight ensued between the two. Shiva came to pacify them, but she was shoved, causing her to fall to the ground. The petitioner posited that since he and Dennis were grappling at that time, there cannot be any certainty as to who actually injured Shiva.[12]

Ruling of the RTC

On April 15, 2010, the RTC rendered its Judgment, the *fallo* of which reads as follows:

> Wherefore, the Court finds that the [petitioner] is guilty beyond reasonable doubt of the offense charged as principal by direct participation and is hereby sentenced to suffer imprisonment of four (4) years, 9 months, and 11 days of *prision correccional* as minimum

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

[11] *Id.* at 17.

[12] *Id.* at 18-19.

to seven (7) years and 4 months of *prision mayor* as maximum, and to pay [Shiva] the amount of ₱25,000.00 as temperate damages in lieu of actual damages.

SO ORDERED.[13]

The RTC convicted the petitioner on the basis of the grounds cited below:

The evidence is positive and convincing that an act of cruelty and physical abuse has been inflicted upon a female child of fourteen (14) years of age by the [petitioner,] who was an adult of twenty (20) years of age. The credible evidence clearly demonstrates that the [petitioner] boxed the left side of [Shiva's] body causing excruciating pain[,] which made the latter feel dizzy and lose consciousness. The medical findings confirm that a rib of [Shiva] was fractured[,] which caused pain even long after the incident. It is not hard to imagine that a bare fist of a twenty[-]year[-]old male could fracture a rib of a frail fourteen[-]year[-]old female. The testimonies of [Shiva], [Melanie], and [James] are found to be clear, candid and convincing narrations of what happened, of how the [petitioner] maltreated and injured [Shiva].

x x x [T]here is nothing on record which shows any evil or improper motive on [the part of the prosecution witnesses] to falsely testify or frame up the [petitioner,] hence, said testimonies are given full faith and credence x x x. The physical and medical evidence[,] which show that [Shiva] suffered rib fracture that caused great pain[,] highly corroborate and confirm that [Shiva] was hurt by the [petitioner] with a hard fist blow, which made her unconscious and [led her to] be hospitalized.

x x x [T]he defense of the [petitioner] that he did not box [Shiva], but that the latter fell to the ground when she was shoved as she tried to pacify the former and [Dennis,] who were exchanging blows and grappling with each other, has to be taken with a grain of salt. x x x [I]t is highly improbable that a young lass[,] who is not even related to the combatants[,] would dare to put herself at risk to serious and inevitable injury by trying to pacify two older male persons[,] who were exchanging hard blows. That would not conform to ordinary human experience; the natural thing for the young girl was to shout

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[13] *Id.* at 16.

or run[,] which [Shiva] did but the [petitioner] still got near and boxed her.

[It] is also highly indicated and very credibly established by the evidence that the [petitioner] boxed and maltreated four other classmates. x x x All these indicate that the [petitioner] was on a rampage and had no qualm[s] about inflicting injury upon a helpless female classmate. At his age of twenty x x x, and in addition to the fact that he was under the influence of liquor, the [petitioner] easily terrorized and frightened his classmates. x x x The denial of the [petitioner] can not be accorded greater evidentiary value than the declarations of credible prosecution witnesses that the [petitioner] boxed [Shiva] x x x.[14]

Ruling of the CA

In the appeal filed before the CA, the petitioner claimed that the injury inflicted on Shiva was not intentional or deliberate. The petitioner insisted that he could not have adopted a deliberate design to injure Shiva since he was trading punches with Dennis. Further, Article 265[15] of the Revised Penal Code (RPC), and not R.A. No. 7610, should be the applicable provision. A single and unintended act of shoving Shiva while the petitioner was engaged in a fist fight with Dennis can hardly be considered as within the definition of child abuse under R.A. No. 7610.[16]

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[14] *Id.* at 19-21.

[15] Art. 265. ***Less serious physical injuries***. — Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical assistance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*.

Whenever less serious physical injuries shall have been inflicted with the manifest intent to kill or offend the injured person, or under circumstances adding ignominy to the offense in addition to the penalty of *arresto mayor*, a fine not exceeding 500 pesos shall be imposed.

Any less serious physical injuries inflicted upon the offender's parents, ascendants, guardians, curators, teachers, or persons of rank, or persons in authority, shall be punished by *prision correccional* in its minimum and medium periods, provided that, in the case of persons in authority, the deed does not constitute the crime of assault upon such person.

[16] *Rollo*, pp. 21-23.

On April 20, 2012, the CA affirmed the conviction but modified the penalty imposed and the damages awarded. The CA instead sentenced the petitioner to suffer imprisonment of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum, and to pay Shiva actual damages in the amount of ₱18,428.00.[17]

The CA explained its disquisition, *viz*:

> [T]he [petitioner] wants Us to weigh the credibility of prosecution witnesses *vis-à-vis* the defense witnesses, a task entrusted to the trial court. x x x [T]he trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.
>
> It is observed that although [Dennis], [Eva] and [Consolacion] testified for the defense, the court *a quo* correctly ruled that their testimonies are incredible and unworthy of belief. x x x [Consolacion] testified that she went out of her classroom at about 10:30 o'clock in the morning of September 14, 2007 because of a commotion, but she failed to recognize the students involved in the brawl. x x x
>
> x x x x x x x x x
>
> Q: You said that you rushed outside, what did you see when you were outside?
>
> A: When I was at the porch, I have (sic) seen two boys boxing but I cannot recognize them because I haven't taken my eyeglasses and it was twenty (20) meters away.
>
> x x x x x x x x x
>
> [The petitioner's] testimony revealed that Consolacion was at the second floor of the building, hence, supporting the court *a quo's* conclusion that Consolacion did not see the whole incident. x x x
>
> x x x x x x x x x
>
> The court *a quo* likewise correctly dismissed [Dennis'] testimony as doubtful since on cross-examination, he stated that he does not know Michael Fontanilla and [James] when the [petitioner] himself revealed that Fontanilla and [James] were their classmates.

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[17] *Id.* at 35.

x x x [Eva], who was then a third year high school student at [BNHS], corroborated the [petitioner's] testimony that [Shiva] pacified [the petitioner] and [Dennis]. We note, however, that she mentioned that [Shiva] was shoved to the ground [w]hen their teacher, [Consolacion], shouted which caused [the petitioner] and [Dennis] to run away. A perusal of [Consolacion's] testimony, however, reveals that she directed the students around to pacify [the petitioner] and [Dennis] then she saw a lady going near the two boys fighting. Afterwhich, she did not witness any incident anymore since she had to pacify her students[,] who were then coming out of the classroom. There was no mention that she shouted at the [petitioner] or [Dennis] after [Shiva] fell to the ground. x x x

x x x [P]rosecution witness [Melanie] bolstered [Shiva's] claim that the [petitioner] boxed her. x x x.

x x x x x x x x x

Q: How far are you (sic) from [the petitioner] when you said you saw him boxed [sic] Shiva?
A: Just near him.

Q: Will you point from the witness stand?
A: x x x More or less 2 meters.

x x x x x x x x x

x x x [James] likewise averred that he personally saw the [petitioner] boxed [sic] [Shiva]. He said:

x x x x x x x x x

Q: You said that [the petitioner] boxed Shiva, did you personally see [the petitioner] boxed [sic] Shiva?
A: Yes, ma'am.

Q: What part of Shiva's body was hit?
A: In (sic) the left rib.

Q: How far are (sic) you from Shiva and [the petitioner] when you said you saw [the petitioner] boxed [sic] Shiva?
A: x x x (4 to 5 meters).

x x x x x x x x x

Under Subsection (b), Section 3 of [R.A. No. 7610], child abuse refers to the maltreatment of a child, whether habitual or not, which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

x x x x x x x x x

x x x [W]hen the incident happened, [Shiva] was a child entitled to the protection extended by R.A. No. 7610 x x x. As defined [by] law, child abuse includes physical abuse of the child, whether the same is habitual or not. The act of [the petitioner] of boxing [Shiva's] left flank falls squarely within this definition. x x x.

x x x As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, [R.A. No. 7610] has stiffer penalties for their commission.

x x x x x x x x x

In the absence of any modifying circumstances, We find that the proper penalty should be four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor* as maximum[,] not the maximum term imposed by the trial court which is much higher, *i.e.*, "seven (7) years and [four (4)] months of *prision mayor*." x x x.

x x x [Shiva] was able to prove actual damages in the amount of Php 18,428.00. The court *a quo* incorrectly awarded temperate damages in the amount of Php 25,000.00 in lieu of actual damages of a lesser amount since such is proper only in cases when the victim died and no evidence of burial and funeral expenses was presented in the trial court.[18] (Citations omitted and underlining ours)

The petitioner filed a motion for reconsideration, which the CA denied in the herein assailed Resolution[19] dated October 29, 2012.

Issues

Unperturbed, the petitioner presents for the Court's resolution the issues of whether or not the CA committed reversible errors in (1) ruling that the injury inflicted on Shiva was intentional and deliberate, and (2) applying the much higher penalty provided

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[18] *Id.* at 23-35.

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

for under Section 10 of R.A. No. 7610, instead of Article 265 of the RPC for slight physical injuries.[20]

The petitioner claims that he and Dennis were trading punches when they saw Shiva slump to the ground. In Dennis' testimony, he was uncertain as to who actually shoved Shiva. Thus, the injury sustained by Shiva merely resulted from an accident and is not within the contemplation of child abuse under R.A. No. 7610.[21]

The petitioner also posits that Section 10 of R.A. No. 7610 penalizes acts of child abuse which are not covered by the RPC. Assuming *arguendo* that the petitioner caused Shiva's injury, Article 265 of the RPC should instead be applied.[22]

In its Comment,[23] the Office of the Solicitor General contends that the petitioner raises factual issues. Besides, even if the merits of the petition are to be considered, the prosecution witnesses, namely, Melanie and James, positively identified the petitioner as the one, who had boxed Shiva. The RTC and CA properly accorded probative weight to the testimonies of the eyewitnesses.

Ruling of the Court

The Court affirms the conviction and the sentence, but imposes an interest on the amount of actual damages awarded by the CA.

On the propriety of the petitioner's conviction

In *Villareal v. Aliga*,[24] the Court declared:

It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* – beyond the ambit of appeal. In *certiorari*

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[20] *Id.* at 6.

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

[22] *Id.* at 10.

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

[24] 724 Phil. 47 (2014).

proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. x x x It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.[25]

In the case at bar, the RTC and the CA uniformly accorded probative value to the testimonies of two eyewitnesses, namely, Melanie and James, who positively identified the petitioner as the one who had boxed Shiva.

Besides, even if the Court were to exercise leniency, a recalibration of the parties' evidence would yield the same result. For one, the defense did not impute and prove any ill motives on the part of the eyewitnesses in testifying against the petitioner. Note that the two witnesses were classmates of both the petitioner and Shiva, and they saw at close range what had transpired. Further, the defense witnesses failed to amply refute the statements of Melanie and James. Consolacion was 20 meters away from where the fist fight between the petitioner and Dennis took place. She also admitted that she was not wearing her eyeglasses then. On the other hand, Eva's statements on what she saw were unclear. Anent Dennis' narrations, he admitted his uncertainty as to who had shoved Shiva to the ground. However, Melanie and James were categorical in identifying the petitioner as the one who boxed Shiva. Dennis' declaration of uncertainty pales in comparison to Melanie and James' positive testimonies. Dennis was then trading punches with the petitioner, and understandably, his recollection of the details of the event was not as comprehensive.

The petitioner also posits that since he and Dennis were exchanging punches then, he could not have made a deliberate design to injure Shiva. Without intent to harm Shiva, the petitioner insists that he deserves an acquittal.

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[25] *Id*. at 62, citing *First Corporation v. Former Sixth Division of the Court of Appeals,* 553 Phil. 526, 540-541 (2007).

The foregoing argument is untenable.

"When the acts complained of are inherently immoral, they are deemed *mala in se*, even if they are punished by a special law. Accordingly, criminal intent must be clearly established with the other elements of the crime; otherwise, no crime is committed."[26]

The petitioner was convicted of violation of Section 10(a), Article VI of R.A. No. 7610, a special law. However, physical abuse of a child is inherently wrong, rendering material the existence of a criminal intent on the part of the offender.

In the petitioner's case, criminal intent is not wanting. Even if the Court were to consider for argument's sake the petitioner's claim that he had no design to harm Shiva, when he swang his arms, he was not performing a lawful act. He clearly intended to injure another person. However, it was not Dennis but Shiva, who ended up with a fractured rib. Nonetheless, the petitioner cannot escape liability for his error. Indeed, criminal liability shall be incurred by any person committing a felony (*delito*) although the wrongful act done be different from that which he intended.[27]

On the application of Section 10(a), Article VI of R.A. No. 7610

The petitioner avers that Section 10(a), Article VI of R.A. No. 7610 only penalizes acts of child abuse which are not covered by the RPC. He insists that the acts complained of should fall under Article 265 of the RPC, which imposes a lighter penalty.

The claim is unpersuasive.

Article 265 of the RPC punishes physical injuries in general. On the other hand, R.A. No. 7610 is intended to "*provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial*

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[26] *Garcia v. CA*, 519 Phil. 591, 596 (2006).

[27] REVISED PENAL CODE, Article 4(1).

to their development."[28] Child abuse refers to the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child.[29] Physical injury includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe injury or serious bodily harm suffered by a child.[30]

It is clear that Shiva was 14 years old when she received the blow, which fractured her rib. Being a child, she is under the protective mantle of R.A. No. 7610, which punishes maltreatment of a child, whether the same be habitual or not.[31] Moreover, the Implementing Rules and Regulations of R.A. No. 7610 even explicitly refer to fractured bones as falling within the coverage of physical injuries, which may be inflicted on a child, for which an accused shall be held liable. Further, under R.A. No. 7610, stiffer penalties are prescribed to deter and prevent violations of its provisions.

On the penalties imposed by the courts *a quo*

The RTC imposed upon the petitioner an indeterminate sentence of four (4) years, nine (9) months, and eleven (11) days of *prision correccional* as minimum, to seven (7) years and four (4) months of *prision mayor* as maximum.

Subsequently, the CA modified the sentence to four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum.

Section 1 of the Indeterminate Sentence Law (IS Law)[32] provides:

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[28] *R.A. No. 7610*, Section 2.

[29] Implementing Rules and Regulations of R.A. No. 7610, Section 2(b).

[30] Implementing Rules and Regulations of R.A. No. 7610, Section 2(d).

[31] *R.A. No. 7610*, Section 3(b); Please also see *Sanchez v. People*, *et al.*, 606 Phil. 762, 775 (2209).

[32] Act No. 4103, as amended, otherwise known as AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

There are, however, instances when the penalties provided for in a special law adopt the nomenclature of the penalties under the RPC. In such cases, the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC.[33]

In *Sanchez v. People, et al.*,[34] the Court is emphatic that:

[T]he penalty for Other Acts of Child Abuse is *prision mayor* in its minimum period. This penalty is derived from, and defined in, the [RPC]. Although R.A. No. 7610 is a special law, the rules in the [RPC] for graduating penalties by degrees or determining the proper period should be applied. Thus, where the special law adopted penalties from the [RPC], the [IS Law] will apply just as it would in felonies. In *People v. Simon*, the Court applied the first clause of Section 1 of the [IS Law] to cases of illegal drugs. In *Cadua v. Court of Appeals*, the Court applied the same principle to cases involving illegal possession of firearms. In those instances, the offenses were also penalized under special laws. Finally, in *Dulla v. Court of Appeals,* a case involving sexual abuse of a child as penalized under Section 5(b), Article III of R.A. No. 7610, the Court likewise applied the same first clause of the [IS Law]. x x x.[35] (Citations omitted)

OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES.

[33] Please see *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 55.

[34] 606 Phil. 762 (2009).

[35] *Id*. at 780.

In the petitioner's case, the maximum imposable penalty is *prision mayor* in its minimum period. The minimum period is further subdivided into three, to wit: (a) six (6) years and one (1) day to six (6) years and eight (8) months, as minimum; (b) six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months, as medium; and (c) seven (7) years, four (4) months and one (1) day to eight (8) years, as maximum.[36] As there were no established attendant mitigating or aggravating circumstances, the CA properly imposed the penalty of six (6) years, eight (8) months and one (1) day as the maximum of the indeterminate sentence.

As to the minimum of the indeterminate sentence, Section 1 of the IS Law provides that it shall be within the range of the penalty next lower to that prescribed for the offense. The penalty next lower to *prision mayor* in its minimum period is *prision correccional* in its maximum period. The CA imposed four (4) years, nine (9) months and eleven (11) days of *prision correccional*, which falls within the maximum range thereof. The CA imposed the minimum indeterminate penalty within the allowable range, and the Court now finds no compelling reason to modify the same.

On Damages

The Court agrees with the CA's award of actual damages, in lieu of the temperate damages imposed by the RTC. To conform, however, to recent jurisprudence, the Court deems it proper to impose an interest of six percent (6%) *per annum* on the actual damages awarded to Shiva to be computed from the date of the finality of this Resolution until fully paid.[37]

WHEREFORE, the Court **AFFIRMS** the Court of Appeals' Decision and Resolution dated April 20, 2012 and October 29, 2012, respectively, in CA-G.R. CR No. 33353, subject to the **MODIFICATION** that the actual damages in the amount of

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[36] Please see *Rosaldes v. People*, G.R. No. 173988, October 8, 2014, 737 SCRA 592, 608-609.

[37] *People v. Cruz*, 714 Phil. 390, 400-401 (2013).

₱18,428.00 to be paid by the petitioner, Jester Mabunot, to the private complainant, Shiva Baguiwan, shall be subject to an interest of six percent (6%) *per annum* reckoned from the finality of this Resolution until full payment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 218891. September 19, 2016]

EDMUND BULAUITAN *y* MAUAYAN,[*] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; 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.— [I]t 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

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[*] "Mauanay" or "Mauwanay" in some parts of the records.

the penalty, and cite the proper provision of the penal law. [T]he Court is of the view that Bulauitan's conviction must be set aside.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; EVIDENCE OBTAINED AND CONFISCATED ON THE OCCASION OF UNREASONABLE SEARCHES AND SEIZURES ARE DEEMED TAINTED AND SHOULD BE EXCLUDED FOR BEING THE PROVERBIAL FRUIT OF A POISONOUS TREE.—** 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 from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding**. In other words, 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.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; A SEARCH UNDER THE STRENGTH OF A WARRANT IS REQUIRED TO BE WITNESSED BY THE LAWFUL OCCUPANT OF THE PREMISES SOUGHT TO BE SEARCHED AND, IN THEIR ABSENCE, BY TWO (2) PERSONS OF SUFFICIENT AGE AND DISCRETION RESIDING IN THE SAME LOCALITY, AND NON-COMPLIANCE THEREWITH VIOLATES THE SPIRIT AND LETTER OF THE LAW, AND THUS, TAINTS THE SEARCH WITH THE VICE OF UNREASONABLENESS, RENDERING THE SEIZED ARTICLES INADMISSIBLE. —** [A] search warrant issued in accordance with the provisions of the Revised Rules of Criminal Procedure does not give the authorities limitless discretion in implementing the same as the same Rules provide parameters in the proper conduct of a search. x x x Under [Section 8, Rule 126], a search under the strength of a warrant is required to be witnessed by the lawful occupant of the premises sought to be searched. It must be stressed **that it is only upon their**

absence that their presence may be replaced by two (2) persons of sufficient age and discretion residing in the same locality. In *People v. Go*, the Court held that a departure from the said mandatory rule - by preventing the lawful occupant or a member of his family from actually witnessing the search and choosing two (2) other witnesses observe the search - violates the spirit and letter of the law, and thus, taints the search with the vice of unreasonableness, rendering the seized articles inadmissible due to the application of the exclusionary rule. x x x. In this case, a judicious perusal of the records reveals that the policemen involved in the search of Bulauitan's residence – as shown in their testimonies – **did not** conduct the search in accordance with Section 8, Rule 126 of the Revised Rules of Criminal Procedure.

4. ID.; ID.; ID.; ACCUSED MUST BE ACQUITTED AND EXONERATED FROM ALL CRIMINAL LIABILITY WHERE THE CONFISCATED DRUGS, WHICH IS THE VERY *CORPUS DELICTI* OF THE CRIME CHARGED, ARE INADMISSIBLE IN EVIDENCE FOR BEING THE PROVERBIAL FRUIT OF THE POISONOUS TREE.— The testimonies given in the case at bar ultimately prove that: (*a*) Bulauitan was not in his residence when the search was conducted; (*b*) his daughter, Maria, was not able to witness SPO2 Baccay's search of Bulauitan's room as PO3 Tagal kept her in the living room and even instructed her to leave the house to contact her parents; and (*c*) Kgd. Soliva and Kgd. Polonia neither witnessed the search as they remained outside Bulauitan's residence. Accordingly, the search conducted therein by the search team fell way below the standard mandated by Section 8, Rule 126 of the Revised Rules of Criminal Procedure, and thus deemed unreasonable within the purview of the exclusionary rule of the 1987 Constitution. As a consequence, the three (3) plastic sachets containing an aggregate amount of 0.22 gram of *shabu* recovered therefrom are inadmissible in evidence for being the proverbial fruit of the poisonous tree. Since the confiscated *shabu* is the very *corpus delicti* of the crime charged, Bulauitan must necessarily be acquitted and exonerated from all criminal liability.

APPEARANCES OF COUNSEL

D.L. Wagas Law Office for petitioner.
The Solicitor General 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 March 26, 2015 and the Resolution[3] dated June 17, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 36117, which affirmed the Decision[4] dated September 20, 2013 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5 (RTC) in Criminal Case No. 10086, finding petitioner Edmund Bulauitan *y* Mauayan (Bulauitan) guilty beyond reasonable doubt, for violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from an Information[6] dated November 7, 2003 filed before the RTC, charging Bulauitan of illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of RA 9165,[7] the accusatory portion of which reads:

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[1] *Rollo*, pp. 3-24.

[2] *Id*. at 26-40. Penned by Associate Justice Isaias P. Dicdican with Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes concurring.

[3] *Id*. at 62-63.

[4] *Id*. at 42-48. Penned by Judge Jezarene C. Aquino.

[5] 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.

[6] Records, pp. 1-2.

[7] The pertinent portions of Section 11, Article II of RA 9165 reads:

> Section 11. *Possession of Dangerous Drugs.* – The penalty of x x x shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug x x x regardless of the degree of purity thereof:
>
> x x x x x x x x x

That on or about October 03, 2003, in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused, [Bulauitan], without authority, did then and there willfully[,] unlawfully[,] and feloniously have in his possession and under his control and custody three (03) pieces of heat sealed plastic sachet containing Methamphetamine Hydrochloride, a dangerous drug commonly known as shabu which he kept inside his residence/dwelling at Centro Northeast, Solana, Cagayan weighing 0.22 grams which dangerous drug was confiscated by elements of the PNP Solana, Cagayan which conducted a search at the residence/ dwelling of the accused by virtue of Search Warrant No. 21 issued by Executive Judge, Honorable VILMA T[.] PAUIG of RTC Branch II, Tuguegarao City, Cagayan which resulted to the confiscation of the above-mentioned dangerous drug as the accused while in possession thereof do not have necessary permit and/or authority [sic].

CONTRARY TO LAW.[8]

The prosecution alleged that on October 3, 2003, the Philippine National Police of Solana, Cagayan constituted a team headed by P/Insp. Kevin Bulayungan (P/Insp. Bulayungan) as leader, with SPO2 Lito Baccay (SPO2 Baccay) and PO3 Elizalde Tagal (PO3 Tagal) as search officer and investigator, respectively, to implement a search warrant issued by Executive Judge Vilma T. Pauig to search Bulauitan's residence. Before going to the target residence, the search team first went to the house of Barangay Chairman Jane Busilan, who in turn, assigned *Kagawad* (Kgd.) Jerry Soliva (Kgd. Soliva) and Kgd. Herald de Polonia (Kgd. Polonia) as search witnesses. Upon arriving at Bulauitan's residence, the search team was met by Bulauitan's two (2) children and housekeeper, who informed them that Bulauitan was not home. This notwithstanding, the search team explained to the children and housekeeper the reason for their presence, prompting the latter to allow them inside the house and conduct

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(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.

[8] Records, p. 1.

the search. SPO2 Baccay then proceeded to Bulauitan's room and there, discovered three (3) heat-sealed plastic sachets containing white crystalline substance. Suspecting that the contents are *shabu*, the search team showed the sachets to the children and housekeeper and photographed the same. SPO2 Baccay then gave the sachets to P/Insp. Bulayungan, who in turn, handed them over to PO3 Tagal who wrapped the confiscated items with a piece of paper for transport to the Solana PNP Station. When Bulauitan arrived at his residence, the search team effected his arrest and took him to the police station with the seized sachets. Upon arrival thereat, PO3 Tagal prepared the police blotter and request for laboratory examination, marked the sachets with his initials, and delivered the same to forensic chemist S/Insp. Myrna Madriaga Tulauan of the PNP Crime Laboratory. A qualitative examination revealed that the three (3) plastic sachets contained an aggregate of 0.22 gram of *shabu*.[9]

In his defense, Bulauitan denied owning the sachets allegedly recovered by the search team in his house. He narrated that in the morning of the fateful day, he went with his wife to Tuguegarao City to tend to their meat shop. He eventually received a call from his daughter, Maria Bulauitan (Maria), informing him that policemen are in their house and conducting a search therein, prompting him to immediately go home. Upon reaching his house, the policemen informed him that they recovered *shabu* from his room, and thus, arrested him. Finally, Bulauitan averred that Joseph Juan – the person who executed the affidavit in support of the application for search warrant – wanted to get even with him as his wife testified against Juan in a theft case. Upon arraignment, Bulauitan pleaded not guilty to the charges against him.[10]

The RTC Ruling

In a Decision[11] dated September 20, 2013, the RTC found Bulauitan guilty beyond reasonable doubt of the crime charged,

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[9] *Rollo*, pp. 27-28. See also TSN, August 1, 2006, pp. 28-29 and 32-38.

[10] *Id.* at 28-29. See also pp. 44-45.

[11] *Id.* at 42-48.

and accordingly, sentenced him to suffer the penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, two (2) months, and one (1) day, as maximum, and to pay a fine in the amount of ₱300,000.00.[12]

The RTC found that Bulauitan constructively possessed the sachets containing *shabu* as they were found inside his house where he exercised dominion and control. In this relation, the RTC opined that the policemen must be accorded the presumption of regularity in the performance of their official duties, especially in the absence of any evidence from Bulauitan to show otherwise.[13]

Aggrieved, Bulauitan elevated his conviction before the CA.

The CA Ruling

In a Decision[14] dated March 26, 2015, the CA affirmed Bulauitan's conviction. It held that all the elements of illegal possession of dangerous drugs are present, considering that Bulauitan without any authority constructively possessed the seized sachets containing *shabu* as they were found inside his house. The CA further held that the prosecution had established an unbroken chain of custody of the seized sachets. Finally, the CA ruled that the search which yielded the seized sachets was properly implemented as it was done in the presence of Bulauitan's two (2) children and housekeeper.[15]

Aggrieved, Bulauitan moved for reconsideration which the CA denied in a Resolution[16] dated June 17, 2015; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not Bulauitan's conviction for illegal possession of dangerous drugs,

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[12] *Id.* at 48.

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

[14] *Id.* at 26-40.

[15] *Id.* at 31-39.

[16] *Id.* at 62-63.

defined and penalized under Section 11, Article II of RA 9165, should be upheld.

The Court's Ruling

The appeal is meritorious.

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.[17]

In this light and as will be explained hereunder, the Court is of the view that Bulauitan's conviction must be set aside.

Section 2,[18] 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),[19] Article III of the 1987 Constitution provides that **evidence obtained from**

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[17] See *People v. Comboy*, G.R. No. 218399, March 2, 2016, citing *Manansala v. People*, G.R. No. 215424, December 9, 2015.

[18] Section 2, Article III of the 1987 Constitution states:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[19] Section 3 (2), Article III of the 1987 Constitution states:

unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding. In other words, 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.[20]

It must, however, be clarified that a search warrant[21] issued in accordance with the provisions of the Revised Rules of Criminal Procedure does not give the authorities limitless discretion in implementing the same as the same Rules provide parameters in the proper conduct of a search. Section 8, Rule 126 of the aforesaid Rules, states that:

SEC. 8. *Search of house, room, or premises to be made in presence of two witnesses*. — No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Under this provision, a search under the strength of a warrant is required to be witnessed by the lawful occupant of the premises sought to be searched. It must be stressed **that it is only upon their absence** that their presence may be replaced by two (2) persons of sufficient age and discretion residing in the same locality. In *People v. Go*,[22] the Court held that a departure from the said mandatory rule – by preventing the lawful occupant or a member of his family from actually witnessing the search

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Section 3. x x x.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[20] See *People v. Manago*, G.R. No. 212340, August 17, 2016, citing *Comerciante v. People*, G.R. No. 205926, July 22, 2015, 763 SCRA 587, 594-595.

[21] Section 1, Rule 126 of the Revised Rules of Criminal Procedure reads:

SECTION 1. *Search warrant defined*. — A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.

[22] 457 Phil. 885 (2003).

and choosing two (2) other witnesses observe the search – violates the spirit and letter of the law, and thus, taints the search with the vice of unreasonableness, rendering the seized articles inadmissible due to the application of the exclusionary rule, *viz.*:

> As pointed out earlier, the members of the raiding team categorically admitted that the search of the upper floor, which allegedly resulted in the recovery of the plastic bag containing the *shabu*, did not take place in the presence of either the lawful occupant of the premises, *i.e.* appellant (who was out), or his son Jack Go (who was handcuffed to a chair on the ground floor). **Such a procedure, whereby the witnesses prescribed by law are prevented from actually observing and monitoring the search of the premises, violates both the spirit and letter of the law**:
>
> x x x x x x x x x
>
> That the raiding party summoned two *barangay kagawads* to witness the search at the second floor is of no moment. **The Rules of Court clearly and explicitly establishes a hierarchy among the witnesses in whose presence the search of the premises must be conducted. Thus, Section 8, Rule 126 provides that the search should be witnessed by "two witnesses of sufficient age and discretion residing in the same locality" only in the absence of either the lawful occupant of the premises or any member of his family.** Thus, the search of appellant's residence clearly should have been witnessed by his son Jack Go who was present at the time. The police officers were without discretion to substitute their choice of witnesses for those prescribed by the law.
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> x x x x x x x x x
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> **The raiding team's departure from the procedure mandated by Section 8, Rule 126 of the Rules of Court, taken together with the numerous other irregularities attending the search of appellant's residence, tainted the search with the vice of unreasonableness, thus compelling this Court to apply the exclusionary rule and declare the seized articles inadmissible in evidence.** This must necessarily be so since it is this Court's solemn duty to be ever watchful for the constitutional rights of the people, and against any stealthy encroachments thereon. In the oft-quoted language of Judge Learned Hand:

> **As we understand it, the reason for the exclusion of evidence competent as such, which has been unlawfully acquired, is that exclusion is the only practical way of enforcing the constitutional privilege.** In earlier times the action of trespass against the offending official may have been protection enough; but that is true no longer. Only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will that wrong be repressed.[23]
> (Emphases and underscoring supplied)

In *People v. Del Castillo*,[24] the Court similarly held that the search of the premises must be witnessed by the lawful occupant or the family members; otherwise, the search becomes unreasonable, thus rendering the seized items inadmissible under the exclusionary rule.

In this case, a judicious perusal of the records reveals that the policemen involved in the search of Bulauitan's residence – as shown in their own testimonies – **did not** conduct the search in accordance with Section 8, Rule 126 of the Revised Rules of Criminal Procedure.

In his testimony, P/Insp. Bulayungan was adamant that Bulauitan was present when the search was commenced, to wit:

> [Asst. Pros. Frederick D. Aquino (Pros. Aquino)]: **And was [Bulauitan] then present when you implemented the search warrant?**
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> [P/Insp. Bulayungan]: **Yes, sir.**
>
> x x x x x x x x x
>
> [Pros. Aquino]: **So after showing to the accused a copy of the search warrant, what did the members of your team do, if any?**
>
> [P/Insp. Bulayungan]: **We conducted an orderly search at the residence of the accused [Bulauitan], sir.**
>
> x x x x x x x x x

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[23] *Id.* at 914-917, citations omitted.

[24] 482 Phil. 828 (2004).

[Atty. Rolando C. Acacio (Atty. Acacio)] So you mean to say that [Bulauitan] was not present when you went to implement the search warrant?

[P/Insp. Bulayungan]: He was present, sir.

[Atty. Acacio]: At what point in time was he present Mr. Witness?

[P/Insp. Bulayungan]: **When we introduced ourselves as policemen and tell our purpose of being there, [Bulauitan] arrived, sir**.

x x x x x x x x x

[Atty. Acacio]: But at that time that there was a sort of reluctance you know for a fact that the accused was not in their house?

[P/Insp. Bulayungan]: **He was there already, sir.**

[Atty. Acacio]: He was there?

[P/Insp. Bulayungan]: **Yes sir because before we enter the house, that is the time that [Bulauitan] was already there after we introduced ourselves as police officers and tell our purpose of being there** [sic].[25] (Emphases and underscoring supplied)

However P/Insp. Bulayungan's testimony was belied by that of another member of the search team, PO3 Tagal, who testified that Bulauitan was not in the premises when they conducted the search:

[Asst. Pros. Maita Grace Deray-Israel (Pros. Israel)]: And what happened when you reached the residence of [Bulauitan]

[PO3 Tagal]: **The house helper met us together with the two (2) children of [Bulauitan] and we asked them where is [Bulauitan] and they answered us that [Bulauitan] was out of his house and he is in Tuguegarao City, Ma'am.**

x x x x x x x x x

[Pros. Israel]: And what happened when you arrived in the house of [Bulauitan]?

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[25] TSN, April 24, 2007, pp. 8, 11-13, 19-20, 27-30, and 37-38.

[PO3 Tagal]: **I asked our team leader [P/Insp. Bulayungan] if we continue [sic] to search the house of [Bulauitan] considering that the owner of the house is not around, Ma'am.**

x x x x x x x x x

[Pros. Israel]: And what is the reply of this [P/Insp. Bulayungan]?

[PO3 Tagal]: **He said that we will continue, Ma'am.**

x x x x x x x x x

[Pros. Israel]: Alright, Mr. Witness, after you have presented that search warrant to the two (2) children of [Bulauitan], what happened next, if any?

[PO3 Tagal]: We requested them to open the door of their house, Ma'am.

[Pros. Israel]: And they accede [sic]?

[PO3 Tagal]: Yes, Ma'am.

[Pros. Israel]: And after they have opened the door of their house, what happened next?

[PO3 Tagal]: **Then we explained to them what is our subject and we requested them to follow us inside the room of [Bulauitan] together with the two (2) Barangay kagawads, Ma'am**.[26]

x x x (Emphases and underscoring supplied)

While Bulauitan's absence in the search, *per se*, did not violate Section 8, Rule 126 of the 2000 Rules on Criminal Procedure, the search team committed other errors which led to such violation. For instance, Bulauitan's daughter, Maria, was effectively precluded from witnessing the search conducted by SPO2 Baccay in Bulauitan's room as PO3 Tagal kept her in the living room by searching the area and asking her a lot of questions. Maria's testimony states:

[Atty. Acacio]: And who were with you then at the house at that time?

[Maria]: I was alone, sir.

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[26] TSN, August 1, 2006, pp. 13-14 and 18-20.

x x x x x x x x x

[Atty. Acacio]: And when [the police officers] asked you the whereabouts of your father what did you tell them?

[Maria]: I told them that they were in Tuguegarao selling, sir.

[Atty. Acacio]: And then when you told them that your father is in Tuguegarao selling, what did the policemen do?

[Maria]: They said that they have a search warrant against my father, sir.

x x x x x x x x x

[Atty. Acacio]: When the policemen told you that there is a search warrant for your father, what did they do?

[Maria]: I was not supposed to let them enter the house because my father was not around but they said that they will still enter because they have a search warrant for my father otherwise they will force to open the door, sir [sic].

x x x x x x x x x

[Atty. Acacio]: And what did you do when they told you that even without your father we still have to search the house?

[Maria]: I let them entered [sic] the house, sir.

x x x x x x x x x

[Atty. Acacio]: When these three policemen were allowed access in the house by you, what did they do?

[Maria]: When they were at the receiving room [SPO2 Baccay] read the contents of the search warrant and asked me and to confirm the room of my father, sir.

[Atty. Acacio]: And when [SPO2 Baccay] did that, what did you do?

[Maria]: I told them that this is the room of my father, sir.

[Atty. Acacio]: And after confirming that indeed that is the room of your father, what did they do?

[Maria]: **[SPO2 Baccay] and the other policemen went inside the room while [PO3 Tagal] was left at the receiving room, sir**.

[Atty. Acacio]: Now, what was [PO3 Tagal] doing when he stayed in the *sala* or receiving room?

[Maria]: **He was searching our belongings and at the same time inquiring from me, sir.**

x x x x

[Atty. Acacio]: Now, when you were in the *sala* were you able to observe what was happening inside the room of your parents?

[Maria]: **No, sir.**

[Atty. Acacio]: And why can't you see what was happening inside the room of your parents?

[Maria]: **Because the door of the room was then half closed, sir**.[27] (Emphases and underscoring supplied)

Maria's direct testimony was further bolstered by her consistency during cross examination, to wit:

[Pros. Ronnel B. Nicolas (Pros. Nicolas)]: In other words, madam witness, you confirm that when the policemen conducted a search, the search was conducted in the presence of these two barangay councilmen?

[Maria]: **Yes they were present but they were outside the house, sir**.

x x x

[Pros. Nicolas]: You also made mention madam witness that when the search was being conducted one of the policemen remained in the *sala* and conducted search therein, is it not?

[Maria]: Yes, sir.

[Pros. Nicolas]: And in fact you were present at the time the policemen conducting a search in the *sala*? [sic]

[Maria]: Yes, sir.

[Pros. Nicolas]: You also made mention madam witness that two policemen conducted search inside the room of your father, is it not? [sic]

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[27] TSN, August 18, 2009, pp. 4-6, 8, and 10-13.

[Maria]: Yes, sir.

[Pros. Nicolas]: And you also made mention that you were not able to actually see them searching because the door leading to the room of your father was half closed, is it not?

[Maria]: Yes, sir.

[Pros. Nicolas]: And of course you just opted to stay in the *sala* even you had the opportunity to enter the room of your parents if you chose it, is it not? [sic]

[Maria]: **Because while [PO3 Tagal] was conducting search he had so many questions that I need to answer, sir.** [sic]

[Pros. Nicolas]: And definitely madam witness nobody prevented you to enter the room of your father at the time the policemen conducted the search inside the room of your parents?

[Maria]: **I was supposed to go with [SPO2 Baccay] inside the room of my parents but [PO3 Tagal] talked to me so we remained in the *sala* (receiving room), sir**.[28] (Emphases and underscoring supplied)

Worse, the search team even instructed Maria to contact her father *via* telephone, which she could only do by leaving their residence and going to the house of a certain Dr. Romeo Bago (Dr. Bago) to use the telephone therein. It was only after her return to their residence that SPO2 Baccay announced that they have allegedly found *shabu* in Bulauitan's room:

[Atty. Acacio]: Now, what did you do when they told you that you contact your father [through] telephone?

[Maria]: **I left our house and went to the house of [Dr. Bago], sir**.

x x x x x x x x x

[Atty. Acacio]: And what happened when you were able to contact the phone number at the stall of your father?

[Maria]: When the call rang the owner of the phone and then she let me waited and I was able to talk to my mother, sir [sic].

[Atty. Acacio]: And what did you tell your mother?

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[28] TSN, August 18, 2009, pp. 25-27.

[Maria]: When I was able to talk to my mother I told her to let my father to go home because policemen were there inside the house, sir [sic].

x x x x x x x x x

[Atty. Acacio]: And what happened when you went home?

[Maria]: When I was able to reach our house I saw [PO3 Tagal] and he asked from me if I was able to contact my father, sir.

[Atty. Acacio]: And what did you tell him?

[Maria]: I told him that I was able to talk to my mother and she will ask my father to go home, sir.

[Atty. Acacio]: And after telling that to [PO3 Tagal] what happened next?

[Maria]: [PO3 Tagal] told to [SPO2 Baccay] to enter inside and then we went inside the house, sir. [sic]

[Atty. Acacio]: And when you entered to the house, what happened next? [sic]

[Maria]: **When we reached the receiving room, [SPO2 Baccay] said that they found something, sir**.

[Atty. Acacio]: And where was [SPO2 Baccay] when he made that announcement that he found something?

[Maria]: **He was inside the room, sir**.

[Atty. Acacio]: And at that time where were you?

[Maria]: **I was at the receiving room, sir**.

x x x x x x x x x

[Atty. Acacio]: And did your father finally arrive?

[Maria]: Yes, sir.

[Atty. Acacio]: Where were you when your father arrived?

[Maria]: I was outside of our house, sir.[29] (Emphases and underscoring supplied)

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[29] TSN August 18, 2009, pp. 14, 16-18, 22.

The foregoing statements were corroborated by Kgd. Soliva's testimony, which essentially stated that: (*a*) Bulauitan was not present when the search was conducted; (*b*) Maria wasn't able to witness the conduct of such search; and (*c*) even he and Kgd. Polonia – the two (2) witnesses designated by the barangay chairman – did not witness the search as they remained outside Bulauitan's residence:

> [Atty. Acacio]: And what happened when you reached the house of [Bulauitan]?
> [Kgd. Soliva]: They [the police officers and the PDEA agents] knocked at the door of the house of [Bulauitan] and the door was opened by the daughter of [Bulauitan], sir.
>
> x x x x x x x x x
>
> [Atty. Acacio]: And what was the response of the daughter of [Bulauitan] when asked as to his whereabouts?
>
> [Kgd. Soliva]: She answered that they were at the public market, sir.
>
> [Atty. Acacio]: And after that, what happened next?
>
> [Kgd. Soliva]: **They sent the daughter to contact her father, sir.**
>
> x x x x x x x x x
>
> [Atty. Acacio]: While the members of the police and the PDEA were inside the house of [Bulauitan], what transpired thereafter, if any?
>
> x x x x x x x x x
>
> [Kgd. Soliva]: I was surprised when they said that they seized *shabu* inside the house, sir.
>
> x x x x x x x x x
>
> [Court]: **When the PDEA and the police operatives conducted a search, you were outside**?
>
> [Kgd. Soliva]: **Yes, your Honor.**
>
> [Court]: And when the police authorities were able to find what they were looking for you did not see how they find [sic] it?
>
> [Kgd. Soliva]: **No more your Honor because when I saw them they were already holding the seized item**.

[Court]: And then the first time you saw the seized item, was that when you enter [sic] the house after they were already seized, is that right?

[Kgd. Soliva]: Yes, your Honor.

x x x x x x x x x

Q: And when you entered the house for the first time after you heard that something was seized inside the house, did you see already [Bulauitan] inside the house?

[Kgd. Soliva]: **No, your honor.**

x x x x x x x x x

[Atty. Acacio]: After you got out of the house together with the members of the police and the PDEA and you went all outside of the house, did you see [Buluaitan]?

x x x x x x x x x

[Kgd. Soliva]: No, sir.[30] (Emphases and underscoring supplied)

The testimonies given in the case at bar ultimately prove that: (*a*) Bulauitan was not in his residence when the search was conducted; (*b*) his daughter, Maria, was not able to witness SPO2 Baccay's search of Bulauitan's room as PO3 Tagal kept her in the living room and even instructed her to leave the house to contact her parents; and (*c*) Kgd. Soliva and Kgd. Polonia neither witnessed the search as they remained outside Bulauitan's residence. Accordingly, the search conducted therein by the search team fell way below the standard mandated by Section 8, Rule 126 of the Revised Rules of Criminal Procedure, and thus deemed unreasonable within the purview of the exclusionary rule of the 1987 Constitution. As a consequence, the three (3) plastic sachets containing an aggregate amount of 0.22 gram of *shabu* recovered therefrom are inadmissible in evidence for being the proverbial fruit of the poisonous tree. Since the confiscated *shabu* is the very *corpus delicti* of the crime charged,[31]

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[30] TSN, March 24, 2009, pp. 12-25.

[31] See *Sindac v. People*, G.R. No. 220732, September 6, 2016. See also *People v. Sorin*, G.R. No. 212635, March 25, 2015, 754 SCRA 594, 610.

Bulauitan must necessarily be acquitted and exonerated from all criminal liability.

As a final note, it is fitting to mention that "[t]he Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions. Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. As Justice Holmes [once said,] x x x 'I think it is less evil that some criminals should escape than that the government should play an ignoble part.' It is simply not allowed in the free society to violate a law to enforce another, especially if the law violated is the Constitution itself."[32]

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 26, 2015 and the Resolution dated June 17, 2015 of the Court of Appeals in CA-G.R. CR No. 36117 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Edmund Bulauitan *y* Mauayan is **ACQUITTED** of the crime charged.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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[32] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

EN BANC

[A.C. No. 10574, September 20, 2016]
(Formerly CBD Case No. 11-3047)

PATRICK R. FABIE, *complainant, vs.* **ATTY. LEONARDO M. REAL,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER'S DUTY TO SAFEGUARD THE CLIENT'S INTERESTS COMMENCES FROM HIS ENGAGEMENT AS SUCH, AND LASTS UNTIL HIS EFFECTIVE RELEASE BY THE CLIENT.— It bears to stress at this point that "[e]very attorney owes fidelity to the causes and concerns of his [client]. He must be ever mindful of the trust and confidence reposed in him by the [client]. His duty to safeguard the [client's] interests commences from his engagement as such, and lasts until his effective release by the [client]. In that time, he is expected to take every reasonable step and exercise ordinary care as his [client's] interests may require." Rule 18.03, Canon 18 of the Code of Professional Responsibility demands upon lawyers to serve their clients with competence and diligence. x x x The Lawyer's Oath similarly mandates a lawyer to conduct himself according to the best of his knowledge and discretion, with all good fidelity to the courts and to his clients. Clearly here, respondent failed to competently and diligently discharge his duty when he was unable to cause the transfer of ownership of property from complainant to Jaynie May. Despite doing nothing, he even obstinately refused to return the ₱40,000.00 he received as attorney's fees. No doubt, respondent "fell short of the demands required of [him] as a member of the bar. [His] inability to properly discharge [his] duty to [his client] makes [him] answerable not just to [him], but also to this Court, to the legal profession, and to the general public.

2. ID.; ID.; ID.; FAILURE OF A LAWYER TO COMPLY WITH HIS OBLIGATION TO SERVE HIS CLIENTS WITH COMPETENCE AND DILIGENCE; IMPOSABLE PENALTY.— Suffice it to say, however, that "the appropriate

penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts." In *Pesto v. Millo*, the Court, after finding therein that Atty. Marcelito M. Millo failed to comply with his obligation to serve his clients with competence and diligence, suspended him from the practice of law for six months and directed him to return the attorney's fees he received on the ground that he did not render efficient service to his clients. The surrounding facts and circumstances of this case calls for the imposition of the same penalty and the adoption of a similar directive. Respondent should thus refund to complainant the ₱40,000.00 given to him in connection with the purported transfer of ownership of property with interest of 12% *per annum* reckoned from the time he received the amount on August 24, 2009 until June 30, 2013, and 6% *per annum* from July 1, 2013 until full payment thereof.

R E S O L U T I O N

DEL CASTILLO, *J.*:

In a Verified Petition,[1] complainant Patrick R. Fabie claimed that he is the owner of a parcel of land located in Bo. Dela Paz, Antipolo City registered under Transfer Certificate of Title (TCT) No. R-1971. His sister Jaynie May R. Fabie (Jaynie May) donated the property to him in support of his intended application for immigration either to the United States of America or Canada. However, his plan to immigrate did not push through hence, he engaged the services of respondent Atty. Leonardo M. Real to facilitate the return of ownership of the said property to Jaynie May.

On August 24, 2009, complainant gave respondent the necessary documents for the purported transfer of ownership of the property as well as the amount of ₱40,000.00 to answer for the expenses to be incurred in connection therewith and for respondent's professional fees.[2] This is evidenced by an

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

[2] *Id*. at 6.

acknowledgement receipt which complainant attached to his Petition indicating as follows:

ACKNOWLEDGEMENT RECEIPT

Received from PATRICK R. FABIE the following documents:

1. Deed of Absolute Sale and Deed of Donation between Patrick Fabie and Jaynie May Fabie
2. Tax Declaration of Real Property
3. Tax Clearance
4. [Official] Real Property tax [r]eceipt
5. Xerox and Original [Transfer Certificate of] Title No. [TCT]. **N-129303**
6. Cash-₱40,000.00

Received by:
Signed 9/18/10
ATTY. LEONARDO M. REAL
Date: August 24,2009
Place: Bermuda Subd.
Antipolo City

Conforme:
Signed
PATRICK R. FABIE[3]

However, more than a year had passed without anything being accomplished. Hence, complainant sought for the return of the items received by respondent. While respondent gave back to complainant TCT No. R-1971, he did not return the ₱40,000.00 and the other documents. And since the demand letter[4] for the return of the money was left unheeded, complainant was constrained to lodge with the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) the said Verified Petition.

In his Answer,[5] respondent admitted that he received the items enumerated in the afore-quoted acknowledgement receipt albeit

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[3] *Id*; emphasis supplied.

[4] *Id*. at 7.

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

on a different date and for a different purpose, i.e, on September 18, 2010, for the purpose of settling the estate of complainant's late father, Esteban E. Fabie, Jr. (Esteban). Later, however, the heirs of Esteban had a change of heart and took back from respondent the documents and the money on November 28, 2010. Complainant allegedly acknowledged the return of the items by respondent as follows:[6]

ACKNOWLEDGEMENT RECEIPT

Received from Atty. Leonardo M. Real the following documents:

1. Deed of Absolute Sale and Deed of Donation bet. Patrick Fabie and Jaynie
2. Tax Declaration of Real Property
3. Tax Clearance
4. [Official] Real Property Tax Receipt
5. Xerox and original Title No. N-129303
6. Cash- ₱40,000.00

Received by:
Signed
PATRICK R. FABIE
Date: August 24,2009
Place: Bermuda Subd.
Antipolo City

Conforme:
Signed 11/28/10
ATTY. LEONARDO M. REAL[7]

Further, respondent attached to his Answer a photocopy of TCT No. N-129303[8] which he claimed to be a part of the estate of Esteban referred to him by the latter's heirs for settlement proceedings. But since there was a misunderstanding among the heirs, the settlement did not push through. To prove the unpleasant relationship of the heirs, respondent attached to his

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[6] *Id*. at 13.

[7] *Id*.

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

Answer a letter[9] dated April 23, 2004 of complainant's mother Elsie R. Fabie (Elsie) indicating her intention to repudiate an amicable settlement that she earlier entered into with her children because the latter committed criminal acts against her. Respondent claimed that he got caught in the middle of this bitter spat of the heirs such that complainant filed this disbarment case against him. At any rate, respondent pointed out that complainant could not have delivered to him TCT No. N-129303 on August 24, 2009 since the same was recorded lost on April 26,2004 and was only recovered on July 27,2010 per entries at the dorsal side of the said title.[10]

In his Reply,[11] complainant clarified that the title which was the subject of his engagement of respondent was TCT No. R-1971 as alleged in his Petition and not TCT No. N-129303. While, indeed, the acknowledgement receipt he appended to his Petition indicates that the TCT number of the title received by respondent is TCT No. N-129303, this was a mere typographical error committed by respondent's secretary who prepared the said acknowledgement receipt. As to how respondent came into possession of a photocopy of TCT No. N-129303, complainant recounted that at one time, he and his mother met with respondent. Respondent thereupon made representations that he could have TCT No. N-129303, which was under the names of complainant's parents, transferred in the sole name of complainant's mother. Upon respondent's further cajoling, complainant's mother gave the former a photocopy of TCT No. N-129303. The purported transfer, however, remained to be a mere plan since complainant's family had no money to defray for the expenses. Unfortunately, respondent was using his possession of a photocopy of TCT No. N-129303 in this case to negate his clear deviation from the conduct expected of a lawyer.

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[9] *Id*. at 16.

[10] *Id*. at 15.

[11] *Id*. at 17-19.

In his Rejoinder,[12] respondent pointed out that the discrepancy between the TCT numbers of the title alluded to by complainant in his Petition (TCT No. R-1971) and of the title indicated in the acknowledgement receipt appended thereto (TCT No. N-129303) was not a mere typographical error considering that the alphanumeric characters of the two TCT numbers were so different from each other. Respondent reiterated his denial that he dealt with complainant with respect to TCT No. R-1971 and asserted that the latter, in filing this complaint for disbarment, was just sour-graping because of the aborted settlement of his father's estate.

Mandatory Conference was set on September 30, 2011.[13] Although respondent filed a Mandatory Conference Brief,[14] he did not appear thereat. Hence, the mandatory conference was terminated and the parties were required to file their respective position papers.[15] Complainant filed his Position Paper[16] attaching thereto an Affidavit[17] executed by his mother Elsie. In the said affidavit, Elsie corroborated the allegations of her son and denied that she or any of her children engaged respondent for the settlement of the estate of Esteban. She farther averred that the said estate was, in fact, already extra-judicially settled through the assistance of a different lawyer as shown by an Extrajudicial Settlement of Estate with Waiver of Rights.[18] On respondent's end, he attached to his Position Paper[19] a draft[20] of the Complaint for Partition and Accounting which he claimed to have prepared in accordance with his engagement by the heirs of Esteban.

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[12] *Id*. at 20-21.

[13] *Id*. at 23.

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

[15] *Id*. at 29.

[16] *Id*. at 30-36.

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

[18] *Id*. at 39-43.

[19] *Id*. at 46-49.

[20] *Id*. at 54-59.

Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation[21] dated November 9, 2011, Investigating Commissioner Oliver A. Cachapero (Commissioner Cachapero) held that the evidence tended to support complainant's allegations. For one, the items received by respondent included a Deed of Absolute Sale and a Deed of Donation executed by and between complainant and Jaynie May — documents which are significant to the purported transfer of ownership of property between the said siblings. For another, he found complainant as quite sure of the details of respondent's return to him of TCT No. R-1971 only as complainant even vividly recalled that the same took place in Starbucks, Edsa Central, Mandaluyong City. On the other hand, Commissioner Cachapero did not find credible respondent's claim that he was engaged by the heirs of Esteban for the settlement of estate.

As to the respective acknowledgment receipts submitted by the parties, Commissioner Cachapero made this observation:

> The undersigned likewise notes that the [r]espondent had apparently perpetrated the odious act of riding on the mistake of his secretary. There apparently was an error in his secretary's typing of the acknowledgment receipt. This can be gleaned from the indication of one and the same date (August 24, 2009) below the printed name of [c]omplainant and [r]espondent in the two (2) Acknowledgment Receipts. Significantly, only the name of the recipient (Respondent) was changed in the latter receipt and this gave way for him to use the original one (with Complainant as recipient) which is erroneous [since the said copy indicated complainant as the recipient when it should have been the respondent] to support his claim that he had already returned to Complainant the sum of ₱40,000.00 that was earlier paid to him the said amount being indicated in the acknowledgment receipt.[22]

Ultimately, Commissioner Cachapero found respondent to have (1) breached his duties to his client when he failed to

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[21] *Id*. at 90-93

[22] *Id*. at 66.

exercise due diligence in his undertaking to cause the transfer of ownership of property from complainant to Jaynie May and instead abandoned his client's cause; (2) converted his client's fund of ₱40,000.00 to his personal use when he failed to return the same to complainant; and, (3) committed dishonesty when he claimed that he had been engaged to settle the estate of Esteban when in truth he was not. And since the above transgressions did not only show bad faith on the part of respondent but also caused material damage to complainant, Commissioner Cachapero recommended that respondent be suspended from the practice of law for two years.

Ruling of the IBP Board of Governors

In Resolution No. XX-2013-406 dated April 15, 2013, the IBP Board of Governors adopted and approved the report and recommendation of Commissioner Cachapero with modification that respondent be suspended for a shorter period of six months.[23]

Respondent filed a Motion for Reconsideration[24] insisting that there was no clear, convincing, and satisfactory evidence adduced to establish that he breached his duties to complainant as to warrant his suspension. The IBP Board of Governors, however, issued Resolution No. XXI-2014-115 on March 21, 2014 denying respondent's Motion for Reconsideration.[25] It further resolved to modify its earlier resolution (Resolution No. XX-2013-406) by suspending respondent from the practice of law for a period of two years in accordance with the recommendation of Commissioner Cachapero.

Our Ruling

"The Court has emphatically stated that when the integrity of a member of the bar is challenged, it is not enough that [he] denies the charges against him; [he] must meet the issue and overcome the evidence against [him]. [He] must show proof

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[23] *Id*. at 89.

[24] *Id*. at 68-76.

[25] *Id*. at 88.

that [he] still maintains that degree of morality and integrity which at all times is expected of [him]."[26] Respondent failed in this regard.

It is undisputed that respondent received documents and money from complainant. What is at issue, however, are the circumstances surrounding such receipt. To recap, complainant asserts that respondent received the items because he engaged the latter to cause the transfer of ownership of a land from him to his sister Jaynie May. Respondent, however, denies this and instead avers that he received the documents and the money in connection with the settlement of the estate of complainant's father Esteban for which he was employed by the latter's heirs. Unfortunately, none of the parties was able to present a written contract which would have been the best evidence of their respective claims of professional engagement. Be that as it may, the Court has carefully scrutinized the evidence presented by both parties and finds that as held by Commissioner Cachapero, the weight of evidence favors the complainant.

First, the documents received by respondent support the transaction for which complainant claims to have engaged his services. Plainly, the Deed of Absolute Sale and Deed of Donation by and between complainant and Jaynie May are the primary documents necessary to facilitate the transfer of ownership of property between them. On the other hand, these documents have no significance to the purported settlement of estate of Esteban. Moreover, if respondent indeed received the documents for purposes of settlement proceedings, why were such documents, which notably relate to just a single property, the only ones given to him when respondent himself alleges in his Answer[27] that the estate of Esteban comprises of prime properties located in Mandaluyong, Quezon City, and Antipolo? Why were titles and documents pertaining to such other properties not among those received by him?

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[26] *Spouses Tejada v. Atty. Palaña*, 557 Phil. 517, 524 (2007).

[27] See page 2 of respondent's Answer, *rollo*, p. 10.

To further negate the allegations against him, respondent capitalizes on the discrepancy between the title number of the TCT of the property supposed to be the subject of the transfer of ownership between complainant and Jaynie May (TCT No. R-1971) and the title number of the TCT received by him as indicated in the parties' respective acknowledgement receipts (TCT No. N-129303). The Court notes that complainant offered an explanation for this, *i.e.*, that the said discrepancy was brought about by a mistake on the part of respondent's secretary who typed the acknowledgement receipt, that is, instead of typing TCT No. R-1971 in the acknowledgment receipt, the secretary typed TCT No. N-129303. Complainant further explains that he did not anymore endeavor to correct the mistake since respondent allegedly told him that both of them understood anyway that the same was a mere typographical error. Respondent, however, argues that the commission of such a mistake is highly improbable.

The Court finds otherwise.

The possibility of the respondent's secretary committing such a mistake cannot just be discounted considering complainant's narration, which significantly was not refuted by respondent, that the latter was also in possession of a photocopy of TCT No. N-129303. Hence, it is not at all unlikely for respondent's secretary to have indeed mixed up the title numbers of the TCTs when she typed the acknowledgment receipt. Besides, respondent himself acknowledged in the motion for reconsideration he filed with the IBP that errors or mistakes are common when using a computer. He further stated that "[s]ecretaries are prone to do their jobs by 'copy and paste' scheme rather than [by] typing [characters] one by one in a document. All it takes is a simple copy operation to copy large amounts of text or images from another source."[28]

Respondent further avers that he could not have received TCT No. N-129303 on August 24, 2009, the date indicated in the acknowledgment receipt submitted by complainant, since

[28] *Id*. at 73.

the said title was recorded lost on August 26,2004 and was only recovered on July 27, 2010 per entries at the dorsal side of the said title. This averment, however, only bolsters complainant's allegation that it was not the original copy of TCT No. N-129303 which was received by respondent but that of TCT No. R-1971. In any case, the Court notes that what was recorded lost was the original of the owner's copy of TCT No. N-129303. This therefore does not negate complainant's possession of a photocopy of TCT No. N-129303 at the time he received from complainant TCT No. R-1971, which as already mentioned could have caused the error in the typing of the TCT number on the acknowledgment receipt submitted by complainant.

More importantly, it is well to note that complainant's allegations were corroborated by the averments in Elsie's affidavit wherein the latter narrated in detail the efforts undertaken by complainant and his family in following up with respondent the purported transfer of ownership and later, the recovery of the money which complainant paid him.

Respondent, on the other hand, aside from unconvincing averments, failed to present competent evidence to support his defense. The Court cannot give weight to the draft of the Complaint for Partition and Accounting which respondent claimed to have prepared pursuant to the alleged engagement of him by the heirs to settle the estate of Esteban. As it is, the said Complaint is a mere draft which respondent could have just prepared as an afterthought in order to support his defense in this case. Moreover, respondent's story that he was tapped by the heirs of Esteban for settlement proceedings hardly inspires belief. He did not present a clear narration of the facts and circumstances surrounding the same. Important details were not provided such as when and how he was engaged, who among the heirs in particular talked to him about the matter, and why he made his claimed return of the documents and money to complainant and not to the other heirs. Instead, respondent merely made a general claim that there existed a professional engagement between him and the heirs of Esteban. Plainly, respondent's story leaves much to be desired.

Since his version of the story fails to convince, respondent's claim that he already returned the documents and money to complainant likewise loses credibility. Besides, per the above-quoted observation of Commissioner Cachapero, the Acknowledgment Receipt he submitted to support such claim is highly doubtful because of several inconsistencies found therein. The Court likewise notes that the same contains insertions/intercalations which were not counter-signed.

It bears to stress at this point that "[e]very attorney owes fidelity to the causes and concerns of his [client]. He must be ever mindful of the trust and confidence reposed in him by the [client]. His duty to safeguard the [client's] interests commences from his engagement as such, and lasts until his effective release by the [client]. In that time, he is expected to take every reasonable step and exercise ordinary care as his [client's] interests may require."[29]

Rule 18.03, Canon 18 of the Code of Professional Responsibility demands upon lawyers to serve their clients with competence and diligence, to wit:

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x x x x x

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

The Lawyer's Oath similarly mandates a lawyer to conduct himself according to the best of his knowledge and discretion, with all good fidelity to the courts and to his clients.

Clearly here, respondent failed to competently and diligently discharge his duty when he was unable to cause the transfer of ownership of property from complainant to Jaynie May. Despite doing nothing, he even obstinately refused to return the ₱40,000.00 he received as attorney's fees. No doubt, respondent

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[29] *Pesto v. Millo,* 706 Phil. 286, 292 (2013).

"fell short of the demands required of [him] as a member of the bar. [His] inability to properly discharge [his] duty to [his client] makes [him] answerable not just to [him], but also to this Court, to the legal profession, and to the general public."[30]

The IBP Board of Governors recommended that respondent be suspended from the practice of law for a period of two years. Suffice it to say, however, that "the appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts."[31] In *Pesto v. Millo,*[32] the Court, after finding therein that Atty. Marcelito M. Millo failed to comply with his obligation to serve his clients with competence and diligence, suspended him from the practice of law for six months and directed him to return the attorney's fees he received on the ground that he did not render efficient service to his clients. The surrounding facts and circumstances of this case calls for the imposition of the same penalty and the adoption of a similar directive. Respondent should thus refund to complainant the ₱40,000.00 given to him in connection with the purported transfer of ownership of property with interest of 12% *per annum* reckoned from the time he received the amount on August 24, 2009 until June 30, 2013, and 6% *per annum* from July 1,2013 until full payment thereof.

WHEREFORE, the Court **FINDS** respondent Atty. Leonardo M. Real guilty of violating Canon 18, Rule 18.03 of the Code of Professional Responsibility and the Lawyer's Oath and thus **SUSPENDS** him from the practice of law for a period of six months effective from notice,**ORDERS** him to return to complainant Patrick R. Fabie within 10 days from notice the sum of ₱40,000.00 with legal interest of 12% *per annum* reckoned from the time he received the amount on August 24,2009 until June 30,2013, and 6% *per annum* from July 1, 2013 until full payment thereof, and **STERNLY WARNS** him that commission

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[30] *Spouses Saunders v. Atty. Lyssa Grace S. Pagano-Calde,* A.C. No. 8708, August 12, 2015.

[31] *Id*.

[32] *Supra* at 296.

of any similar infraction in the future will be dealt with more severely. Finally, he must **SUBMIT** to this Court written proof of his compliance within 30 days from notice of this Resolution.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent Atty. Leonardo M. Real's personal record as an attorney; the Integrated Bar of the Philippines; and the Office of the Court Administrator for dissemination to all courts throughout the country for their information and guidance.

SO ORDERED.

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

Carpio, J., on official leave.

EN BANC

[A.C. No. 11095. September 20, 2016]
(Formerly CBD Case No. 11-3140)

EUFEMIA A. CAMINO, *complainant, vs.* **ATTY. RYAN REY L. PASAGUI,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER MAY BE DISCIPLINED FOR MISCONDUCT COMMITTED EITHER IN HIS PROFESSIONAL OR PRIVATE CAPACITY.— A lawyer is duty-bound to observe candor, fairness and loyalty in all his dealings and transactions with his clients. The profession, therefore, demands of an attorney an absolute abdication of every personal advantage conflicting in any way, directly or

indirectly, with the interest of his client. x x x Rule 1.0, Canon 1 of the Code of Professional Responsibility, provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." It is well established that a lawyer's conduct is "not confined to the performance of his professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court." Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is "unlawful." "Unlawful" conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element. To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straight-forwardness, while conduct that is "deceitful" means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.

2. ID.;ID.;WHEN A LAWYER COLLECTS OR RECEIVES MONEY FROM HIS CLIENT FOR A PARTICULAR PURPOSE, HE SHOULD PROMPTLY ACCOUNT TO THE CLIENT HOW THE MONEY WAS SPENT; CASE AT BAR.— A lawyer, under his oath, pledges himself not to delay any man for money or malice and is bound to conduct himself with all good fidelity to his clients. He is obligated to report promptly the money of his client that has come into his possession. He should not commingle it with his private property or use it for his personal purposes without his client's consent. When a lawyer collects or receives money from his client for a particular purpose (such as for filing fees, registration fees, transportation and office expenses), he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. Respondent, by converting the money of his client to his own personal use without her consent, was guilty of deceit, malpractice and gross misconduct. Not only did he degrade himself but as an unfaithful lawyer he besmirched the fair name of an honorable profession. x x x The Court also deems it appropriate to order the return of the moneys which respondent

received as attorney-in-fact, for the purpose of facilitating the transfer of the title in the name of the complainant with the corresponding payment of legal interest as pronounced in the case of *Nacar v. Gallery Frames*.

3. ID.; ID.; ATTORNEYS MUST NOT ONLY KEEP INVIOLATE THEIR CLIENT'S CONFIDENCE, BUT ALSO AVOID THE APPEARANCE OF TREACHERY AND DOUBLE-DEALING, FOR ONLY THEN CAN LITIGANTS BE ENCOURAGED TO ENTRUST THEIR SECRETS TO THEIR ATTORNEYS WHICH IS OF PARAMOUNT IMPORTANCE IN THE ADMINISTRATION OF JUSTICE.— Atty. Pasagui's act of propositioning himself as a lawyer of Tan and Camino who have opposing interests as one being the seller and the other one, the buyer, is deplorable. As lawyer of the buyer, Tan, he facilitated the buyer's payments to Camino, but at the same time when it seemed that he could get a higher price from another buyer, he encouraged Camino to cancel the sale in favor of Tan. Clearly, such actuations of Atty. Pasagui are tantamount to double-dealing and conflict of interest, and manifests unethical practice of law. Attorneys, like Caesar's wife, must not only keep inviolate their client's confidence, but must also avoid the appearance of treachery and double-dealing, for only then can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of justice.

4. ID.; ID.; A MEMBER OF THE BAR MAY BE PENALIZED, EVEN DISBARRED OR SUSPENDED FROM HIS OFFICE AS AN ATTORNEY, FOR VIOLATION OF THE LAWYER'S OATH AND/OR BREACH OF THE ETHICS OF THE LEGAL PROFESSION AS EMBODIED IN THE CODE OF PROFESSIONAL RESPONSIBILITY; CASE AT BAR.— A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility. For the practice of law is "a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character." The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. Here, Atty. Pasagui demonstrated not just a negligent disregard

of his duties as a lawyer but a wanton betrayal of the trust of his client and, in general, the public. Accordingly, the Court finds that the suspension for one (1) year recommended by the IBP-Board of Governors is not sufficient punishment for Atty. Pasagui's unacceptable acts and omissions. The acts of the respondent constitute malpractice and gross misconduct in his office as attorney. His incompetence and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed on him. x x x **WHEREFORE**, Resolution No. XXI-2014-938 dated December 14, 2014 of the IBP-Board of Governors which found respondent Atty. Ryan Rey L. Pasagui **GUILTY** of violation of Rule 1.01 of the Code of Professional Responsibility is **AFFIRMED with MODIFICATION as to the penalty**. Respondent Atty. Ryan Rey L. Pasagui is instead meted the penalty of **DISBARMENT**.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for complainant.
Felipe N. Egargo, Jr., for respondent.

D E C I S I O N

***PER CURIAM*:**

Before us is a Disbarment Complaint[1] dated July 13, 2011 filed by Eufemia A. Camino against respondent Atty. Ryan Rey L. Pasagui before the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*), docketed as CBD Case No. 11-3140, now A.C. No. 11095.

The facts are as follows:

Complainant Eufemia A. Camino (*Camino*) is the vendor of a lot covered by Transfer Certificate of Title (*TCT*) No. T-70247,[2] still registered under the name of the Heirs of Camino's father. Respondent Atty. Ryan Rey L. Pasagui (*Atty. Pasagui*) was allegedly the lawyer of Congresswoman Mila Tan (*Tan*) who

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

[2] *Id*. at 59.

was in charge of handling the payments for the property which Camino sold to Tan in 2010. Camino narrated that sometime after the election, Atty. Pasagui offered her Tan's payment in the amount of Thirty Thousand Pesos (₱30,000.00). However, Camino refused to accept the same as she wanted to have the payment in full and added that she also returned to Atty. Pasagui the postdated check amounting to Two Million Pesos (₱2,000,000.00) which Tan previously issued.

Atty. Pasagui then advised her to this effect, "*maupay ngani na waray mo karawta, kay magrerecall man ngani diri ka na mababaydan kay waray na hi Congresswoman Mila Tan kwarta. Pamiling nala hin iba na buyer ibabalik nato it kwarta ha iya ngan maghihimo nala ako hin demand letter na kinahanglan na maimpasan kay kun diri makahatag, ibabalik nala an iya nahatag*." (Good that you did not accept it because there will be a recall and Congresswoman Mila would not have enough money to pay you. Look for another buyer and we'll return her money. I will prepare a demand letter that she must pay you or else you will just pay her back the amount she has paid). Camino further alleged that Atty. Pasagui assured her that he will take care of everything and encouraged her to look for another buyer and advised her to set its price at Seven Million Pesos (Php7,000,000.00).

Few weeks after, Camino informed Atty. Pasagui that she has a buyer but the latter wanted to have a clean title of the property since said property is still under the names of all the heirs of her father. Atty. Pasagui then asked for the title to make the verifications and facilitate the transferring of the title under her name considering that she has paid her siblings with their respective shares. Atty. Pasagui then told her that the transfer of the title in her name will cost about Seven Hundred Thousand Pesos (₱700,000.00) or more and that the said amount would be enough because he can ask for discounts from his friend at the Bureau of Internal Revenue (*BIR*).

Sometime in January 2011, Atty. Pasagui told Camino that they will proceed with the sale to another buyer since Tan did not give any payment yet even after sending her the demand

letter. Atty. Pasagui, however, failed to show Camino the said demand letter.

Convinced by Atty. Pasagui's assurance that she could still sell the property to another buyer, she consented to his proposition and told him that she will look for a sufficient amount of money necessary for the processing of the transfer of the title.

In the evening of February 3, 2011, Camino informed Atty. Pasagui that she already has the amount of ₱120,000.00 to start the processing of the transfer of title in her name. However, on the day they were supposed to meet, Atty. Pasagui failed to meet her and instead sent his mother, Susie Pasagui, to receive the ₱120,000.00.[3]

Thereafter, Atty. Pasagui advised Camino to apply for a loan at Perpetual Help Credit Cooperative, Inc. (PHCCI), Alang-alang, Leyte, using her residential house and lot at V & G as collateral. The proceeds thereof will then be used for the necessary expenses in transferring the title in Camino's name. He claimed that the loan can be released in one (1) week.

Thus, Camino and her husband, Perpetuo P. Camino, executed a Special Power of Attorney (*SPA*)[4] in favor of respondent Atty. Pasagui, authorizing the latter to obtain a loan in their behalf with PHCCI to be secured by their own property covered by TCT No. T-35197.[5]

A month after, Camino went to Atty. Pasagui's house to inquire about the status of the loan application. She was then told that the application was still in process and the maximum loanable amount was only Seven Hundred Thousand Pesos (₱700,000.00) and that the release will be on a staggered basis.

Doubtful, Camino personally went to PHCCI and asked for the copy of his loan application. Upon securing a copy of the application, Camino discovered that the loan was already

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[3] *Id*. at 8.

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

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

approved and that the proceeds thereof amounting to One Million Pesos (₱1,000,000.00) was released on February 15, 2011.

Sometime in April 2011, Atty. Pasagui, together with his parents invited complainant and her son, Francis Peter Camino, to the pension house where Tan was staying. At that time, Camino have yet to confront Atty. Pasagui about her discovery that he already collected the loan proceeds from PHCCI as she was hoping that he would be the one to tell her himself.

On the way to the pension house, Camino recalled that Atty. Pasagui advised her to refuse payment from Tan should she attempt to hand over an amount less than Two Hundred Thousand Pesos (₱200,000.00). Camino then wondered why Tan would still offer her payment of ₱200,000.00 when she thought that Atty. Pasagui already told her that the sale of the property will no longer push through.

When they reached the pension house, Atty. Pasagui went directly to the room of Tan and spent almost thirty minutes inside. When they got out of the room, Tan handed to her an envelope containing the amount of ₱150,000.00. Atty. Pasagui then gave her a signal to accept the said amount. She accepted the money from Tan who also promised her the full payment on April 28, 2011.

On April 28, 2011, Camino tried to call Atty. Pasagui to follow up on Tan's payment but he did not answer her call. Neither did Atty. Pasagui get in touch with her after their meeting.

Camino then decided to check the status of the title of the property at the Register of Deeds. She found out that Atty. Pasagui neither processed the transfer of the title in her name nor paid the necessary fees for its transfer. Camino also went to Atty. Pasagui's house to inquire about Tan's promise of payment but he was not around.

Confused, on June 6, 2011, with the assistance of a lawyer, Camino wrote Atty. Pasagui and reminded him of their agreement that he will be the one to facilitate and secure a loan with PHCCI in order to finance the payment of the necessary expenses for

the transfer of the title in her name.[6] Camino mentioned that she was able to secure a printout of the loan interest worksheet and that it was reflected therein that Atty. Pasagui already received the proceeds of the loan. Camino alleged that sufficient time have elapsed already, yet, even after several inquiries and verification from the Register of Deeds and other government agencies concerned, there had been no transaction filed in connection with the transfer of the ownership of the property. Camino added that she tried to get in touch with Atty. Pasagui but the same was futile, thus, she demanded from him to account and turn-over the proceeds of the real estate loan from the PHCCI and to return back to her all pertinent documents and papers which were entrusted to him.[7]

In his Answer[8] dated June 16, 2011, Atty. Pasagui explained, to wit:

> *As of the moment, however, the undersigned is already facilitating for the release of your documents from Perpetual Help Credit Cooperative, Inc., Alang-alang Branch, Alang-alang, Leyte. As to your pertinent documents relative to Transfer Certificate of Title No. T-70247, the same is not within my possession as those documents are in the possession of the person who bought the same real property way back in the year 2009.*

On August 12, 2011, the IBP-CBD ordered Atty. Pasagui to submit his Answer to the complaint.[9]

Atty. Pasagui, in his Answer[10] dated September 21, 2011, admitted that he had indeed applied for a loan with PHCCI but insisted that the same was personal to him, thus, he will also be the one to personally pay for it. He further alleged that he is not under any obligation to report or account to Camino where

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[6] *Id*. at 15.

[7] *Id*.

[8] *Id*. at 16.

[9] *Id*. at 39.

[10] *Id*. at 51-57.

the proceeds of the loan went because it is he, himself, who will pay it anyway.

On October 12, 2011, the IBP-CBD notified the parties to appear before the Commission for the mandatory conference.[11]

In its Report and Recommendation[12] dated July 10, 2014, the IBP-CBD found Atty. Pasagui guilty of violating Rule 1.01 of the Code of Professional Responsibility for Lawyers which is a mandate for lawyers to desist from "dishonest, immoral or deceitful conduct." It recommended that Atty. Pasagui be reprimanded with a warning that a repetition of the same infraction will result in the imposition of a more severe penalty.

In Resolution No. XXI-2014-938[13] dated December 14, 2014, the IBP-Board of Governors resolved to adopt and approve with modification as to the penalty the Report and Recommendation of the IBP-CBD. Instead, it recommended that Atty. Pasagui be suspended from the practice of law for one (1) year for violation of Rule 1.01 of the Code of Professional Responsibility, without prejudice to the filing by the complainant of an appropriate action in court.

We sustain the findings of the IBP-CBD except as to the penalty.

A lawyer is duty-bound to observe candor, fairness and loyalty in all his dealings and transactions with his clients. The profession, therefore, demands of an attorney an absolute abdication of every personal advantage conflicting in any way, directly or indirectly, with the interest of his client. In this case, Atty. Pasagui failed to measure up to the exacting standard expected of him.[14]

Rule 1.0, Canon 1 of the Code of Professional Responsibility, provides that "[a] lawyer shall not engage in unlawful, dishonest,

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[11] *Id.* at 166.

[12] *Id.* at 238-239.

[13] *Id.* at 236-237.

[14] *Barnachea. v. Atty. Quiocho*, 447 Phil. 67, 75 (2003).

immoral or deceitful conduct." It is well established that a lawyer's conduct is "not confined to the performance of his professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court."[15]

Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is "unlawful." "Unlawful" conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element. To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straight-forwardness, while conduct that is "deceitful" means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.[16]

In the instant case, Atty. Pasagui's guilt is undisputed. Atty. Pasagui's defense that the loan was personal to him fails to convince. A perusal of the Special Power of Attorney issued by Camino and her husband to Atty. Pasagui clearly shows that the application of the loan with PHCCI was in behalf of the Caminos and that the property mortgaged was likewise the property of the latter. If it were true that it was a personal loan to him, Atty. Pasagui failed to provide an explanation as to why he used Camino's property as collateral. There was likewise no explanation as to why the Caminos would allow such set up of applying a loan for the personal benefit of Atty. Pasagui using their own property as collateral. In the absence of any agreement between the parties, as in this case, it does not make

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[15] *Navarro, et al. v. Atty. Solidum, Jr.*, 725 Phil. 358, 367 (2014), citing *Roa v. Moreno*, 633 Phil. 1, 7 (2010).

[16] *Jimenez v. Francisco*, A.C. No. 10548, December 10, 2014, 744 SCRA 215, 230.

sense that the Caminos would allow their own residential property to be mortgaged in order to finance something that will not be of benefit to them. It is then plausible that the true intention of the Caminos in designating Atty. Pasagui as attorney-in-fact was for the purpose of obtaining a loan with the PHCCI to finance the expenses of the transfer of title in Camino's name. Thus, by his failure to make good of their agreement to use the proceeds of the loan for the transfer of the title in Camino's name, Atty. Pasagui not only betrayed the trust and confidence reposed upon him but he is also guilty of engaging in dishonest and deceitful conduct. The failure of Atty. Pasagui to inform Camino of the status of the transfer of title despite the release of the loan to finance the transfer of the title, is a clear indicium that he converted the money for his own use and constituted a gross violation of professional ethics and betrayal of public confidence in the legal profession.[17] He violated Canon 16 of the Code of Professional Responsibility, which states that "[a] lawyer shall hold in trust all moneys and properties of his client that may come into his possession." Furthermore:

Rule 16.01. A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02. A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03. A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

A lawyer, under his oath, pledges himself not to delay any man for money or malice and is bound to conduct himself with all good fidelity to his clients. He is obligated to report promptly the money of his client that has come into his possession. He should not commingle it with his private property or use it for

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[17] *Villanueva v. Atty. Gonzales*, 568 Phil. 379, 386 (2008).

his personal purposes without his client's consent. When a lawyer collects or receives money from his client for a particular purpose (such as for filing fees, registration fees, transportation and office expenses), he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client.[18] Respondent, by converting the money of his client to his own personal use without her consent, was guilty of deceit, malpractice and gross misconduct. Not only did he degrade himself but as an unfaithful lawyer he besmirched the fair name of an honorable profession.

Furthermore, Atty. Pasagui's act of propositioning himself as a lawyer of Tan and Camino who have opposing interests as one being the seller and the other one, the buyer, is deplorable. As lawyer of the buyer, Tan, he facilitated the buyer's payments to Camino, but at the same time when it seemed that he could get a higher price from another buyer, he encouraged Camino to cancel the sale in favor of Tan. Clearly, such actuations of Atty. Pasagui are tantamount to double-dealing and conflict of interest, and manifests unethical practice of law. Attorneys, like Caesar's wife, must not only keep inviolate their client's confidence, but must also avoid the appearance of treachery and double-dealing, for only then can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of justice.[19]

PENALTY

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility. For the practice of law is "a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character." The

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[18] *Belleza v. Atty. Macasa*, 611 Phil. 179, 190 (2009), citing *In re Nueno*, 48 Phil. 178 (1948).

[19] *Suntay v. Atty. Suntay*, 435 Phil. 482, 492-493 (2002).

appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[20]

Here, Atty. Pasagui demonstrated not just a negligent disregard of his duties as a lawyer but a wanton betrayal of the trust of his client and, in general, the public. Accordingly, the Court finds that the suspension for one (1) year recommended by the IBP-Board of Governors is not sufficient punishment for Atty. Pasagui's unacceptable acts and omissions. The acts of the respondent constitute malpractice and gross misconduct in his office as attorney. His incompetence and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed on him.

The Court also deems it appropriate to order the return of the moneys which respondent received as attorney-in-fact, for the purpose of facilitating the transfer of the title in the name of the complainant with the corresponding payment of legal interest as pronounced in the case of *Nacar v. Gallery Frames*.[21] True, in disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. In such cases, the Court's only concern is the determination of respondent's administrative liability; it should not involve his civil liability for moneys received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement. However, in this case, it appeared that the Caminos entrusted the task of facilitating the transfer of the title by virtue of respondent's legal expertise. The receipt of the moneys was not by virtue of a personal transaction between the complainant and respondent. After all, if a person, in respect to business affairs or troubles of any kind, consults a lawyer with a view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces with the consultation, as in this case, then the professional employment is established.[22] Once lawyers

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[20] *Jimenez v. Atty. Francisco*, A.C. No. 10548 , December 10, 2014, 744 SCRA 215, 240.

[21] 716 Phil. 267 (2013).

[22] *Hilado v. David*, 84 Phil. 569, 576 (1949).

agree to take up the cause of a client, they owe fidelity to such cause and must always be mindful of the trust and confidence reposed in them.[23]

WHEREFORE, Resolution No. XXI-2014-938 dated December 14, 2014 of the IBP-Board of Governors which found respondent Atty. Ryan Rey L. Pasagui **GUILTY** of violation of Rule 1.01 of the Code of Professional Responsibility is **AFFIRMED with modification as to the penalty**. Respondent Atty. Ryan Rey L. Pasagui is instead meted the penalty of **DISBARMENT**. Respondent is further **ORDERED** to immediately **RETURN** the loan proceeds amounting to ₱1,000,000.00 and to pay legal interest at the rate of twelve percent (12%) *per annum* computed from the release of the loan on February 15, 2011 up to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until fully paid, as well as, the ₱120,000.00 received for the purpose of transferring the title in the name of the complainant and to pay legal interest at the rate of twelve percent (12%) *per annum* computed from receipt of the amount on February 3, 2011 up to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until fully paid. He is likewise **ORDERED** to **RETURN** all other documents pertinent to the loan obtained from PHCCI and those received from complainant.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of respondent; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

SO ORDERED.

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

Carpio, J., on official leave.

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[23] *Aromin v. Atty. Boncavil*, 373 Phil. 612, 618 (1999).

EN BANC

[A.M. No. P-09-2621. September 20, 2016]
(Formerly OCA-I.P.I. No. 08-2939-P)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **EDUARDO T. UMBLAS, Legal Researcher, Regional Trial Court, Branch 33, Ballesteros, Cagayan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6713 (CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES); GRAVE MISCONDUCT; TO WARRANT DISMISSAL FROM SERVICE, THE MISCONDUCT MUST BE GRAVE, SERIOUS, IMPORTANT, WEIGHTY, MOMENTOUS, AND NOT TRIFLING.—** Misconduct is a transgression of some established and definite rule of action, more particularly, it is the unlawful behavior of, or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment. The misconduct is grave if it involves any of the additional elements of corruption, willful intents to violate the law or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefits for himself or for another person, contrary to duty and the rights of others.

2. **ID.; ID.; ID.; ID.; ACT OF JUDGE ISSUING A DECISION THAT VOIDED A MARITAL UNION WITHOUT ANY JUDICIAL PROCEEDING CONSTITUTES GRAVE MISCONDUCT; CASE AT BAR.—** In fine, it was proven by substantial evidence that respondent Umblas unlawfully and wrongfully used his position to issue the subject documents,

which were clearly made to benefit Ramil. Moreover, the respondent violated the law and flagrantly disregarded the established rules by his reprehensible act of issuing a decision that voided a marital union without any judicial proceeding. Such, malfeasance not only makes a mockery of marriage and its life – changing consequences but likewise grossly violates the basic norms of truth, justice, and due process. It was also established that the respondent violated Section 4 of R.A. No. 6713. He miserably failed to live up to the exacting standards imposed upon public employees.

3. **ID.; ID.; ID.; ID.; ID.; PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST OFFENSE.—** Rule 10, Section 46 (A) (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service classifies grave misconduct as a grave offense punishable by dismissal even for the first offense. Section 52 (a) states that the penalty of dismissal carries with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office. It must be stressed that every employee of integrity, uprightness, and honesty. Like any public servant, he must exhibit the highest sense of honesty and integrity not only in the performance of his official duties but also in his personal and private dealings with other people, to preserve the court's good name and standing. The image of the court of justice is mirrored in the conduct, official and of its personnel. Court personnel have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice. Here, the respondent failed to meet these stringent standards set for a judicial employee and, therefore, he does not deserve to remain with the judiciary.

D E C I S I O N

***PER CURIAM*:**

This is an administrative case charging respondent Eduardo T. Umblas *(Umblas)*, Legal Researcher, Regional Trial Court, Branch 33, Ballesteros, Cagayan *(RTC)* with grave misconduct and violation of Republic Act *(R.A.)* No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials

and Employees, for his act of certifiying as true copy a spurious court decision, which declared the marriage of Maria Noemi Bautista-Pabon *(Noemi)* and Ramil Pabon *(Ramil)* null and void, and issuing a certificate of finality relative to the said decision.

The Antecedents

On August 15, 2008, Noemi filed her Complaint[1] with the Office of the Court Administrator *(OCA)* against Umblas; the RTC Clerk of Court Atty. Rizalina Aquino *(Atty. Aquino)* for violation of the Code of Conduct for Judicial Employees or Court Personnel; and Judge Eugenio Tangonan, Jr. *(Judge Tangonan, Jr.)* for violation of the Code of Judicial Ethics and Conduct.

Complainant Noemi alleged, among others, that she was constrained to file criminal charges against her husband, Ramil, for violation of R.A. No. 9262, or the Anti-Violence Against Women and Their Children Act, before the Pasay City Prosecutor's Office, and for Adultery and Concubinage before the Provincial Prosecutor's Office of San Pedro, Laguna; that on July 22, 2008, Atty. Romeo Lumagui, Jr. *(Atty. Lumagui, Jr.)*, Ramil's counsel, filed his Motion to Re-open Preliminary Investigation and Admit Attached Documentary Evidence[2] on the basis of a newly-discovered evidence in connection with the R.A. No. 9262 case before the Pasay City Prosectutor's Office; that the attached documents turned out to be copies of the June 20, 2005 RTC Decision[3] penned by Judge Tangonan, Jr., in Civil Case No. 33-328C-2005, entitled "Ramil Pabon vs. Noemi Bautista-Pabon," and the December 18, 2005 Certificate of Finality[4] both issued by Umblas relative to the said decision; and that both documents were stamped with "Certified True Copy" bearing the name and the signature of Umblas.

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

[2] *Id*. at 139-141.

[3] *Id*. at 143-147.

[4] *Id*. at 142.

Noemi further claimed that she inquired from the Office of the Solicitor General *(OSG)* and the said office issued a certification,[5] dated July 30, 2008, stating that it had not received any pleading or kept any record pertaining to Civil Case No. 33-328C-2005; that she went to Ballesteros, Cagayan, where the dubious decision was promulgated, to verify the veracity of the subject documents; that she went to the RTC and discovered that no such case existed in the court docket as verified by the court stenographer and the sheriff; that she talked to Umblas who refused to say whether such case was recorded in the court docket and denied her request for copies of the case records; that she was able to talk on the phone with Atty. Aquino who was on leave that day and could not come to the office despite her request; and she also looked for Judge Tangonan but she was told that he had already retired.

Noemi prayed that Umblas, Atty. Aquino and Judge Tangonan, Jr. be all found guilty of Grave Misconduct and be penalized accordingly because she believed that the subject documents were non-existent and fabricated because at the time the RTC decision was allegedly rendered on June 20, 2005, she and Ramil were still living together in Batangas and never in Ballesteros, Cagayan.

At the OCA level

In a letter,[6] dated August 28, 2008, the OCA informed Noemi that Judge Tangonan, Jr. had compulsorily retired on April 26, 2006 and that it could no longer exercise supervision over him, but assured her that Umblas and Atty. Aquino would be required to comment on the complaint.

On September 8, 2008, in its 1st Indorsement,[7] the OCA required Umblas and Atty. Aquino to submit their respective comments within ten (10) days from receipt of a copy.

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[5] *Id*. at 149.

[6] *Id*. at 159.

[7] *Id*. at 160-161.

On October 9, 2008, Atty. Aquino filed her Comment[8] and explained that she was on leave on the day complainant Noemi arrived at the RTC office; that she was not familiar with the case as the document was dated June 2005 and she assumed office only in July 2005; that she asked Noemi to leave copies of the document but she did not; that she made contact with Noemi and got the information regarding the case; that she verified the same and on August 21, 2008, she issued a certification[9] attesting that the petition for declaration of nullity of marriage of Ramil and Noemi was not filed with their court; and that she performed her duties as Clerk of Court diligently, promptly and religiously.

In his Comment,[10] dated December 12, 2008, Umblas claimed that he neither issued nor consented to the issuance of the subject documents considering that there was no such case filed with the RTC; that his signatures appearing in the subject documents were imitations; that the lack of proof of payment for the certificate of finality meant that the same was fraudulent; and that it was Ramil's duty to provide an explanation as to how the subject documents came into existence consistent with the doctrine that the person in possession of a falsified document, who used it and who benefited therefrom, was presumed to be the author thereof.

In the Court's Resolution,[11] dated March 25, 2009, it was resolved that the complaint against Umblas be re-docketed as a regular administrative case and assigned to the Executive Judge of the RTC of Ballesteros, Cagayan, for investigation, report and recommendation. The Court, in the same resolution, dismissed the complaint against Atty. Aquino as it was not substantiated.

Later on, Noemi moved for change of venue because Umblas was one of the staff members of the Executive Judge. The Court,

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

[9] *Id*. at 185.

[10] *Id*. at 181-184.

[11] *Id*. at 194-195.

in its November 23, 2009 Resolution,[12] granted the motion and assigned the case to Executive Judge Vilma Pauig *(Judge Pauig)* of RTC, Tuguegarao City.

On August 11, 2010, a motion for inhibition was filed by Umblas on the ground that Judge Pauig admitted that she was personally familiar with Atty. Aquino, and that the latter, as Clerk of Court of the RTC, would have an inevitable role in the said inquiry. Thus, in her November 5, 2010 Order, Judge Pauig inhibited herself from further investigating the case.

The Court, in its Resolution,[13] dated February 7, 2011, assigned the investigation of the case to Vice Executive Judge Lyliha Aquino of RTC, Branch 4, Tuguegarao City. The latter, however, voluntarily inhibited herself because the Executive Judge of RTC, Ballesteros, Cagayan, who was the immediate superior of Umblas, was her classmate in law school. In another Resolution,[14] dated January 25, 2012, the Court designated Acting Presiding Judge Pablo Agustin of RTC, Branch 1, Tuguegarao City, who also inhibited himself because of his close friendship with Umblas.

Finally, Judge Raymond Reynold Lauigan *(Judge Lauigan)* who assumed performance of judicial functions in Branch 1, was directed by the Court, in its July 15, 2013 Resolution,[15] to take over the investigation.

Thereafter, Judge Lauigan took over the continuation of the investigation.

The Report and Findings of the Investigating Judge

In his Investigation Report and Findings,[16] dated February 28, 2015, Judge Lauigan determined that there was substantial

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[12] *Id.* at 209-210.

[13] *Id.* at 428-429.

[14] *Rollo,* Vol. II, pp. 564-565.

[15] *Id.* at 568.

[16] *Rollo,* Vol. III 801-811.

evidence to hold respondent Umblas liable for grave misconduct. He found that the respondent participated in the production of the subject documents. He gave credence to the declaration of Atty. Randy Vega *(Atty. Vega)*, Ramil's friend, whom the latter asked to go to the RTC and check on the status of his case for declaration of nullity of marriage. The report cited the Affidavit[17] of Atty. Vega, dated January 9, 2009, which stated that it was Umblas who handed to him the said documents. Judge Lauigan noted that the said statement of Atty. Vega was never categorically refuted by the respondent. Umblas instead claimed that Atty. Vega was "a total stranger to him"; that the statement of Atty. Vega was part of Noemi's documentary evidence in several cases she had filed against him but which were all dismissed; and that he could not have furnished the subject documents as he was no longer the OIC since July 2005.

Judge Lauigan did not give weight and credence to Umblas' defense of denial as the same was self-serving and not corroborated by other independent evidence. With regard to the respondent's claim of forged signatures, the report concluded that respondent failed to discharge the burden of proving that his signatures in the subject documents were indeed forged.

This investigation report and recommendation was refered to the OCA for its evaluation, report and recommendation.

The OCA Recommendation

In its Recommendation,[18] dated November 9, 2015, the OCA affirmed the findings of Judge Lauigan that Noemi was able to prove by substantial evidence that Umblas was guilty of grave misconduct. It was established that the subject documents were spurious. The OCA considered the testimonies of Noemi, Atty. Vega and Atty. Lumagui, Jr. as sufficient evidence to hold Umblas responsible for the issuance of the subject documents. It explained that their categorical and positive declarations prevailed over the plain denial of the respondent.

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[17] *Rollo,* Vol. II pp. 474-476.

[18] *Rollo,* Vol. III, 812-818.

Further, the OCA stated that Umblas did not offer any evidence to support his claim of forgery. It opined that his mere disavowal of the signatures affixed in the subject documents could not exonerate him from liability for grave misconduct. Thus, the OCA recommended that the respondent be dismissed from service.

ISSUE

WHETHER UMBLAS WAS GUILTY OF GRAVE MISCONDUCT TO WARRANT HIS DISMISSAL FROM SERVICE

The Court's Ruling

The Court agrees with the findings and recommendation of the OCA.

Misconduct is a transgression of some established and definite rule of action, more particularly, it is the unlawful behavior of, or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment.[19]

The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.[20]

Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefits for himself or for another person, contrary to duty and the rights of others.[21]

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[19] *Office of the Court Administrator v. Musngi*, 691 Phil. 117 (2012).

[20] *Office of the Court Administrator v. Indar*, 685 Phil. 272 (2012).

[21] *Office of the Court Administrator v. Lopez*, 654 Phil. 602 (2011).

Respondent Umblas was also charged with violation of R.A. No. 6713. Section 4 of the said law establishes the standards of personal conduct that every public official and employee must observe in the discharge and execution of their official duties.

Section 4. *Norms of Conduct of Public Officials and Employees.*— x x x.

(a) *Commitment to public interest.* — **Public officials and employees shall always uphold the public interest over and above personal interest.** All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

(b) *Professionalism.* — Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. **They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.**

(c) *Justness and sincerity.* — Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. **They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest.** They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

x x x (Emphases supplied)

After a judicious perusal of the records, the Court finds that respondent Umblas committed grave misconduct and violated Section 4 of R.A. No. 6713 for unlawfully producing spurious court documents. The findings of the Court shall be discussed *in seriatim.*

The subject documents were falsified

As correctly found by the OCA, the subject documents were spurious because, *first*, there was no record of the case for declaration of nullity of marriage in the docket of the RTC as certified by its Clerk of Court. Even the respondent himself, in his comment, acknowledged the non-existence of the case, *viz.*

> 3. That respondent fully agrees with the complainant on her observations **that there was no such case captioned "Ramil B. Pabon, Petitioner v. Ma. Noemi Bautista-Pabon, Respondent" filed with and docketed as Civil Case No. 33-328C-2005 with RTC, Ballesteros, Cagayan- Branch 33 x x x.**[22] [Emphasis on the original]

Second, the OSG was not notified of the supposed proceedings pursuant to A.M. No. 02-11-10-SC, or the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.[23] Also, there was no participation by the public prosecutor therein as required by Article 48[24] of the Family Code and Section 9[25] of A.M. No. 02-11-10-SC.

Finally, Noemi herself was not aware that Ramil filed a petition to declare their marriage null and void. She did not receive

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[22] *Rollo,* p. 181.

[23] Sec. 5 (4) x x x. The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, within five days from the date of its filing and submit to the court proof of such service within the same period.

Sec. 19 (2). The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail.

[24] Art. 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

[25] Sec. 9. Investigation report of public prosecutor. – x x x the public prosecutor shall submit a report to the court stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels, if any.

any summons relative to the case and so she was not able to file an answer, much less participate, in the proceedings, which was also required by the Rules.[26] Noemi even claimed that in 2005, they were still living together in Batangas.

All these circumstances and procedural infirmities lead to the conclusion that the subject documents are indeed spurious.

The evidence established that the respondent issued the subject documents

In his January 9, 2005 Affidavit, submitted during the investigation, Atty. Vega stated that it was the respondent who personally handed the subject documents to him. Relevant portions of the affidavit are quoted hereunder:

4. Sometime around April 2008, I went to Ballesteros, Cagayan, Regional Trial Court Branch 33 to follow up the status of the petition for declaration of nullity of marriage between Ramil and Noemi. I was able to personally talk to Eduardo T. Umblas and when I asked him about the case of Ramil, he gave me the originals of the Decision dated June 20, 2005 and the Certificate of Finality dated December 18, 2005 in Civil Case No. 33-328C-2005 entitled "Ramil B. Pabon vs. Ma. Noemi Bautista-Pabon." He likewise gave me certified true copies of the Decision and the Certificate of Finality. In fact, one copy of the Decision and Certificate of Finality bears the original receipt of the Local Civil Registrar of Cagayan.

5. After I received the original and the certified true copies of the Decision and the Certificate of Finality, I called up Ramil to inform him that I have the documents with me. He then instructed me to give the documents to Atty. Romeo D. Lumagui, Jr. at 17 Matino St., Sikatuna Village, Quezon City.[27]

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[26] Sec. 8. Answer. — (1) The respondent shall file his answer within fifteen days from service of summons, or within thirty days from the last issue of publication in case of service of summons by publication. The answer must be verified by the respondent himself and not by counsel or attorney-in-fact.

[27] *Rollo,* Vol. II, pp. 474-475.

In his March 26, 2009 Reply-Affidavit,[28] Atty. Lumagui, Jr. confirmed that the subject documents were given to him by Atty. Vega with the representation that a court staff handed the same to him.

As correctly noted by the OCA, the respondent never directly and categorically refuted the assertions of Atty. Vega and Atty. Lumagui, Jr. against him. The respondent merely stated that the said affidavits of those lawyers were part of Noemi's documentary evidence in several cases she had filed against him, which were all dismissed. In the said dismissals, however, the merits of the affidavits were not passed upon as the cases were dismissed due to lack of jurisdiction, premature filing and lack of probable cause.

Respondent failed to substantiate his defense of forgery

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence. The burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.[29]

Here, the respondent did not submit any evidence to support his claim of forgery. He could have provided a sample of his signature or offered an expert witness to establish that his signatures appearing on the subject documents were fraudulent. Instead, he remained passive and chose to rely on his bare allegation that the signatures were imitations.

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[28] *Id.* at 467-472.

[29] *Garbo v. Spouses Garabato*, G.R. No. 200013, January 14, 2015, 746 SCRA 189, 199.

Moreover, pursuant to Section 22, Rule 132 of the Rules of Court,[30] during the investigation, the signatures appearing in the subject documents were compared with the signatures appearing in the comment, counter-affidavit and rejoinder affidavit submitted by the respondent, and it was concluded that the documents were signed by one and the same person.

The Respondent's liability

In fine, it was proven by substantial evidence that respondent Umblas unlawfully and wrongfully used his position to issue the subject documents, which were clearly made to benefit Ramil. Moreover, the respondent violated the law and flagrantly disregarded the established rules by his reprehensible act of issuing a decision that voided a marital union without any judicial proceedings. Such malfeasance not only makes a mockery of marriage and its life-changing consequences but likewise grossly violates the basic norms of truth, justice, and due process.[31]

It was also established that the respondent violated Section 4 of R.A. No. 6713. He miserably failed to live up to the exacting standards imposed upon public employees. His gross misconduct was not only contrary to law but also greatly undermines the people's faith in the Judiciary and betrays the public trust and confidence reposed in the courts.

Rule 10, Section 46 (A) (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service classifies grave misconduct as a grave offense punishable by dismissal even for the first offense. Section 52 (a) states that the penalty of

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[30] Sec. 22. *How genuineness of handwriting proved.* The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

[31] *Supra* note 20.

dismissal carries with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office.

It must be stressed that every employee of the Judiciary should be an example of integrity, uprightness, and honesty. Like any public servant, he must exhibit the highest sense of honesty and integrity not only in the performance of his official duties but also in his personal and private dealings with other people, to preserve the court's good name and standing. The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court personnel have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice.[32] Here, the respondent failed to meet these stringent standards set for a judicial employee and, therefore, he does not deserve to remain with the Judiciary.

WHEREFORE, finding Eduardo T. Umblas, Legal Researcher, Regional Trial Court, Branch 33, Ballesteros, Cagayan, **GUILTY** of Grave Misconduct and Violation of Section 4 of Republic Act No. 6713, the Court hereby orders his **DISMISSAL** from the service with **FORFEITURE** of all benefits, except accrued leave benefits, with prejudice to re-employment in any branch or instrumentality of the government including government-owned or controlled corporations.

The Office of the Court Administrator is hereby ordered to file the appropriate criminal complaint against him.

SO ORDERED.

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

Perez, J., no part, previous action as Court Administrator.

Carpio, J., on official leave.

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[32] *OCA v. Ampong,* A.M. No. P-13-3132, June 4, 2014, 724 SCRA 488, 498.

EN BANC

[G.R. No. 221538. September 20, 2016]

RIZALITO Y. DAVID, *petitioner*, *vs.* **SENATE ELECTORAL TRIBUNAL and MARY GRACE POE-LLAMANZARES**, *respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; ELECTORAL TRIBUNALS; HAVE EXCLUSIVE AND ORIGINAL JURISDICTION OVER CONTESTS RELATING TO ELECTION, RETURNS, AND QUALIFICATIONS OF SENATORS AND REPRESENTATIVES; IT IS THEIR ONLY TASK, THEY PERFORM NO OTHER FUNCTION. — Article VI, Section 17, the Constitution segregates from all other judicial and quasi-judicial bodies (particularly, courts and the Commission on Elections) the power to rule on contests relating to the election, returns, and qualifications of members of the Senate (as well as of the House of Representatives). These powers are granted to a separate and distinct constitutional organ. There are two (2) aspects to the exclusivity of the Senate Electoral Tribunal's power. The power to resolve such contests is exclusive to any other body. The resolution of such contests is its only task; it performs no other function. x x x All constitutional provisions—under the 1935 and 1987 Constitutions—which provide for the creation of electoral tribunals (or their predecessor, the Electoral Commission), have been unequivocal in their language. The electoral tribunal shall be the "sole" judge. x x x Exclusive, *original* jurisdiction over contests relating to the election, returns, and qualifications of the elective officials falling within the scope of their powers is, thus, vested in these electoral tribunals. It is only before them that post-election challenges against the election, returns, and qualifications of Senators and Representatives (as well as of the President and the Vice-President, in the case of the Presidential Electoral Tribunal) may be initiated.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A PETITION FOR *CERTIORARI* IS ALLOWED TO ASSAIL THE DECISIONS OF ELECTORAL TRIBUNALS;

INSTANCES WHERE WRITS OF *CERTIORARI* HAVE BEEN ISSUED AGAINST THE RULINGS OF THESE TRIBUNALS.— A party aggrieved by the rulings of the Senate or House Electoral Tribunal invokes the jurisdiction of this Court through the vehicle of a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. An appeal is a continuation of the proceedings in the tribunal from which the appeal is taken. A petition for *certiorari* is allowed in Article VIII, Section 1 of the Constitution and described in the 1997 Rules of Civil Procedure as an independent civil action. The viability of such a petition is premised on an allegation of "grave abuse of discretion." x x x There is grave abuse of discretion when a constitutional organ such as the Senate Electoral Tribunal or the Commission on Elections, makes manifestly gross errors in its factual inferences such that critical pieces of evidence, which have been nevertheless properly introduced by a party, or admitted, or which were the subject of stipulation, are ignored or not accounted for. A glaring misinterpretation of the constitutional text or of statutory provisions, as well as a misreading or misapplication of the current state of jurisprudence, is also considered grave abuse of discretion. The arbitrariness consists in the disregard of the current state of our law. Adjudication that fails to consider the facts and evidence or frivolously departs from settled principles engenders a strong suspicion of partiality. This can be a badge of hostile intent against a party. Writs of *certiorari* have, therefore, been issued: (a) where the tribunal's approach to an issue is premised on wrong considerations and its conclusions founded on a gross misreading, if not misrepresentation, of the evidence; (b) where a tribunal's assessment of a case is "far from reasonable[,] [and] based solely on very personal and subjective assessment standards when the law is replete with standards that can be used"; "(c) where the tribunal's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable"; and (d) where the tribunal invokes erroneous or irrelevant considerations in resolving an issue.

3. ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION COMMITTED BY THE SENATE ELECTORAL TRIBUNAL IN RESOLVING THE LEGAL QUESTION INVOLVED IN THE PRESENT PETITION.— We find no basis for concluding that the Senate Electoral Tribunal acted

without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. The Senate Electoral Tribunal's conclusions are in keeping with a faithful and exhaustive reading of the Constitution, one that proceeds from an intent to give life to all the aspirations of all its provisions. Ruling on the Petition for Quo Warranto initiated by petitioner, the Senate Electoral Tribunal was confronted with a novel legal question: the citizenship status of children whose biological parents are unknown, considering that the Constitution, in Article IV, Section 1(2) explicitly makes reference to one's father or mother. It was compelled to exercise its original jurisdiction in the face of a constitutional ambiguity that, at that point, was without judicial precedent. x x x The Senate Electoral Tribunal knew the limits of human capacity. It did not insist on burdening private respondent with conclusively proving, within the course of the few short months, the one thing that she has never been in a position to know throughout her lifetime. Instead, it conscientiously appreciated the implications of all other facts known about her finding. Therefore, it arrived at conclusions in a manner in keeping with the degree of proof required in proceedings before a quasi-judicial body: not absolute certainty, not proof beyond reasonable doubt or preponderance of evidence, but "substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." In the process, it avoided setting a damning precedent for all children with the misfortune of having been abandoned by their biological parents. Far from reducing them to inferior, second-class citizens, the Senate Electoral Tribunal did justice to the Constitution's aims of promoting and defending the well-being of children, advancing human rights, and guaranteeing equal protection of the laws and equal access to opportunities for public service.

4. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTRUCTION; GUIDING PRINCIPLES IN THE INTERPRETATION OF THE CONSTITUTION, REITERATED AND EXPLAINED.— The entire exercise of interpreting a constitutional provision must necessarily begin with the text itself. The language of the provision being interpreted is the principal source from which this Court determines constitutional intent. To the extent possible, words must be given their ordinary meaning; this is consistent with the basic precept of *verba legis*. The Constitution is truly a

public document in that it was ratified and approved by a direct act of the People: exercising their right of suffrage, they approved of it through a plebiscite. The preeminent consideration in reading the Constitution, therefore, is the People's consciousness: that is, popular, rather than technical-legal, understanding. x x x Reading a constitutional provision requires awareness of its relation with the whole of the Constitution. A constitutional provision is but a constituent of a greater whole. It is the framework of the Constitution that animates each of its components through the dynamism of these components' interrelations. What is called into operation is the entire document, not simply a peripheral item. The Constitution should, therefore, be appreciated and read as a singular, whole unit—*ut magis valeat quam pereat*. Each provision must be understood and effected in a way that gives life to all that the Constitution contains, from its foundational principles to its finest fixings. The words and phrases that establish its framework and its values color each provision at the heart of a controversy in an actual case. x x x Reading a certain text includes a consideration of jurisprudence that has previously considered that exact same text, if any. Our legal system is founded on the basic principle that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form part of [our] legal system." Jurisprudence is not an independent source of law. Nevertheless, judicial interpretation is deemed part of or written into the text itself as of the date that it was originally passed. This is because judicial construction articulates the contemporaneous intent that the text brings to effect. Nevertheless, one must not fall into the temptation of considering prior interpretation as immutable. Interpretation grounded on textual primacy likewise looks into how the text has evolved. Unless completely novel, legal provisions are the result of the re-adoption—often with accompanying re-calibration—of previously existing rules. Even when seemingly novel, provisions are often introduced as a means of addressing the inadequacies and excesses of previously existing rules. One may trace the historical development of text by comparing its current iteration with prior counterpart provisions, keenly taking note of changes in syntax, along with accounting for more conspicuous substantive changes such as the addition and deletion of provisos or items in enumerations, shifting terminologies, the use of more emphatic or more moderate qualifiers, and the imposition of heavier penalties.

The tension between consistency and change galvanizes meaning. x x x Contemporaneous construction and aids that are external to the text may be resorted to when the text is capable of multiple, viable meanings. It is only then that one can go beyond the strict boundaries of the document. Nevertheless, even when meaning has already been ascertained from a reading of the plain text, contemporaneous construction may serve to verify or validate the meaning yielded by such reading. Limited resort to contemporaneous construction is justified by the realization that the business of understanding the Constitution is not exclusive to this Court. The basic democratic foundation of our constitutional order necessarily means that all organs of government, and even the People, read the fundamental law and are guided by it. When competing viable interpretations arise, a justiciable controversy may ensue requiring judicial intervention in order to arrive with finality at which interpretation shall be sustained. To remain true to its democratic moorings, however, judicial involvement must remain guided by a framework or deference and constitutional avoidance. This same principle underlies the basic doctrine that courts are to refrain from issuing advisory opinions. Specifically as regards this Court, only constitutional issues that are narrowly framed, sufficient to resolve an actual case, may be entertained. When permissible then, one may consider analogous jurisprudence (that is, judicial decisions on similar, but not the very same, matters or concerns), as well as thematically similar statutes and international norms that form part of our legal system. This includes discerning the purpose and aims of the text in light of the specific facts under consideration. It is also only at this juncture—when external aids may be consulted—that the supposedly underlying notions of the framers, as articulated through records of deliberations and other similar accounts, can be illuminating. x x x In the hierarchy of the means for constitutional interpretation, inferring meaning from the supposed intent of the framers or fathoming the original understanding of the individuals who adopted the basic document is the weakest approach. These methods leave the greatest room for subjective interpretation. Moreover, they allow for the greatest errors. The alleged intent of the framers is not necessarily encompassed or exhaustively articulated in the records of deliberations. Those that have been otherwise silent and have not actively engaged in interpellation and debate may have voted for or against a

proposition for reasons entirely their own and not necessarily in complete agreement with those articulated by the more vocal. It is even possible that the beliefs that motivated them were based on entirely erroneous premises. Fathoming original understanding can also misrepresent history as it compels a comprehension of actions made within specific historical episodes through detached, and not necessarily better-guided, modern lenses.

5. ID.; ID.; CITIZENSHIP; CONCEPT.— Citizenship is a legal device denoting political affiliation. It is the "right to have rights." It is one's "personal and . . . permanent membership in a political community. . . The core of citizenship is the capacity to enjoy political rights, that is, the right to participate in government principally through the right to vote, the right to hold public office[,] and the right to petition the government for redress of grievance." Citizenship also entails obligations to the political community of which one is part. Citizenship, therefore, is intimately tied with the notion that loyalty is owed to the state, considering the benefits and protection provided by it. This is particularly so if these benefits and protection have been enjoyed from the moment of the citizen's birth.

6. ID.; ID.; ID.; ORIGIN OF THE CONCEPT OF "NATURAL-BORN" CITIZENSHIP.— [T]he concept of "natural-born" citizenship is a "foreign" concept that was transplanted into this jurisdiction as part of the 1935 Constitution's eligibility requirements for President and Vice-President of the Philippines. In the United States Constitution, from which this concept originated, the term "natural-born citizen" appears in only a single instance: as an eligibility requirement for the presidency. It is not defined in that Constitution or in American laws. Its origins and rationale for inclusion as a requirement for the presidency are not even found in the records of constitutional deliberations. However, it has been suggested that, as the United States was under British colonial rule before its independence, the requirement of being natural-born was introduced as a safeguard against foreign infiltration in the administration of national government[.]

7. ID.; ID.; 1987 CONSTITUTION; TWO (2) CATEGORIES OF FILIPINO CITIZENS, EXPLAINED.— [T]here are only two (2) categories of Filipino citizens: natural-born and naturalized. A natural-born citizen is defined in Article IV,

Section 2 as one who is a citizen of the Philippines "from birth without having to perform any act to acquire or perfect Philippine citizenship." By necessary implication, a naturalized citizen is one who is not natural-born. *Bengson v. House of Representatives Electoral Tribunal* articulates this definition by dichotomy: [O]nly naturalized Filipinos are considered not natural-born citizens. It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: . . . A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. Former Associate Justice Artemio Panganiban further shed light on the concept of naturalized citizens in his Concurring Opinion in *Bengson*: naturalized citizens, he stated, are "former aliens or foreigners who had to undergo a rigid procedure, in which they had to adduce sufficient evidence to prove that they possessed all the qualifications and none of the disqualifications provided by law in order to become Filipino citizens."

8. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; VALID MEANS FOR PROOF NOT ONLY IN CRIMINAL BUT ALSO IN CIVIL, ADMINISTRATIVE, AND QUASI-JUDICIAL PROCEEDINGS.— Although the Revised Rules on Evidence's sole mention of circumstantial evidence is in reference to criminal proceedings, this Court has nevertheless sustained the use of circumstantial evidence in other proceedings. There is no rational basis for making the use of circumstantial evidence exclusive to criminal proceedings and for not considering circumstantial facts as valid means for proof in civil and/or administrative proceedings. In criminal proceedings, circumstantial evidence suffices to sustain a conviction (which may result in deprivation of life, liberty, and property) anchored on the highest standard or proof that our legal system would require, i.e., proof beyond reasonable doubt. If circumstantial evidence suffices for such a high standard, so too may it suffice to satisfy the less stringent standard of proof in administrative and quasi-judicial proceedings such as those before the Senate Electoral Tribunal, i.e., substantial evidence.

9. ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR ARE SUBSTANTIAL EVIDENCE JUSTIFYING AN INFERENCE THAT PRIVATE RESPONDENT'S BIOLOGICAL PARENTS

WERE FILIPINO.— Private respondent was found as a newborn infant outside the Parish Church of Jaro, Iloilo on September 3, 1968. In 1968, Iloilo, as did most—if not all—Philippine provinces, had a predominantly Filipino population. Private respondent is described as having "brown almond-shaped eyes, a low nasal bridge, straight black hair and an oval-shaped face." She stands at 5 feet and 2 inches tall. Further, in 1968, there was no international airport in Jaro, Iloilo. These circumstances are substantial evidence justifying an inference that her biological parents were Filipino. Her abandonment at a Catholic Church is more or less consistent with how a Filipino who, in 1968, lived in a predominantly religious and Catholic environment, would have behaved. The absence of an international airport in Jaro, Iloilo precludes the possibility of a foreigner mother, along with a foreigner father, swiftly and surreptitiously coming in and out of Jaro, Iloilo just to give birth and leave her offspring there. Though proof of ethnicity is unnecessary, her physical features nonetheless attest to it.

10. POLITICAL LAW; CONSTITUTIONAL LAW; CITIZENSHIP; THE PRESUMPTION THAT ALL FOUNDLINGS FOUND IN THE PHILIPPINES ARE BORN TO AT LEAST EITHER A FILIPINO FATHER OR A FILIPINO MOTHER IS IN ACCORD WITH THE CONSTITUTION AS A WHOLE.— The presumption that all foundlings found in the Philippines are born to at least either a Filipino father or a Filipino mother (and are thus natural-born, unless there is substantial proof otherwise) arises when one reads the Constitution as a whole, so as to "effectuate [its] whole purpose." As much as we have previously harmonized Article IV, Section 2 with Article IV, Section 1(2), constitutional provisions on citizenship must not be taken in isolation. They must be read in light of the constitutional mandate to defend the well-being of children, to guarantee equal protection of the law and equal access to opportunities for public service, and to respect human rights. They must also be read in conjunction with the Constitution's reasons for requiring natural-born status for select public offices. Further, this presumption is validated by contemporaneous construction that considers related legislative enactments, executive and administrative actions, and international instruments. Article II, Section 13 and Article XV, Section 3 of the 1987 Constitution require the state to enhance children's well-being and to project them from

conditions prejudicial to or that may undermine their development. Fulfilling this mandate includes preventing discriminatory conditions and, especially, dismantling mechanisms for discrimination that hide behind the veneer of the legal apparatus[.] x x x Concluding that foundlings are not natural-born Filipino citizens is tantamount to permanently discriminating against our foundling citizens. They can then never be of service to the country in the highest possible capacities. It is also tantamount to excluding them from certain means such as professions and state scholarships, which will enable the actualization of their aspirations. These consequences cannot be tolerated by the Constitution, not least of all through the present politically charged proceedings, the direct objective of which is merely to exclude a singular politician from office. Concluding that foundlings are not natural-born citizens creates an inferior class of citizens who are made to suffer that inferiority through no fault of their own. If that is not discrimination, we do not know what is. The Constitution guarantees equal protection of the laws and equal access to opportunities for public service[.] x x x The equal protection clause serves as a guarantee that "persons under like circumstances and falling within the same class are treated alike, in terms of 'privileges conferred and liabilities enforced.' It is a guarantee against 'undue favor and individual or class privilege, as well as hostile discrimination or oppression of inequality.'" Other than the anonymity of their biological parents, no substantial distinction differentiates foundlings from children with known Filipino parents. They are both entitled to the full extent of the state's protection from the moment of their birth. Foundlings' misfortune in failing to identify the parents who abandoned them—an inability arising from no fault of their own—cannot be the foundation of a rule that reduces them to statelessness or, at best, as inferior, second-class citizens who are not entitled to as much benefits and protection from the state as those who know their parents. Sustaining this classification is not only inequitable; it is dehumanizing. It condemns those who, from the very beginning of their lives, were abandoned to a life of desolation and deprivation. This Court does not exist in a vacuum. It is a constitutional organ, mandated to effect the Constitution's dictum of defending and promoting the well-being and development of children. It is not our business to reify discriminatory classes based on circumstances of birth. Even

more basic than their being citizens of the Philippines, foundlings are human persons whose dignity we value and rights we, as a civilized nation, respect.

11. ID.; ID.; ID.; ENACTED STATUTES AND RATIFIED TREATIES THAT ARE FOUNDED ON THE PREMISE THAT FOUNDLINGS ARE FILIPINO CITIZENS AT BIRTH, DISCUSSED.— Congress has enacted statutes founded on the premise that foundlings are Filipino citizens at birth. It has adopted mechanisms to effect the constitutional mandate to protect children. Likewise, the Senate has ratified treaties that put this mandate into effect. x x x Section 4(b) of the Republic Act No. 9344 defines the "best interest of the child" as the "totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child's physical, psychological and emotional development." Consistent with this statute is our ratification of the United Nations Convention on the Rights of the Child. This specifically requires the states-parties' protection of: first, children's rights to immediate registration and nationality after birth; second, against statelessness; and third, against discrimination on account of their birth status. x x x The Philippines likewise ratified the 1966 International Covenant on Civil and Political Rights. As with the Convention on the Rights of the Child, this treaty requires that children be allowed immediate registration after birth and to acquire a nationality. It similarly defends them against discrimination[.] x x x Accordingly, by the Constitution and by statute, foundlings cannot be the object of discrimination. They are vested with the rights to be registered and granted nationality upon birth. To deny them these rights, deprive them of citizenship, and render them stateless is to unduly burden them, discriminate them, and undermine their development. Not only Republic Act No. 9344, the Convention on the Rights of the Child, and the International Covenant on Civil and Political Rights effect the constitutional dictum of promoting the well-being of children and protecting them from discrimination. Other legislative enactments demonstrate the intent to treat foundlings as Filipino citizens from birth. Republic Act No. 8552, though briefly referred to as the Domestic Adoption Act of 1998, is formally entitled An Act Establishing the Rules and Policies on Domestic Adoption **of Filipino Children** and for Other Purposes. It was enacted as a mechanism to "provide alternative

protection and assistance through foster care or adoption of every child who is neglected, orphaned, or abandoned." Foundlings are explicitly among the "Filipino children" covered by Republic Act No. 8552[.] x x x Similarly, Republic Act No. 8043, though briefly referred to as the Inter-Country Adoption Act of 1995, is formally entitled An Act Establishing the Rules to Govern Inter-Country **Adoption of Filipino Children**, and for Other Purposes. As with Republic Act No. 8552, it expressly includes foundlings among "Filipino children" who may be adopted[.] x x x Our statutes on adoption allow for the recognition of foundlings' Filipino citizenship on account of their birth. They benefit from this without having to do any act to perfect their citizenship or without having to complete the naturalization process. Thus, by definition, they are natural-born citizens.

12. ID.; ID.; ID.; SEVERAL ACTS OF EXECUTIVE ORGANS HAVE RECOGNIZED RESPONDENT'S NATURAL-BORN STATUS.— Specifically regarding private respondent, several acts of executive organs have recognized her natural-born status. This status was never questioned throughout her life; that is, until circumstances made it appear that she was a viable candidate for President of the Philippines. Until this, as well as the proceedings in the related case of *Poe-Llamanzares*, private respondent's natural-born status has been affirmed and reaffirmed through various official public acts. First, private respondent was issued a foundling certificate and benefitted from the domestic adoption process. Second, on July 18, 2006, she was granted an order of reacquisition of natural-born citizenship under Republic Act No. 9225 by the Bureau of Immigration. Third, on October 6, 2010, the President of the Philippines appointed her as MTRCB Chairperson—an office that requires natural-born citizenship.

13. ID.; ID.; ID.; WHILE PRIVATE RESPONDENT LOST HER PHILIPPINE CITIZENSHIP WHEN SHE WAS NATURALIZED AN AMERICAN CITIZEN, SHE FULLY REACQUIRED NATURAL-BORN CITIZENSHIP UPON COMPLIANCE WITH ALL THE REQUIREMENTS; SHE LIKEWISE COMPLIED WITH THE REQUIREMENTS FOR ELIGIBILITY TO ELECTIVE PUBLIC OFFICE UNDER REPUBLIC ACT NO. 9225 (RA 9225).— "Philippine citizenship may be lost or reacquired in the manner provided by law." Commonwealth Act No. 63, which was in effect when

private respondent was naturalized an American citizen on October 18, 2001, provided in Section 1(1) that "[a] Filipino citizen may lose his citizenship . . . [b]y naturalization in a foreign country." Thus, private respondent lost her Philippine citizenship when she was naturalized an American citizen. However, on July 7, 2006, she took her Oath of Allegiance to the Republic of the Philippines under Section 3 of Republic Act No. 9225. Three (3) days later, July 10, 2006, she filed before the Bureau of Immigration and Deportation a Petition for Reacquisition of her Philippine citizenship. Shortly after, this Petition was granted. x x x Republic Act No. 9225 made natural-born Filipinos' status permanent and immutable despite naturalization as citizens of other countries. x x x Section 3's implications are clear. Natural-born Philippine citizens who, after Republic Act 9225 took effect, are naturalized in foreign countries "***retain***," that is, keep, their Philippine citizenship, although the effectivity of this retention and the ability to exercise the rights and capacities attendant to this status are subject to certain solemnities (i.e., oath of allegiance and other requirements for specific rights and/or acts, as enumerated in Section 5). On the other hand, those who became citizens of another country before the effectivity of Republic Act No. 9225 "***reacquire***" their Philippine citizenship and may exercise attendant rights and capacities, also upon compliance with certain solemnities. Read in conjunction with Section 2's declaration of a policy of immutability, this reacquisition is not a mere restoration that leaves a vacuum in the intervening period. Rather, this reacquisition works to restore natural-born status as though it was never lost at all. x x x Thus, natural-born Filipinos who have been naturalized elsewhere and wish to run for elective public office must comply with all of the following requirements: First, taking the oath of allegiance to the Republic. This effects the retention or reacquisition of one's status as a natural-born Filipino. This also enables the enjoyment of full civil and political rights, subject to all attendant liabilities and responsibilities under existing laws, provided the solemnities recited in Section 5 of Republic Act No. 9225 are satisfied. Second, compliance with Article V, Section 1 of the 1987 Constitution, Republic Act No. 9189, otherwise known as the Overseas Absentee Voting Act of 2003, and other existing laws. This is to facilitate the exercise of the right of suffrage; that is, to allow for voting in elections. Third, "mak[ing] a personal and sworn renunciation

of any and all foreign citizenship before any public officer authorized to administer an oath." This, along with satisfying the other qualification requirements under relevant laws, makes one eligible for elective public office. x x x Private respondent has complied with all of these requirements. x x x Private respondent has, therefore, not only fully reacquired natural-born citizenship; she has also complied with all of the other requirements for eligibility to elective public office, as stipulated in Republic Act No. 9225.

14. ID.; ID.; ID.; "REACQUIRE" AS THE TERM USED IN RA 9225, EXPLAINED; REQUIRING COMPLIANCE WITH RA 9225 IS FOR FACILITATING THE ENJOYMENT OF OTHER INCIDENTS TO CITIZENSHIP, NOT FOR EFFECTING THE REACQUISITION OF NATURAL-BORN CITIZENSHIP ITSELF.— [T]hose who take the Oath of Allegiance under Section 3 of Republic Act No. 9225 reacquire natural-born citizenship. The prefix "re" signifies reference to the preceding state of affairs. It is to this status quo ante that one returns. "Re"-acquiring can only mean a reversion to "the way things were." Had Republic Act No. 9225 intended to mean the investiture of an entirely new status, it should not have used a word such as "reacquire." Republic Act No. 9225, therefore, does not operate to make new citizens whose citizenship commences only from the moment of compliance with its requirements. *Bengson*, speaking on the analogous situation of repatriation, ruled that repatriation involves the restoration of former status or the recovery of one's original nationality[.] x x x Although *Bengson* was decided while Commonwealth Act No. 63 was in force, its ruling is in keeping with Republic Act No. 9225's policy of permanence and immutablity: "all Philippine citizens of another country shall be deemed not to have lost their Philippine citizenship." In *Bengson*'s words, the once naturalized citizen is "restored" or brought back to his or her natural-***born*** status. There may have been an interruption in the recognition of this status, as, in the interim, he or she was naturalized elsewhere, but the restoration of natural-born status expurgates this intervening fact. Thus, he or she does not become a Philippine citizen only from the point of restoration and moving forward. He or she is recognized, *de jure*, as a Philippine citizen from birth, although the intervening fact may have consequences de facto. Republic Act No. 9225 may involve extended processes not limited to taking

the Oath of Allegiance and requiring compliance with additional solemnities, but these are for facilitating the enjoyment of other incidents to citizenship, not for effecting the reacquisition of natural-born citizenship itself. Therefore, it is markedly different from naturalization as there is no singular, extended process with which the former natural-born citizen must comply.

PERLAS-BERNABE, *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; CITIZENSHIP; CITIZENSHIP IS CONFERRED BY VIRTUE OF BLOOD RELATIONSHIP TO A FILIPINO PARENT; THE 1935 CONSTITUTION DID NOT INCLUDE FOUNDLINGS IN THE ENUMERATION OF THOSE WHO ARE CONSIDERED FILIPINO CITIZENS.— The advent of the 1935 Constitution established the principle of *jus sanguinis* as basis for acquiring Philippine citizenship. Following this principle, citizenship is conferred by virtue of blood relationship to a Filipino parent. It was admitted that respondent was a foundling with unknown facts of birth and parentage. On its face, Section 1, Article IV of the 1935 Constitution – the applicable law to respondent's case – did not include foundlings in the enumeration of those who are considered Filipino citizens.

2. ID.; ID.; ID.; ID.; IN THE ABSENCE OF COMPETENT AND SUFFICIENT EVIDENCE TO PROVE PRIVATE RESPONDENT'S BLOOD RELATION TO A FILIPINO PARENT, SHE CANNOT BE CONSIDERED A NATURAL-BORN FILIPINO CITIZEN.— In this case, respondent failed to present competent and sufficient evidence to prove her blood relation to a Filipino parent which is necessary to determine natural-born citizenship pursuant to the *jus sanguinis* principle. x x x Absent satisfactory proof establishing any blood relation to a Filipino parent, and without any mention in the 1935 Constitution that foundlings are considered or even presumed to be Filipino citizens at birth, it is my view that, under the auspices of the 1935 Constitution, respondent could not be considered a natural-born Filipino citizen. As worded, the provisions of Section 1, Article IV of the 1935 Constitution are clear, direct, and unambiguous. This Court should therefore apply the statutory construction principles of *expressio unius est exclusio alterius* and *verba legis non est recedendum*. Consequently, it would be unnecessary to resort to the

constitutional deliberations or to examine the underlying intent of the framers of the 1935 Constitution. x x x In fact, it should be pointed out that the 1935 Constitution, as it was adopted in its final form, **never carried over any proposed provision on foundlings being considered or presumed to be Filipino citizens**. Its final exclusion is therefore indicative of the framers' prevailing intent. The *ponencia*'s theorized "harmonization" of the constitutional provisions on citizenship with the provisions on the promotion of children's well-being, equal protection, public service, and even human dignity and human rights appears to be a tailor-fitted advocacy for allowing foundlings to run for key national posts that, quite frankly, stretches the import of these distinct provisions to the separate and unique matter of citizenship. There seems to be an evident logical problem with the argument that since the Constitution protects its children, and respects human rights and equality to run for office, then *ergo*, foundlings should be presumed to be natural-born. It appears that this approach aims to collate all possibly related constitutional text, albeit far-flung, just to divine a presumption when unfortunately, there is none.

3. ID.; ID.; ID.; ID.; "CIRCUMSTANTIAL EVIDENCE" IN CASE AT BAR DO NOT ADEQUATELY PROVE PRIVATE RESPONDENT'S PARENTAGE TO A FILIPINO CITIZEN; THE FACT THAT HER PARENTS ARE UNKNOWN DIRECTLY PUTS INTO QUESTION HER FILIPINO CITIZENSHIP BECAUSE SHE HAS NO *PRIMA FACIE* LINK TO A FILIPINO PARENT FROM WHICH SHE COULD HAVE TRACED HER FILIPINO CITIZENSHIP.— [T]he foregoing "circumstantial evidence" do not adequately prove the determination sought to be established: that is, whether or not respondent can trace her parentage to a Filipino citizen. These circumstances can be easily debunked by contrary but likewise rationally-sounding suppositions. Case law holds that "[m]atters dealing with qualifications for public elective office must be strictly complied with." The proof to hurdle a substantial challenge against a candidate's qualifications must therefore be solid. This Court cannot make a definitive pronouncement on a candidate's citizenship when there is a looming possibility that he/she is not Filipino. The circumstances surrounding respondent's abandonment (both as to the milieu of time and place), as well

as her physical characteristics, hardly assuage this possibility. By parity of reasoning, they do not prove that she was born to a Filipino: her abandonment in the Philippines is just a restatement of her foundling status, while her physical features only tend to prove that her parents likely had Filipino features and yet it remains uncertain if their citizenship was Filipino. More so, the statistics cited — assuming the same to be true — do not account for all births but only of those recorded. To my mind, it is uncertain how "encompassing" was the Philippine's civil registration system at that time — in 1968 — to be able to conclude that those statistics logically reflect a credible and representative sample size. And even assuming it to be so, 1,595 were reflected as foreigners, rendering it factually possible that respondent belonged to this class. Ultimately, the opposition against respondent's natural-born citizenship claim is simple but striking: the fact that her parents are unknown directly puts into question her Filipino citizenship because she has no *prima facie* link to a Filipino parent from which she could have traced her Filipino citizenship.

APPEARANCES OF COUNSEL

Manuelito R. Luna for petitioner.

Poblador Bautista & Reyes and *G.E. Garcia Law Office* for respondent Mary Grace Poe-Llamanzares.

The Solicitor General for public respondent.

D E C I S I O N

LEONEN, *J.*:

The words of our most fundamental law cannot be read so as to callously exclude all foundlings from public service.

When the names of the parents of a foundling cannot be discovered despite a diligent search, but sufficient evidence is presented to sustain a reasonable inference that satisfies the quantum of proof required to conclude that at least one or both of his or her parents is Filipino, then this should be sufficient to establish that he or she is a natural-born citizen. When these

inferences are made by the Senate Electoral Tribunal in the exercise of its sole and exclusive prerogative to decide the qualifications of the members of the Senate, then there is no grave abuse of discretion remediable by either Rule 65 of the Rules of Court or Article VIII, Section I of the Constitution.

This case certainly does not decide with finality the citizenship of every single foundling as natural-born. The circumstances of each case are unique, and substantial proof may exist to show that a foundling is not natural-born. The nature of the Senate Electoral Tribunal and its place in the scheme of political powers, as devised by the Constitution, are likewise different from the other ways to raise questions of citizenship.

Before this Court is a Petition for Certiorari[1] filed by petitioner Rizalito Y. David (David). He prays for the nullification of the assailed November 17, 2015 Decision and December 3, 2015 Resolution of public respondent Senate Electoral Tribunal in SET Case No. 001-15.[2] The assailed November 17, 2015 Decision[3] dismissed the Petition for Quo Warranto filed by David, which sought to unseat private respondent Mary Grace Poe-Llamanzares as a Senator for allegedly not being a natural-born citizen of the Philippines and, therefore, not being qualified to hold such office under Article VI, Section 3[4] of the 1987 Constitution. The assailed December 3, 2015 Resolution[5] denied David's Motion for Reconsideration.

Senator Mary Grace Poe-Llamanzares (Senator Poe) is a foundling whose biological parents are unknown. As an infant,

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[1] *Rollo*, pp. 3-76. The Petition was filed under Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Id*. at 73.

[3] *Id*. at 227-258.

[4] CONST., Art. VI, Sec. 3 provides:

SECTION 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election

[5] *Rollo*, pp. 80-83.

she was abandoned at the Parish Church of Jaro, Iloilo.[6] Edgardo Militar found her outside the church on September 3, 1968 at about 9:30 a.m.[7] He later turned her over to Mr. and Mrs. Emiliano Militar.[8] Emiliano Militar reported to the Office of the Local Civil Registrar that the infant was found on September 6, 1968.[9] She was given the name Mary Grace Natividad Contreras Militar.[10] The Local Civil Registrar issued a Certificate of Live Birth/Foundling Certificate stating:

> Circumstances: THE SUBJECT CHILD WAS FOUND IN THE PARISH CHURCHD [sic] OF JARO, ON SEPTEMBER 3, 1968 AT ABOUT 9:30 A.M. BY EDGARDO MILITAR AND THE SAID CHILD IS PRESENTLY IN THE CUSTODY OF MR. AND MRS. EMILIANO MILITAR AT STA. ISABEL STREET, JARO . . .[11]

On May 13, 1974, the Municipal Court of San Juan, Rizal promulgated the Decision granting the Petition for Adoption of Senator Poe by Spouses Ronald Allan Poe (more popularly known as Fernando Poe, Jr.) and Jesusa Sonora Poe (more popularly known as Susan Roces).[12] The Decision also ordered the change in Senator Poe's name from Mary Grace Natividad Contreras Militar to Mary Grace Natividad Sonora Poe.[13] On October 27, 2005, Clerk of Court III Eleanor A. Sorio certified that the Decision had become final in a Certificate of Finality.[14]

On April 11, 1980, the Office of Civil Registrar-Iloilo received the Decision of the San Juan Court Municipal Court and noted on Senator Poe's foundling certificate that she was adopted by

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[6] *Id*. at 8.

[7] *Id*. See also *rollo*, p. 227, SET Decision.

[8] *Id*.

[9] *Id*. at 227.

[10] *Id*. at 681, Poe Comment.

[11] *Id*. at 8.

[12] *Id*. at 681.

[13] *Id*.

[14] *Id*.

Spouses Ronald Allan and Jesusa Poe.[15] This hand-written notation appears on Senator Poe's foundling certificate:

> NOTE: Adopted child by the Spouses Ronald Allan Poe and Jesusa Sonora Poe as per Court Order, Mun. Court, San Juan, Rizal, by Hon. Judge Alfredo M. Gorgonio dated May 13, 1974, under Sp. Proc. No. 138.[16]

Senator Poe became a registered voter in Greenhills, San Juan, Metro Manila when she turned 18 years old.[17] The Commission on Elections issued her a Voter's Identification Card for Precinct No. 196, Greenhills, San Juan, Metro Manila on December 13, 1986.[18]

On April 4, 1988, the Department of Foreign Affairs issued her a Philippine passport.[19] Her passport was renewed on April 5, 1993, May 19, 1998, October 13, 2009, December 19, 2013, and March 18, 2014.[20] Having become Senator, she was also issued a Philippine diplomatic passport on December 19, 2013.[21]

Senator Poe took Development Studies at the University of the Philippines, Manila, but eventually went to the United States in 1988 to obtain her college degree.[22] In 1991, she earned a bachelor's degree in Political Science from Boston College, Chestnut Hill, Massachusetts.[23]

On July 27, 1991, Senator Poe married Teodoro Misael Daniel V. Llamanzares, both an American and Filipino national since

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[15] *Id*.

[16] *Id*.

[17] *Id*. at 9.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 228.

[21] *Id*. at 682.

[22] *Id*. at 9 and 682.

[23] *Id*. at 9.

birth.[24] The marriage took place in Sanctuario de San Jose Parish, San Juan, Manila.[25] On July 29, 1991, Senator Poe returned to the United States with her husband.[26] For some time, she lived with her husband and children in the United States.[27]

Senator Poe and her husband had three (3) children: Brian Daniel (Brian), Hanna MacKenzie (Hanna), and Jesusa Anika (Anika).[28] Brian was born in the United States on April 16, 1992. Hanna was born on July 10, 1998, and Anika on June 5, 2004. Both Hanna and Anika were born in the Philippines.[29]

Senator Poe was naturalized and granted American citizenship on October 18, 2001.[30] She was subsequently given a United States passport.[31]

Senator Poe's adoptive father, Fernando Poe, Jr., ran for President of the Republic of the Philippines in the 2004 National Elections.[32] To support her father's candidacy, Senator Poe and her daughter Hanna returned to the Philippines on April 8, 2004.[33] After the Elections, she returned to the United States on July 8, 2004.[34] It was during her stay in the Philippines that she gave birth to her youngest daughter, Anika.[35]

Fernando Poe, Jr. was hospitalized on December 11, 2004 and eventually "slipped into a coma."[36] Senator Poe returned

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[24] *Id*. at 682-683.

[25] *Id*. at 228.

[26] *Id*.

[27] *Id*. at 9.

[28] *Id*. at 683.

[29] *Id*.

[30] *Id*. at 9.

[31] *Id*.

[32] *Id*. at 683.

[33] *Id*. at 9.

[34] *Id*.

[35] *Id*. at 683.

[36] *Id*. at 10.

to the Philippines on December 13, 2004.[37] On December 14, 2004, her father died.[38] She stayed in the country until February 3, 2005 to attend her father's funeral and to attend to the settling of his estate.[39]

In 2004, Senator Poe resigned from work in the United States. She never looked for work again in the United States.[40]

Senator Poe decided to return home in 2005.[41] After consulting her children, they all agreed to return to the Philippines to support the grieving Susan Roces.[42] In early 2005, they notified Brian and Hanna's schools Virginia, United States that they would be transferring to the Philippines the following semester.[43] She came back on May 24, 2005.[44] Her children also arrived in the first half of 2005.[45] However, her husband stayed in the United States to "finish pending projects, and to arrange for the sale of the family home there."[46]

Following her return, Senator Poe was issued by the Bureau of Internal Revenue a Tax Identification Number (TIN) on July 22, 2005.[47]

On July 7, 2006, Senator Poe took the Oath of Allegiance to Republic of the Philippines:[48]

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[37] *Id*.

[38] *Id*.

[39] *Id*.

[40] *Id*. at 684.

[41] *Id*. at 228.

[42] *Id*. at 684.

[43] *Id*.

[44] *Id*. at 685.

[45] *Id*.

[46] *Id*.

[47] *Id*. at 228.

[48] *Id*. at 10.

I, Mary Grace Poe Llamanzares, solemnly swear that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.[49]

On July 10, 2006, Senator Poe filed a Petition for Retention and or Re-acquisition of Philippine Citizenship through Republic Act No. 9225.[50] She also "filed applications for derivative citizenship on behalf of her three children who were all below eighteen (18) years of age at that time."[51]

The Petition was granted by the Bureau of Immigration and Deportation on July 18, 2006 through an Order signed by Associate Commissioner Roy M. Almoro for Commissioner Alipio F. Fernandez, Jr:[52]

A careful review of the documents submitted in support of the instant petition indicate that David was a former citizen of the Republic of the Philippines being born to Filipino parents and is presumed to be a natural born Philippine citizen; thereafter, became an American citizen and is now a holder of an American passport; was issued an ACT and ICR and has taken her oath of allegiance to the Republic of the Philippines on July 7, 2006 and so is thereby deemed to have re-acquired her Philippine Citizenship.[53] (Emphasis in the original)

In the same Order, Senator Poe's children were "deemed Citizens of the Philippines in accordance with Section 4 of R[epublic] A[ct] No. 9225."[54] Until now, the Order "has not

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[49] *Id*. at 685.

[50] *Id*. at 228.

[51] *Id*. 686.

[52] *Id*. at 228.

[53] *Id*. at 686.

[54] *Id*.

been set aside by the Department of Justice or any other agency of Government."[55]

On July 31, 2006, the Bureau of Immigration issued Identification Certificates in the name of Senator Poe and her children.[56] It stated that Senator Poe is a "citizen of the Philippines pursuant to the Citizenship Retention and Re-acquisition Act of 2003 . . . in relation to Administrative Order No. 91, Series of 2004 and Memorandum Circular No. AFF-2-005 per Office Order No. AFF-06-9133 signed Associate Commissioner Roy M. Almoro dated July 18, 2006."[57]

Senator Poe became a registered voter of Barangay Santa Lucia, San Juan City on August 31, 2006.[58]

Senator Poe made several trips to the United States of America between 2006 and 2009 using her United States Passport No. 170377935.[59] She used her passport "after having taken her Oath of Allegiance to the Republic on 07 July 2006, but not after she has formally renounced her American citizenship on 20 October 2010."[60] The following are the flight records given by the Bureau of Immigration:

Departures	Flight No.
November 1, 2006	SQ071
July 20, 2007	PR730
October 31, 2007	PR300
October 2, 2008	PR358
April 20, 2009	PR104
July 31, 2009	PR730
October 19, 2009	PR102
November 15, 2009	PR103
December 27, 2009	PR112
March 27, 2010	PR102

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[55] *Id*.

[56] *Id*. at 686-687.

[57] *Id*. at 687.

[58] *Id*.

[59] *Id*. at 256.

[60] *Id*.

Arrivals	Flight No.
November 4, 2006	SQ076
July 23, 2007	PR731
November 5, 2007	PR337
May 8, 2008	PR103
October 5, 2008	PR359
May 21, 2009	PR105
August 3, 2009	PR733
November 15, 2009	PR103[61]

On October 6, 2010, President Benigno Simeon Aquino III appointed Senator Poe as Chairperson of the Movie and Television Review and Classification Board (MTRCB).[62] On October 20, 2010, Senator Poe executed an Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship,[63] stating:

> I, MARY GRACE POE-LLAMANZARES, Filipino, of legal age, and presently residing at No. 107 Rodeo Drive, Corinthian Hills, Quezon City, Philippines, after having been duly sworn to in accordance with the law, do hereby depose and state that with this affidavit, I hereby expressly and voluntarily renounce my United States nationality/American citizenship, together with all rights and privileges and all duties and allegiance and fidelity thereunto pertaining. I make this renunciation intentionally, voluntarily, and of my own free will, free of any duress or undue influence.[64] (Emphasis in the original)

The affidavit was submitted to the Bureau of Immigration on October 21, 2010.[65] On October 21, 2010, she took her Oath of Office as MTRCB Chairperson and assumed office on October 26, 2010.[66] Her oath of office stated:

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[61] *Id*.

[62] *Id*. at 10.

[63] *Id*. at 687.

[64] *Id*. at 687-688.

[65] *Id*. at 688.

[66] *Id*. at 229.

PANUNUMPA SA KATUNGKULAN

Ako, si MARY GRACE POE LLAMANZARES, na itinalaga sa katungkulan bilang *Chairperson, Movie and Television Review and Classification Board*, ay taimtim na nanunumpa na tutuparin ko nang buong husay at katapatan, sa abot ng aking kakayahan, ang mga tungkulin ng aking kasalukuyang katungkulan at ng mga iba pang pagkaraan nito'y gagampanan ko sa ilalim ng Republika ng Pilipinas; na aking itataguyod at ipagtatanggol ang Saligan Batas ng Pilipinas; na tunay na mananalig at tatalima ako rito; na susundin ko ang mga batas, mga kautusang lega, at mga dekretong pinaiiral ng mga sadyang itinakdang may kapangyarihan ng Republika ng Pilipinas; at kusa kong babalikatin ang pananagutang ito, nang walang ano mang pasubali o hangaring umiwas.

Kasihan nawa ako ng Diyos.

NILAGDAAN AT PINANUMPAAN sa harap ko ngayong ika-21 ng Oktubre 2010, Lungsod ng Maynila, Pilipinas.[67] (Emphasis in the original)

Senator Poe executed an Oath/Affirmation of Renunciation of Nationality of the United States[68] in the presence of Vice-Consul Somer E. Bessire-Briers on July 12, 2011.[69] On this occasion, she also filled out the Questionnaire Information for Determining Possible Loss of U.S. Citizenship.[70] On December 9, 2011, Vice Consul Jason Galian executed a Certificate of Loss of Nationality for Senator Poe.[71] The certificate was approved by the Overseas Citizen Service, Department of State, on February 3, 2012.[72]

Senator Poe decided to run as Senator in the 2013 Elections.[73] On September 27, 2012, she executed a Certificate of Candidacy,

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[67] *Id*. at 689, Poe Comment.

[68] *Id*. at 229.

[69] *Id*.

[70] *Id*.

[71] *Id*.

[72] *Id*.

[73] *Id*.

which was submitted to the Commission on Elections on October 2, 2012.[74] She won and was declared as Senator-elect on May 16, 2013.[75]

David, a losing candidate in the 2013 Senatorial Elections, filed before the Senate Electoral Tribunal a Petition for Quo Warranto on August 6, 2015.[76] He contested the election of Senator Poe for failing to "comply with the citizenship and residency requirements mandated by the 1987 Constitution."[77]

Thereafter, the Senate Electoral Tribunal issued Resolution No. 15-01 requiring David "to correct the formal defects of his petition."[78] David filed his amended Petition on August 17, 2015.[79]

On August 18, 2015, Resolution No. 15-02 was issued by the Senate Electoral Tribunal, through its Executive Committee, ordering the Secretary of the Senate Electoral Tribunal to summon Senator Poe to file an answer to the amended Petition.[80]

Pending the filing of Senator Poe's answer, David filed a Motion Subpoena the Record of Application of Citizenship Re-acquisition and related documents from the Bureau of Immigration on August 25, 2015.[81] The documents requested included Senator Poe's record of travels and NSO kept Birth Certificate.[82] On August 26, 2015, the Senate Electoral Tribunal issued Resolution No. 15-04 granting the Motion.[83] The same

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[74] *Id*.

[75] *Id*.

[76] *Id*.

[77] *Id*.

[78] *Id*. at 230.

[79] *Id*.

[80] *Id*.

[81] *Id*.

[82] *Id*.

[83] *Id*.

Resolution directed the Secretary of the Tribunal to issue a subpoena to the concerned officials of the Bureau of Immigration and the National Statistics Office.[84] The subpoenas ordered the officials to appear on September 1, 2015 at 10:00 a.m. before the Office of the Secretary of the Senate bearing three (3) sets of the requested documents.[85] The subpoenas were complied with by both the Bureau of Immigration and the National Statistics Office on September 1, 2015.[86]

On September 1, 2015, Senator Poe submitted her Verified Answer with (1) Prayer for Summary Dismissal; (2) Motion for Preliminary Hearing on Grounds for Immediate Dismissal/ Affirmative Defenses; (3) Motion to Cite David for Direct Contempt of Court; and (4) Counterclaim for Indirect Contempt of Court.[87]

On September 2, 2015, the Senate Electoral Tribunal issued Resolution No. 15-05 requiring the parties to file a preliminary conference brief on or before September 9, 2015.[88] The Resolution also set the Preliminary Conference on September 11, 2015.[89] During the Preliminary Conference, the parties "agreed to drop the issue of residency on the ground of prescription."[90]

Oral arguments were held by the Senate Electoral Tribunal on September 21, 2015.[91] The parties were then "required to submit their respective [memoranda], without prejudice to the submission of DNA evidence by [Senator Poe] within thirty (30) days from the said date."[92]

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[84] *Id*.

[85] *Id*.

[86] *Id*.

[87] *Id*.

[88] *Id*. at 231.

[89] *Id*.

[90] *Id*.

[91] *Id*.

[92] *Id*.

On October 21, 2015, Senator Poe moved to extend for 15 days the submission of DNA test results.[93] The Senate Electoral Tribunal granted the Motion on October 27, 2015 through Resolution No. 15-08.[94] On November 5, 2015, Senator Poe filed a Manifestation regarding the results of DNA Testing,[95] which stated that "none of the tests that [Senator Poe] took provided results that would shed light to the real identity of her biological parents."[96] The Manifestation also stated that Senator Poe was to continue to find closure regarding the issue and submit any development to the Senate Electoral Tribunal. Later, Senator Poe submitted "the issue of her natural-born Filipino citizenship as a foundling for resolution upon the legal arguments set forth in her submissions to the Tribunal."[97] On November 6, 2015, through Resolution No. 15-10, the Senate Electoral Tribunal "noted the [M]anifestation and considered the case submitted for resolution."[98]

On November 17, 2015, the Senate Electoral Tribunal promulgated its assailed Decision finding Senator Poe to be a natural-born citizen and, therefore, qualified to hold office as Senator.[99] The Decision stated:

> We rule that Respondent is a natural-born citizen under the 1935 Constitution and continue to be a natural-born citizen as defined under the 1987 Constitution, as she is a citizen of the Philippines from birth, without having to perform any act to acquire or perfect (her) Philippine citizenship.
>
> . . . . . .
>
> In light of our earlier pronouncement that Respondent is a natural-born Filipino citizen, Respondent validly reacquired her natural-born

[93] *Id*.

[94] *Id*.

[95] *Id*.

[96] *Id*.

[97] *Id*.

[98] *Id*.

[99] *Id*. at 257.

Filipino citizenship upon taking her Oath of Allegiance to the Republic of the Philippines, as required under Section 3 of R.A. No. 9225.

Under Section 11 of B.I. Memorandum Circular No. AFF 05-002 (the Revised Rules Implementing R.A. No. 9225), the foregoing Oath of Allegiance is the "final act" to reacquire natural-born Philippine citizenship.

. . . . . .

To repeat, Respondent never used her USA passport from the moment she renounced her American citizenship on 20 October 2010. She remained solely a natural-born Filipino citizen from that time on until today.

WHEREFORE, in view of the foregoing, the petition for quo warranto is DISMISSED.

No pronouncement as to costs.

SO ORDERED.[100] (Citations omitted)

On November 23, 2015, David moved for reconsideration.[101] The Senate Electoral Tribunal issued Resolution No. 15-11 on November 24, 2015, giving Senator Poe five (5) days to comment on the Motion for Reconsideration.[102]

Senator Poe filed her Comment/Opposition to the Motion for Reconsideration on December 1, 2015.[103] David's Motion for Reconsideration was denied by the Senate Electoral Tribunal on December 3, 2015:[104]

WHEREFORE, the Tribunal resolves to DENY the *Verified Motion for Reconsideration (of the Decision promulgated on 17 November 2015)* of David Rizalito Y. David dated 23 November 2015.

The Tribunal further resolves to CONFIRM Resolution No. 15-11 dated 24 November 2015 issued by the Executive Committee of the

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[100] *Id*. at 253-257.

[101] *Id*. at 84-100.

[102] *Id*. at 80, SET Resolution No. 15-12.

[103] *Id*. at 81.

[104] *Id*. at 80-83.

Tribunal; to **NOTE** the Comment/Opposition filed by counsel for Respondent on 01 December 2015; to **GRANT** the motion for leave to appear and submit memorandum as *amici curiae* filed by Dean Arturo de Castro [and to] NOTE the Memorandum (for Volunteer Amicus Curiae) earlier submitted by Dean de Castro before the Commission on Elections in SPA No. 15-139 (DC), entitled "Amado D. Valdez, Petitoner, versus Mary Grace Natividad Sonora Poe Llaman[z]ares, Respondent."

SO ORDERED.[105] (Emphasis in the original)

On December 8, 2015, the Senate Electoral Tribunal's Resolution was received by David.[106] On December 9, 2015, David filed the present Petition for Certiorari before this Court.[107]

On December 16, 2015, this Court required the Senate Electoral Tribunal and Senator Poe to comment on the Petition "within a non-extendible period of fifteen (15) days from notice."[108] The Resolution also set oral arguments on January 19, 2016.[109] The Senate Electoral Tribunal, through the Office of the Solicitor General, submitted its Comment on December 30, 2015.[110] Senator Poe submitted her Comment on January 4, 2016.[111]

This case was held in abeyance pending the resolution of the Commission on Elections case on the issue of private respondent's citizenship.

For resolution is the sole issue of whether the Senate Electoral Tribunal committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's Petition for Quo Warranto based on its finding that private respondent

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[105] *Id*. at 82.

[106] *Id*. at 7.

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

[108] *Id*. at 647, SET Comment.

[109] *Id*.

[110] *Id*. at 669.

[111] *Id*. at 677-828.

is a natural-born Filipino citizen, qualified to hold a seat as Senator under Article VI, Section 3 of the 1987 Constitution.

I

Petitioner comes to this Court invoking our power of judicial review through a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. He seeks to annul the assailed Decision and Resolution of the Senate Electoral Tribunal, which state its findings and conclusions on private respondent's citizenship.

Ruling on petitioner's plea for post-judgment relief calls for a consideration of two (2) factors: first, the breadth of this Court's competence relative to that of the Senate Electoral Tribunal; and second, the nature of the remedial vehicle—a petition for certiorari—through which one who is aggrieved by a judgment of the Senate Electoral Tribunal may seek relief from this Court.

I. A

The Senate Electoral Tribunal, along with the House of Representatives Electoral Tribunal, is a creation of Article VI, Section 17 of the 1987 Constitution:[112]

ARTICLE VI
The Legislative Department

. . . .

SECTION 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the *sole judge of all*

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[112] A counterpart electoral tribunal for the positions of President and Vice-President was also created by the seventh paragraph of Article VII, Section 4 of the 1987 Constitution.

CONST., Art. VII, Sec. 4 provides:

SECTION 4 . . . .

. . . .

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman. (Emphasis supplied)

Through Article VI, Section 17, the Constitution segregates from all other judicial and quasi-judicial bodies (particularly, courts and the Commission on Elections[113]) the power to rule on contests[114] relating to the election, returns, and qualifications

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[113] Trial courts and the Commission on Elections still exercise jurisdiction over contests relating to the election, returns, and qualifications of local elective offices.

CONST., Art. IX-C, Sec. 2(2) provides:

SECTION 2. The Commission on Elections shall exercise the following powers and functions:

. . . . . .

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

[114] The term "contest" refers to post-election disputes. In *Tecson v. Commission on Elections*, 468 Phil. 421 (2004) [Per *J*. Vitug, *En Banc*], this Court referring to the counterpart electoral tribunal for the President and Vice President – the Presidential Electoral Tribunal – explained: "Ordinary usage would characterize a "contest" in reference to a *post-election scenario*. Election contests consist of eitheir an election protest or a *quo warranto* which, although two distinct remedies, would have one objective in view, i.e. to dislodge the winning candidate from office. A perusal of the phraseology in Rule 12, Rule 13, and Rule 14 of the "Rules of the Presidential Electoral Tribunal" promulgated by the Supreme Court *en banc* on 18 April 1992, would support this premise. . . .

of members of the Senate (as well as of the House of Representatives). These powers are granted to a separate and distinct constitutional organ. There are two (2) aspects to the exclusivity of the Senate Electoral Tribunal's power. The power to resolve such contests is exclusive to any other body. The resolution of such contests is its only task; it performs no other function.

The 1987 Constitution is not the first fundamental law to introduce into our legal system an "independent, impartial and non-partisan body attached to the legislature and specially created for that singular purpose."[115] The 1935 Constitution similarly created an Electoral Commission, independent from the National Assembly, to be the sole judge of all contests relating to members of the National Assembly.[116] This was a departure from the

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"The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President", of the Philippines, and not of "candidates" for President or Vice-President. A *quo warranto* proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. In such context, the election contest can only contemplate a post-election *scenario*. In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election *scenario*.

"It is fair to conclude that the jurisdiction of the Supreme Court [sitting as the Presidential Electoral Tribunal], defined by Section 4, paragraph 7, of the 1987 Constitution, would not include cases directly brought before it, questioning the qualifications of a candidate for the presidency or vice-presidency before the elections are held."

[115] *Lazatin v. House of Representatives Electoral Tribunal*, 250 Phil. 390, 399 (1988). [Per J. Cortes, *En Banc*].

[116] CONST. (1935), Art. VI, Sec. 4 provides:

SECTION 4. There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The senior Justice in the Commission shall be its Chairman. The Electoral Commission shall be the *sole judge* of all contests relating to the election, returns, and qualifications of the Members of the National Assembly.

system introduced by prior organic acts enforced under American colonial rule—namely: the Philippine Bill of 1902 and the Jones Law of 1916—which vested the power to resolve such contests in the legislature itself. When the 1935 Constitution was amended to make room for a bicameral legislature, a corresponding amendment was made for there to be separate electoral tribunals for each chamber of Congress.[117] The 1973 Constitution did away with these electoral tribunals, but they have since been restored by the 1987 Constitution.

All constitutional provisions—under the 1935 and 1987 Constitutions—which provide for the creation of electoral tribunals (or their predecessor, the Electoral Commission), have been unequivocal in their language. The electoral tribunal shall be the "sole" judge.

In *Lazatin v. House Electoral Tribunal*:[118]

> The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred. . . . The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as complete and unimpaired as if it had remained originally in the legislature[.]" Earlier, this grant of power to the legislature was characterized by Justice Malcohn as "full, clear and complete." . . . Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal . . . and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. . . . The same may be said

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[117] CONST. (1935 amended), Art. VI, Sec. 11 provides:

> SECTION 11. The Senate and the House of Representatives shall have an Electoral Tribunal which shall be the *sole judge* of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest numbers of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman.

[118] 250 Phil. 390 (1988) [Per *J.* Cortes, *En Banc*].

with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.[119]

Exclusive, *original* jurisdiction over contests relating to the election, returns, and qualifications of the elective officials falling within the scope of their powers is, thus, vested in these electoral tribunals. It is only before them that post-election challenges against the election, returns, and qualifications of Senators and Representatives (as well as of the President and the Vice-President, in the case of the Presidential Electoral Tribunal) may be initiated.

The judgments of these tribunals are not beyond the scope of any review. Article VI, Section 17's stipulation of electoral tribunals' being the "sole" judge must be read in harmony with Article VIII, Section 1's express statement that "[j]udicial power includes the duty of the courts of justice . . . 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." Judicial review is, therefore, still possible. In *Libanan v. House of Representatives Electoral Tribunal*:[120]

> The Court has stressed that ". . . so long as the Constitution grants the [House of Representatives Electoral Tribunal] the power to be the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, any final action taken by the [House of Representatives Electoral Tribunal] on a matter within its jurisdiction shall, as a rule, not be reviewed by this Court . . . the power granted to the Electoral Tribunal . . . excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same."
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> The Court did recognize, of course, its power of judicial review in exceptional cases. In *Robles vs. [House of Representatives Electoral Tribunal]*, the Court has explained that while the judgments of the Tribunal are beyond judicial interference, *the Court may do so, however, but only "in the exercise of this Court's so-called*

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[119] *Id.* at 399-400.

[120] 347 Phil. 797 (1997) [Per *J.* Vitug, *En Banc*].

***extraordinary jurisdiction**, . . . upon a determination that the Tribunal's decision or resolution was rendered without or in excess of its jurisdiction, or with grave abuse of discretion* or paraphrasing *Morrero*, upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such grave abuse of discretion that there has to be a remedy for such abuse."

In the old, but still relevant, case of *Morrero vs. Bocar*, the Court has ruled that the power of the Electoral Commission "is beyond judicial interference except, in any event, upon a clear showing of such arbitrary and improvident use of power as will constitute a denial of due process." The Court does not, to paraphrase it in *Co vs. [House of Representatives Electoral Tribunal]*, venture into the perilous area of correcting perceived errors of independent branches of the Government; it comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution itself calls for remedial action.[121] (Emphasis supplied, citations omitted)

This Court reviews judgments of the House and Senate Electoral Tribunals not in the exercise of its appellate jurisdiction. Our review is limited to a determination of whether there has been an error in jurisdiction, not an error in judgment.

I. B

A party aggrieved by the rulings of the Senate or House Electoral Tribunal invokes the jurisdiction of this Court through the vehicle of a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. An appeal is a continuation of the proceedings in the tribunal from which the appeal is taken. A petition for certiorari is allowed in Article VIII, Section 1 of the Constitution and described in the 1997 Rules of Civil Procedure as an independent civil action.[122] The viability of

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[121] *Id.* at 804-805.

[122] See *J.* Leonen, Concurring Opinions in *Rappler v. Bautista*, G.R. No. 222702, April 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/222702.pdf> 2-3 [Per *J.* Carpio, *En Banc*]

such a petition is premised on an allegation of "grave abuse of discretion."[123]

The term "grave abuse of discretion" has been generally held to refer to such arbitrary, capricious, or whimsical exercise of judgment as is tantamount to lack of jurisdiction:

> [T]he abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough: it must be grave.[124]

There is grave abuse of discretion when a constitutional organ such as the Senate Electoral Tribunal or the Commission on Elections, makes manifestly gross errors in its factual inferences such that critical pieces of evidence, which have been nevertheless properly introduced by a party, or admitted, or which were the subject of stipulation, are ignored or not accounted for.[125]

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and in *Villanueva v. Judicial Bar Council*, G.R. No. 211833, April 7, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/211833_leonen.pdf> 4-5 [Per *J.* Reyes, *En Banc*].

[123] RULES OF COURT, Rule 65, Sec. 1 provides:

> SECTION 1. Petition for *certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[124] *Mitra v. Commission on Elections*, 636 Phil. 753, 777 (2010) [Per *J.* Brion, *En Banc*].

[125] *Abosta Shipmanagement Corporation v. National Labor Relations Commission (First Division) and Arnulfo R. Flores*, 670 Phil. 136, 151 (2011) [Per *J.* Brion, Second Division].

A glaring misinterpretation of the constitutional text or of statutory provisions, as well as a misreading or misapplication of the current state of jurisprudence, is also considered grave abuse of discretion.[126] The arbitrariness consists in the disregard of the current state of our law.

Adjudication that fails to consider the facts and evidence or frivolously departs from settled principles engenders a strong suspicion of partiality. This can be a badge of hostile intent against a party.

Writs of certiorari have, therefore, been issued: (a) where the tribunal's approach to an issue is premised on wrong considerations and its conclusions founded on a gross misreading, if not misrepresentation, of the evidence;[127] (b) where a tribunal's assessment of a case is "far from reasonable[,] [and] based solely on very personal and subjective assessment standards when the law is replete with standards that can be used";[128] "(c) where the tribunal's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable";[129] and (d) where

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[126] *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, G.R. No. 212096, October 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/212096.pdf> 7 [Per *J*. Brion, Second Division].

[127] *Mitra v. Commission on Elections*, 636 Phil. 753, 777-778, 782 (2010) [Per *J.* Brion, *En Banc*].

[128] *Id*. at 787.

[129] *Id*. at 778. In *Mitra*, this Court faulted the Commission on Elections for relying on very select facts that appeared to have been appreciated precisely in such a manner as to make it appear that the candidate whose residence was in question was not qualified. Viewing these facts in isolation indicated a practically deliberate, ill-intentioned intent at sustaining a previously-conceived myopic conclusion:

"In considering the residency issue, the [Commission on Elections] practically focused solely on its consideration of Mitra's residence at Maligaya Feedmill, on the basis of mere photographs of the premises. In the [Commission on Elections'] view (expressly voiced out by the Division and fully concurred in by the *En Banc*), the Maligaya Feedmill building could not have been Mitra's residence because it is cold and utterly devoid of any indication of

the tribunal invokes erroneous or irrelevant considerations in resolving an issue.[130]

I. C

We find no basis for concluding that the Senate Electoral Tribunal acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Senate Electoral Tribunal's conclusions are in keeping with a faithful and exhaustive reading of the Constitution, one that proceeds from an intent to give life to all the aspirations of all its provisions.

Ruling on the Petition for Quo Warranto initiated by petitioner, the Senate Electoral Tribunal was confronted with a novel legal question: the citizenship status of children whose biological parents are unknown, considering that the Constitution, in Article IV, Section 1(2) explicitly makes reference to one's father or mother. It was compelled to exercise its original jurisdiction in the face of a constitutional ambiguity that, at that point, was without judicial precedent.

Mitra's personality and that it lacks loving attention and details inherent in every home to make it one's residence. This was the main reason that the [Commission on Elections] relied upon for its conclusion.

"Such assessment, in our view, based on the interior design and furnishings of a dwelling as shown by and examined only through photographs, is far from reasonable; the [Commission on Elections] thereby determined the fitness of a dwelling as a person's residence based solely on very personal and subjective assessment standards when the law is replete with standards that can be used. Where a dwelling qualifies as a residence - *i.e.*, the dwelling where a person permanently intends to return to and to remain - his or her capacity or inclination to decorate the place, or the lack of it, is immaterial."

[130] In *Varias v. Commission on Elections*, 626 Phil. 292, 314-315 (2010) [Per *J.* Brion, *En Banc*], this Court, citing *Pecson v. Commission on Elections*, 595 Phil. 1214, 1226 (2008) [Per *J.* Brion, *En Banc*] stated: "[A] court abuses its discretion when it lacks jurisdiction, fails to consider and make a record of the factors relevant to its determination, relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors, clearly gives too much weight to one factor, relies on erroneous conclusions of law or equity, or misapplies its factual or legal conclusions."

Acting within this void, the Senate Electoral Tribunal was only asked to make a reasonable interpretation of the law while needfully considering the established personal circumstances of private respondent. It could not have asked the impossible of private respondent, sending her on a proverbial fool's errand to establish her parentage, when the controversy before it arose because private respondent's parentage was unknown and has remained so throughout her life.

The Senate Electoral Tribunal knew the limits of human capacity. It did not insist on burdening private respondent with conclusively proving, within the course of the few short months, the one thing that she has never been in a position to know throughout her lifetime. Instead, it conscientiously appreciated the implications of all other facts known about her finding. Therefore, it arrived at conclusions in a manner in keeping with the degree of proof required in proceedings before a quasi-judicial body: not absolute certainty, not proof beyond reasonable doubt or preponderance of evidence, but "substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[131]

In the process, it avoided setting a damning precedent for all children with the misfortune of having been abandoned by their biological parents. Far from reducing them to inferior, second-class citizens, the Senate Electoral Tribunal did justice to the Constitution's aims of promoting and defending the well-being of children, advancing human rights, and guaranteeing equal protection of the laws and equal access to opportunities for public service.

II

Article VI, Section 3 of the 1987 Constitution spells out the requirement that "[n]o person shall be a Senator unless he [or she] is a natural-born citizen of the Philippines."

Petitioner asserts that private respondent is not a natural-born citizen and, therefore, not qualified to sit as Senator of

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[131] RULES OF COURT, Rule 133, Sec. 5.

the Republic, chiefly on two (2) grounds. First, he argues that as a foundling whose parents are unknown, private respondent fails to satisfy the *jus sanguinis* principle: that is, that she failed to establish her Filipino "blood line," which is supposedly the essence of the Constitution's determination of who are natural-born citizens of the Philippines. Proceeding from this first assertion, petitioner insists that as private respondent was never a natural-born citizen, she could never leave reverted to natural-born status despite the performance of acts that ostensibly comply with Republic Act No. 9225, otherwise known as the Citizenship Retention and Re-acquisition Act of 2003.

Petitioner's case hinges on the primacy he places over Article IV, Section 1 of the 1987 Constitution and its enumeration of who are Filipino citizens, more specifically on Section 1(2), which identifies as citizens "[t]hose whose fathers or mothers are citizens of the Philippines." Petitioner similarly claims that, as private respondent's foundling status is settled, the burden to prove Filipino parentage was upon her. With private respondent having supposedly failed to discharge this burden, the supposed inevitable conclusion is that she is not a natural-born Filipino.

III

At the heart of this controversy is a constitutional ambiguity. Definitely, foundlings have biological parents, either or both of whom can be Filipinos. Yet, by the nature of their being foundlings, they may, at critical times, not know their parents. Thus, this controversy must consider possibilities where parentage may be Filipino but, due to no fault of the foundling, remains unknown.[132] Resolving this controversy hinges on constitutional interpretation.

Discerning constitutional meaning is an exercise in discovering the sovereign's purpose so as to identify which among competing

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[132] CONST., Art. IV, Sec. 1(2):

SECTION 1. The following are citizens of the Philippines:

. . . . . .

(2) Those whose fathers or mothers are citizens of the Philippines[.]

interpretations of the same text is the more contemporarily viable construction. Primarily, the actual words—text—and how they are situated within the whole document—context—govern. Secondarily, when discerning meaning from the plain text (i.e., verba legis) fails, contemporaneous construction may settle what is more viable. Nevertheless, even when a reading of the plain text is already sufficient, contemporaneous construction may still be resorted to as a means for verifying or validating the clear textual or contextual meaning of the Constitution.

III. A

The entire exercise of interpreting a constitutional provision must necessarily begin with the text itself. The language of the provision being interpreted is the principal source from which this Court determines constitutional intent.[133]

To the extent possible, words must be given their ordinary meaning; this is consistent with the basic precept of verba legis.[134] The Constitution is truly a public document in that it was ratified and approved by a direct act of the People exercising their right of suffrage, they approved of it through a plebiscite. The preeminent consideration in reading the Constitution, therefore, is the People's consciousness: that is, popular, rather than technical-legal, understanding. Thus:

> *We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin.* It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What

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[133] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 412 Phil. 308, 338 (2001) [Per *J.* Panganiban, *En Banc*].

[134] *See J.* Leonen, Dissenting Opinion in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 501-523 (2013) [Per *J.* Mendoza, *En Banc*].

it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus, these are the cases where the need for construction is reduced to a minimum.[135] (Emphasis supplied)

Reading a constitutional provision requires awareness of its relation with the whole of the Constitution. A constitutional provision is but a constituent of a greater whole. It is the framework of the Constitution that animates each of its components through the dynamism of these components' interrelations. What is called into operation is the entire document, not simply a peripheral item. The Constitution should, therefore, be appreciated and read as a singular, whole unit—*ut magis valeat quam pereat*.[136] Each provision must be understood and effected in a way that gives life to all that the Constitution contains, from its foundational principles to its finest fixings.[137]

The words and phrases that establish its framework and its values color each provision at the heart of a controversy in an actual case. In *Civil Liberties Union v. Executive Secretary*:[138]

It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing

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[135] *Francisco v. House of Representatives*, 460 Phil. 830, 885 (2003) [Per *J.* Carpio Morales, *En Banc*], citing *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 142 Phil. 393 (1970) [Per *J.* Fernando, Second Division]. This was also cited in *Saguisag v. Ochoa*, G.R. No. 212426, January 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/212426.pdf> [Per *C.J.* Sereno, *En Banc*].

[136] *Francisco v. House of Representatives*, 460 Phil. 830, 886 (2003) [Per *J.* Carpio Morales, *En Banc*].

[137] *La Bugal-B'laan Tribal Association, Inc. v. Ramos (Resolution)*, 486 Phil. 754, 773 (2004) [Per *J.* Panganiban, *En Banc*] states that "[t]he Constitution should be read in broad, life-giving strokes."

[138] 272 Phil. 147 (1991) [Per *C.J.* Fernan, *En Banc*].

on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.

In other words, the court must harmonize them, if practicable, and must lean in favor of construction which will render every word operative, rather than one which may make the words idle and nugatory.[139] (Citations omitted)

Reading a certain text includes a consideration of jurisprudence that has previously considered that exact same text, if any. Our legal system is founded on the basic principle that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form part of [our] legal system."[140] Jurisprudence is not an independent source of law. Nevertheless, judicial interpretation is deemed part of or written into the text itself as of the date that it was originally passed. This is because judicial construction articulates the contemporaneous intent that the text brings to effect.[141] Nevertheless, one must not fall into the temptation of considering prior interpretation as immutable.

Interpretation grounded on textual primacy likewise looks into how the text has evolved. Unless completely novel, legal provisions are the result of the re-adoption—often with accompanying re-calibration—of previously existing rules. Even when seemingly novel, provisions are often introduced as a means of addressing the inadequacies and excesses of previously existing rules.

One may trace the historical development of text by comparing its current iteration with prior counterpart provisions, keenly taking note of changes in syntax, along with accounting for more conspicuous substantive changes such as the addition and

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[139] *Id.* at 162, *as cited in Atty. Macalintal v. Presidential Electoral Tribunal*, 650 Phil. 326, 341 (2010) [Per *J.* Nachura, *En Banc*].

[140] CIVIL CODE, Art. 8.

[141] *Senarillos v. Hermosisima*, 100 Phil. 501, 504 (1956) [Per *J.* J. B. L. Reyes, *En Banc*].

deletion of provisos or items in enumerations, shifting terminologies, the use of more emphatic or more moderate qualifiers, and the imposition of heavier penalties. The tension between consistency and change galvanizes meaning.

Article IV, Section 1 of the 1987 Constitution, which enumerates who are citizens of the Philippines, may be compared with counterpart provisions, not only in earlier Constitutions but even in organic laws[142] and in similar mechanisms[143] introduced by colonial rulers whose precepts nevertheless still resonate today.

Even as ordinary meaning is preeminent, a realistic appreciation of legal interpretation must grapple with the truth that meaning is not always singular and uniform. In *Social Weather Stations, Inc. v. Commission on Elections*,[144] this Court explained the place of a holistic approach in legal interpretation:

> Interestingly, both COMELEC and petitioners appeal to what they (respectively) construe to be plainly evident from Section 5.2(a)'s text on the part of COMELEC, that the use of the words "paid for" evinces no distinction between direct purchasers and those who purchase via subscription schemes; and, on the part of petitioners, that Section 5.2(a)'s desistance from actually using the word "subscriber" means that subscribers are beyond its contemplation. The variance in the parties' positions, considering that they are both banking on what they claim to be the Fair Election Act's plain meaning, is the best evidence of an extant ambiguity.

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[142] The adoption of the Philippine Bill of 1902, otherwise known as the Philippine Organic Act of 1902, crystallized the concept of "Philippine citizens." See *Tecson v. Commission on Elections*, 468 Phil. 421, 467-468 (2004) Per *J.* Vitug, *En Banc*].

[143] For example, the Civil Code of Spain became effective in the jurisdiction on December 18, 1889, making the first categorical listing on who were Spanish citizens. See *Tecson v. Commission on Elections*, 468 Phil. 421, 465 (2004) [Per *J.* Vitug, *En Banc*].

[144] G.R. No. 208062, April 7, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/208062.pdf> [Per *J.* Leonen, *En Banc*].

Second, statutory construction cannot lend itself to pedantic rigor that foments absurdity. The dangers of inordinate insistence on literal interpretation are commonsensical and need not be belabored. These dangers are by no means endemic to legal interpretation. Even in everyday conversations, misplaced literal interpretations are fodder for humor. A fixation on technical rules of grammar is no less innocuous. A pompously doctrinaire approach to text can stifle, rather than facilitate, the legislative wisdom that unbridled textualism purports to bolster.

Third, the assumption that there is, in all cases, a universal plain language is erroneous. In reality, universality and uniformity in meaning is a rarity. A contrary belief wrongly assumes that language is static.

The more appropriate and more effective approach is, thus, holistic rather than parochial: to consider context and the interplay of the historical, the contemporary, and even the envisioned. *Judicial interpretation entails the convergence of social realities and social ideals. The latter are meant to be effected by the legal apparatus, chief of which is the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the vernacular that describes the Constitution — saligan — demonstrates this imperative of constitutional primacy.*

Thus, we refuse to read Section 5.2(a) of the Fair Election Act in isolation. Here, we consider not an abstruse provision but a stipulation that is part of the whole, i.e., the statute of which it is a part, that is aimed at realizing the ideal of fair elections. We consider not a cloistered provision but a norm that should have a present authoritative effect to achieve the ideals of those who currently read, depend on, and demand fealty from the Constitution.[145] (Emphasis supplied)

III. B

Contemporaneous construction and aids that are external to the text may be resorted to when the text is capable of multiple, viable meanings.[146] It is only then that one can go beyond the

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[145] *Id.* at 26.

[146] *Sobejana-Condon v. Commission on Elections*, 692 Phil. 407, 421 (2012) [Per *J.* Reyes, *En Banc*]: "Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring

strict boundaries of the document. Nevertheless, even when meaning has already been ascertained from a reading of the plain text, contemporaneous construction may serve to verify or validate the meaning yielded by such reading.

Limited resort to contemporaneous construction is justified by the realization that the business of understanding the Constitution is not exclusive to this Court. The basic democratic foundation of our constitutional order necessarily means that all organs of government, and even the People, read the fundamental law and are guided by it. When competing viable interpretations arise, a justiciable controversy may ensue requiring judicial intervention in order to arrive with finality at which interpretation shall be sustained. To remain true to its democratic moorings, however, judicial involvement must remain guided by a framework or deference and constitutional avoidance. This same principle underlies the basic doctrine that courts are to refrain from issuing advisory opinions. Specifically as regards this Court, only constitutional issues that are narrowly framed, sufficient to resolve an actual case, may be entertained.[147]

When permissible then, one may consider analogous jurisprudence (that is, judicial decisions on similar, but not the very same, matters or concerns),[148] as well as thematically similar statutes and international norms that form part of our legal system. This includes discerning the purpose and aims of the text in light of the specific facts under consideration. It is also only at this juncture—when external aids may be consulted—that the

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to two or more things at the same time. For a statute to be considered ambiguous, it must admit of two or more possible meanings."

[147] *See, for example, In the Matter of: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement v. Abolition of Judiciary Development Fund*, UDK-15143, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/15143.pdf> [Per *J.* Leonen, *En Banc*], citing *J.* Leonen, Concurring Opinion in *Belgica v. Ochoa*, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 278-279 [Per *J.* Perlas-Bernabe, *En Banc*].

[148] *Cf.* what was previously discussed regarding previous judicial decisions on the very same text.

supposedly underlying notions of the framers, as articulated through records of deliberations and other similar accounts, can be illuminating.

III. C

In the hierarchy of the means for constitutional interpretation, inferring meaning from the supposed intent of the framers or fathoming the original understanding of the individuals who adopted the basic document is the weakest approach.

These methods leave the greatest room for subjective interpretation. Moreover, they allow for the greatest errors. The alleged intent of the framers is not necessarily encompassed or exhaustively articulated in the records of deliberations. Those that have been otherwise silent and have not actively engaged in interpellation and debate may have voted for or against a proposition for reasons entirely their own and not necessarily in complete agreement with those articulated by the more vocal. It is even possible that the beliefs that motivated them were based on entirely erroneous premises. Fathoming original understanding can also misrepresent history as it compels a comprehension of actions made within specific historical episodes through detached, and not necessarily better-guided, modern lenses.

Moreover, the original intent of the framers of the Constitution is not always uniform with the original understanding of the People who ratified it. In *Civil Liberties Union*:

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave the instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." *The proper interpretation therefore depends more*

on how it was understood by the people adopting it than in the framer's understanding thereof.[149] (*Emphasis supplied*)

IV

Though her parents are unknown, private respondent is a Philippine citizen without the need for an express statement in the Constitution making her so. Her status as such is but the logical consequence of a reasonable reading of the Constitution within its plain text. The Constitution provides its own cues; there is not even a need to delve into the deliberations of its framers and the implications of international legal instruments. This reading proceeds from several levels.

On an initial level, a plain textual reading readily identifies the specific provision, which principally governs: the Constitution's actual definition, in Article IV, Section 2, of "natural-born citizens." This definition must be harmonized with Section 1's enumeration, which includes a reference to parentage. These provisions must then be appreciated in relation to the factual milieu of this case. The pieces of evidence before the Senate Electoral Tribunal, admitted facts, and uncontroverted circumstances adequately justify the conclusion of private respondent's Filipino parentage.

On another level, the assumption should be that foundlings are natural-born unless there is substantial evidence to the contrary. This is necessarily engendered by a complete consideration of the whole Constitution, not just its provisions on citizenship. This includes its mandate of defending the well-being of children, guaranteeing equal protection of the law, equal access to opportunities for public service, and respecting human rights, as well as its reasons for requiring natural-born status for select public offices. Moreover, this is a reading validated by contemporaneous construction that considers related legislative enactments, executive and administrative actions, and international instruments.

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[149] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 887 [Per *J.* Carpio Morales, *En Banc*], citing *Civil Liberties Union v. Executive Secretary*, 272 Phil. 147, 169-170 (1991) [Per *C.J.* Fernan, *En Banc*].

V

Private respondent was a Filipino citizen at birth. This status' commencement from birth means that private respondent never had to do anything to consummate this status. By definition, she is natural-born. Though subsequently naturalized, she reacquired her natural-born status upon satisfying the requirement of Republic Act No. 9225. Accordingly, she is qualified to hold office as Senator of the Republic.

V. A

Article IV, Section 1 of the 1987 Constitution enumerates who are citizens of the Philippines:

> Section 1. The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
> (2) Those whose fathers or mothers are citizens of the Philippines;
> (3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
> (4) Those who are naturalized in accordance with law.[150]

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[150] The 1935 Constitution was in effect when petitioner was born. However, the provisions are now substantially similar to the present Constitution, except that the present Constitution provides clarity for "natural born" status. For comparison, the 1935 provisions state:

SECTION 1. The following are citizens of the Philippines.

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

SECTION 2. Philippine citizenship may be lost or reacquired in the manner provided by law.

Article IV, Section 2 identifies who are natural-born citizens:

> Sec. 2. Natural-born citizens are those who are ***citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship***. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens. (Emphasis supplied)

Section 2's significance is self-evident. It provides a definition of the term "natural-born citizens." This is distinct from Section 1's enumeration of who are citizens. As against Section 1's generic listing, Section 2 specifically articulates those who may count themselves as natural-born.

The weight and implications of this categorical definition are better appreciated when supplemented with an understanding of how our concepts of citizenship and natural-born citizenship have evolved. As will be seen, the term "natural-born citizen" was a transplanted, but tardily defined, foreign concept.

V. B

Citizenship is a legal device denoting political affiliation. It is the "right to have rights."[151] It is one's personal and . . . permanent membership in a political community. . . The core of citizenship is the capacity to enjoy political rights, that is, the right to participate in government principally through the right to vote, the right to hold public office[,] and the right to petition the government for redress of grievance.[152]

Citizenship also entails obligations to the political community of which one is part.[153] Citizenship, therefore, is intimately tied with the notion that loyalty is owed to the state, considering

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[151] *C.J.* Warren, Dissenting Opinion in *Perez v. Brownwell*, 356 U.S. 44 (1958).

[152] *Go v. Republic of the Philippines*, G.R. 202809, July 2, 2014, 729 SCRA 138, 149 [Per *J.* Mendoza, Third Division], *citing* BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY* (2009 ed.).

[153] *Id*.

the benefits and protection provided by it. This is particularly so if these benefits and protection have been enjoyed from the moment of the citizen's birth.

Tecson v. Commission on Elections[154] reckoned with the historical development of our concept of citizenship, beginning under Spanish colonial rule.[155] Under the Spanish, the native inhabitants of the Philippine Islands were identified not as citizens but as "Spanish subjects."[156] Church records show that native inhabitants were referred to as "indios." The alternative identification of native inhabitants as subjects or as indios demonstrated the colonial master's regard for native inhabitants as inferior.[157] Natives were, thus, reduced to subservience in their own land.

Under the Spanish Constitution of 1876, persons born within Spanish territory, not just peninsular Spain, were considered Spaniards, classification, however, did not extend to the Philippine Islands, as Article 89 expressly mandated that the archipelago was to be governed by special laws.[158] It was only on December 18, 1889, upon the effectivity in this jurisdiction of the Civil Code of Spain, that there existed a categorical enumeration of who were Spanish citizens,[159] thus:

(a) Persons born in Spanish territory,
(b) Children of a Spanish father or mother, even if they were born outside of Spain,
(c) Foreigners who have obtained naturalization papers,
(d) Those who, without such papers, may have become domiciled inhabitants of any town of the Monarchy.[160]

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[154] 468 Phil. 421 (2004) [Per *J.* Vitug, *En Banc*].

[155] *Id*. at 464-470.

[156] *Id*. at 464.

[157] *Id*.

[158] *Id*. at 465.

[159] *Id*.

[160] *Id*. at 465-466, citing The Civil Code of Spain, Art. 17.

1898 marked the end of Spanish colonial rule. The Philippine Islands were ceded by Spain to the United States of America under the Treaty of Paris, which was entered into on December 10, 1898. The Treaty of Paris did not automatically convert the native inhabitants to American citizens.[161] Instead, it left the determination of the native inhabitants' status to the Congress of the United States:

> Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty may remain in such territory or may remove therefrom. . . . In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making . . . a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.
>
> Thus -
>
> The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress.[162]

Pending legislation by the United States Congress, the native inhabitants who had ceased to be Spanish subjects were "issued passports describing them to be citizens of the Philippines entitled to the protection of the United States."[163]

The term "citizens of the Philippine Islands" first appeared in legislation in the Philippine Organic Act, otherwise known as the Philippine Bill of 1902:[164]

> Section 4. That all inhabitants of the Philippine Islands continuing to reside therein, who were Spanish subjects on the eleventh day of

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[161] *Id*. at 466-467, citing RAMON M. VELAYO, *PHILIPPINE CITIZENSHIP AND NATURALIZATION* 22-23 (1965).

[162] *Id*. at 466, citing RAMON M. VELAYO, *PHILIPPINE CITIZENSHIP AND NATURALIZATION* 22-23 (1965).

[163] *Id*. at 467.

[164] *Id*. at 467-468.

April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequent thereto, ***shall be deemed and held to be citizens of the Philippine Islands*** and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight. (Emphasis supplied)

The Philippine Bill of 1902 explicitly covered the status of children born in the Philippine Islands to its inhabitants who were Spanish subjects as of April 11, 1899. However, it did not account for the status of children born in the Islands to parents who were not Spanish subjects. A view was expressed that the common law concept of *jus soli* (or citizenship by place of birth), which was operative in the United States, applied to the Philippine Islands.[165]

On March 23, 1912, the United States Congress amended Section 4 of the Philippine Bill of 1902. It was made to include a proviso for the enactment by the legislature of a law on acquiring citizenship. This proviso read:

Provided, That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein.[166]

In 1916, the Philippine Autonomy Act, otherwise known as the Jones Law of 1916, replaced the Philippine Bill of 1902. It restated the citizenship provision of the Philippine Bill of 1902, as amended:[167]

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[165] *Id*.

[166] *Id*. at 468.

[167] *Id*.

Section 2.—Philippine Citizenship and Naturalization

That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight, and except such others as have since become citizens of some other country: Provided, That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein.

The Jones Law of 1916 provided that a native-born inhabitant of the Philippine Islands was deemed to be a citizen of the Philippines as of April 11, 1899 if he or she was "(1) a subject of Spain on April 11, 1899, (2) residing in the Philippines on said date, and (3) since that date, not a citizen of some other country."[168]

There was previously the view that *jus soli* may apply as a mode of acquiring citizenship. It was the 1935 Constitution that made sole reference to parentage vis-a-vis the determination of citizenship.[169] Article III, Section 1 of the 1935 Constitution provided:

SECTION 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
(2) Those born in the Philippines Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

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[168] *Id.* at 469.

[169] *Id.*

(3) Those whose fathers are citizens of the Philippines.
(4) Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship.
(5) Those who are naturalized in accordance with law.

The term "natural-born citizen" first appeared in this jurisdiction in the 1935 Constitution's provision stipulating the qualifications for President and Vice-President of the Philippines. Article VII, Section 3 read:

SECTION 3. No person may be elected to the office of President or Vice-President, unless he be a natural-born citizen of the Philippines, a qualified voter, forty years of age or over, and has been a resident of the Philippines for at least ten years immediately preceding the election.

While it used the term "natural-born citizen," the 1935 Constitution did not define the term.

Article II, Section 1(4) of the 1935 Constitution—read with the then civil law provisions that stipulated the automatic loss of Filipino citizens lip by women who marry alien husbands—was discriminatory towards women.[170] The 1973 Constitution rectified this problematic situation:

SECTION 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.
(2) Those whose fathers or mothers are citizens of the Philippines.
(3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.
(4) Those who are naturalized in accordance with law.

SECTION 2. A female citizen of the Philippines who marries an alien shall retain her Philippine citizenship, unless by her act or omission she is deemed, under the law, to have renounced her citizenship.[171]

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[170] *Id*.

[171] CONST. (1973), Art. III, Secs. 1 and 2.

The 1973 Constitution was the first instrument to actually define the term "natural-born citizen." Article III, Section 4 of the 1973 Constitution provided:

SECTION 4. A natural-born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship.[172]

The present Constitution adopted most of the provisions of the 1973 Constitution on citizenship, "except for subsection (3) thereof that aimed to correct the irregular situation generated by the questionable proviso in the 1935 Constitution."[173]

Article IV, Section 1 of the 1987 Constitution now reads:

Section 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
(2) Those whose fathers or mothers are citizens of the Philippines;
(3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
(4) Those who are naturalized in accordance with law.[174]

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[172] CONST. (1973), Art. III, Sec. 4.

[173] *Tecson v. Commission on Elections*, 468 Phil. 421, 470 (2004) [Per *J.* Vitug, *En Banc*].

[174] The 1935 Constitution was in effect when petitioner was born. However, the provisions are now substantially similar to the present Constitution, except that the present Constitution provides clarity for "natural born" status. For comparison, the 1935 provisions state:

SECTION 1. The following are citizens of the Philippines.

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

Article IV, Section 2 also calibrated the 1973 Constitution's previous definition of natural-born citizens, as follows:

> Sec. 2. Natural-born citizens are those who are ***citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship***. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens. (Emphasis supplied)

Ironically, the concept of "natural-born" citizenship is a "foreign" concept that was transplanted into this jurisdiction as part of the 1935 Constitution's eligibility requirements for President and Vice-President of the Philippines.

In the United States Constitution, from which this concept originated, the term "natural-born citizen" appears in only a single instance: as an eligibility requirement for the presidency.[175] It is not defined in that Constitution or in American laws. Its origins and rationale for inclusion as a requirement for the presidency are not even found in the records of constitutional deliberations.[176] However, it has been suggested that, as the United States was under British colonial rule before its independence, the requirement of being natural-born was introduced as a safeguard against foreign infiltration in the administration of national government:

> It has been suggested, quite plausibly, that this language was inserted in response to a letter sent by John Jay to George Washington, and probably to other delegates, on July 25, 1787, which stated:
>
> > Permit me to hint, whether it would be wise and seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in Chief of the American army

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SECTION 2. Philippine citizenship may be lost or reacquired in the manner provided by law.

[175] *See* Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. 1, 5 (1968).

[176] *Id*. at 3-4.

shall not be given to nor devolve on, any but a natural *born* Citizen.

Possibly this letter was motivated by distrust of Baron Von Steuben, who had served valiantly in the Revolutionary forces, but whose subsequent loyalty was suspected by Jay. Another theory is that the Jay letter, and the resulting constitutional provision, responded to rumors that the Convention was concocting a monarchy to be ruled by a foreign monarch.[177]

In the United States, however, citizenship is based on *jus soli*, not *jus sanguinis*.

V. C

Today, there are only two (2) categories of Filipino citizens: natural-born and naturalized.

A natural-born citizen is defined in Article IV, Section 2 as one who is a citizen of the Philippines "from birth without having to perform any act to acquire or perfect Philippine citizenship." By necessary implication, a naturalized citizen is one who is not natural-born. *Bengson v. House of Representatives Electoral Tribunal*[178] articulates this definition by dichotomy:

[O]nly naturalized Filipinos are considered not natural-born citizens. It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: . . . A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino.[179]

Former Associate Justice Artemio Panganiban further shed light on the concept of naturalized citizens in his Concurring Opinion in *Bengson*: naturalized citizens, he stated, are "former aliens or foreigners who had to undergo a rigid procedure, in which they had to adduce sufficient evidence to prove that they

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[177] *Id*. at 5.

[178] 409 Phil. 633 (2001) [Per *J*. Kapunan, *En Banc*].

[179] *Id*. at 651.

possessed all the qualifications and none of the disqualifications provided by law in order to become Filipino citizens."[180]

One who desires to acquire Filipino citizenship by naturalization is generally required to file a verified petition.[181] He or she must establish, among others, that he or she is of

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[180] *Id*. at 656.

[181] *See* Rep. Act No. 9139 (2000), Sec. 5 provides:

SECTION 5. *Petition for Citizenship*. — (1) Any person desiring to acquire Philippine, citizenship under this Act shall file with the Special Committee on Naturalization created under Section 6 hereof, a petition of five (5) copies legibly typed and signed, thumbmarked and verified by him/her, with the latter's passport-sized photograph attached to each copy of the petition, and setting forth the following:

. . . .

Com. Act No. 473, Sec.7 provides:

SECTION 7. *Petition for Citizenship*. — Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in triplicate, accompanied by two photographs of the petitioner, setting forth his name and surname; his present and former places of residence; his occupation; the place and date of his birth; whether single or married and if the father of children, the name, age, birthplace and residence of the wife and of the children; the approximate date of his or her arrival in the Philippines, the name of the port of debarkation, and, if he remembers it, the name of the ship on which he came; a declaration that he has the qualifications required by this Act, specifying the same, and that he is not disqualified for naturalization under the provisions of this Act; that he has complied with the requirements of section five of this Act; and that he will reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship. The petition must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable, and that said petitioner has in then opinion all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provisions of this Act. The petition shall also set forth the names and post-office addresses of such witnesses as the petitioner may desire to introduce at the hearing of the case. The certificate of arrival, and the declaration of intention must be made part of the petition.

[1] See Section 3, Article VI

legal age, is of good moral character, and has the capacity to adapt to Filipino culture, tradition, and principles, or otherwise has resided in the Philippines for a significant period of time.[182]

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[182] *See* Rep. Act No. 9139 (2000), Sec. 3 provides:

SECTION 3. Qualifications. — Subject to the provisions of the succeeding section, any person desiring to avail of the benefits of this Act must meet the following qualifications:
(a) The applicant must be born in the Philippines and residing therein since birth;
(b) The applicant must not be less than eighteen (18) years of age, at the time of filing of his/her petition;
(c) The applicant must be of good moral character and believes in the underlying principles of the Constitution, and must have conducted himself/herself in a proper and irreproachable manner during his/her entire period of residence in the Philippines in his relation with the duly constituted government as well as with the community in which he/she is living;
(d) The applicant must have received his/her primary and secondary education in any public school or private educational institution duly recognized by the Department of Education, Culture and Sports, where Philippine history, government and civics are taught and prescribed as part of the school curriculum and where enrollment is not limited to any race or nationality: Provided, That should he/she have minor children of school age, he/she must have enrolled them in similar schools;
(e) The applicant must have a known trade, business, profession or lawful occupation, from which he/she derives income sufficient for his/her support and if he/she is married and/or has dependents, also that of his/her family: Provided, however, That this shall not apply to applicants who are college degree holders but are unable to practice their profession because they are disqualified to do so by reason of their citizenship;
(f) The applicant must be able to read, write and speak Filipino or any of the dialects of the Philippines; and
(g) The applicant must have mingled with the Filipinos and evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipino people.
Comm. Act No. 473, Sec. 2 provides:
SECTION 2. Qualifications. — Subject to section four of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization:
First. He must be not less than twenty-one years of age on the day of the hearing of the petition;
Second. He must have resided in the Philippines for a continuous period of not less than ten years;

Further, the applicant must show that he or she will not be a threat to the state, to the public, and to the Filipinos' core beliefs.[183]

Third. He must be of good moral character and believes in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living.

Fourth. He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation;

Fifth. He must be able to speak and write English or Spanish and any of the principal Philippine languages;

Sixth. He must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen.

[183] Rep. Act No. 9139 (2000), Sec. 4 provides:

SECTION 4. Disqualifications. — The following are not qualified to be naturalized as Filipino citizens under this Act:
(a) Those opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;
(b) Those defending or teaching the necessity of or propriety of violence, personal assault or assassination for the success or predominance of their ideas;
(c) Polygamists or believers in the practice of polygamy;
(d) Those convicted of crimes involving moral turpitude;
(e) Those suffering from mental alienation or incurable contagious diseases;
(f) Those who, during the period of their residence in the Philippines, have not mingled socially with Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipinos;
(g) Citizens or subjects with whom the Philippines is at war, during the period of such war; and
(h) Citizens or subjects of a foreign country whose laws do not grant Filipinos the right to be naturalized citizens or subjects thereof.
Com. Act No. 473 (1939), Sec. 4 provides:
SECTION 4. Who are Disqualified. — The following can not be naturalized as Philippine citizens:

V. D

Article IV, Section 1 of the 1987 Constitution merely gives an enumeration. Section 2 categorically defines "natural-born citizens." This constitutional definition is further clarified in jurisprudence, which delineates natural-born citizenship from naturalized citizenship. Consistent with Article 8 of the Civil Code, this jurisprudential clarification is deemed written into the interpreted text, thus establishing its contemporaneous intent.

Therefore, petitioner's restrictive reliance on Section 1 and the need to establish bloodline is misplaced. It is inordinately selective and myopic. It divines Section 1's mere enumeration but blatantly turns a blind eye to the succeeding Section's unequivocal definition.

Between Article IV, Section 1(2), which petitioner harps on, and Section 2, it is Section 2 that is on point. To determine whether private respondent is a natural-born citizen, we must look into whether she had to do anything to perfect her citizenship. In view of *Bengson*, this calls for an inquiry into whether she underwent the naturalization process to become a Filipino.

She did not.

(a) Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;
(b) Persons defending or teaching the necessity or propriety of violence, personal assault or assassination for the success and predominance of their ideas;
(c) Polygamists or believers in the practice of polygamy;
(d) Persons convicted of crimes involving moral turpitude;
(e) Persons suffering from mental alienation or incurable contagious diseases;
(f) Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;
(g) Citizens or subjects of nations with whom the United States and the Philippines are at war, during the period of such war;
(h) Citizens or subjects of a foreign country other than the United States, whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof.

At no point has it been substantiated that private respondent went through the actual naturalization process. There is no more straightforward and more effective way to terminate this inquiry than this realization of total and utter lack of proof.

At most, there have been suggestions *likening* a preferential approach to foundlings, as well as compliance with Republic Act No. 9225, with naturalization. These attempts at analogies are misplaced. The statutory mechanisms for naturalization are clear, specific, and narrowly devised. The investiture of citizenship on foundlings benefits children, individuals whose capacity to act is restricted.[184] It is a glaring mistake to liken them to an adult filing before the relevant authorities a sworn petition seeking to become a Filipino, the grant of which is contingent on evidence that he or she must himself or herself adduce. As shall later be discussed, Republic Act No. 9225 is premised on the immutability of natural-born status. It privileges natural-born citizens and proceeds from an entirely different premise from the restrictive process of naturalization.

So too, the jurisprudential treatment of naturalization vis-a-vis natural-born status is clear. It should be with the actual process of naturalization that natural-born status is to be

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[184] The Civil Code states:

Article 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.

Article 38. Minority, insanity or imbecility, the state of being a deaf-mute, prodigality and civil interdiction are mere restrictions on capacity to act, and do not exempt the incapacitated person from certain obligations, as when the latter arise from his acts or from property relations, such as easements.

Article 39. The following circumstances, among others, modify or limit capacity to act: age, insanity, imbecility, the state of being a deaf-mute, penalty, prodigality, family relations, alienage, absence, insolvency and trusteeship. The consequences of these circumstances are governed in this Code, other codes, the Rules of Court, and in special laws. Capacity to act is not limited on account of religious belief or political opinion. A married woman, twenty-one years of age or over, is qualified for all acts of civil life, except in cases specified by law.

contrasted, not against other procedures relating to citizenship. Otherwise, the door may be thrown open for the unbridled diminution of the status of citizens.

V. E

Natural-born citizenship is not concerned with being a human thoroughbred.

Section 2 defines "natural-born citizens." Section 1(2) stipulates that to be a citizen, either one's father or one's mother must be a Filipino citizen.

That is all there is to Section 1(2). Physical features, genetics, pedigree, and ethnicity are not determinative of citizenship.

Section 1(2) does not require one's parents to be natural-born Filipino citizens. It does not even require them to conform to traditional conceptions of what is indigenously or ethnically Filipino. One or both parents can, therefore, be ethnically foreign.

Section 1(2) requires nothing more than one ascendant degree: parentage. The citizenship of everyone else in one's ancestry is irrelevant. There is no need, as petitioner insists, for a pure Filipino bloodline.

Section 1(2) requires citizenship, not identity. A conclusion of Filipino citizenship may be sustained by evidence adduced in a proper proceeding, which substantially proves that either or both of one's parents is a Filipino citizen.

V. F

Private respondent has done this. The evidence she adduced in these proceedings attests to how at least one—if not both—of her biological parents were Filipino citizens.

Proving private respondent's biological parentage is now practically impossible. To begin with, she was abandoned as a newborn infant. She was abandoned almost half a century ago. By now, there are only a handful of those who, in 1968, were able-minded adults who can still lucidly render testimonies on the circumstances of her birth and finding. Even the identification

of individuals against whom DNA evidence may be tested is improbable, and by sheer economic cost, prohibitive.

However, our evidentiary rules admit of alternative means for private respondent to establish her parentage.

In lieu of direct evidence, facts may be proven through circumstantial evidence. In *Suerte-Felipe v. People*:[185]

> Direct evidence is that which proves the fact in dispute without the aid of any inference or presumption; while circumstantial evidence is the proof of fact or facts from which, taken either singly or collectively, the existence of a particular fact in dispute may be inferred as a necessary or probable consequence.[186]

People v. Raganas[187] further defines circumstantial evidence:

> Circumstantial evidence is that which relates to a series of facts other than the fact in issue, which by experience have been found so associated with such fact that in a relation of cause and effect, they lead us to a satisfactory conclusion.[188] (Citation omitted)

Rule 133, Section 4 of the Revised Rules on Evidence, for instance, stipulates when circumstantial evidence is sufficient to justify a conviction in criminal proceedings:

> **Section 4.** *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstances;
>
> (b) The facts from which the inferences are derived are proven; and
>
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

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[185] 571 Phil. 170 (2008) [Per *J*. Chico-Nazario, Third Division].

[186] *Id*. at 189-190, citing *Lack County v. Neilon*, 44 Or. 14, 21, 74, p. 212; *State v. Avery*, 113 Mo. 475, 494, 21 S.W. 193; and *Reynolds Trial Ev.*, Sec. 4, p. 8.

[187] 374 Phil. 810 (1999) [Per *J.* Quisumbing, Second Division].

[188] *Id*. at 822.

Although the Revised Rules on Evidence's sole mention of circumstantial evidence is in reference to criminal proceedings, this Court has nevertheless sustained the use of circumstantial evidence in other proceedings.[189] There is no rational basis for making the use of circumstantial evidence exclusive to criminal proceedings and for not considering circumstantial facts as valid means for proof in civil and/or administrative proceedings.

In criminal proceedings, circumstantial evidence suffices to sustain a conviction (which may result in deprivation of life, liberty, and property) anchored on the highest standard or proof that our legal system would require, i.e., proof beyond reasonable doubt. If circumstantial evidence suffices for such a high standard, so too may it suffice to satisfy the less stringent standard of proof in administrative and quasi-judicial proceedings such as those before the Senate Electoral Tribunal, i.e., substantial evidence.[190]

Private respondent was found as a newborn infant outside the Parish Church of Jaro, Iloilo on September 3, 1968.[191] In 1968, Iloilo, as did most—if not all—Philippine provinces, had a predominantly Filipino population.[192] Private respondent is

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[189] See *Lua v. O'Brien, et al.*, 55 Phil. 53 (1930) [Per *J*. Street, *En Banc*]; *Vda. De Laig, et al. v. Court of Appeals*, 172 Phil. 283 (1978) [Per *J*. Makasiar, First Division]; *Baloloy v. Hular*, 481 Phil. 398 (2004) [Per *J*. Callejo, Sr., Second Division]; and *Heirs of Celestial v. Heirs of Celestial*, 455 Phil. 704 (2003) [Per *J*. Ynares-Santiago, First Division].

[190] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940) [Per *J*. Laurel, *En Banc*]. Also, Rule 133, Section 5 of the Revised Rules on Evidence states:

Section 5. Substantial evidence. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

[191] *Rollo*, p. 8.

[192] See *J*. Leonen, Concurring Opinion in *Poe-Llamanzares v. Commission on Elections*, G.R. No. 221698-700, March 8, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/221697_leonen.pdf> 83 [Per *J*. Perez, *En Banc*].

described as having "brown almond-shaped eyes, a low nasal bridge, straight black hair and an oval-shaped face."[193] She stands at 5 feet and 2 inches tall.[194] Further, in 1968, there was no international airport in Jaro, Iloilo.

These circumstances are substantial evidence justifying an inference that her biological parents were Filipino. Her abandonment at a Catholic Church is more or less consistent with how a Filipino who, in 1968, lived in a predominantly religious and Catholic environment, would have behaved. The absence of an international airport in Jaro, Iloilo precludes the possibility of a foreigner mother, along with a foreigner father, swiftly and surreptitiously coming in and out of Jaro, Iloilo just to give birth and leave her offspring there. Though proof of ethnicity is unnecessary, her physical features nonetheless attest to it.

In the other related case of *Poe-Llamanzares v. Commission on Elections*,[195] the Solicitor General underscored how it is statistically more probable that private respondent was born a Filipino citizen rather than as a foreigner. He submitted the following table is support of his statistical inference:[196]

NUMBER OF FOREIGN AND FILIPINO CHILDREN BORN IN THE PHILIPPINES: 1965-1975 AND 2010-2014

YEAR	FOREIGN CHILDREN BORN IN THE PHILIPPINES	FILIPINO CHILDREN BORN IN THE PHILIPPINES
1965	1,479	795,415
1966	1,437	823,342
1967	1,440	840,302
1968	1,595	898,570

[193] *Id*.

[194] *Id*.

[195] G.R. No. 221698-700, March 8, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/221697.pdf>

[196] *J.* Leonen, Dissenting Opinion in *Poe-Llamanzares v. Commission on Elections*, G.R. No. 221698-700, March 8, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/221697_leonen.pdf> 83 [Per *J.* Perez, *En Banc*].

1969	1,728	946,753
1970	1,521	966,762
1971	1,401	963,749
1972	1,784	968,385
1973	1,212	1,045,290
1974	1,496	1,081,873
1975	1,493	1,223,837
2010	1,244	1,782,877
2011	1,140	1,746,685
2012	1,454	1,790,367
2013	1,315	1,751,523
2014	1,351	1,748,782

Source: Philippine Statistics Authority [illegible][197]

Thus, out of the 900,165 recorded births in the Philippines in 1968, only 1,595 or 0.18% newborns were foreigners. This translates to roughly 99.8% probability that private respondent was born a Filipino citizen.

Given the sheer difficulty, if not outright impossibility, of identifying her parents after half a century, a range of substantive proof is available to sustain a reasonable conclusion as to private respondent's parentage.

VI

Before a discussion on how private respondent's natural-born status is sustained by a general assumption on foundlings arising from a comprehensive reading and validated by a contemporaneous construction of the Constitution, and considering that we have just discussed the evidence pertaining to the circumstances of private respondent's birth, it is opportune to consider petitioner's allegations that private respondent bore the burden of proving—through proof of her bloodline—her natural-born status.

Petitioner's claim that the burden of evidence shifted to private respondent upon a mere showing that she is a foundling is a serious error.

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[197] *Id*. at 84.

Petitioner invites this Court to establish a jurisprudential presumption that all newborns who have been abandoned in rural areas in the Philippines are not Filipinos. His emphasis on private respondent's supposed burden to prove the circumstances of her birth places upon her an impossible condition. To require proof from private respondent borders on the absurd when there is no dispute that the crux of the controversy—the identity of her biological parents—is simply not known.

"Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." Burden of proof lies on the party making the allegations;[198] that is, the party who "alleges the affirmative of the issue"[199] Burden of proof never shifts from one party to another. What shifts is the burden of evidence. This shift happens when a party makes a prima facie case in his or her favor.[200] The other party then bears the "burden of going forward"[201] with the evidence considering that which has ostensibly been established against him or her.

In an action for quo warranto, the burden of proof necessarily falls on the party who brings the action and who alleges that the respondent is ineligible for the office involved in the controversy. In proceedings before quasi-judicial bodies such as the Senate Electoral Tribunal, the requisite quantum of proof is substantial evidence.[202] This burden was petitioner's to discharge. Once the petitioner makes a prima facie case, the burden of evidence shifts to the respondent.

Private respondent's admitted status as a foundling does not establish a prima facie case in favor of petitioner. While it does

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[198] *Uytengsu III v. Baduel*, 514 Phil. 1 (2005) [Per *J*. Tinga, Second Division].

[199] *Jison v. Court of Appeals*, 350 Phil. 138 (1998) [Per *J*. Davide, Jr., First Division].

[200] *Id*.

[201] *Tañada v. Angara*, 338 Phil. 546 (1997) [Per *J*. Panganiban, *En Banc*].

[202] RULES OF COURT, Rule 133, Sec. 5.

establish that the identities of private respondent's biological parents are not known, it does not automatically mean that neither her father nor her mother is a Filipino.

The most that petitioner had in his favor was doubt. A taint of doubt, however, is by no means substantial evidence establishing a prima facie case and shifting the burden of evidence to private respondent.

Isolating the fact of private respondent's being a foundling, petitioner trivializes other uncontroverted circumstances that we have previously established as substantive evidence of private respondent's parentage:

(1) Petitioner was found in front of a church in Jaro, Iloilo;

(2) She was only an infant when she was found, practically a newborn;

(3) She was found sometime in September 1968;

(4) Immediately after she was found, private respondent was registered as a foundling;

(5) There was no international airport in Jaro, Iloilo; and

(6) Private respondent's physical features are consistent with those of typical Filipinos.

Petitioner's refusal to account for these facts demonstrates an imperceptive bias. As against petitioner's suggested conclusions, the more reasonable inference from these facts is that at least one of private respondent's parents is a Filipino.

VII

Apart from how private respondent is a natural-born Filipino citizen consistent with a reading that harmonizes Article IV, Section 2's definition of natural-born citizens and Section 1(2)'s reference to parentage, the Constitution sustains a presumption that all foundlings found in the Philippines are born to at least either a Filipino father or a Filipino mother and are thus natural-born, unless there is substantial proof otherwise. Consistent with Article IV, Section 1(2), any such countervailing proof

must show that both—not just one—of a foundling's biological parents are not Filipino citizens.

VII. A

Quoting heavily from Associate Justice Teresita Leonardo-De Castro's Dissenting Opinion to the assailed November 17, 2015 Decision, petitioner intimates that no inference or presumption in favor of natural-born citizenship may be indulged in resolving this case.[203] He insists that it is private respondent's duty to present incontrovertible proof of her Filipino parentage.

Relying on presumptions is concededly less than ideal. Common sense dictates that actual proof is preferable. Nevertheless, resolving citizenship issues based on presumptions is firmly established in jurisprudence.

In 2004, this Court resolved *Tecson* on the basis of presumptions. Ruling on the allegations that former presidential candidate Ronald Allan Poe (more popularly known as Fernando Poe, Jr.) was not a natural-born Filipino citizen, this Court proceeded from the presumptions that: first, Fernando Poe Jr.'s grandfather, Lorenzo Pou, was born sometime in 1870, while the country was still under Spanish colonial rule;[204] and second, that Lorenzo Pou's place of residence, as indicated in his death certificate, must have also been his place of residence before death, which subjected him to the "en masse Filipinization," or sweeping investiture of Filipino citizenship effected by the Philippine Bill of 1902.[205] This Court then noted that Lorenzo Pou's citizenship would have extended to his son and Fernando Poe Jr.'s father, Allan F. Poe. Based on these, Fernando Poe. Jr. would then have been a natural-born Filipino as he was born while the 1935 Constitution, which conferred Filipino citizenship to those born to Filipino fathers, was in effect:

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[203] *Rollo*, pp. 56-58.

[204] *Tecson v. Commission on Elections*, 468 Phil. 421, 473-474 (2004) [Per *J.* Vitug, *En Banc*].

[205] *Id.* at 473-474 and 488.

In ascertaining, in G.R. No. 161824, whether grave abuse of discretion has been committed by the COMELEC, it is necessary to take on the matter of whether or not respondent FPJ is a natural-born citizen, which, in turn, depended on whether or not the father of respondent, Allan F. Poe, would have himself been a Filipino citizen and, in the affirmative, whether or not the alleged illegitimacy of respondent prevents him from taking after the Filipino citizenship of his putative father. Any conclusion on the Filipino citizenship of Lorenzo Pou could only be drawn from the presumption that having died in 1954 at 84 years old, when the Philippines was under Spanish rule, and that San Carlos, Pangasinan, his place of residence upon his death in 1954, in the absence of any other evidence, could have well been his place of residence before death, such that Lorenzo Pou would have benefited from the "*en masse* Filipinization" that the Philippine Bill had effected in 1902. That citizenship (of Lorenzo Pou), if acquired, would thereby extend to his son, Allan F. Poe, father of respondent FPJ. The 1935 Constitution, during which regime respondent FPJ has seen first light, confers citizenship to all persons whose fathers are Filipino citizens regardless of whether such children are legitimate or illegitimate.[206]

It is true that there is jurisprudence—*Paa v. Chan*[207] and *Go v. Ramos*[208] (which merely cites *Paa*)—to the effect that presumptions cannot be entertained in citizenship cases.

Paa, decided in 1967, stated:

It is incumbent upon *the respondent*, who claims Philippine citizenship, to prove to the satisfaction of the court that he is really a Filipino. No presumption can be indulged in favor of ***the*** *claimant*, of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the State.[209] (Emphasis supplied)

These pronouncements are no longer controlling in light of this Court's more recent ruling in *Tecson*.

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[206] *Id*. at 487-488.

[207] 128 Phil. 815 (1967) [Per *J*. Zaldivar, *En Banc*].

[208] 614 Phil. 451, 479 (2009) [Per *J*. Quisumbing, Second Division].

[209] 128 Phil. 815, 825 (1967) [Per *J*. Zaldivar, *En Banc*].

Moreover, what this Court stated in *Paa* was that "no presumption can be indulged in favor of ***the*** claimant of Philippine citizenship." This reference to "the claimant" was preceded by a sentence specifically referencing the duty of "the respondent." The syntax of this Court's pronouncement—using the definitive article "the"—reveals that its conclusion was specific only to Chan and to his circumstances. Otherwise, this Court would have used generic language. Instead of the definite article "the," it could have used the indefinite article "a" in that same sentence: "no presumption can be indulged in favor of ***a*** claimant of Philippine citizenship." In the alternative, it could have used other words that would show absolute or sweeping application, for instance: "no presumption can be indulged in favor of ***any/every*** claimant of Philippine citizenship;" or, "no presumption can be indulged in favor of ***all*** claimants of Philippine citizenship."

The factual backdrop of *Paa* is markedly different from those of this case. Its statements, therefore, are inappropriate precedents for this case. In *Paa*, clear evidence was adduced showing that respondent Quintin Chan was registered as an alien with the Bureau of Immigration. His father was likewise registered as an alien. These pieces of evidence already indubitably establish foreign citizenship and shut the door to any presumption. In contrast, petitioner in this case presents no proof, direct or circumstantial, of private respondent's or of both of her parents' foreign citizenship.

Go cited *Paa*, taking the same quoted portion but revising it to make it appear that the same pronouncement was generally applicable:

> It is incumbent upon ***one*** who claims Philippine citizenship to prove to the satisfaction of the court that he is really a Filipino. No presumption can be indulged in favor of the claimant of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the state.[210] (Emphasis supplied)

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[210] *Go v. Ramos*, 614 Phil. 451, 479 (2009) [Per *J.* Quisumbing, Second Division].

Thus, *Paa*'s essential and pivotal nuance was lost in proverbial translation. In any case, *Go* was decided by this Court sitting in Division. It cannot overturn *Tecson*, which was decided by this Court sitting En Banc. Likewise, *Go*'s factual and even procedural backdrops are different from those of this case. *Go* involved the deportation of an allegedly illegal and undesirable alien, not an election controversy. In *Go*, copies of birth certificates unequivocally showing the Chinese citizenship of Go and of his siblings were adduced.

VII. B

The presumption that all foundlings found in the Philippines are born to at least either a Filipino father or a Filipino mother (and are thus natural-born, unless there is substantial proof otherwise) arises when one reads the Constitution as a whole, so as to "effectuate [its] whole purpose."[211]

As much as we have previously harmonized Article IV, Section 2 with Article IV, Section 1(2), constitutional provisions on citizenship must not be taken in isolation. They must be read in light of the constitutional mandate to defend the well-being of children, to guarantee equal protection of the law and equal access to opportunities for public service, and to respect human rights. They must also be read in conjunction with the Constitution's reasons for requiring natural-born status for select public offices. Further, this presumption is validated by contemporaneous construction that considers related legislative enactments, executive and administrative actions, and international instruments.

Article II, Section 13 and Article XV, Section 3 of the 1987 Constitution require the state to enhance children's well-being and to project them from conditions prejudicial to or that may undermine their development. Fulfilling this mandate includes preventing discriminatory conditions and, especially, dismantling mechanisms for discrimination that hide behind the veneer of the legal apparatus:

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[211] *Civil Liberties Union v. Executive Secretary*, 272 Phil. 147, 162 (1991) [Per *C.J.* Fernan, *En Banc*].

ARTICLE II

. . . . . .

State Policies

. . . . . .

SECTION 13. The State recognizes the vital role of the youth in nation-building and ***shall promote and protect their physical, moral, spiritual, intellectual, and social well-being***. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

. . . . . .

ARTICLE XV
The Family

. . . . . .

SECTION 3. The State shall defend:

. . . . . .

(2) ***The right of children to*** assistance, including proper care and nutrition, and ***special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development***[.] (Emphasis supplied)

Certain crucial government offices are exclusive to natural-born citizens of the Philippines. The 1987 Constitution makes the following offices exclusive to natural-born citizens

(1) President;[212]
(2) Vice-President;[213]

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[212] CONST., Art. VII, Sec. 2 provides:

ARTICLE VII. Executive Department

. . . . . .

SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

[213] CONST., Art. VII, Sec. 3.

(3) Senator;[214]
(4) Member of the House of Representatives;[215]
(5) Member of the Supreme Court or any lower collegiate court;[216]
(6) Chairperson and Commissioners of the Civil Service Commission;[217]

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[214] CONST., Art. VI, Sec. 3 provides:

ARTICLE VI. The Legislative Department

. . . . . .

SECTION 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

[215] CONST., Art. VI, Sec. 6 provides:

ARTICLE VI. The Legislative Department

. . . . . .

SECTION 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

[216] CONST., Art. VIII, Sec. 7(1) provides:

ARTICLE VIII. Judicial Department

. . . . . .

SECTION 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

[217] CONST., Art. IX-B, Sec. 1(1) provides:

ARTICLE IX. Constitutional Commissions

. . . . . .

B. The Civil Service Commission

SECTION 1. (1) The Civil Service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners who shall be natural-born citizens of the Philippines and, at the time of their

(7) Chairperson and Commissioners of the Commission on Elections;[218]
(8) Chairperson and Commissioners of the Commission on Audit;[219]
(9) Ombudsman and his or her deputies;[220]

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appointment, at least thirty-five years of age, with proven capacity for public administration, and must not have been candidates for any elective position in the elections immediately preceding their appointment.

[218] CONST., Art. IX-C, Sec. 1(1) provides:

ARTICLE IX. Constitutional Commissions

. . . . . .

C. The Commission on Elections

SECTION 1. (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be Members of the Philippine Bar who have been engaged in the practice of law for at least ten years.

[219] CONST., Art. IX-D, Sec. 1(1) provides:

ARTICLE IX. Constitutional Commissions

. . . . . .

D. Commission on Audit

SECTION 1. (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, certified public accountants with not less than ten years of auditing experience, or members of the Philippine Bar who have been engaged in the practice of law for at least ten years, and must not have been candidates for any elective position in the elections immediately preceding their appointment. At no time shall all Members of the Commission belong to the same profession.

[220] CONST., Art. XI, Sec.8 provides:

ARTICLE XI. Accountability of Public Officers

. . . . . .

SECTION 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and independence, and members of

(10) Board of Governors of the Bangko Sentral ng Pilipinas;[221] and
(11) Chairperson and Members of the Commission on Human Rights.[222]

Apart from these, other positions that are limited to natural-born citizens include, among others, city fiscals,[223] assistant

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the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have for ten years or more been a judge or engaged in the practice of law in the Philippines.

[221] CONST., Art. XII, Sec. 20 provides:

ARTICLE XII. National Economy and Patrimony

. . . . . .

SECTION 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

[222] CONST., Art. XIII, Sec. 17(2) provides:

ARTICLE XIII. Social Justice and Human Rights

. . . . . .

Human Rights

SECTION 17. . . .

(2) The Commission shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar. The term of office and other qualifications and disabilities of the Members of the Commission shall be provided by law.

[223] Rep. Act No. 3537 (1963), Sec. 1. Section thirty-eight of Republic Act Numbered Four hundred nine, as amended by Republic Act Numbered Eighteen hundred sixty and Republic Act Numbered Three thousand ten, is further amended to read as follows:

Sec. 38. *The City Fiscal and Assistant City Fiscals.* — There shall be in the Office of the City Fiscal one chief to be known as the City Fiscal with

city fiscals,[224] Presiding Judges and Associate Judges of the Sandiganbayan, and other public offices.[225] Certain professions are also limited to natural-born citizens,[226] as are other legally established benefits and incentives.[227]

Concluding that foundlings are not natural-born Filipino citizens is tantamount to permanently discriminating against our foundling citizens. They can then never be of service to the country in the highest possible capacities. It is also tantamount to excluding them from certain means such as professions and state scholarships, which will enable the actualization of their aspirations. These consequences cannot be tolerated by the Constitution, not least of all through the present politically charged proceedings, the direct objective of which is merely to exclude a singular politician from office. Concluding that foundlings are not natural-born citizens creates an inferior class of citizens who are made to suffer that inferiority through no fault of their own.

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the rank, salary and privileges of a Judge of the Court of First Instance, an assistant chief to be known as the first assistant city fiscal, three second assistant city fiscals who shall be the chiefs of divisions, and fifty-seven assistant fiscals, who shall discharge their duties under the general supervision of the Secretary of Justice. *To be eligible for appointment as City Fiscal one must be a natural born citizen of the Philippines* and must have practiced law in the Philippines for a period of not less than ten years or held during a like period of an office in the Philippine Government requiring admission to the practice of law as an indispensable requisite. *To be eligible for appointment as assistant fiscal one must be a natural born citizen of the Philippines* and must have practiced law for at least five years prior to his appointment or held during a like period an office in the Philippine Government requiring admission to the practice of law as an indispensable requisite. (Emphasis supplied)

[224] Rep. Act No. 3537 (1963).

[225] Examples of these are: the Land Transportation Office Commissioner, the Mines and Geosciences Bureau Director, the Executive Director of Bicol River Basin, the Board Member of the Energy Regulatory Commission, and the National Youth Commissioner, among others.

[226] Examples of these are pharmacists and officers of the Philippine Coast Guard, among others.

[227] Among these incentives are state scholarships in science and certain investment rights.

If that is not discrimination, we do not know what is.

The Constitution guarantees equal protection of the laws and equal access to opportunities for public service:

ARTICLE II

. . . . . .

State Policies

. . . . . .

SECTION 26. The State shall ***guarantee equal access to opportunities for public service***, and prohibit political dynasties as may be defined by law.

. . . . . .

ARTICLE III
Bill of Rights

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***.

. . . . . .

ARTICLE XIII
Social Justice and Human Rights

SECTION 1. The Congress shall give highest priority to the enactment of measures that ***protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good***. (Emphasis supplied)

The equal protection clause serves as a guarantee that "persons under like circumstances and falling within the same class are treated alike, in terms of 'privileges conferred and liabilities enforced.' It is a guarantee against 'undue favor and individual or class privilege, as well as hostile discrimination or oppression of inequality.'"[228]

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[228] *Sameer v. Cabiles*, G.R. No. 170139, August 5, 2014, 732 SCRA 22, 57 [Per *J.* Leonen, *En Banc*].

Other than the anonymity of their biological parents, no substantial distinction[229] differentiates foundlings from children with known Filipino parents. They are both entitled to the full extent of the state's protection from the moment of their birth. Foundlings' misfortune in failing to identify the parents who abandoned them—an inability arising from no fault of their own—cannot be the foundation of a rule that reduces them to statelessness or, at best, as inferior, second-class citizens who are not entitled to as much benefits and protection from the state as those who know their parents. Sustaining this classification is not only inequitable; it is dehumanizing. It condemns those who, from the very beginning of their lives, were abandoned to a life of desolation and deprivation.

This Court does not exist in a vacuum. It is a constitutional organ, mandated to effect the Constitution's dictum of defending and promoting the well-being and development of children. It is not our business to reify discriminatory classes based on circumstances of birth.

Even more basic than their being citizens of the Philippines, foundlings are human persons whose dignity we value and rights we, as a civilized nation, respect. Thus:

ARTICLE II

. . . . . .

State Policies

. . . . . .

SECTION 11. The State values the dignity of every human person and guarantees ***full respect for human rights***. (Emphasis supplied)

VII. C

Though the matter is settled by interpretation exclusively within the confines of constitutional text, the presumption that foundlings are natural-born citizens of the Philippines (unless substantial evidence of the foreign citizenship of both of the

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[229] *People v. Cayat*, 68 Phil. 12, 18 (1939) [Per *J.* Moran, First Division].

foundling's parents is presented) is validated by a parallel consideration or contemporaneous construction of the Constitution with acts of Congress, international instruments in force in the Philippines, as well as acts of executive organs such as the Bureau of Immigration, Civil Registrars, and the President of the Philippines.

Congress has enacted statutes founded on the premise that foundlings are Filipino citizens at birth. It has adopted mechanisms to effect the constitutional mandate to protect children. Likewise, the Senate has ratified treaties that put this mandate into effect.

Republic Act No. 9344, otherwise known as the Juvenile Justice and Welfare Act of 2006, provides:

> **SEC. 2.** ***Declaration of State Policy*****.** - The following State policies shall be observed at all times:
>
> . . . . . .
>
> ***(b) The State shall protect the best interests of the child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a party.*** Proceedings before any authority shall be conducted in the best interest of the child and in a manner which allows the child to participate and to express himself/herself freely. The participation of children in the program and policy formulation and implementation related to juvenile justice and welfare shall be ensured by the concerned government agency. (Emphasis supplied)

Section 4(b) of the Republic Act No. 9344 defines the "best interest of the child" as the "totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child's physical, psychological and emotional development."

Consistent with this statute is our ratification[230] of the United Nations Convention on the Rights of the Child. This specifically requires the states-parties' protection of: first, children's rights

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[230] Ratified on August 21, 1990.

to immediate registration and nationality after birth; second, against statelessness; and third, against discrimination on account of their birth status.[231] Pertinent portions of the Convention read:

Preamble

The State Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the **inherent dignity and of the equal and inalienable rights of all members of the human family** is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, **reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person**, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that **everyone is entitled to all the rights and freedoms** set forth therein, **without distinction of any kind**, such as race, colour, sex, language, religion, political or other opinion, **national or social origin**, property, **birth or other status**,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that **childhood is entitled to special care and assistance**,

. . . . . .

Have agreed as follows:

. . . . . .

Article 2

1. State parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction **without discrimination of any kind, irrespective of the child's or his or her parent's** or legal guardian's race, colour, sex,

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[231] *See* United Nations Treaty Collection, *Convention on the Rights of the Child* <https:/treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=11&chapter=4&clang=–en> (visited March 7, 2016).

language, religion, political or other opinion, national, **ethnic or social origin, property, disability, birth or other status**.

2. **States Parties shall take appropriate measures to ensure that the child is protected against all forms of discrimination** or punishment **on the basis of the status**, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. **In all actions concerning children**, whether undertaken by public or private social welfare institutions, **courts of law**, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration**.

2. **States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being**, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

. . . . . .

Article 7

1. The child, shall be **registered immediately after birth** and shall have the right from birth to a name, the **right to acquire a nationality** and as far as possible, the right to know and be cared for by his or her parents.

2. States Parties **shall ensure the implementation of these rights** in accordance with their national law and their obligations under the relevant international instruments in this field, **in particular where the child would otherwise be stateless**. (Emphasis supplied)

The Philippines likewise ratified[232] the 1966 International Covenant on Civil and Political Rights. As with the Convention on the Rights of the Child, this treaty requires that children be allowed immediate registration after birth and to acquire a nationality. It similarly defends them against discrimination:

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[232] Ratified on October 23, 1986.

Article 24. . . .

1. **Every child shall have, without any discrimination as to** race, colour, sex, language, religion, national or social origin, property **or birth**, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be **registered immediately after birth** and shall have a name.

3. Every child has the **right to acquire a nationality**.

. . . . . .

Article 26. **All persons** are equal before the law and are **entitled without any discrimination to the equal protection of the law**. In this respect, the law shall **prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground** such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, **birth or other status**. (Emphasis supplied)

Treaties are "international agreement[s] concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."[233] Under Article VII, Section 21 of the 1987 Constitution, treaties require concurrence by the Senate before they become binding:

SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

The Senate's ratification of a treaty makes it legally effective and binding by transformation. It then has the force and effect of a statute enacted by Congress. In *Pharmaceutical and Health Care Association of the Philippines v. Duque III, et al.*:[234]

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[233] See *Bayan v. Zamora*, 396 Phil. 623, 657-660 (2000) [Per *J.* Buena, *En Banc*], *citing* the Vienna Convention on the Laws of Treaties.

[234] 561 Phil. 386 (2007) [Per *J.* Austria-Martinez, *En Banc*].

Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation. *The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation.* The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.

Treaties become part of the law of the land through transformation pursuant to Article VII, Section 21 of the Constitution which provides that "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate." Thus, treaties or conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts.[235] (Emphasis supplied)

Following ratification by the Senate, no further action, legislative or otherwise, is necessary. Thereafter, the whole of government—including the judiciary—is duty-bound to abide by the treaty, consistent with the maxim *pacta sunt servanda*.

Accordingly, by the Constitution and by statute, foundlings cannot be the object of discrimination. They are vested with the rights to be registered and granted nationality upon birth. To deny them these rights, deprive them of citizenship, and render them stateless is to unduly burden them, discriminate them, and undermine their development.

Not only Republic Act No. 9344, the Convention on the Rights of the Child, and the International Covenant on Civil and Political Rights effect the constitutional dictum of promoting the well-being of children and protecting them from discrimination. Other legislative enactments demonstrate the intent to treat foundlings as Filipino citizens from birth.

Republic Act No. 8552, though briefly referred to as the Domestic Adoption Act of 1998, is formally entitled An Act Establishing the Rules and Policies on Domestic Adoption **of Filipino Children** and for Other Purposes. It was enacted as

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[235] *Id*. at 397-398

a mechanism to "provide alternative protection and assistance through foster care or adoption of every child who is neglected, orphaned, or abandoned."[236]

Foundlings are explicitly among the "Filipino children" covered by Republic Act No. 8552:[237]

SECTION 5. *Location of Unknown Parent(s).* — It shall be the duty of the Department or the child-placing or child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). ***If such efforts fail, the child shall be registered as a foundling and subsequently be the subject of legal proceedings where he/she shall be declared abandoned.*** (Emphasis supplied)

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[236] Rep. Act No. 8552 (1998), Sec. 2(b) provides:

Section 2 (b). In all matters relating to the care, custody and adoption of a child, his/her interest shall be the paramount consideration in accordance with the tenets set forth in the United Nations (UN) Convention on the Rights of the Child; UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption, Nationally and Internationally; and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. Toward this end, the State shall provide alternative protection and assistance through foster care or adoption for every child who is neglected, orphaned, or abandoned.

[237] *See also* Rep. Act No. 9523 (2009), An Act Requiring the Certification of the Department of Social Welfare and Development (DSWD) to Declare a "Child Legally Available for Adoption" as a Prerequisite for Adoption Proceedings, Amending for this Purpose Certain Provision of Rep. Act No. 8552, otherwise known as the Inter-country Adoption Act of 1995, Pres. Decree No. 603, otherwise known as the Child and Youth Welfare Code, and for Other Purposes.

Rep. Act No. 9523 (2009), Sec. 2 provides:

SECTION 2. *Definition of Terms.* — As used in this Act, the following terms shall mean:

(1) Department of Social Welfare and Development (DSWD) is the agency charged to implement the provisions of this Act and shall have the sole authority to issue the certification declaring a child legally available for adoption.

. . . .

(3) Abandoned Child refers to a child who has no proper parental care or guardianship, or whose parent(s) have deserted him/her for a period of at least three (3) continuous months, which includes a foundling.

Similarly, Republic Act No. 8043, though briefly referred to as the Inter-Country Adoption Act of 1995, is formally entitled An Act Establishing the Rules to Govern Inter-Country **Adoption of Filipino Children**, and for Other Purposes. As with Republic Act No. 8552, it expressly includes foundlings among "Filipino children" who may be adopted:

SECTION 8. *Who May Be Adopted.* — Only a legally free child may be the subject of inter-country adoption, in order that such child may be considered for placement, the following documents must be submitted to the Board:

a) Child study;

b) Birth certificate/foundling certificate;

c) Deed of voluntary commitment/decree of abandonment/death certificate of parents;

d) Medical evaluation/history;

e) Psychological evaluation, as necessary; and

f) Recent photo of the child. (Emphasis supplied)

In the case of foundlings, foundling certificates may be presented in lieu of authenticated birth certificates to satisfy the requirement for the issuance of passports, which will then facilitate their adoption by foreigners:

SECTION 5. If the applicant is an adopted person, he must present a certified true copy of the Court Order of Adoption, certified true copy of his original and amended birth certificates as issued by the OCRG. If the applicant is a minor, a Clearance from the DSWD shall be required. In case the applicant is for adoption by foreign parents under R.A. No. 8043, the following, shall be required:

a) Certified true copy of the Court Decree of Abandonment of Child, the Death Certificate of the child's parents, or the Deed of Voluntary Commitment executed after the birth of the child.

b) Endorsement of child to the Intercountry Adoption Board by the DSWD.

> ***c) Authenticated Birth or Foundling Certificate.***[238] (Emphasis supplied)

Our statutes on adoption allow for the recognition of foundlings' Filipino citizenship on account of their birth. They benefit from this without having to do any act to perfect their citizenship or without having to complete the naturalization process. Thus, by definition, they are natural-born citizens.

Specifically regarding private respondent, several acts of executive organs have recognized her natural-born status. This status was never questioned throughout her life; that is, until circumstances made it appear that she was a viable candidate for President of the Philippines. Until this, as well as the proceedings in the related case of *Poe-Llamanzares*, private respondent's natural-born status has been affirmed and reaffirmed through various official public acts.

First, private respondent was issued a foundling certificate and benefitted from the domestic adoption process. Second, on July 18, 2006, she was granted an order of reacquisition of natural-born citizenship under Republic Act No. 9225 by the Bureau of Immigration. Third, on October 6, 2010, the President of the Philippines appointed her as MTRCB Chairperson—an office that requires natural-born citizenship.[239]

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[238] DFA Order No. 11-97, Implementing Rules and Regulations for Rep. Act No. 8239 (1997), Philippine Passport Act.

[239] Pres. Decree No. 1986, Sec. 2 provides:

> Section 2. Composition; qualifications; benefits. — The BOARD shall be composed of a Chairman, a Vice-Chairman and thirty (30) members, who shall all be appointed by the President of the Philippines. The Chairman, the Vice-Chairman, and the members of the BOARD, shall hold office for a term of one (1) year, unless sooner removed by the President for any cause; Provided, That they shall be eligible for re-appointment after the expiration of their term. If the Chairman, or the Vice-Chairman or any member of the BOARD fails to complete his term, any person appointed to fill the vacancy shall serve only for the unexpired portion of the term of the BOARD member whom he succeeds.
>
> No person shall be appointed to the BOARD, unless he is a natural-born citizen of the Philippines, not less than twenty-one (21) years of age, and of

VIII

As it is settled that private respondent's being a foundling is not a bar to natural-born citizenship, petitioner's proposition as to her inability to benefit from Republic Act No. 9225 crumbles. Private respondent, a natural-born Filipino citizen, re-acquired natural-born Filipino citizenship when, following her naturalization as a citizen of the United States, she complied with the requisites of Republic Act No. 9225.

VIII. A

"Philippine citizenship may be lost or reacquired in the manner provided by law."[240] Commonwealth Act No. 63, which was in effect when private respondent was naturalized an American citizen on October 18, 2001, provided in Section 1(1) that "[a] Filipino citizen may lose his citizenship . . . [b]y naturalization in a foreign country." Thus, private respondent lost her Philippine citizenship when she was naturalized an American citizen. However, on July 7, 2006, she took her Oath of Allegiance to the Republic of the Philippines under Section 3 of Republic Act No. 9225. Three (3) days later, July 10, 2006, she filed before the Bureau of Immigration and Deportation a Petition for Reacquisition of her Philippine citizenship. Shortly after, this Petition was granted.[241]

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good moral character and standing in the community; Provided, That in the selection of the members of the BOARD due consideration shall be given to such qualifications as would produce a multi-sectoral combination of expertise in the various areas of motion picture and television; Provided, further, That at least five (5) members of the BOARD shall be members of the Philippine Bar. Provided, finally That at least fifteen (15) members of the BOARD may come from the movie and television industry to be nominated by legitimate associations representing the various sectors of said industry.

The Chairman, the Vice-Chairman and the other members of the BOARD shall be entitled to transportation, representation and other allowances which shall in no case exceed FIVE THOUSAND PESOS (₱5,000.00) per month.

[240] CONST, Art. IV, Sec. 3.

[241] *Rollo*, pp. 685-686.

Republic Act No. 9225 superseded Commonwealth Act No. 63[242] and Republic Act No. 8171[243] specifically "to do away with the provision in Commonwealth Act No. 63 which takes away Philippine citizenship from natural-born Filipinos who become naturalized citizens of other countries."[244]

The citizenship regime put in place by Republic Act No. 9225 is designed, in its own words, to ensure "that all Philippine citizens who become citizens of another country shall be deemed *not to have lost* their Philippine citizenship."[245] This Court shed light on this in *Calilung v. Commission on Elections*:[246] "[w]hat Rep. Act No. 9225 does is allow dual citizenship to natural-born Filipino citizens who have lost Philippine citizenship by reason of their naturalization as citizens of a foreign country."[247]

Republic Act No. 9225 made natural-born Filipinos' status permanent and immutable despite naturalization as citizens of other countries. To effect this, Section 3 of Republic Act No. 9225 provides:

> SEC. 3. Retention of Philippine Citizenship. — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have reacquired Philippine citizenship upon taking the following oath of allegiance to the Republic:
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> "I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic

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[242] An Act Providing for the Ways in which Philippine Citizenship may be Lost or Reacquired.

[243] An Act Providing for the Repatriation of Filipino Women who have Lost their Philippine Citizenship by Marriage to Aliens and Natural-born Filipinos.

[244] See *Calilung v. Commission on Elections*, 551 Phil. 110, 117-18 (2007) [Per *J.* Quisumbing, *En Banc*] in which this Court stated that this was the clear intent of the legislature when it enacted Republic Act No. 9225.

[245] Rep. Act No. 9225 (2003), Sec. 2.

[246] 551 Phil. 110 (2007) [Per *J.* Quisumbing, *En Banc*].

[247] *Id.* at 118.

> of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion."
>
> Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

Section 3's implications are clear. Natural-born Philippine citizens who, after Republic Act 9225 took effect, are naturalized in foreign countries "***retain***," that is, keep, their Philippine citizenship, although the effectivity of this retention and the ability to exercise the rights and capacities attendant to this status are subject to certain solemnities (i.e., oath of allegiance and other requirements for specific rights and/or acts, as enumerated in Section 5). On the other hand, those who became citizens of another country before the effectivity of Republic Act No. 9225 "***reacquire***" their Philippine citizenship and may exercise attendant rights and capacities, also upon compliance with certain solemnities. Read in conjunction with Section 2's declaration of a policy of immutability, this reacquisition is not a mere restoration that leaves a vacuum in the intervening period. Rather, this reacquisition works to restore natural-born status as though it was never lost at all.

VIII. B

Taking the Oath of Allegiance effects the retention or reacquisition of natural-born citizenship. It also facilitates the enjoyment of civil and political rights, "subject to all attendant liabilities and responsibilities."[248] However, other conditions must be met for the exercise of other faculties:

> Sec. 5. *Civil and Political Rights and Liabilities*. — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities

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[248] Rep. Act No. 9225 (2003), Sec. 5.

and responsibilities under existing laws of the Philippines and the following conditions:

(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as "the Overseas Absentee Voting Act of 2003" and other existing laws;

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, ***at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship*** before any public officer authorized to administer an oath;

(3) Those appointed to any public office shall subscribe and swear to an ***oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office***; *Provided*, That they renounce their oath of allegiance to the country where they took that oath;

(4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and

(5) That the right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

   a. are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

   b. are in active service as commissioned or non-commissioned officers in the armed forces of the country which they are naturalized citizens. (Emphasis supplied)

Thus, natural-born Filipinos who have been naturalized elsewhere and wish to run for elective public office must comply with all of the following requirements:

First, taking the oath of allegiance to the Republic. This effects the retention or reacquisition of one's status as a natural-born

Filipino.[249] This also enables the enjoyment of full civil and political rights, subject to all attendant liabilities and responsibilities under existing laws, provided the solemnities recited in Section 5 of Republic Act No. 9225 are satisfied.[250]

Second, compliance with Article V, Section 1 of the 1987 Constitution,[251] Republic Act No. 9189, otherwise known as the Overseas Absentee Voting Act of 2003, and other existing laws. This is to facilitate the exercise of the right of suffrage; that is, to allow for voting in elections.[252]

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[249] Rep. Act No. 9225 (2003), Sec. 3, par. 2:

Section 3. Retention of Philippine Citizenship - . . .

. . . . . .

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

[250] Rep. Act No. 9225 (2003), Sec. 5 provides:

Section 5. Civil and Political Rights and Liabilities — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

. . . . . .

[251] CONST., Art. V, Sec. 1 provides:

Section 1. Suffrage maybe exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year, and in the place wherein they propose to vote, for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

[252] Rep. Act No. 9225 (2003), Sec. 5(1) provides:

Section 5. Civil and Political Rights and Liabilities — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" and other existing laws;

Third, "mak[ing] a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath."[253] This, along with satisfying the other qualification requirements under relevant laws, makes one eligible for elective public office.

As explained in *Sobejana-Condon v. Commission on Elections*,[254] this required sworn renunciation is intended to complement Article XI, Section 18 of the Constitution in that "[p]ublic officers and employees owe the State and this Constitution allegiance at all times and any public officer or employee who seeks to change his citizenship or acquire the status of an immigrant of another country during his tenure shall be dealt with by law."[255] It is also in view of this that Section 5(5) similarly bars those who seek or occupy public office elsewhere and/or who are serving in the armed forces of other countries from being appointed or elected to public office in the Philippines.

VIII. C

Private respondent has complied with all of these requirements. First, on July 7, 2006, she took the Oath of Allegiance to the Republic of the Philippines.[256] Second, on August 31, 2006,

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[253] Rep. Act No. 9225 (2003), Sec. 5(2) provides:

> Section 5. Civil and Political Rights and Liabilities – Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
>
> . . . .
>
> (2) Those seeking elective public in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

[254] 692 Phil. 407 (2012) [Per *J.* Reyes, *En Banc*].

[255] *Id.* at 428.

[256] *Rollo*, p. 10.

she became a registered voter of Barangay Santa Lucia, San Juan.[257] This evidences her compliance with Article V, Section 1 of the 1987 Constitution. Since she was to vote within the country, this dispensed with the need to comply with the Overseas Absentee Voting Act of 2003. Lastly, on October 20, 2010, she executed an Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship.[258] This was complemented by her execution of an Oath/Affirmation of Renunciation of Nationality of the United States[259] before Vice-Consul Somer E. Bessire-Briers on July 12, 2011,[260] which was, in turn, followed by Vice Consul Jason Galian's issuance of a Certificate of Loss of Nationality on December 9, 2011[261] and the approval of this certificate by the Overseas Citizen Service, Department of State, on February 3, 2012.[262]

Private respondent has, therefore, not only fully reacquired natural-born citizenship; she has also complied with all of the other requirements for eligibility to elective public office, as stipulated in Republic Act No. 9225.

VIII. D

It is incorrect to intimate that private respondent's having had to comply with Republic Act No. 9225 shows that she is a naturalized, rather than a natural-born, Filipino citizen. It is wrong to postulate that compliance with Republic Act No. 9225 signifies the performance of acts to perfect citizenship.

To do so is to completely disregard the unequivocal policy of permanence and immutability as articulated in Section 2 of Republic Act No. 9225 and as illuminated in jurisprudence. It is to erroneously assume that a natural-born Filipino citizen's

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[257] *Id.* at 687.

[258] *Id.*

[259] *Id.* at 229.

[260] *Id.*

[261] *Id.*

[262] *Id.*

naturalization elsewhere is an irreversible termination of his or her natural-born status.

To belabor the point, those who take the Oath of Allegiance under Section 3 of Republic Act No. 9225 reacquire natural-born citizenship. The prefix "re" signifies reference to the preceding state of affairs. It is to this status quo ante that one returns. "Re"-acquiring can only mean a reversion to "the way things were." Had Republic Act No. 9225 intended to mean the investiture of an entirely new status, it should not have used a word such as "reacquire." Republic Act No. 9225, therefore, does not operate to make new citizens whose citizenship commences only from the moment of compliance with its requirements.

Bengson, speaking on the analogous situation of repatriation, ruled that repatriation involves the restoration of former status or the recovery of one's original nationality:

> Moreover, repatriation results in the recovery of the original nationality. This means that a naturalized Filipino who lost his citizenship will be restored to his prior status as a naturalized Filipino citizen. On the other hand, *if he was originally a natural-born citizen before he lost his Philippine citizenship, he will be restored to his former status as a natural-born Filipino*.[263] (Emphasis supplied)

Although *Bengson* was decided while Commonwealth Act No. 63 was in force, its ruling is in keeping with Republic Act No. 9225 's policy of permanence and immutablity: "all Philippine citizens of another country shall be deemed not to have lost their Philippine citizenship."[264] In *Bengson*'s words, the once naturalized citizen is "restored" or brought back to his or her natural-***born*** status. There may have been an interruption in the recognition of this status, as, in the interim, he or she was naturalized elsewhere, but the restoration of natural-born status expurgates this intervening fact. Thus, he or she

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[263] *Bengson v. Bouse of Representatives Electoral Tribunal*, 409 Phil. 633, 649 (2001) [Per *J.* Kapunan, *En Banc*].

[264] Rep. Act No. 9225 (2003), sec. 2.

does not become a Philippine citizen only from the point of restoration and moving forward. He or she is recognized, *de jure*, as a Philippine citizen from birth, although the intervening fact may have consequences de facto.

Republic Act No. 9225 may involve extended processes not limited to taking the Oath of Allegiance and requiring compliance with additional solemnities, but these are for facilitating the enjoyment of other incidents to citizenship, not for effecting the reacquisition of natural-born citizenship itself. Therefore, it is markedly different from naturalization as there is no singular, extended process with which the former natural-born citizen must comply.

IX

To hold, as petitioner suggests, that private respondent is stateless[265] is not only to set a dangerous and callous precedent. It is to make this Court an accomplice to injustice.

Equality, the recognition of the humanity of every individual, and social justice are the bedrocks of our constitutional order. By the unfortunate fortuity of the inability or outright irresponsibility of those gave them life, foundlings are compelled to begin their very existence at a disadvantage. Theirs is a continuing destitution that can never be truly remedied by any economic relief.

If we are to make the motives of our Constitution true, then we can never tolerate an interpretation that condemns foundlings to an even greater misfortune because of their being abandoned. The Constitution cannot be rendered inert and meaningless for them by mechanical judicial fiat.

Dura lex sed lex is not a callous and unthinking maxim to be deployed against other reasonable interpretations of our basic law. It does command us to consider legal text, but always with justice in mind.

It is the empowering and ennobling interpretation of the Constitution that we must always sustain. Not only will this

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[265] *Rollo*, p. 35.

manner of interpretation edify the less fortunate; it establishes us, as Filipinos, as a humane and civilized people.

The Senate Electoral Tribunal acted well within the bounds of its constitutional competence when it ruled that private respondent is a natural-born citizen qualified to sit as Senator of the Republic. Contrary to petitioner's arguments, there is no basis for annulling its assailed Decision and Resolution.

WHEREFORE, the Petition for Certiorari is **DISMISSED**. Public respondent Senate Electoral Tribunal did not act without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its assailed November 17, 2015 Decision and December 3, 2015 Resolution.

Private respondent Mary Grace Poe-Llamanzares is a natural-born Filipino citizen qualified to hold office as Senator of the Republic.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Peralta, Bersamin, Perez, and *Caguioa, JJ.*, concur.

Jardeleza, J., in the result.

Del Castillo, J., not natural born until proven otherwise.

Mendoza, J., with some reservation.

Reyes, J., dissents.

Perlas-Bernabe, J., dissents, see dissenting opinion.

Carpio, Leonardo-de Castro, and *Brion, JJ.*, no part.

DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I dissent.

I respectfully submit that the Senate Electoral Tribunal (SET) committed grave abuse of discretion in ruling that private

respondent Mary Grace Poe-Llamanzares (respondent) was a natural-born citizen and, thus, qualified to hold office as Senator of the Republic of the Philippines.[1]

An act of a court or tribunal can only be considered as committed with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[2] In this relation, "**grave abuse of discretion arises when a** lower court or **tribunal patently violates the Constitution**, the law or existing jurisprudence."[3]

The advent of the 1935 Constitution established the principle of *jus sanguinis* as basis for acquiring Philippine citizenship.[4] Following this principle, citizenship is conferred by virtue of blood relationship to a Filipino parent.[5]

It was admitted that respondent was a foundling with unknown facts of birth and parentage. On its face, Section 1, Article IV of the 1935 Constitution – the applicable law to respondent's case – did not include foundlings in the enumeration of those who are considered Filipino citizens. It reads:

> Section 1. The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

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[1] See Section 3, Article VI of the 1987 Constitution.

[2] *Carpio Morales v. Court of Appeals,* G.R. Nos. 217126-27, November 10, 2015, citing *Yu v. Reyes-Carpio*, 667 Phil. 474, 481-482 (2011).

[3] See *id*., citing *Tagolino v. House of Representatives Electoral Tribunal*, 706 Phil. 534, 558 (2013).

[4] *Valles v. Commission on Elections*, 392 Phil. 327, 336 (2000).

[5] *Id*.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

This case was originally a *quo warranto* proceeding before the SET.[6] The initial burden, thus, fell upon petitioner Rizalito Y. David to show that respondent lacked the qualifications of a Senator. However, upon respondent's voluntary admission that she was a foundling, the burden of evidence was shifted to her. In his Dissenting Opinion before the SET, Associate Justice Arturo D. Brion pertinently explains:

> [I]n *quo warranto*, the petitioner who challenges the respondent's qualification to office carries the burden of proving, by preponderance of evidence, the facts constituting the disqualification. Upon such proof, the burden shifts to the respondent who must now present opposing evidence constituting his or her defense or establishing his or her affirmative defense.
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> x x x x x x x x x
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> In the present case, the petitioner has alleged that the respondent is a foundling. He posits that, as a foundling has no known parents from whom to trace the origins of her citizenship, the respondent is not a Filipino citizen and is, therefore, not eligible for the position of senator.
>
> Significantly, the respondent admitted her status as a foundling, thus, lifting the petitioner's burden of proving his claim that she is a foundling. With the admission, the fact necessary to establish the petitioner's claim is considered established.[7]

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[6] Docketed as SET Case No. 001-15.

[7] See Dissenting Opinion of Justice Brion in *David v. Poe-Llamanzares*, SET Case No. 001-15, November 17, 2015, pp. 12-13.

In this case, respondent failed to present competent and sufficient evidence to prove her blood relation to a Filipino parent which is necessary to determine natural-born citizenship pursuant to the *jus sanguinis* principle. This notwithstanding, the *ponencia* concludes that the following circumstances are substantial evidence justifying the inference that respondent's biological parents are Filipino:[8]

(*a*) **Circumstances of abandonment:** Respondent was found as a newborn infant outside the Parish Church of Jaro, Iloilo on September 3, 1968. In 1968, Iloilo, as did most if not all other Philippine provinces, had a predominantly Filipino population. In 1968, there was also no international airport in Jaro, Iloilo.

(*b*) **Physical features:** She is described as having "brown almond-shaped eyes, a low nasal bridge, straight black hair and an oval-shaped face." She stands at only 5 feet and 2 inches tall.

(*c*) **Statistical inference:** in the related case of *Poe-Llamanzares v. Commission on Elections*,[9] former Solicitor General Florin T. Hilbay underscored how it was statistically more probable that respondent was born a Filipino citizen, submitting that out of 900,165 recorded births in the Philippines in 1968, over 1,595 or 0.18% were foreigners. This translates to, roughly, a 99.8% probability that respondent was born a Filipino citizen.

However, the foregoing "circumstantial evidence" do not adequately prove the determination sought to be established: that is, whether or not respondent can trace her parentage to a Filipino citizen. These circumstances can be easily debunked by contrary but likewise rationally-sounding suppositions. Case law holds that "[m]atters dealing with qualifications for public elective office must be strictly complied with."[10]

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[8] See *ponencia*, pp. 39-40.

[9] See G.R. Nos. 221697 and 221698-221700, March 8, 2016.

[10] See *Arnado v. COMELEC*, G.R. No. 210164, August 18, 2015.

The proof to hurdle a substantial challenge against a candidate's qualifications must therefore be solid. This Court cannot make a definitive pronouncement on a candidate's citizenship when there is a looming possibility that he/she is not Filipino. The circumstances surrounding respondent's abandonment (both as to the milieu of time and place), as well as her physical characteristics, hardly assuage this possibility. By parity of reasoning, they do not prove that she was born to a Filipino: her abandonment in the Philippines is just a restatement of her foundling status, while her physical features only tend to prove that her parents likely had Filipino features and yet it remains uncertain if their citizenship was Filipino. More so, the statistics cited – assuming the same to be true – do not account for all births but only of those recorded. To my mind, it is uncertain how "encompassing" was the Philippine's civil registration system at that time – in 1968 – to be able to conclude that those statistics logically reflect a credible and representative sample size. And even assuming it to be so, 1,595 were reflected as foreigners, rendering it factually possible that respondent belonged to this class. Ultimately, the opposition against respondent's natural-born citizenship claim is simple but striking: the fact that her parents are unknown directly puts into question her Filipino citizenship because she has no *prima facie* link to a Filipino parent from which she could have traced her Filipino citizenship.

Absent satisfactory proof establishing any blood relation to a Filipino parent, and without any mention in the 1935 Constitution that foundlings are considered or even presumed to be Filipino citizens at birth, it is my view that, under the auspices of the 1935 Constitution, respondent could not be considered a natural-born Filipino citizen. As worded, the provisions of Section 1, Article IV of the 1935 Constitution are clear, direct, and unambiguous. This Court should therefore apply the statutory construction principles of *expressio unius est exclusio alterius* and *verba legis non est recedendum*. Consequently, it would be unnecessary to resort to the constitutional deliberations or to examine the underlying intent

of the framers of the 1935 Constitution. In *Civil Liberties Union v. The Executive Secretary*,[11] this Court remarked that:

> Debates in the constitutional convention "are of value **as showing the views of the individual members, and as indicating the reasons for their votes**, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. **We think it [is] safer to construe the constitution from what appears upon its face**."[12]

In fact, it should be pointed out that the 1935 Constitution, as it was adopted in its final form, **never carried over any proposed provision on foundlings being considered or presumed to be Filipino citizens**. Its final exclusion is therefore indicative of the framers' prevailing intent.[13] The *ponencia*'s theorized "harmonization"[14] of the constitutional provisions on citizenship with the provisions on the promotion of children's well-being,[15]

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[11] 272 Phil. 147 (1991).

[12] *Id.* at 169-170.

[13] See *Civil Liberties Union v. The Executive Secretary*, 272 Phil. 147, 157 (1991).

[14] *Ponencia*, pp. 45-50.

[15] Section 13, Article II of the 1987 Constitution provides:

> Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Section 3, Article XV of the 1987 Constitution also provides:

> Section 3. The State shall defend:
>
> x x x x x x x x x
>
> (3) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development;
>
> x x x x x x x x x

equal protection,[16] public service,[17] and even human dignity and human rights[18] appears to be a tailor-fitted advocacy for allowing foundlings to run for key national posts that, quite frankly, stretches the import of these distinct provisions to the separate and unique matter of citizenship. There seems to be an evident logical problem with the argument that since the Constitution protects its children, and respects human rights and equality to run for office, then *ergo*, foundlings should be presumed to be natural-born. It appears that this approach aims to collate all possibly related constitutional text, albeit far-flung, just to divine a presumption when unfortunately, there is none.

Moreover, as Senior Associate Justice Antonio T. Carpio (Justice Carpio) aptly pointed out in his Dissenting Opinion before the SET, it would be insensible to suppose that the framers of the 1935 Constitution intended that foundlings be considered as natural-born citizens:

> [N]one of the framers of the 1935 Constitution mentioned the term natural-born in relation to the citizenship of foundlings. Again, under the 1935 Constitution, only those whose fathers were Filipino citizens were considered natural-born citizens. Those who were born of Filipino

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[16] Section 1, Article III of the 1987 Constitution reads:

> 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.

[17] Section 26, Article II of the 1987 Constitution states:

> Section 26. The State shall guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law.

[18] Section 1, Article XIII of the 1987 Constitution provides:

> Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.
>
> x x x x x x x x x

Section 11, Article II of the 1987 Constitution states:

> Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

mothers and alien fathers were still required to elect Philippine citizenship, preventing them from being natural-born citizens. If, as respondent would like us to believe, the framers intended that foundlings be considered natural-born Filipino citizens, this would create an absurd situation where a child with unknown parentage would be placed in a better position than child whose mother is actually known to be a Filipino citizen. The framers of the 1935 Constitution could not have intended to create such absurdity.[19]

While the predicament of foundlings of having their parents unknown would seem to entail the difficult, if not impossible, task of proving their Filipino parentage, the current state of the law which requires evidence of blood relation to a Filipino parent to establish natural-born citizenship under the *jus sanguinis* principle must be respected at all costs. This is not to say that the position of foundlings in relation to their endeavors for high public offices has been overlooked in this discourse. Rather, the correction of this seeming "misfortune" – as the *ponencia* would suppose[20] – lies in legislative revision, not judicial supplication. For surely, it is not for this Court to step in and supply additional meaning when clarity is evoked in the citizenship provisions of the Constitution.

For another, I would also like to express my reservations on the *ponencia*'s reliance on *Tecson v. Commission on Elections*[21] (*Tecson*) wherein this Court resolved that respondent's adoptive father, Ronald Allan Kelley Poe, more popularly known as Fernando Poe Jr. (FPJ), was qualified to run for the presidential post during the 2004 National Elections which, according to the *ponencia*,[22] was based on the basis of "presumptions" that proved his status as a natural-born citizen. In that case, the identity of FPJ's parents, Allan F. Poe and Bessie Kelley, was never questioned. More importantly, there was direct documentary

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[19] See Dissenting Opinion of Justice Carpio in *David v. Poe-Llamanzares*, SET Case No. 001-15, November 17, 2015, pp. 28-29.

[20] See *ponencia*, pp. 18-19.

[21] 468 Phil. 421 (2004).

[22] See *ponencia*, pp. 42-43.

evidence to trace Allan F. Poe's parentage to Lorenzo Pou, whose death certificate identified him to be a Filipino. Thus, by that direct proof alone, there was a substantial trace of Allan F. Poe's parentage to a Filipino (Lorenzo Pou), which in turn, allowed the substantial tracing of FPJ's parentage to a Filipino (Allan F. Poe). As such, FPJ was declared qualified to run for the presidential post in 2004. The Court further explained that while the birth certificate of FPJ's grandfather, Lorenzo Pou, was not presented, it could be assumed that the latter was born in 1870 while the Philippines was still a colony of Spain. This inference was drawn from the fact that Lorezo Pou died at the age of 84 years old in 1954. Thus, absent any evidence to the contrary, and against petitioner therein's bare allegation, Lorenzo Pou was deemed to be a resident of the Philippines and hence, a Filipino citizen by operation of the Philippine Organic Act of 1902,[23] on the premise that the place of residence of a person at the time of his death was also his residence before his death. In any event, the certified true copy of the original death certificate of Lorenzo Pou reflecting that he was a Filipino citizen was enough basis to trace FPJ's Filipino natural-born citizenship. As the Court aptly cited, according to Section 44, Rule 130 of the Rules of Court, "entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are ***prima facie*** **evidence of the facts therein stated**."

In contrast, by her admission as a foundling whose parents are unknown, and without presenting any other evidence to show any substantial tracing of Filipino parentage similar to FPJ, the legal and factual nuances of respondent's case should be treated differently. Accordingly, *Tecson* provides no authoritative jurisprudential anchorage to this case.

Finally, it bears stressing that the *jus sanguinis* principle of citizenship established in the 1935 Constitution was subsequently

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[23] See Section 4 of the Philippine Organic Act of 1902, entitled "AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES."

carried over and adopted in the 1973 and 1987 Constitutions.[24] Thus, notwithstanding the existence of any treaty or generally accepted principle of international law which purportedly evince that foundlings are accorded natural-born citizenship in the State in which they are found, the same, nonetheless, could not be given effect as it would contravene the Constitution. To recall, should international law be adopted in this jurisdiction, it would only form part of the sphere of domestic law.[25] Being relegated to the same level as domestic laws, they could not modify or alter, much less prevail, over the express mandate of the Constitution. In this relation, I deem it fitting to echo the point made by Associate Justice Teresita J. Leonardo-De Castro, likewise in her Separate Opinion before the SET:

> Citizenship is not automatically conferred under the international conventions cited but will entail an affirmative action of the State, by a national law or legislative enactment, so that the nature of citizenship, if ever acquired pursuant thereto, is citizenship by naturalization. There must be a law by which citizenship can be acquired. By no means can this citizenship be considered that of a natural-born character under the principle of *jus sanguinis* in the Philippine Constitution.[26]

For all these reasons, I unfortunately depart from the ruling of the majority and perforce submit that the SET committed grave abuse of discretion in declaring respondent a natural-born citizen. The majority ruling runs afoul of and even distorts the plain language of the Constitution which firmly and consistently follows the *jus sanguinis* principle. In the final analysis, since respondent has not presented any competent and sufficient evidence to prove her blood relation to a Filipino parent in these proceedings, she should not be deemed to be a natural-born citizen of the Philippines, which, thus, renders the

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[24] See *Valles v. Commission on Elections*, *supra* note 4, at 336-337.

[25] *Pharmaceutical and Health Care Assoc. of the Phils. v. Duque III,* 561 Phil. 386, 397-398 (2007).

[26] See Separate Opinion of Justice De Castro in *David v. Poe-Llamanzares*, SET Case No. 001-15, November 17, 2015, p. 18.

instant petition meritorious. Nonetheless, it is important to point out that respondent is not precluded from later on proving her natural-born citizenship through such necessary evidence in the appropriate proceeding therefor, considering that a decision determining natural-born citizenship never becomes final.[27] I reach these conclusions solely under the peculiar auspices of this case and through nothing but my honest and conscientious assessment of the facts parallel to the applicable legal principles. As a magistrate of this High Court, I am impelled to do no less than fulfill my duty to faithfully interpret the laws and the Constitution, bereft of any politics or controversy, or of any regard to the tides of popularity or gleam of any personality.

WHEREFORE, I vote to **GRANT** the petition.

THIRD DIVISION

[A.C. No. 9912. September 21, 2016]

DATU REMIGIO M. DUQUE JR., *complainant, vs.* **COMMISSION ON ELECTIONS CHAIRMAN SIXTO S. BRILLANTES, JR., COMMISSIONERS LUCENITO N. TAGLE, ELIAS R. YUSOPH, and CHRISTIAN ROBERT S. LIM; ATTYS. MA. JOSEFINA E. DELA CRUZ, ESMERALDA A. AMORA-LADRA, MA. JUANA S. VALLEZA, SHEMIDAH G. CADIZ, and FERNANDO F. COT-OM; and PROSECUTOR NOEL S. ADION,** *respondents.*

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[27] See Dissenting Opinion of Justice Carpio in *David v. Poe-Llamanzares*, SET Case. No. 001-15, p. 35, citing *Kilosbayan Foundation v. Ermita*, 553 Phil. 331, 343-344 (2007).

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; ATTORNEYS; AS A RULE, AN IMPEACHABLE OFFICER WHO IS A MEMBER OF THE BAR CANNOT BE DISBARRED WITHOUT FIRST BEING IMPEACHED.— This Court, guided by its pronouncements in *Jarque v. Ombudsman*, *In Re First Indorsement from Raul M. Gonzales* and *Cuenco v. Hon. Fernan*, has laid down the rule that an impeachable officer who is a member of the Bar cannot be disbarred without first being impeached. At the time the present complaint was filed, respondents-commissioners were all lawyers. As impeachable officers who are at the same time the members of the Bar, respondents-commissioners must first be removed from office *via* the constitutional route of impeachment before they may be held to answer administratively for their supposed erroneous resolutions and actions. x x x The object of a disbarment proceeding is not so much to punish the individual attorney himself, as to safeguard the administration of justice by protecting the court and the public from the misconduct of officers of the court, and to remove from the profession of law persons whose disregard for their oath of office have proved them unfit to continue discharging the trust reposed in them as members of the bar. Thus, the power to disbar attorneys ought always to be exercised with great caution, and only in clear cases of misconduct which seriously affects the standing and character of the lawyer as an officer of the court and member of the bar.

2. POLITICAL LAW; ELECTIONS; COMMISSION ON ELECTIONS (COMELEC); THE QUASI-JUDICIAL FUNCTION OF THE COMELEC EMBRACES THE POWER TO RESOLVE CONTROVERSIES ARISING FROM THE ENFORCEMENT OF ELECTION LAWS, AND TO BE THE SOLE JUDGE OF ALL PRE-PROCLAMATION CONTROVERSIES, AND OF ALL CONTESTS RELATING TO ELECTIONS, RETURNS, AND QUALIFICATIONS.— The appreciation of the contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional,

provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and barangay officials. Consequently, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court. It must likewise be emphasized that the assailed actions of the respondents pertain to their quasi-judicial functions. The quasi-judicial function of the COMELEC embraces the power to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies; and of all contests relating to the elections, returns, and qualifications. Thus, the COMELEC, in resolving the subject complaint, was exercising its quasi-judicial power in pursuit of the truth behind the allegations in the complaint. The fact that the COMELEC's resolution was adverse to the complainant, in the absence of grave abuse of discretion, does not make a case for disbarment.

3. **REMEDIAL LAW; DISCIPLINE OF JUDGES; A JUDGE'S FAILURE TO INTERPRET THE LAW OR TO PROPERLY APPRECIATE THE EVIDENCE PRESENTED DOES NOT NECESSARILY RENDER HIM ADMINISTRATIVELY LIABLE.—** It is settled that a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

APPEARANCES OF COUNSEL

Leynes & Lozada-Marquez for Commissioner Lim.
Office of the Solicitor General for public respondents.

D E C I S I O N

PERALTA, ***J.*:**

Before this Court is a disbarment complaint filed by Datu Remigio M. Duque, Jr., (*Duque*) against former Commission on Elections (*COMELEC*) Chairman Sixto S. Brillantes, Jr., Commissioners Lucenito N. Tagle, Elias R. Yusoph, and Christian Robert S. Lim; Attys. Ma. Josefina E. Dela Cruz, Esmeralda A. Amora-Ladra, Ma. Juana S. Valleza, Shemidah G. Cadiz, and Fernando F. Cot-om; and Prosecutor Noel S. Adion for Conduct Unbecoming a Lawyer, Gross Ignorance of the Law and Gross Misconduct.

The case stemmed from a Complaint dated May 26, 2011 filed by Duque against respondents Sheila D. Mabutol, Cleotilde L. Balite, Camilo M. Labayne, Reynaldo P. Erese, Jr., Ruth Joy V. Gabor, Luzviminda V. Galanga, Esmeraldo Galanga, Jr., Gavino V. Rufino, Jr., Zenaida T. Rufino, Melanie M. Tagudin-Cordova, Alona D. Rocacorba, Alma P. Bunag, Joey G. Lomot and Nena G. Bactas, docketed as I.S. No. 111-18-INV-11-D-0390, for alleged violation of election laws, particularly Sections 223, 224, Article 19, Section 261 (y) (17), (z) (21), and Article 22 of *Batas Pambansa Blg*. 881.

Duque, who ran for *Punong Barangay* of Lomboy, La Paz, Tarlac but lost, filed a petition for recount contesting the results in a number of precincts where respondents were chairman and members of the Board of Election Tellers (*BETs*), respectively. Duque alleged that there were several irregularities in the canvassing of the ballots, *i.e.*, the discovery of alleged crumpled official ballots during the recount proceedings and unsigned election returns. Respondents, however, vehemently denied said allegations.

On June 13, 2011, Assistant Provincial Prosecutor Noel S. Adion recommended that the complaint for violation of *Batas Pambansa Blg*. 881 be dismissed for lack of jurisdiction as the COMELEC has the exclusive power to conduct preliminary investigation of all election offenses, and to prosecute the same.

Duque moved for reconsideration but was denied in a Resolution[1] dated September 21, 2011.

The records of the case were forwarded to the COMELEC.

On March 14, 2013, in its disputed Decision,[2] as recommended by the Law Department of the COMELEC, the COMELEC *En Banc*[3] dismissed the complaint for lack of probable cause. It found no violation of any of the pertinent election laws. It likewise pointed out that Duque failed to substantiate the complaint by clear and convincing evidence.

Aggrieved, complainant filed the instant disbarment complaint against Commissioners Brillantes, *et al.*

On July 1, 2013, the Court resolved to require respondents to Comment on the complaint against them.[4]

Respondents, through the Office of the Solicitor General, in its Comment[5] dated October 24, 2013, pointed out that respondents, being COMELEC Commissioners may only be removed from office solely by impeachment. As impeachable officers who are at the same time members of the Bar, respondent Commissioners must be removed from office by impeachment before they may be held to answer administratively for their supposed erroneous resolutions and actions.

Respondents likewise maintained that there exists no valid ground for their disbarment. While complainant insists that respondents conspired to deprive him of his constitutional rights by dismissing his complaint despite "voluminous evidence," complainant, however, failed to establish said allegation of conspiracy by positive and conclusive evidence. Other than

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[1] *Rollo*, p. 28.

[2] *Id*. at 173-178.

[3] COMELEC *En Banc* composed of Sixto S. Brillantes as Chairman, with Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca, concurring.

[4] *Rollo*, p. 60.

[5] *Id*. at 202-215.

his bare allegations of conspiracy, complainant failed to show how respondents acted in concert to deprive him of his constitutional rights or even specify the particular acts performed by respondents in the supposed conspiracy.

In his separate Comment[6] dated September 10, 2013, respondent Prosecutor Adion averred that the complaint against him has no legal and factual basis.

For his part, respondent Commissioner Lim, through his counsel, echoed the other Commissioners' contention that as an impeachable officer, he must first be removed from office through the constitutional route of impeachment before he may be held administratively liable for his participation in the disputed Resolution. He added that Duque miserably failed to allege, much less submit a clear, convincing and satisfactory proof of any act of Lim which may be construed as a ground for disbarment. Respondent further pointed out that the COMELEC *En Banc*, in dismissing the complaint of Duque, properly applied paragraph (m), Section 3, Rule 131 of the Rules of Court which states that "it is presumed that official duty has been regularly performed;" hence, the members of the BETs enjoy the presumption of regularity in the performance of their official duties unless a clear and convincing evidence is shown to the contrary.

RULING

To begin with, the Court takes notice that respondents Sixto S. Brillantes, Jr., Lucenito N. Tagle and Elias R. Yusoph, all retired from the COMELEC on February 2, 2015. However, it does not necessarily call for the dismissal of the complaint, considering that the very thrust of the instant disbarment complaint is the issuance of a Resolution dated March 14, 2013 which dismissed E.O. Case No. 12-003,[7] where respondents Brillantes, Tagle and Yusoph concurred in, when they were still members of the COMELEC's *En Banc.*

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[6] *Id*. at 181-188.

[7] *Remegio M. Duque, Jr. v. Sheila D. Mabutol, et al.*

Be that as it may, after a careful perusal of the facts of the case, the Court, however, finds no merit in the instant petition.

This Court, guided by its pronouncements in *Jarque v. Ombudsman,*[8] *In Re First Indorsement from Raul M. Gonzales*[9] and *Cuenco v. Hon. Fernan,*[10] has laid down the rule that an impeachable officer who is a member of the Bar cannot be disbarred without first being impeached. At the time the present complaint was filed, respondents-commissioners were all lawyers. As impeachable officers who are at the same time the members of the Bar, respondents-commissioners must first be removed from office *via* the constitutional route of impeachment before they may be held to answer administratively for their supposed erroneous resolutions and actions.

Nevertheless, even if the Court were to look into the assailed actions of respondents-commissioners as well as respondents-lawyers under the Code of Professional Responsibility, We find no specific actuations and sufficient evidence to show that respondents did engage in dishonest, immoral or deceitful conduct in their capacity as lawyers.

The appreciation of the contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and barangay officials. Consequently, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court.[11]

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[8] A.C. No. 4509, December 5, 1995, 250 SCRA 11.

[9] 243 Phil. 167, 170 (1988).

[10] 241 Phil. 816, 828 (1988).

[11] *Punzalan v. COMELEC*, 352 Phil. 538, 552-553 (1998).

It must likewise be emphasized that the assailed actions of the respondents pertain to their quasi-judicial functions. The quasi-judicial function of the COMELEC embraces the power to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies; and of all contests relating to the elections, returns, and qualifications.[12] Thus, the COMELEC, in resolving the subject complaint, was exercising its quasi-judicial power in pursuit of the truth behind the allegations in the complaint. The fact that the COMELEC's resolution was adverse to the complainant, in the absence of grave abuse of discretion, does not make a case for disbarment.

It is settled that a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[13] As we held in *Balsamo v. Judge Suan*:[14]

> It should be emphasized, however, that as a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. He cannot be subjected to liability " civil, criminal or administrative " for any of his official acts, no matter how erroneous, as long as he acts in good faith. In such a case, the remedy of the aggrieved party is not to file an administrative complaint against the judge but to elevate the error to the higher court for review and correction. The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial. Thus, not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in

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[12] *Bedol v. Commission on Elections*, 621 Phil. 498, 510 (2009).

[13] *Salvador v. Judge Limsiaco, Jr.,* 519 Phil. 683, 687 (2006).

[14] 458 Phil. 11, 23-24 (2003). (Citations omitted)

bad faith or with deliberate intent to do an injustice. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.

If at all, complainant felt aggrieved and wanted to properly proceed against the COMELEC, the remedy of an aggrieved party against a judgment or final order or resolution of the COMELEC is a petition under Rule 64 in relation to Rule 65 of the Rules of Court brought before this Court,[15] and not a disbarment proceeding. There being no evidence whatsoever tending to prove unfitness of respondents to continue in the practice of law and remain officers of the court, and there being no showing that respondents were motivated by bad faith or ill motive in rendering the assailed decision, the charges of conduct unbecoming a lawyer, gross ignorance of the law and gross misconduct against them, thus, must be dismissed.

We must reiterate that in disbarment proceedings, the burden of proof is on the complainant; the Court exercises its disciplinary power only if the complainant establishes her case by clear, convincing, and satisfactory evidence. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has a greater weight than that of the other party. When the pieces of evidence of the parties are evenly balanced or when doubt exists on the preponderance of evidence, the equipoise rule dictates that the decision be against the party carrying the burden of proof.[16]

The object of a disbarment proceeding is not so much to punish the individual attorney himself, as to safeguard the administration of justice by protecting the court and the public from the misconduct of officers of the court, and to remove from the profession of law persons whose disregard for their oath of office have proved them unfit to continue discharging the trust reposed in them as members of the bar. Thus, the power

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[15] *Macabago v. COMELEC*, 440 Phil. 683, 691-692 (2002).

[16] *Ylaya v. Atty. Gacott*, 702 Phil. 390, 413 (2013).

to disbar attorneys ought always to be exercised with great caution, and only in clear cases of misconduct which seriously affects the standing and character of the lawyer as an officer of the court and member of the bar.[17]

WHEREFORE, the instant disbarment complaint against respondents former COMELEC Chairman Sixto S. Brillantes, Jr., Commissioners Lucento N. Tagle, Elias R. Yusoph, and Christian Robert S. Lim, Attys. Ma. Josefina E. Dela Cruz, Esmeralda A. Amora-Ladra, Ma. Juana S. Valleza, Shemidah G. Cadiz, and Fernando F. Cot-Om, and Prosecutor Noel S. Adion is hereby **DISMISSED** for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 10150. September 21, 2016]

GINA E. ENDAYA, *complainant, vs.* **ATTY. EDGARDO O. PALAY,** *respondent.*

SYLLABUS

REMEDIAL LAW; 2004 RULES ON NOTARIAL PRACTICE; THE ACT OF NOTARIZING A DOCUMENT WITHOUT THE PRESENCE OF THE PERSON WHO ALLEGEDLY PLACED HIS THUMBMARK ON THE NOTARIZED DOCUMENT CONSTITUTES A DIRECT VIOLATION OF

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[17] *Anacta v. Atty. Resurreccion*, 692 Phil. 488, 497 (2012).

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 19, 2016.

THE 2004 RULES ON NOTARIAL PRACTICE; IMPOSABLE PENALTY.— Under the 2004 Rules on Notarial Practice, only members of the Philippine Bar in good standing are eligible to be commissioned as notaries public. Thus, performing the functions of a notary public constitutes the practice of law. In this case, Atty. Palay no longer disputed the findings of the IBP, which is tantamount to an admission that he notarized a document without the presence of the person who allegedly placed his thumbmark therein. This constitutes a direct violation of the 2004 Rules on Notarial Practice, specifically Rule IV, Section 2 (b). By acknowledging the Deed of Sale, he made it appear that Villaos personally appeared before him when this was not in fact the case. Worse, in his answer to the complaint, he lied about being called into a car by Villaos' driver. These actions evince dishonesty on the part of Atty. Palay – in direct violation of Rule 1.01 of the Code of Professional Responsibility. These adversely reflect on his fitness to be a member of the legal profession. This warrants a suspension from the practice of law for a period of six (6) months, in addition to his disqualification from being commissioned as a notary public for two (2) years.

APPEARANCES OF COUNSEL

Paul Resurreccion for complainant.
Antonio B. Abad for respondent.

D E C I S I O N

JARDELEZA, *J.*:

For resolution is the second motion for reconsideration,[1] which we treated as a petition for review,[2] of Resolution No. XX-2011-279[3] promulgated by the Board of Governors of the Integrated Bar of the Philippines (IBP) suspending Atty. Edgardo O. Palay (Atty. Palay) from the practice of law for the period

[1] *Rollo*, pp. 242-244.

[2] *Id.* at 259-260.

[3] *Id*. at 150.

of one (1) year and perpetually disqualifying him from being commissioned as a notary public. The case originated from a complaint for disbarment[4] filed by Gina E. Endaya (Endaya) charging Atty. Palay, a notary public in Puerto Princesa, Palawan, with violation of Canon 1, Rules 1.01 and 1.02, Canon 7, Rule 7.03 and the 2004 Rules on Notarial Practice.[5]

The records show that on July 27, 2004, Atty. Palay notarized the Deed of Sale covering eight (8) parcels of land covered by Transfer Certificate of Title Nos. 8940, 8941, 8942, 8943, 8944, 10774, 17938, and 19319, allegedly executed and thumbmarked by Engr. Atilano AB. Villaos (Villaos), father of the complainant.[6] Endaya claimed that Villaos was already confined at the Philippine Heart Center in Quezon City from May 27 to August 17, 2004, and it was therefore impossible that he appeared before Atty. Palay in Puerto Princesa, Palawan, to affix his thumbmark in the Deed of Sale. During that period, Villaos was no longer of sound mind and incapable of discerning and knowing the consequences of the Deed of Sale as shown in the affidavit executed by Dr. Bella L. Fernandez. Villaos eventually passed away on August 28, 2004.[7]

In his answer, Atty. Palay said that he was approached by Villaos' driver sometime in May 2004 to render notarial services and asked him to meet Villaos in the car. According to Atty. Palay, it was Villaos who begged him to be allowed to affix his thumbmark on the Deed of Sale because the latter was already very ill and could no longer sign.[8] Endaya rebutted this by presenting the affidavit of Dr. Carlos Tan, who stated that Villaos was under intravenous fluid since the last week of April 2004 and was breathing through an oxygen mask.[9] Villaos' driver,

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

[5] A.M. No. 02-8-13-SC, August 1, 2004.

[6] *Rollo*, p. 151.

[7] *Id*. at 151-152.

[8] *Id.* at 152.

[9] *Id.* at 152-153.

Arnel Villafuerte, also denied under oath that he approached Atty. Palay to have the Deed of Sale notarized.[10]

IBP Investigating Commissioner Jordan M. Pizarras found that Atty. Palay failed to faithfully discharge his duties as a notary public and recommended that he be suspended from the practice of law for three (3) months and be permanently disqualified from being a notary public.[11] The IBP Board of Governors adopted and approved the recommendation of the Investigating Commissioner, but increased the suspension to a period of one (1) year.[12] Atty. Palay moved for reconsideration but the IBP denied the same.[13]

Atty. Palay filed a second motion for reconsideration,[14] admitting that he violated the canons and ethics of the legal profession but only with regard to the performance of his duties as a notary public. He maintains that he did not commit any wrongdoing in respect of his duties as counsel to his clients; hence, he appeals that his one-year suspension from the practice of law be lifted.[15] Atty. Palay's motion, which we treated as a petition for review, has no merit.

Contrary to Atty. Palay's argument, we find that the duties of a notary public are intricately related with the practice of law. Under the 2004 Rules on Notarial Practice, only members of the Philippine Bar in good standing are eligible to be commissioned as notaries public.[16] Thus, performing the functions of a notary public constitutes the practice of law. In this case, Atty. Palay no longer disputed the findings of the IBP, which is tantamount to an admission that he notarized a

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[10] *Id*. at 153.

[11] *Id.* at 157-158.

[12] *Supra* note 3.

[13] *Rollo,* pp. 230-231.

[14] *Supra* note 1.

[15] *Rollo,* p. 243.

[16] 2004 Rules on Notarial Practice, Rule III, Sec. 1, par. (4).

document without the presence of the person who allegedly placed his thumbmark therein. This constitutes a direct violation of the 2004 Rules on Notarial Practice, specifically Rule IV, Section 2(b).[17] By acknowledging the Deed of Sale, he made it appear that Villaos personally appeared before him when this was not in fact the case. Worse, in his answer to the complaint, he lied about being called into a car by Villaos' driver. These actions evince dishonesty on the part of Atty. Palay—in direct violation of Rule 1.01 of the Code of Professional Responsibility.[18] These adversely reflect on his fitness to be a member of the legal profession. This warrants a suspension from the practice of law for a period of six (6) months,[19] in addition to his disqualification from being commissioned as a notary public for two (2) years.[20]

On a separate matter, we ordered counsel for the complainant, Atty. Paul Resurreccion (Atty. Resurreccion), to file a comment on Atty. Palay's second motion for reconsideration. We had already fined him ₱1,000.00 for failure to comply with our initial directive and required him anew to comply with the order.[21] To date, however, Atty. Resurreccion still failed to do so. His

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[17] 2004 Rules on Notarial Practice, Rule IV, Sec. 2. Prohibitions.–

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(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

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

[19] *Almazan, Sr. v. Suerte-Felipe*, A.C. No. 7184, September 17, 2014, 735 SCRA 230; *Laquindanum v. Quintana*, A.C. No. 7036, June 29, 2009, 591 SCRA 204.

[20] *Bartolome v. Basilio*, A.C. No. 10783, October 14, 2015, 772 SCRA 213; *Sultan v. Macabanding*, A.C. No. 7919, October 8, 2014, 737 SCRA 530.

[21] *Rollo*, p. 262.

act of disobeying a court order constitutes indirect contempt,[22] and, accordingly, we deem it proper to impose an additional fine of ₱5,000.00 for his repeated disregard thereof.

WHEREFORE, the Court finds respondent Atty. Edgardo O. Palay **GUILTY** of violating Canon l, Rule 1.01 of the Code of Professional Responsibility and the 2004 Rules on Notarial Practice. Accordingly, the Court **SUSPENDS** him from the practice of law for **six (6) months**, **REVOKES** his incumbent notarial commission, if any, and **DISQUALIFIES** him from being commissioned as a notary public for **two (2) years**. Respondent is also **STERNLY WARNED** that more severe penalties will be imposed for any further breach of the Canons in the Code of Professional Responsibility.

The Court also finds Atty. Paul Resurreccion **GUILTY** of **INDIRECT CONTEMPT** and orders him to **PAY A FINE** of **FIVE THOUSAND PESOS** (**₱5,000.00**) within ten (10) days from notice, with a **STERN WARNING** that repetition of the same or similar offense in the future will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be included in the records of the respondent and counsel for the complainant, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

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

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[22] RULES OF COURT, Rule 71, Sec. 3, par. (b).

THIRD DIVISION

[A.C. No. 11238. September 21, 2016]

ATTY. MYLENE S. YUMUL-ESPINA, *complainant, vs.* **ATTY. BENEDICTO D. TABAQUERO,** *respondent.*

SYLLABUS

REMEDIAL LAW; DISBARMENT AND DISCIPLINE OF ATTORNEYS; A CASE FOR DISBARMENT OR SUSPENSION IS NOT MEANT TO GRANT RELIEF TO A COMPLAINANT AS IN A CIVIL CASE, BUT IS INTENDED TO CLEANSE THE RANKS OF THE LEGAL PROFESSION OF ITS UNDESIRABLE MEMBERS IN ORDER TO PROTECT THE PUBLIC AND THE COURTS.— Disbarment proceedings are *sui generis.* Their main purpose is mainly to determine the fitness of a lawyer to continue acting as an officer of the court and as participant in the dispensation of justice. Hence, the underlying motives of the complainant are unimportant and of little relevance. We have consistently looked with disfavor upon affidavits of desistance filed in disbarment proceedings. Administrative proceedings are imbued with public interest. Hence, these proceedings should not be made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses. x x x We emphasize that a case for disbarment or suspension is not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. Although there are times when we dismissed the case after the complainant withdrew his complaint, the dismissal was not due to our acquiescence to the complainant's wish but because of the absence of any competent and credible evidence by reason of the desistance. x x x In disbarment cases, the burden of proof rests upon the complainant, and the legal presumption that a lawyer is innocent of the charges proferred against him until the contrary is proved; and that he regularly performed his duty as an officer of the Court in accordance with his oath. It follows therefore that if the complaint was withdrawn (in this case through desistance) immediately after it was filed, it would be difficult to investigate, or prove the charge.

APPEARANCES OF COUNSEL

Tabaquero Albano Lopez & Associates for respondent.

D E C I S I O N

JARDELEZA, *J.*:

Before us is a complaint for disbarment[1] filed by Atty. Mylene S. Yumul-Espina (complainant) against Atty. Benedicto D. Tabaquero (respondent) before the Integrated Bar of the Philippines (IBP). Complainant charged respondent with violating Canon 1[2] of the Code of Professional Responsibility (CPR), specifically Rules 1.01,[3] 1.02[4] and 1.03.[5]

Facts

Shirley Atkinson (Shirley) is married to Derek Atkinson (Derek), a British Citizen. She purchased two properties (covered by Transfer Certificate of Title [TCT] No. 142730 and TCT No. 151683), both of which she intended to mortgage. In order to facilitate the mortgage on TCT No. 142730, Derek allegedly executed an Affidavit of Waiver of Rights which he subscribed before complainant (as a notary public) on October 25, 1999. Thus, Shirley was able to mortgage TCT No. 142730 without the signature of marital consent of Derek Atkinson.[6]

Derek, however, claims that he could not have executed the Affidavit of Waiver of Rights because he was out of the country

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[1] *Rollo*, pp. 2-13.

[2] CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

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

[4] Rule 1.02 – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

[5] Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

[6] *Rollo*, pp. 40-41.

on October 25, 1999, and therefore, could not have personally appeared before complainant on that date.[7] Thus, he filed falsification cases against complainant and Shirley, respectively.[8]

During the pendency of these criminal cases, complainant filed a complaint-affidavit before the IBP Commission on Bar Discipline against respondent.[9] She alleges that in representing Derek in the criminal cases against her for "Falsification of Document by a Notary Public," and against Shirley for "Falsification of Public Document," respondent violated the CPR.[10] She claims that respondent prosecuted the criminal complaints against her and Shirley in order to assert his client's non-existent rights and interest as owner of the property, blatantly disregarding the constitutional prohibition on foreigners from acquiring private lands in the Philippines.[11]

In his Answer,[12] respondent argues that he was engaged as counsel for Derek long after the acquisition of the disputed properties. He never had any participation with respect to the purchase of the two properties.[13] Upon Derek's instruction, direction and decision, respondent filed the cases (against Shirley and complainant) after Derek learned about the mortgages and the execution of the Affidavits of Waiver of Rights he allegedly subscribed before complainant.[14]

According to respondent, the issue being raised by complainant in the disbarment proceeding is the same issue raised by Maria

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[7] *Id.* at 81.

[8] Falsification of Public Documents by a Private Individual against Shirley Atkinson, Criminal Case No. 13-0449; and Falsification of Public Document by a Notary Public against complainant, Criminal Case No. 13-1324. See *Id.* at 5-6.

[9] *Id.* at 2.

[10] *Id.* at 10-11.

[11] *Id.* at 6.

[12] *Id.* at 40-51.

[13] *Id.* at 42.

[14] *Id.* at 43-44.

Luisa Tanghal, one of the defendants in the petition for annulment of the extra-judicial foreclosure filed by Derek.[15] In that case, Tanghal filed a Motion to Dismiss on the ground that Derek cannot own lands in the Philippines. The Regional Trial Court of Parañaque City denied Tanghal's motion, and ruled that Derek's claim is not actually a claim of ownership over the said property but a claim on his funds.[16] Respondent also denied committing any violation of the canons of the CPR. He countered that the complainant is bitter and vengeful on account of Derek's filing of the criminal complaint against her.[17]

Investigation ensued and the IBP issued a Notice of Mandatory Conference/Hearing[18] on June 19, 2014. Respondent submitted his Mandatory Conference Brief[19] on July 10, 2014. In his brief, he alleged (as a counter-complaint) that complainant violated her duties under the Notarial Law.[20] Complainant submitted her Mandatory Conference Brief[21] on July 15, 2014 reiterating the salient points in her complaint.

In respondent's Rejoinder to Reply,[22] he submitted that the constitutional prohibition is not germane, material or relevant to the criminal complaints his client filed against complainant and Shirley. The basis of these criminal complaints is the falsified signature in the affidavit allegedly executed by Derek.[23] As in his counter-complaint, respondent, citing *Social Security Commission v. Corral*,[24] reiterated complainant's breach of the notarial law:[25]

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[15] *Id.* at 46.

[16] *Id.* at 46, 108.

[17] *Id.* at 47.

[18] *Id.* at 117.

[19] *Id.* at 118-125.

[20] *Id.* at 122.

[21] *Id.* at 128-132.

[22] *Id.* at 276-283.

[23] *Id.* at 278.

[24] A.C. No. 6249, October 14, 2004, 440 SCRA 291.

[25] *Rollo*, p. 280.

x x x A notary public is duty bound to require the person executing a document to be personally present, to swear before him that he is that person and ask the latter if he has voluntarily and freely executed the same x x x.[26]

Meanwhile, pending resolution of the case by the Investigating Commissioner, complainant executed and filed an Affidavit of Desistance[27] which recited, thus:

3. Moreover, consistent with charity, goodwill and the Christmas spirit, I hereby desist and withdraw the averments I alleged in my Complaint-Affidavit which I filed in connection with above-captioned case. I further request this Honorable Commission to consider my Complaint-Affidavit as withdrawn from the records of above-captioned case, with full knowledge of the legal and other consequences thereof;

4. This Affidavit of Desistance may be pleaded as a bar to any existing and/or future criminal, civil and/or administrative cases filed or will be filed against Respondent for the same acts subject of the present Complaint; and

5. I am hereby executing this Affidavit for the purpose of attesting to the truth of the foregoing averments, for the purpose of dismissing above-captioned case and for other legal intents and purposes.

Respondent also filed and executed his Affidavit of Desistance/ Withdrawal[28] which stated, thus:

2. I hereby desist and/or withdraw my [unsworn] Counter-Complaint mentioned in my Mandatory Conference Brief dated [July 9,] 2014 and my [unsworn] averments/allegations in my Rejoinder to Reply dated [September 10,] 2014 regarding the alleged violation of duties and/or non-compliance of the Notarial Law by Complainant and request this Honorable Office to consider the same as withdrawn from the records of [the] above-captioned case, with full knowledge of the legal and other consequences thereof;

3. I expressly declare that the incident was the result of a misapprehension of facts and a simple misunderstanding between Complainant and me;

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[26] *Id.*

[27] *Rollo*, pp. 303-304.

[28] *Id.* at 296-297.

4. This Affidavit of Desistance and/or Withdrawal may be pleaded as a bar to any existing and/or future criminal, civil and/or administrative cases filed or will be filed against Complainant for the same acts subject of above-captioned case[.]

Thus, Investigating Commissioner Eduardo R. Robles, in his Report and Recommendation,[29] recommended that the complaint and counter-complaint be dismissed upon the "prodding of the parties." He reasoned that the Commission cannot possibly resolve the controversies after the revelations made by the parties in their Affidavit of Desistance and Affidavit of Desistance/Withdrawal.[30]

On April 18, 2015, the IBP Board of Governors (IBP Board) issued Resolution No. XXI-2015-283,[31] adopting and approving the recommendation to dismiss the complaint and counter-complaint against the parties.

Our Ruling

We do not agree with the ruling of the IBP Board. The cases should not have been dismissed on the basis of the affidavits of desistance.

Disbarment proceedings are *sui generis*.[32] Their main purpose is mainly to determine the fitness of a lawyer to continue acting as an officer of the court and as participant in the dispensation of justice.[33] Hence, the underlying motives of the complainant are unimportant and of little relevance.[34]

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[29] *Id.* at 313-315.

[30] *Id.* at 315.

[31] *Id.* at 311-312.

[32] *Guarin v. Limpin*, A.C. No. 10576, January 14, 2015, 745 SCRA 459, 464; *Cristobal v. Renta*, A.C. No. 9925, September 17, 2014, 735 SCRA 247, 249; *Ylaya v. Gacott*, A.C. No. 6475, January 30, 2013, 689 SCRA 452, 467; *Ventura v. Samson*, A.C. No. 9608, November 27, 2012, 686 SCRA 430, 443.

[33] *Office of the Court Administrator v. Liangco*, A.C. No. 5355, 662 SCRA 103, December 13, 2011, 662 SCRA 103, 121.

[34] *Id*.

We have consistently looked with disfavor upon affidavits of desistance filed in disbarment proceedings.[35] Administrative proceedings are imbued with public interest.[36] Hence, these proceedings should not be made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses.[37] In *Garrido v. Garrido*,[38] we held:

> Laws dealing with double jeopardy or with procedure—such as the verification of pleadings and prejudicial questions, or in this case, prescription of offenses or the *filing of affidavits of desistance by the complainant—do not apply in the determination of a lawyer's qualifications and fitness for membership in the Bar*.[39]

We emphasize that a case for disbarment or suspension is not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts.[40]

Although there are times when we dismissed the case after the complainant withdrew his complaint,[41] the dismissal was

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[35] See *Ventura v. Samson*, *supra*; *Gonzales v. Cabucana, Jr.*, A.C. No. 6836, January 23, 2006, 479 SCRA 320; *Rangwani v. Diño*, A.C. No. 5454, November 23, 2004, 443 SCRA 408; *Reyes-Domingo v. Morales*, A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6; *Bulado v. Tiu, Jr.*, A.M. No. P-96-1211, March 31, 2000, 329 SCRA 308; *Gacho v. Fuentes, Jr.*, A.M. No. P-98-1265, June 29, 1998, 291 SCRA 474; *Dagsa-an v. Conag*, A.M. No. P-98-1269, May 13, 1998, 290 SCRA 12; *Estreller v. Manatad, Jr.*, A.M. No. P-94-1034, February 21, 1997, 268 SCRA 608; *Sandoval v. Manalo*, A.M. No. MTJ-96-1080, August 22, 1996, 260 SCRA 611; *Zamora v. Jumamoy*, A.M. No. P-93-781, December 2, 1994, 238 SCRA 587; *Sy v. Academia*, A.M. No. P-87-72, July 3, 1991, 198 SCRA 705; *Bais v. Tugaoen*, A.M. No. 1294-MJ, March 23, 1979, 89 SCRA 101; and *Bolivar v. Simbol*, A.C. No. 377, April 29, 1966, 16 SCRA 623.

[36] *Gonzales v. Cabucana, Jr., supra* at 332.

[37] *Rangwani v. Diño*, *supra* at 417.

[38] A.C. No. 6593, February 4, 2010, 611 SCRA 508.

[39] *Id.* at 515-516. Emphasis supplied.

[40] *Ventura v. Samson, supra* at 443.

[41] See *Ocampo v. Dominguez*, A.C. No. 1006, October 17, 1980, 100 SCRA 308; *Santos v. De Guzman*, A.C. No. 1527, June 19, 1980, 98 SCRA 59; and *Santiago v. Bustamante*, A.C. No. 827, April 29, 1977, 76 SCRA 527.

not due to our acquiescence to the complainant's wish but because of the absence of any competent and credible evidence by reason of the desistance.[42]

In *Gaviola v. Salcedo*,[43] we clarified that the filing of an affidavit of desistance by the complainant for lack of interest does not *ipso facto* result in the termination of an administrative case for suspension or disbarment of an erring lawyer.[44] However, we were constrained to dismiss the case against respondent Salcedo because the charges cannot be proved without the evidence of the complainant and her witnesses.[45]

In *Firman v. Crisanto*,[46] the complainant alleged that respondent lawyer had carnal relations with her when she was below 18 years of age although he was a married man.[47] Since the only evidence available is the complainant's testimony and the complaint was withdrawn before any investigation was made, the charge can no longer hold water. In the absence of any evidence, it is of course inevitable that the case should be dismissed.[48]

The foregoing decisions reflect the principle that in disbarment cases, the burden of proof rests upon the complainant,[49] and the legal presumption that a lawyer is innocent of the charges proferred against him until the contrary is proved; and that he

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[42] *Ocampo v. Dominguez, supra* at 311-312.

[43] A.C. No. 3037, May 20, 2004, 428 SCRA 563.

[44] *Id*. at 565, citing *Munar v. Flores*, A.C. No. 2112, May 30, 1983, 122 SCRA 448, 452.

[45] *Id*. at 566.

[46] A.C. No. 1471, January 11, 1979, 88 SCRA 18.

[47] *Id*. at 18-19.

[48] *Id.* at 20.

[49] *Villamor, Jr. v. Santos,* A.C. No. 9868, April 22, 2015, 757 SCRA 1, 7. See also *Amatorio v. Yap*, A.C. No. 5914, March 11, 2015, 752 SCRA 230; *Lanuza v. Magsalin III*, A.C. No. 7687, December 3, 2014, 743 SCRA 453; and *Joven v. Cruz*, A.C. No. 7686, July 31, 2013, 702 SCRA 545.

regularly performed his duty as an officer of the Court in accordance with his oath.[50] It follows therefore that if the complaint was withdrawn (in this case through desistance) immediately after it was filed, it would be difficult to investigate, or prove the charge.

However, the facts of these cited cases differ from the case before this court. Unlike in the cited cases, the affidavits of desistance in this case were submitted after the investigation was completed. Thus, the issues in the complaint and in the counter-complaint (with their corresponding evidentiary support) have been duly ventilated in the pleadings submitted by the parties,[51] and during the conferences and hearings[52] held before the Investigating Commissioner. In fact, the only matter lacking in the proceeding is the Investigating Commissioner's report and recommendation. We also note one peculiarity in this case, in contrast to the cited cases. In this case, there is already a finding of probable cause against complainant for falsification of public document.[53] Therefore, unlike the aforementioned cases, it cannot be said that the complaint and counter-complaint should be dismissed for lack of evidence to investigate or prove the charge.

Further, Section 5, Rule 139-B of the Rules of Court provides:

Sec. 5. *Service or dismissal.* – x x x

No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges or failure of the complainant to prosecute the same, unless the Supreme Court *motu propio* or upon recommendation of the IBP Board of Governors, determines that there is no compelling

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[50] *Guarin v. Limpin*, *supra* note 32. See also *Lanuza v. Magsalin III, supra*; *Jimenez v. Verano, Jr.*, A.C. No. 8108, July 15, 2014, 730 SCRA 53; *Ylaya v. Gacott, supra* note 32; and *Arma v. Montevilla*, A.C. No. 4829, July 21, 2008, 559 SCRA 1.

[51] *Rollo*, pp. 2-13, 40-51, 140-153, 223-238, 267-273, 276-283.

[52] *Id.* at 134-135, 294.

[53] *Id.* at 89-93.

reason to continue with the disbarment or suspension proceedings against the respondent. (Emphasis supplied.)

The report and recommendation did not find that there is no compelling reason to continue the proceedings against petitioner and respondent. It merely stated that "[b]esides, this Commission cannot possibly resolve the controversies after the revelations made by the parties in their Affidavit of Desistance and Affidavit of Desistance/Withdrawal. Accordingly, it is hereby recommended that, upon the prodding of the parties themselves, the complaint and the counter-complaint be dismissed."[54]

The IBP Board should not have dismissed the cases on the basis of the affidavits of desistance filed by the parties.

We now come to the merits of the complaint and the counter-complaint.

We find respondent not guilty of violations of Canon 1 of the Code of Professional Responsibility. Complainant cannot argue that the intention behind the falsification cases filed by respondent (as counsel of Derek) against her and Shirley, respectively, was to circumvent the constitutional prohibition on foreign ownership of lands in the Philippines. In these cases, Derek did not seek that the ownership of the lands be conveyed to him.[55] The basis of these criminal complaints is complainant's act of making it appear that Derek was present, or participated in the execution of the affidavits. The constitutional prohibition is therefore irrelevant in these criminal complaints.

However, the counter-complaint against complainant, for violation of the Notarial Law, is meritorious. The evidence on record sufficiently showed that Derek could not have appeared before complainant on October 25, 1999, the day the Affidavit of Waiver was notarized. Derek's passport entries[56] and the certification[57] from the Bureau of Immigration show that after

[54] *Id.* at 315.

[55] *Id.* at 77-83, 96-107.

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

[57] *Id.* at 112-115.

Derek departed from the Philippines for United Kingdom on September 27, 1999, his next arrival in the Philippines was on December 17, 1999.

Records show that complainant failed to address this issue in any of the pleadings she filed in the proceedings before the IBP. The failure is despite the opportunities where complainant could have refuted the allegation.[58] We note that the only instance where it appeared that complainant may have addressed this issue was when respondent referred[59] to complainant's claim in his Comment/Opposition to the Petition for Review before the Department of Justice (DOJ).[60] We further note that the Comment/Opposition was an attachment to complainant's complaint-affidavit to prove merely that respondent continued to represent Derek in the proceedings before the DOJ.[61] The relevant portion provides:

> x x x [A]bout the claim of [complainant] that all what she could remember is that there was a man who appeared a foreigner (*sic*) and claimed to be [Derek]. Noticeably and conformably to the Notarial Law, there is need for personal appearance, positive proofs of identity for the notarization of the document.
>
> What was presented as identification and the claim that a foreigner appeared before her is largely on the basis of a Community Tax Certificate. The Community Tax Certificate that appeared on the Affidavit of Waiver of Rights, and surprisingly obtained by a foreigner who is not qualified to have a Community Tax Certificate, not being a Filipino citizen but a visitor, is entered as having been paid for and issued on September 28, 1999.
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> This is preposterous in that as the Community Tax Certificate was procured, issued and released on September 28, 1999, [Derek] was not also in the Philippines. x x x[62]

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[58] See Order dated July 31, 2014 of the IBP Commissioner, *id.* at 135; and Complainant's Reply (to Respondent's Position Paper), *id.* at 267.

[59] *Id.* at 44-45.

[60] *Id.* at 24-38.

[61] *Id.* at 6.

[62] *Id.* at 27.

Thus, complainant's act of notarizing the document without the presence of the affiant is prohibited by the 2004 Rules on Notarial Practice[63] which provides:

> Rule IV. Powers and Limitations of Notaries Public
>
> x x x
>
> Sec. 2. Prohibitions. x x x
>
> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –
>
> (1) is not in the notary's presence personally at the time of the notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

This is the most common violation committed by lawyers. To deter further violations, and in line with existing jurisprudence, we impose the penalties of suspension from the practice of law for six (6) months, revocation of incumbent commission as a notary public, and disqualification from being commissioned as a notary public for a period of two (2) years.

Further, we note that the result of this case cannot affect the pending criminal cases involving the parties. Administrative cases against lawyers belong to a class of their own. They are distinct from and they may proceed independently of civil and criminal cases.[64]

Finally, we remind complainants, especially members of the bar, to be more circumspect in filing disbarment complaints. A complaint filed solely as a retaliatory measure[65] or by reason

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[63] A.M. No. 02-8-13-SC, August 1, 2004.

[64] *Guevarra v. Eala*, A.C. No. 7136, August 1, 2007, 529 SCRA 1, 14, citing *Gatchalian Promotions Talents Pool, Inc. v. Naldoza,* A.C. No. 4017, September 29, 1999, 315 SCRA 406. See also *Mecaral v. Velasquez*, A.C. No. 8392, June 29, 2010, 622 SCRA 1.

[65] *Santiago v. Bustamante*, *supra* note 41.

of mistake, lack of communication[66] or a misapprehension of facts as in this case, achieves nothing except to waste the time of the IBP and this Court.

WHEREFORE, we **SET ASIDE** Resolution No. XXI-2015-283 of the IBP Board of Governors insofar as it dismissed the cases against complainant and respondent because of the affidavits of desistance. Based on the merits of the cases filed against the parties, we hold that:

(1) The complaint against respondent **Atty. Benedicto D. Tabaquero** is **DISMISSED** for lack of merit.

(2) Complainant **Atty. Mylene S. Yumul-Espina** is **GUILTY** of violating the 2004 Rules on Notarial Practice. Accordingly, the Court hereby **SUSPENDS** her from the practice of law for six (6) months; **REVOKES** her incumbent commission as a notary public; and **PROHIBITS** her from being commissioned as a notary public for two (2) years, effective immediately. She is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.[67]

SO ORDERED.

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

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[66] *Santos v. de Guzman*, *supra* note 41.

[67] See *Sappayani v. Gasmen*, A.C. No. 7073, September 1, 2015; *Sultan v. Macabanding*, A.C. No. 7919, October 8, 2014, 737 SCRA 530; *Agbulos v. Viray*, A.C. 7350 , February 18, 2013, 690 SCRA 1; and *Isenhardt v. Real*, A.C. No. 8254, February 15, 2012, 666 SCRA 20.

THIRD DIVISION

[G.R. No. 183947. September 21, 2016]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **TEODORO G. BERNARDINO**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; LIMITED TO QUESTIONS OF FACT; EXCEPTIONS, APPLICABLE IN CASE AT BAR.— As a rule, we are not a trier of facts. Our jurisdiction in a Rule 45 petition is limited to the review of pure questions of law. Factual findings of the lower court, especially when affirmed by the appellate court, are usually binding to us. However, this rule admits of certain exceptions, three of which apply in this case: 1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; and 3) when the judgment is based on a misapprehension of facts. As such, we find it warranted to depart from the general rule and re-examine the facts of the case.

2. ID.; EVIDENCE; BURDEN OF PROOF; LIES WITH THE PLAINTIFF TO ESTABLISH HIS CAUSE OF ACTION THROUGH PREPONDERANCE OF EVIDENCE; PREPONDERANCE OF EVIDENCE, EXPLAINED.— It is a basic rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it. Thus, the party, whether plaintiff or defendant, who asserts the affirmative of an issue has the *onus* to prove his assertion in order to obtain a favorable judgment. For the plaintiff, the burden to prove its positive assertions never parts. As plaintiff in the court *a quo*, therefore, it was imperative upon Bernardino to prove the allegations in his complaint. The burden of proof will not vest on RCBC the obligation to prove that the subrogation agreement was not a condition precedent before Bernardino may be held liable under the comprehensive surety agreements. Bernardino, however, was unable to discharge this burden. He was unable to establish his cause of action through preponderance

of evidence which is the degree of proof required in civil cases. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability to truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition.

3. ID.; ID.; ID.; RESPONDENT FAILED TO PROVE THE EXISTENCE OF A SUBROGATION AGREEMENT THAT OPERATES AS A CONDITION PRECEDENT TO THE SURETY AGREEMENT.— Although Rojas could not recall some details of the meetings, We find these details innocuous and merely incidental. Rojas cannot be expected to remember every single detail of the meeting with perfect recall. Far from adversely affecting his credibility, his failure to recall every minute detail of what transpired even fortifies it. We have held that the failure of a witness to recall each and every detail of an occurrence may even serve to strengthen rather than weaken his credibility because it erases any suspicion of a coached or rehearsed testimony. What is clear from the testimony of Rojas is that the surety agreement was discussed and he was of the opinion, from the bank's perspective, that such security was not enough. Nowhere did he state or admit that the parties agreed to, much less discussed, a subrogation agreement as a condition precedent to the surety agreement. In the same vein, Atty. Dueñas' testimony shows that in a series of meetings, the parties discussed a possible "arrangement on the transfer of the collateral" once Bernardino is called to pay the obligation. Atty. Dueñas testified that Bernardino proposed "that collateral be given him." While this may pertain to the subrogation agreement Bernardino is claiming, what is glaringly absent from the discussions is the final agreement reached by the parties. For an offer to be binding, the acceptance must be absolute and must not qualify the terms of the offer. Where there is only a proposal and a counter-proposal that did not add up to a final arrangement, there is no meeting of the minds between the parties. Thus, the surety agreements remain unconditional and their validity stands. x x x The surety agreements do not include or refer to the execution of a subrogation agreement as a condition precedent before Bernardino could be held liable. Bernardino cannot now

come to court asking for the enforcement of an agreement which clearly does not appear in the written contract between him and RCBC.

4. ID.; ID.; PAROL EVIDENCE RULE; CONCEPT.— Under this rule, when the parties have reduced their agreement into writing, they are deemed to have intended the written agreement to be the sole repository and memorial of everything that they have agreed upon. All their prior and contemporaneous agreements are deemed to be merged in the written document so that, as between them and their successors-in-interest, such writing becomes exclusive evidence of its terms and any verbal agreement which tends to vary, alter or modify it is not admissible. Whatever is not found in the writing is understood to have been waived and abandoned. This must be so because an oral testimony on an alleged prior or contemporaneous agreement, such as the subrogation agreement subject of Bernardino's testimony in this case, comes from a party who has an interest in the outcome of the case and depends exclusively on human memory. Thus, it is not as reliable as written documentary evidence. Spoken words could be notoriously undesirable unlike a written contract which speaks of a uniform language.

5. ID.; ID.; ID.; EXCEPTIONS TO THE PAROL EVIDENCE RULE; FAILURE TO PLEAD ANY EXCEPTION RENDERS THE PAROL EVIDENCE INADMISSIBLE AND FAILURE TO OBJECT AGAINST ITS ADMISSION CONSTITUTES A WAIVER.— [T]he rule prohibiting the presentation of parol evidence is not absolute. A party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading any of the following: (a) An intrinsic ambiguity, mistake or imperfection in the written agreement; (b) The failure of the written agreement to express the true intent and agreement of the parties thereto; (c) The validity of the written agreement; or (d) The existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement. In his Complaint, however, Bernardino did not plead any exception to the application of the parol evidence rule. All that he pleaded was the alleged collateral agreement with which RCBC must first comply. We have uniformly held that it is only where a party puts in issue in his pleadings the failure of the written

agreement to express the true intent of the parties that the party may present evidence to modify, explain or add to the terms of the written agreement. The failure of Bernardino, therefore, should have rendered the parol evidence inadmissible. However, no timely objection or protest was made against its admission and RCBC, against whom it was presented, cross-examined the witnesses who testified. Failure to object to the parol evidence constitutes a waiver to its admissibility.

6. ID.; ID.; ID.; PAROL EVIDENCE FAILS TO PROVE THE EXISTENCE OF AN ALLEGED SUBROGATION AGREEMENT BETWEEN THE PARTIES.— Contrary to the findings of the lower courts, we hold that the parol evidence fails to prove the existence of an alleged subrogation agreement between the parties. Firstly, the correspondence exchanged by the parties show that no agreement on the execution of the subrogation agreement was reached. x x x Secondly, significant parts in the testimonies of Rojas and Atty. Dueñas, as earlier discussed, bolster RCBC's argument that there was no meeting of the minds between the parties that a subrogation agreement needs to be executed first before Bernardino can be held liable under the surety agreements. Lastly, the exception to the parol evidence rule on the ground that the agreement fails to express the true intent of the parties obtains only where the written contract is so ambiguous or obscure in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument. As we have earlier pointed out, the surety agreements are clear and unambiguous. The contractual intention of the parties to bind Bernardino solidarily with MMC is readily understood from a reading of the surety agreements.

7. CIVIL CODE; GUARANTY; SURETYSHIP IS A CONTRACTUAL RELATION RESULTING FROM AN AGREEMENT WHEREBY ONE PERSON, THE SURETY, ENGAGES TO BE ANSWERABLE FOR THE DEBT, DEFAULT OR MISCARRIAGE OF ANOTHER, KNOWN AS THE PRINCIPAL.— Suretyship is a contractual relation resulting from an agreement whereby one person, the surety, engages to be answerable for the debt, default or miscarriage of another, known as the principal. The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. Nevertheless, although the contract of a surety

is in essence secondary only to a valid principal obligation, his liability to the creditor or promisee of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the principal. The surety therefore becomes liable for the debt or duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom.

8. ID.; ID.; ID.; RESPONDENT, AS A SURETY, IS PRINCIPALLY AND SOLIDARILY LIABLE FOR THE OBLIGATIONS ARISING FROM THE PROMISSORY NOTES; RESPONDENT MAY DEMAND SECURITY FROM THE PRINCIPAL DEBTOR AND NOT FROM PETITIONER.— Bernardino cannot now renege on his obligation to pay the promissory notes under the claim that there was a previous agreement between the parties for RCBC to execute a subrogation agreement before Bernardino could be held liable under the surety agreements. We stress that the right to subrogation of a paying surety is by operation of law. Article 2067 of the Civil Code provides in part that the guarantor who pays is subrogated to all the rights which the creditor had against the debtor. Although Article 2067 explicitly pertains to guarantors, the right to subrogation extends as well to sureties. Similarly, under Article 2071 of the Civil Code, a remedy available to a guarantor (or surety), even before having paid, is to demand a security from the principal debtor that shall protect the guarantor (or surety) from any proceedings by the creditor and the danger of insolvency of the debtor in certain cases. x x x It is clear, therefore, that whatever right to a security Bernardino may have can only be demanded from MMC and not from RCBC.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Rico and Associates for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision dated June 10, 2008[2] and the Resolution dated July 22, 2008[3] of the Court of Appeals (CA) in CA-G.R. CV No. 88745. The assailed Decision and Resolution affirmed the Decision dated June 30, 2006[4] of the Regional Trial Court, Branch 59, Makati City in Civil Case No. 98-1851, which declared the comprehensive surety agreements between Rizal Commercial Banking Corporation (RCBC) and Teodoro G. Bernardino (Bernardino) unenforceable and having no effect for the reason that the subrogation agreement, a condition precedent, was not executed.

The Facts

In 1995, Marcopper Mining Corporation (MMC) obtained an unsecured bridge loan from RCBC in the amount of US$13.7 Million to finance the acquisition of twelve (12) Rig Mining Trucks and one (1) Demag Excavator Shovel. Payment of the bridge loan was supposed to be sourced from the proceeds of a long term loan MMC was seeking from Export-Import Bank (EXIM Bank). EXIM Bank, however, failed to approve the long term loan due to a tailing spill in MMC's mining area in Marinduque which caused the stoppage of MMC's operations.[5]

Concerned that the short term loan it extended to MMC was unsecured, RCBC negotiated with MMC to provide collateral or security. MMC yielded to RCBC's request and decided to

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[1] *Rollo,* pp. 13-76.

[2] *Id.* at 78-118. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Jose C. Mendoza (now a Member of the Court) and Arturo G. Tayag concurring.

[3] *Id.* at 120.

[4] *Id.* at 459-486.

[5] *Id.* at 79.

mortgage twelve (12) units of Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel covered by a Deed of Chattel Mortgage dated April 23, 1996.[6] Additionally, MMC pledged shares of stocks covered by Deeds of Pledge dated August 29, 1996[7] and September 9, 1997.[8] RCBC later expressed interest in substituting these collaterals with MMC's residential property in Forbes Park (Forbes Park property), which was mortgaged with the Asian Development Bank (ADB).[9]

In a letter dated July 1, 1997[10] to RCBC, MMC proposed two (2) options for the payment of its loan, to wit:

1) Initiate a foreclosure on the mortgaged assets, thereby realizing a maximum cash proceeds of about $11.6 Million. The balance will have to be relegated to the rank of unsecured obligations whose repayment will solely depend on the timing and extent of cash proceeds to be generated from the disposal of the company's assets, or

2) Accept our proposal which calls for the involvement of [MMC's] major shareholders.

   The company may request the involvement of our major shareholders who could ensure a definite repayment plan for the principal exposure of $ 13.7 Million. Said repayment plan will consist of the following components:

   a) Implementation of the assignment of the Forbes Park property for the previously agreed amount of ₱235 Million;
   b) Payment of the amount of ₱ 71 Million, being the peso equivalent of the difference between $ 11.6 Million and $ 8.9 Million (dollar equivalent of ₱ 235 Million) over a period of one (1) year on a quarterly basis, plus interest; and

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

[7] *Id.* at 879-880.

[8] *Id.* at 877-878.

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

[10] *Id.* at 140-143.

c) Payment of the balance of ₱ 55.4 Million (being the peso equivalent of the difference between the entire principal obligation of $ 13.7 Million and $ 11.6 Million which is the sum of Items a) and b) above), over a period of two (2) years payable quarterly.[11]

In the same letter, MMC encouraged RCBC to choose the second option, thus:

We believe that Option 2 above guarantees your full recovery of our principal obligation to you. Since our major shareholders have already indicated their willingness to support this repayment scheme, may we request you to accept this option for immediate implementation.[12]

On July 3, 1997, representatives of MMC and RCBC met to discuss the details of MMC's proposals. RCBC was represented by its former vice-presidents Filadelfo Rojas (Rojas), Felisa Banzon (Banzon), Susan Santos (Santos), and Atty. Merlyn Dueñas (Atty. Dueñas). RCBC representatives signified their intention to choose Option 2, but raised a concern on the issue of accrued interest.[13] MMC also informed them that Placer Dome, a major stockholder of MMC which, as a guarantor, subsequently acquired the mortgage on the Forbes Park property, would only agree to let go of the Forbes Park property if RCBC would release in its favor the mining equipment mortgaged to RCBC.[14] It was also discussed that another condition for the second option was for a stockholder of MMC to act as a surety for two (2) promissory notes intended to be executed between the parties.[15]

In a letter dated July 8, 1997,[16] MMC made some revisions of the second option in view of RCBC's concern regarding accrued interest, to wit:

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[11] *Id.* at 141-142.

[12] *Id.* at 142.

[13] *Id.* at 81.

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

[15] *Id.* at 83.

[16] *Id.* at 144-145.

We then agreed on the repayment of your principal exposure to us as follows:

1) The principal amount was to be revised, from the original principal of $13.7 million to $14.327 million, which includes interest that has been capitalized;
2) Implementation of the assignment of the Forbes Park property for the agreed amount of ₱235 million, equivalent to about $8,901,515;
3) Payment of the amount of $2,698,485 over a period of one (1) year payable quarterly plus interest; and
4) Payment of the balance of $2,727,000 over a period of two (2) years, payable quarterly, without interest.

RCBC, through Rojas and Santos, signed its conformity to the July 8, 1997 letter.[17]

On August 1, 1997, MMC forwarded four (4) documents to RCBC for signature.[18] The cover letter reads:

In connection with the transfer of our Forbes Park Property in your favor, we are transmitting to you herewith the following documents:

1. Deed of Assignment dated August 1, 1997, for BIR purposes;
2. Deed of Partial Release from Mortgage signed by the Attorney-in-Fact of MR Holdings Limited releasing from their mortgage the above-mentioned property; and
3. Copy of Secretary's Certificate of a resolution passed by the Board of Directors of MR Holdings Limited appointing as Attorney-in-Fact, Atty. Alma D. Fernandez-Mallonga. The original of said Secretary's Certificate is with Atty. Mallonga and will be presented to the Register of Deeds when required[;]
4. Deed of Release from Mortgage to be signed by RCBC involving the release from your mortgage six (6) units Rig Trucks and one (1) unit Demag Shovel.

Kindly note that the release of the above-mentioned property by MR Holdings Limited from their mortgage was made on the condition that a substitution thereof with other unencumbered and free assets

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[17] *Id.* at 145.

[18] *Id.* at 83.

and properties of the mortgagor under a second Addendum Mortgage be effected. Inasmuch as our only free and unencumbered assets will be those that will be released by you under the Deed of Release from Mortgage mentioned under Item No. 4 above, may we therefore request that your authorized signatories sign as soon as possible the said Deed of Release from Mortgage.[19]

RCBC only signed the Deed of Assignment of the Forbes Park property and returned the Deed of Release from Mortgage of the six (6) Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel unsigned.[20]

In a letter dated August 22, 1997,[21] MMC sent RCBC the surety agreements duly executed by Bernardino, together with the two (2) promissory notes covering the remaining obligation of MMC after effecting partial payment through the assignment of the Forbes Park property to RCBC. Non-Negotiable Promissory Note No. 21-3697[22] was for the amount of US$2,698,485.00 payable within one year with interest at 9% per *annum* and a first quarterly due date of November 24, 1997, while Non-Negotiable Promissory Note No. 21-3797[23] was for the amount of US$2,727,000.00 payable within two years without interest and a first quarterly due date of November 24, 1997.[24] The parties signed the promissory notes on August 26, 1997.[25]

In a letter dated September 12, 1997,[26] MMC, through Banzon, acknowledged the transfer of ownership of the Forbes Park property to RCBC. She, however, informed MMC that the bank could still not commit to an approval of MMC's request for

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[19] *Id.* at 266.

[20] *Id.* at 85.

[21] *Id.* at 164.

[22] *Id.* at 165-166.

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

[24] *Id.* at 25.

[25] *Id.* at 165 and 167.

[26] *Id.* at 169.

the release of the six (6) Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel because it was still working on some details of the request.

In a letter dated November 24, 1997,[27] MMC requested RCBC to immediately release from mortgage the mining equipment. MMC reminded RCBC that MR Holdings, Ltd., the successor-in-interest of the ADB, agreed to release the Forbes Park property from its mortgage only upon the assurance that RCBC will also release the mining equipment from their mortgage and turn them over to MR Holdings, Ltd. MMC also informed RCBC that it likewise committed to mortgage the shares of stocks subject of the Deeds of Pledge with MR Holdings, Ltd.

In a letter dated December 17, 1997,[28] RCBC informed MMC that the release from mortgage of the six (6) units of the Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel, as well as the release from pledge of the club shares, have been approved by its Executive Committee subject to the condition that payment for the first amortization be made by MMC.[29]

MMC failed to settle the obligations which fell due on November 24, 1997, February 23, 1998 and May 25, 1998.[30] Final demand was sent to MMC on July 1, 1998, declaring the whole obligation under the promissory notes due and payable and giving it five (5) days from receipt to settle the whole obligation of US$5,726,660.28. Demand was also made on Bernardino, as surety for MMC, to pay the amount plus ₱20,685,872.25 as penalty.[31]

On July 31, 1998, Bernardino instituted a Complaint[32] for specific performance, and for the declaration of nullity or

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[27] *Id.* at 170-171.

[28] *Id.* at 173.

[29] *Id.* at 172-173.

[30] *Id.* at 175.

[31] *Id.* at 174-176.

[32] *Id.* at 177-183.

unenforceability of surety agreements against RCBC. It was docketed as Civil Case No. 98-185 and filed before Branch 59 of the Regional Trial Court (RTC) of Makati City. Bernardino prayed that judgment be rendered declaring the surety agreements between him and RCBC null and void and/or unenforceable, and that RCBC be held liable for damages.[33]

In its Answer with Compulsory Counterclaims,[34] RCBC alleged that contrary to Bernardino's assertion, the parties did not agree to execute an agreement on Bernardino's subrogation rights and a release of mortgage and pledge over MMC's properties. As its counterclaims, RCBC prayed that Bernardino be declared jointly and severally liable with MMC to pay RCBC the principal amount due under the promissory notes, including the interest and stipulated penalty therein, as well as attorney's fees and damages.[35]

The Ruling of the Trial Court

Before resolving the complaint, the RTC, Branch 59, Makati City pointed out that a separate complaint for specific performance docketed as Civil Case No. 98-1661 was filed by MMC against RCBC before the RTC, Branch 57, Makati City. In that case, the issue involved was whether RCBC may be ordered to execute a Deed of Partial Release of Mortgage. The RTC, Branch 57, Makati City ruled in favor of MMC. On appeal, the CA affirmed the RTC Decision. Considering that the issue had been passed upon in Civil Case No. 98-1661, which was then on appeal before us, the RTC, Branch 59 limited the issue before it to the validity of the surety agreements executed by Bernardino.[36]

Ruling in favor of Bernardino, the RTC, Branch 59, Makati City held that he was able to establish his claim by preponderance

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[33] *Id.* at 182.

[34] Records, pp. 44-68.

[35] *Id.* at 67-68.

[36] *Rollo,* pp. 468-470.

of evidence. It ruled that the subrogation agreement was a condition precedent before Bernardino may be held liable under the comprehensive surety agreements. Since there was no subrogation agreement, the comprehensive surety agreements are unenforceable and have no effect. The dispositive portion of the RTC Decision reads as follows:

> **WHEREFORE, PREMISES CONSIDERED**, judgment is hereby rendered in favor of the plaintiff, declaring that for RCBC's unjust refusal to execute the necessary subrogation agreement which is a condition precedent before plaintiff may be held liable under the comprehensive surety agreements, the same are declared unenforceable and of no effect.
>
> Defendant is also ordered to pay plaintiff the following sums:
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> 1) ₱100,000.00 as moral damages;
> 2) ₱100,000.00 as nominal and exemplary damages;
> 3) ₱957,540.94 as attorney's fees;
> 4) ₱44,519.03 as litigation expenses; and
> 5) Costs of suit against herein defendant.
>
> **SO ORDERED**.[37]

The Ruling of the Court of Appeals

The CA denied RCBC's appeal and affirmed the RTC Decision. The CA agreed with the trial court that MMC was led to believe that RCBC agreed to execute a subrogation agreement in favor of Bernardino and to effect a release of the mortgage and pledge.

The CA also denied RCBC's motion for reconsideration in a Resolution dated July 22, 2008.[38] Hence, this petition, which raises the main issue of whether RCBC and Bernardino agreed that a subrogation agreement be executed as a condition precedent before Bernardino can be held liable under the surety agreements.

RCBC maintains that in affirming the Decision of the RTC, the CA, in grave error of law, blatantly disregarded:

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[37] *Id.* at 486.

[38] *Id.* at 120.

1) Article 1403 of the Civil Code on what constitutes unenforceable contracts. Nowhere in the complaint nor in the evidence on record can one find any claim that the essential elements needed for a contract to be considered unenforceable are missing;

2) The principle that 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;

3) The principle that inconsistencies as to minor details and peripheral matters do not affect the credibility of witnesses nor the probative weight of their testimonies. While RCBC's witnesses may not have recalled certain details that took place long before they were called to testify, they were clear on the threshold legal and factual issues in this case;

4) The hornbook rule on mutuality and interpretation of contracts that when the terms of the agreement, as expressed in such language, are clear, they are to be understood literally, just as they appear on the face thereof. Bernardino failed to prove exceptional circumstances when parol evidence can be received. He did not adduce any documentary evidence to establish his self-serving contention that RCBC agreed to the release of a certain mortgage and to the execution of any subrogation agreement. On the contrary, there is clear evidence on record negating this alleged agreement;

5) Section 28, Rule 130 of the Rules of Court, or the *res inter alios acta* rule, which states that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. The CA unduly relied on, and unfairly imputed acts of third parties against RCBC to establish the supposed intention, state of mind and undertaking of RCBC; and

6) The settled rule that any person who seeks to be awarded damages due to acts of another has the burden of proving

that the latter acted in bad faith or with ill motive. The CA made no finding of any specific act committed by RCBC that may constitute bad faith, much less one that could overcome the presumption of good faith.[39]

Our Ruling

The petition is impressed with merit.

We clarify at the outset that the only issue We shall resolve here is whether there was a condition precedent, a subrogation agreement, to the surety agreements Bernardino executed in favor of RCBC. The issue on whether RCBC had agreed to a release of the six (6) Rig Haul Trucks, one (1) Demag Hydraulic Excavator Shovel, and shares of stock in favor of MMC has already been settled in *Rizal Commercial Banking Corporation v. Marcopper Mining Corporation.*[40]

As a rule, we are not a trier of facts. Our jurisdiction in a Rule 45 petition is limited to the review of pure questions of law.[41] Factual findings of the lower court, especially when affirmed by the appellate court, are usually binding to us.[42] However, this rule admits of certain exceptions,[43] three of which apply in this case: 1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; and 3) when the judgment is based on a misapprehension of facts. As such, we find it warranted to depart from the general rule and re-examine the facts of the case.

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[39] *Id.* at 17-19.

[40] G.R. No. 170738, September 12, 2008, 565 SCRA 125. Penned by Associate Justice Leonardo A. Quisumbing.

[41] *Land Bank of the Philippines v. Yatco Agricultural Enterprises,* G.R. No. 172551, January 15, 2014, 713 SCRA 370, 378-379.

[42] *Suliman v. People,* G.R. No. 190970, November 24, 2014, 741 SCRA 477, 487.

[43] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.,* G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660.

Bernardino failed to establish the existence of a subrogation agreement, that operates as a condition precedent to the surety agreement.

It is a basic rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it.[44] Thus, the party, whether plaintiff or defendant, who asserts the affirmative of an issue has the *onus* to prove his assertion in order to obtain a favorable judgment. For the plaintiff, the burden to prove its positive assertions never parts.[45]

As plaintiff in the court *a quo*, therefore, it was imperative upon Bernardino to prove the allegations in his complaint. The burden of proof will not vest on RCBC the obligation to prove that the subrogation agreement was not a condition precedent before Bernardino may be held liable under the comprehensive surety agreements. Bernardino, however, was unable to discharge this burden. He was unable to establish his cause of action through preponderance of evidence which is the degree of proof required in civil cases.[46]

Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence."[47] Preponderance of evidence is a phrase which, in the last analysis, means probability to truth.[48] It is evidence which is more convincing

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[44] *MOF Company, Inc. v. Shin Yang Brokerage Corporation,* G.R. No. 172822, December 18, 2009, 608 SCRA 521, 533, citing *Acabal v. Acabal*, G.R. No. 148376, March 31, 2005, 454 SCRA 555, 569.

[45] *Bank of the Philippine Islands v. Royeca,* G.R. No. 176664, July 21, 2008, 559 SCRA 207, 215.

[46] RULES OF COURT, Rule 133, Sec. 1.

[47] *Magdiwang Realty Corporation v. The Manila Banking Corporation,* G.R. No. 195592, September 5, 2012, 680 SCRA 251, 265.

[48] *Chua v. Westmont Bank*, G.R. No. 182650, February 27, 2012, 667 SCRA 56, 68.

to the court as worthier of belief than that which is offered in opposition.[49]

Here, Bernardino asserted that the surety agreements he signed in favor of RCBC were ineffectual because the subrogation agreement, which the parties had allegedly agreed to execute as a condition precedent, were not executed.

Both the RTC and the CA gave credence to the testimonies of Bernardino and his witness, Nestor Escalante (Escalante). True, findings by the trial court as to the credibility of witnesses are accorded the greatest respect, and even finality by the appellate courts, since the former is in a better position to observe their demeanor as well as their deportment and manner of testifying during the trial.[50] In this case, however, the RTC and the CA overlooked certain significant facts in the testimonies of Bernardino's witnesses.

Bernardino harped on the testimony of Atty. Dueñas that the parties indeed agreed to execute a subrogation agreement. But Atty. Dueñas' testimony is far from being corroborative to the testimonies of Bernardino and Escalante. On the contrary, it is unreliable and inconclusive for being unclear and ambiguous. We quote the pertinent testimony in full:

> A: Subrogation of what rights?
>
> ATTY. PEÑA:
> Q: Of bank's rights in case of this surety over all.
> A: They could not have agreed upon that.
> No, Sir.
> There was.
> On the subrogation itself, there is an agreement.
>
> Q: So, there was no agreement on that[?]
> A: No, Sir.[51]

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[49] *Eulogio v. Apeles,* G.R. No. 167884, January 20, 2009, 576 SCRA 561, 571-572.

[50] *Domingo v. Domingo*, G.R. No. 150897, April 11, 2005, 455 SCRA 230, 238.

[51] *Rollo,* p. 1624.

The RTC and the CA are also one in saying that the testimony of Rojas was evasive and vacillating, and thus, unworthy of credence. We disagree. Although Rojas could not recall some details of the meetings, We find these details innocuous and merely incidental. Rojas cannot be expected to remember every single detail of the meeting with perfect recall.[52] Far from adversely affecting his credibility, his failure to recall every minute detail of what transpired even fortifies it. We have held that the failure of a witness to recall each and every detail of an occurrence may even serve to strengthen rather than weaken his credibility because it erases any suspicion of a coached or rehearsed testimony.[53] What is clear from the testimony of Rojas is that the surety agreement was discussed and he was of the opinion, from the bank's perspective, that such security was not enough. Nowhere did he state or admit that the parties agreed to, much less discussed, a subrogation agreement as a condition precedent to the surety agreement.

In the same vein, Atty. Dueñas' testimony shows that in a series of meetings, the parties discussed a possible "arrangement on the transfer of the collateral" once Bernardino is called to pay the obligation.[54] Atty. Dueñas testified that Bernardino proposed "that collateral be given him."[55] While this may pertain to the subrogation agreement Bernardino is claiming, what is glaringly absent from the discussions is the final agreement reached by the parties. For an offer to be binding, the acceptance must be absolute and must not qualify the terms of the offer.[56] Where there is only a proposal and a counter-proposal that did not add up to a final arrangement, there is no meeting of the

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[52] *Rivera v. People,* G.R. No. 138553, June 30, 2005, 462 SCRA 350, 359-360.

[53] *Id.*

[54] *Rollo,* p. 1636.

[55] *Id.* at 1635.

[56] *Manila Metal Container Corporation v. Philippine National Bank,* G.R. No. 166862, December 20, 2006, 511 SCRA 444, 465.

minds between the parties.[57] Thus, the surety agreements remain unconditional and their validity stands.

More importantly, the terms of the surety agreements are clear. When the terms of a contract are clear and unambiguous, they are to be read in their literal sense. When there is no ambiguity in the language of a contract, there is no room for construction, only compliance.[58] As we held in *Bautista v. Court of Appeals*:[59]

> **The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone.** Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense. **Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from terms which he voluntarily consented to, or impose on him those which he did not.**[60] (Citation omitted; emphasis ours.)

The surety agreements do not include or refer to the execution of a subrogation agreement as a condition precedent before Bernardino could be held liable. Bernardino cannot now come to court asking for the enforcement of an agreement which clearly does not appear in the written contract between him and RCBC.

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[57] *Rizal Commercial Banking Corporation v. Marcopper Mining Corporation,* G.R. No. 170738, October 30, 2009, 604 SCRA 719, 735.

[58] *Insular Life Assurance Company, Ltd., v. Asset Builders Corporation,* G.R. No. 147410, February 5, 2004, 422 SCRA 148, 165, citing *Leaño v. Court of Appeals,* G.R. No. 129018, November 15, 2001, 369 SCRA 36.

[59] G.R. No. 123655, January 19, 2000, 322 SCRA 365.

[60] *Bautista v. Court of Appeals, supra* at 376.

The parol evidence rule, in general, restricts the evidence to the surety agreements between MMC and RCBC. The first paragraph of Section 9, Rule 130 of the Revised Rules on Evidence provides:

> Sec. 9. *Evidence of written agreements.* — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.
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Under this rule, when the parties have reduced their agreement into writing, they are deemed to have intended the written agreement to be the sole repository and memorial of everything that they have agreed upon. All their prior and contemporaneous agreements are deemed to be merged in the written document so that, as between them and their successors-in-interest, such writing becomes exclusive evidence of its terms and any verbal agreement which tends to vary, alter or modify it is not admissible.[61] Whatever is not found in the writing is understood to have been waived and abandoned.[62] This must be so because an oral testimony on an alleged prior or contemporaneous agreement, such as the subrogation agreement subject of Bernardino's testimony in this case, comes from a party who has an interest in the outcome of the case and depends exclusively on human memory. Thus, it is not as reliable as written documentary evidence. Spoken words could be notoriously undesirable unlike a written contract which speaks of a uniform language.[63]

Be that as it may, the rule prohibiting the presentation of parol evidence is not absolute. A party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading any of the following:

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[61] *Allied Banking Corporation v. Cheng Yong,* G.R. Nos. 151040 &154109, October 5, 2005, 472 SCRA 101, 111.

[62] *Edrada v. Ramos,* G.R. No. 154413, August 31, 2005, 468 SCRA 597, 604.

[63] *Ortañez v. Court of Appeals,* G.R. No. 107372, January 23, 1997, 266 SCRA 561, 565.

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.[64]

In his Complaint, however, Bernardino did not plead any exception to the application of the parol evidence rule. All that he pleaded was the alleged collateral agreement with which RCBC must first comply.[65] We have uniformly held that it is only where a party puts in issue in his pleadings the failure of the written agreement to express the true intent of the parties that the party may present evidence to modify, explain or add to the terms of the written agreement.[66] The failure of Bernardino, therefore, should have rendered the parol evidence inadmissible. However, no timely objection or protest was made against its admission and RCBC, against whom it was presented, cross-examined the witnesses who testified. Failure to object to the parol evidence constitutes a waiver to its admissibility.[67]

Nevertheless, while admissibility of evidence is an affair of logic and law, determined as it is by its relevance and competence, the weight to be given to such evidence, once admitted, still depends on judicial evaluation.[68] Contrary to the findings of the lower courts, we hold that the parol evidence fails to prove the existence of an alleged subrogation agreement between the parties.

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[64] RULES OF COURT, Rule 130, Sec. 9.

[65] See *Ortañez v. Court of Appeals, supra* note 63.

[66] *Sabio v. International Corporate Bank, Inc.,* G.R. No. 132709, September 4, 2001, 364 SCRA 385, 405.

[67] *Reyes v. Court of Appeals,* G.R. No. 147758, June 26, 2002, 383 SCRA 471, 479-480.

[68] *Peñalber v. Ramos,* G.R. No. 178645, January 30, 2009, 577 SCRA 509, 529-530.

Firstly, the correspondence exchanged by the parties show that no agreement on the execution of the subrogation agreement was reached. Bernardino claims that discussions about the subrogation agreement were held on a July 3, 1997 meeting, yet, when the surety agreements were transmitted to RCBC on August 22, 1997,[69] he had already duly executed them with nary a colatilla, an addendum, or a disclaimer about a subrogation agreement. In its letter dated November 24, 1997,[70] MMC merely reminded RCBC that its restructured loan is covered by a surety issued by Bernardino, in addition to the other mortgaged equipment. These letters also show that MMC was only concerned with the release of the mining equipment and shares of stocks, but not with the execution of a subrogation agreement. What is even telling is that in the November 24, 1997 letter, MMC stated that the surety is **in addition** to the other collaterals mortgaged with RCBC. This refutes Bernardino's argument that these collaterals were meant to be retained by RCBC for his ultimate benefit after he pays the obligation of MMC and is subrogated to all the rights of RCBC as a creditor.

Secondly, significant parts in the testimonies of Rojas and Atty. Dueñas, as earlier discussed, bolster RCBC's argument that there was no meeting of the minds between the parties that a subrogation agreement needs to be executed first before Bernardino can be held liable under the surety agreements.

Lastly, the exception to the parol evidence rule on the ground that the agreement fails to express the true intent of the parties obtains only where the written contract is so ambiguous or obscure in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument.[71] As we have earlier pointed out, the surety agreements are clear and unambiguous. The contractual intention of the parties to bind Bernardino solidarily with MMC is readily understood from a reading of the surety agreements.

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[69] *Rollo*, pp. 164-166.

[70] *Id.* at 170-171.

[71] *Ortañez v. Court of Appeals, supra* note 63 at 566.

As surety, Bernardino is principally and solidarily liable for the obligations arising from the promissory notes.

In *Rizal Commercial Banking Corporation v. Marcopper Mining Corporation,*[72] We reversed the lower courts and found that MMC failed to prove that the parties agreed for RCBC to execute a partial release of mortgage and pledge upon assignment to it of the Forbes Park property.[73] We also ruled favorably on the counterclaims of RCBC, with respect to the principal amount of MMC's promissory notes, the interest, penalties, and attorney's fees stipulated therein.[74] We then directed MMC to pay the amounts expressly stipulated in Non-Negotiable Promissory Notes No. 21-3697 and 21-3797. The complete *fallo* of our Decision reads as follows:

WHEREFORE, the petition is GRANTED. The assailed Decision dated June 6, 2005 and the Resolution dated December 8, 2005 of the Court of Appeals in CA-G.R. CV No. 77594 are REVERSED and SET ASIDE. Marcopper is directed to pay RCBC the following amounts expressly stipulated in the Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797:

1. US$5,425,485.00 as the total principal amount due under Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797, including the interest due on US$2,698,845.00 under Non-Negotiable Promissory Note No. 21-3697 at the rate of 9% *per annum* until fully paid.

2. Penalty equivalent to 36% *per annum* of the amount due and unpaid under Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797 until fully paid; and

3. Attorney's fees equivalent to 20% of the total amount due.

RCBC's claims for moral and exemplary damages are denied. It may, however, exercise its rights, in accordance with law, to

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[72] *Supra* note 40.

[73] *Id.* at 141.

[74] *Id.* at 137.

foreclose on the properties covered. No pronouncement as to costs.

SO ORDERED.[75]

The obligation of MMC having been settled in the above decision, which has already attained finality when We denied MMC's Motion for Reconsideration in our Resolution dated October 30, 2009,[76] Bernardino, as surety, has also become liable for MMC's obligation to RCBC or to its successors-in-interest[77] under the promissory notes.

Article 2047 of the Civil Code provides:

Art. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case, the contract is called a suretyship.

Suretyship is a contractual relation resulting from an agreement whereby one person, the surety, engages to be answerable for the debt, default or miscarriage of another, known as the principal. The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal.[78] Nevertheless,

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[75] *Id.* at 144-145.

[76] *Rizal Commercial Banking Corporation v. Marcopper Mining Corporation,* G.R. No. 170738, October 30, 2009, 604 SCRA 719.

[77] In its Compliance dated February 24, 2016, RCBC, through its counsel, manifested that MMC's outstanding obligation was sold as a non-performing loan to a special purpose vehicle, Philippine Investment One (SPV-AMC), Inc. (*Rollo,* pp. 1779-1789). In a letter dated August 10, 2006 and which was attached to Bernardino's Compliance dated February 10, 2016, MMC did not object to the sale of its loan to SPV-AMC, Inc. SPV-AMC, Inc., however, opted not to substitute RCBC in this case. Hence, RCBC continued to litigate the case on its behalf in accordance with Section 19, Rule 3 of the Rules of Court. (*Id.* at 1785-1791)

[78] *Garcia, Jr. v. Court of Appeals,* G.R. No. 80201, November 20, 1990, 191 SCRA 493, 495.

although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promisee of the principal is said to be direct, primary and absolute;[79] in other words, he is directly and equally bound with the principal. The surety therefore becomes liable for the debt or duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom.[80]

Bernardino cannot now renege on his obligation to pay the promissory notes under the claim that there was a previous agreement between the parties for RCBC to execute a subrogation agreement before Bernardino could be held liable under the surety agreements. We stress that the right to subrogation of a paying surety is by operation of law. Article 2067 of the Civil Code provides in part that the guarantor who pays is subrogated to all the rights which the creditor had against the debtor. Although Article 2067 explicitly pertains to guarantors, the right to subrogation extends as well to sureties.[81]

Similarly, under Article 2071 of the Civil Code, a remedy available to a guarantor (or surety),[82] even before having paid, is to demand a security from the principal debtor that shall protect the guarantor (or surety) from any proceedings by the creditor and the danger of insolvency of the debtor in certain cases. Thus:

Article 2071. The guarantor, even before having paid, may proceed against the principal debtor:

(1) When he is sued for the payment;
(2) In case of insolvency of the principal debtor;

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[79] *Id.* at 495-496.

[80] *Id.* at 496 citing *Miner's Merchants Bank v. Gidley*, 144 SE 2d 711 (1965).

[81] *Escaño v. Ortigas, Jr.,* G.R. No. 151953, June 29, 2007, 526 SCRA 26, 46.

[82] *Autocorp Group v. Intra Strata Assurance Corporation,* G.R. No. 166662, June 27, 2008, 556 SCRA 250, 257.

(3) When the debtor has bound himself to relieve him from the guaranty within a specified period, and this period has expired;
(4) When the debt has become demandable, by reason of the expiration of the period for payment;
(5) After the lapse of ten years, when the principal obligation has no fixed period for its maturity, unless it be of such nature that it cannot be extinguished except within a period longer than ten years;
(6) If there are reasonable grounds to fear that the principal debtor intends to abscond;
(7) If the principal debtor is in imminent danger of becoming insolvent.

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It is clear, therefore, that whatever right to a security Bernardino may have can only be demanded from MMC and not from RCBC.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED**. The Decision dated June 10, 2008 and the Resolution dated July 22, 2008 affirming the RTC Decision dated June 30, 2006 are **SET ASIDE**. Teodoro G. Bernardino is hereby declared jointly and severally liable with MMC to pay RCBC or its successors-in-interest the following:

1. US$5,425,485.00 as the principal amount due under Non-Negotiable Promissory Notes No. 21-3697 and 21-3797, including the interest due on US$2,698,845.00 under Non-Negotiable Promissory Note No. 21-3697 at the rate of 9% *per annum* until fully paid;
2. The stipulated penalty at the rate of 36% *per annum* of the amount due under Non-Negotiable Promissory Notes No. 21-3697 and 21-3797 until fully paid; and
3. Attorney's fees equivalent to 20% of the total amount due.

RCBC's claims for moral and exemplary damages are denied for lack of merit.

SO ORDERED.

Brion, Peralta (Acting Chairperson), Bersamin, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 184237. September 21, 2016]

HENRY H. TENG, *petitioner, vs.* **LAWRENCE C. TING, EDMUND TING AND ANTHONY TING,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF *RES JUDICATA,* EXPLAINED; TWO CONCEPTS.— Under the doctrine of *res judicata*, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them in law or estate. There are two distinct concepts of *res judicata*. The first is bar by prior judgment under Rule 39, Section 47(b) x x x and the second is conclusiveness of judgment under Rule 39, Section 47(c)[.]

2. ID.; ID.; ID.; ID.; *RES JUDICATA* UNDER THE CONCEPT OF CONCLUSIVENESS OF JUDGMENT, EXPOUNDED. — Conclusiveness of judgment applies when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively settled fact or question furthermore cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment. While conclusiveness of judgment does not have

the same barring effect as that of a bar by former judgment that proscribes subsequent actions, the former nonetheless estops the parties from raising in a later case the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case. In other words, the dictum laid down in the earlier final judgment or order becomes conclusive and continues to be binding between the same parties, their privies and successors-in-interest, as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court in a later case; the binding effect and enforceability of that earlier dictum can no longer be re-litigated in a later case since the issue has already been resolved and finally laid to rest in the earlier case.

3. ID.; ID.; ID.; ID.; ID.; THE ISSUE OF ADVANCED LEGITIME IN THE PRESENT CASE WHICH TOUCHES UPON THE ISSUE OF OWNERSHIP OF THE SUBJECT PROPERTY CANNOT BE RESOLVED INASMUCH AS *RES JUDICATA* IN THE CONCEPT OF CONCLUSIVENESS OF JUDGMENT HAS ALREADY SET IN; THE ISSUE OF PROVISIONAL OWNERSHIP OVER THE SAID PROPERTY HAS ALREADY BEEN SETTLED IN THE PRIOR CASE OF *HKO AH PAO*.— In *Hko Ah Pao*, one of the petitioners therein, Henry Teng, is herein petitioner and therein respondents are likewise herein respondents. For *res judicata* in the concept of conclusiveness of judgment, identity of causes of action and subject matter is not required; it is the identity of issues that is material. The issue presented in *Hko Ah Pao* is the ownership over the Malate property. We held that petitioners failed to prove by preponderance of evidence that Teng Ching Lay was the real owner of the Malate property. x x x In the instant case, petitioner's assertion that the issue of advanced legitime should be ventilated in another forum touches upon the issue of ownership. To consider the disputed property as part of the legitime presupposes that the testator owns the property. Disingenuously, petitioner is seeking to revive the already settled issue of provisional ownership which has been settled in *Hko Ah Pao*. It is clear that there is identity of parties and subject matter in the two cases. *Hko Ah Pao* does not bar the institution of the probate case but the pronouncement of ownership of the property belonging to Arsenio is conclusive upon the trial court *a quo* thereby precluding it from re-litigating the same issue. It is significant to stress that the jurisdiction of

the RTC as a probate court relates only to matters having to do with the settlement of the estate and probate of a will of a deceased person, and does not extend to the determination of a question of ownership that arises during the proceedings. This is true whether or not the property is alleged to belong to the estate, unless the claimants to the property are all heirs of the deceased and they agree to submit the question for determination by the probate or administration court and the interests of third parties are not prejudiced; or unless the purpose is to determine whether or not certain properties should be included in the inventory, in which case the probate or administration court may decide *prima facie* the ownership of the property, but such determination is not final and is without prejudice to the right of interested parties to ventilate the question of ownership in a proper action. Otherwise put, the determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title by a court of competent jurisdiction. The separate action contemplated by the rule had in fact already been instituted by herein petitioner in *Hko Ah Pao* through a petition for cancellation of title and partition with damages, which essentially questions ownership of the Malate property. At this juncture, we hold that there is no need to ventilate the issue of advanced legitime vis-à-vis ownership in another forum because *res judicata* in the concept of conclusiveness of judgment has already set in.

APPEARANCES OF COUNSEL

Pantaleon Law Office for respondents.

D E C I S I O N

PEREZ, *J.*:

Assailed in this Petition for Review is the 2 May 2008 Decision[1] of the Court of Appeals in CA-GR SP No. 100224. The appellate court had affirmed two Orders[2] issued by the Regional Trial

[1] *Rollo*, pp. 26-42; Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Regalado E. Maambong and Augustin S. Dizon concurring.

[2] *Id*. at 74-76 and 83-84.

Court (RTC) of Manila, Branch 21 directing the exclusion of certain properties allegedly belonging to respondents.

Teng Ching Lay died intestate in 1989, leaving as heirs, her child from her first marriage, Arsenio Ting (Arsenio) and from the second marriage, petitioner Henry Teng and Anna Teng. Arsenio married Germana Chua and bore three (3) sons, respondents Lawrence, Edmund and Anthony Ting. Arsenio predeceased his father.

In the intestate proceedings for the settlement of Arsenio's estate in 1975, then Court of First Instance (CFI) of Agusan del Norte and Butuan City approved the project of partition which included, among others, a residential property located at Dr. A. Vasquez Street in Malate, Manila (Malate property), which was adjudicated in favor of respondents.

The subject property became the subject of a case dispute in *Hko Ah Pao v. Ting*, later docketed as G.R. No. 153476.[3] Petitioner claimed that said property is owned by Teng Ching Lay and the latter merely entrusted the same to Arsenio. Eventually, on 27 September 2006, this Court had ruled that Arsenio owned the subject property.

Meanwhile on 27 April 1992, petitioner filed a verified petition for the settlement of the estate of Teng Ching Lay with the RTC of Manila. Petitioner was appointed as administrator of the estate in 1999.

In a Manifestation[4] dated 17 March 2005, petitioner submitted the Estate's Inventory as of 31 December 2004 and its Statement of Income and Expenses for the period 30 January 1989 to 31 December 2004.[5] The inventory included the Malate property and other properties entrusted to Arsenio such as personal properties in the form of investments, cash and equipment, and other real properties in Butuan City.

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[3] 534 Phil. 679 (2006).

[4] *Rollo*, pp. 52-54.

[5] *Id*. at 55-59.

Alleging that the properties belonging to Arsenio are included in the inventory, respondents filed their Motion for Exclusion of Properties owned by Arsenio Ting and his Heirs. These properties included the Malate properties and the properties were described as "Add: Other properties entrusted to Arsenio Ting."[6] Petitioner opposed the exclusion arguing that these properties were held by Arsenio in trust for Teng Ching Lay because of the constitutional prohibition against Teng Ching Lay, an alien who cannot own lands in the Philippines. Respondents stressed that the properties of Arsenio being claimed for the estate of Teng Ching Lay were acquired by them through inheritance from their father Arsenio whose estate was judicially settled in 1975.

In an Order[7] dated 12 Mach 2007, the trial court, through Judge Amor A. Reyes, granted the Motion for Exclusion. The dispositive portion of the Order reads:

> WHEREFORE, premises considered, the Motion for Exclusion of Properties owned by Arsenio Ting is hereby GRANTED. The properties included in the inventory which as early as October 23, 1975 had already been partitioned among the heirs of Arsenio Ting entitled In the matter of the Intestate Estate of Arsenio O. Ting.[8]

The trial court found that the following properties had already been the subject of a judicial partition in the intestate proceedings for Arsenio:

1. Residential lot covered by TCT No. 134412 located at 1723 A. Vasquez St. Malate, Manila;

2. Residential lot located at Maug, Butuan City covered by T.D. NR-03041-0291 in favor of deceased Teng Ching Lay and Jacinto Chua consisting of 18,989 sq. m. (50%) (no TCT available). Tax Declaration only ₱474,675.00;

3. Industrial lot located at Maug, Butuan City, covered by T.D. No. NR-03-041-029 in favor of Teng Ching Lay and Jacinto Chua

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[6] *Id*. at 56-58.

[7] *Id*. at 74-76.

[8] *Id*. at 76.

consisting of 26,826 sq. m. (50%) (no TCT available). Tax Declaration only ₱1,951,875.00; and

4. And those properties included in the Inventory as of December 31, 2004 filed by the Administrator with the Statement "Add: other properties entrusted to Arsenio Ting."[9]

The trial court based its finding on the following: 1) Order dated 23 October 1975 of the then CFI of Agusan Del Norte and Butuan City; 2) the Project of Partition dated 1975; 3) the complete Inventory and appraisal of Real Properties of the Estate under Administration; and 4) other documents relative to the judicial settlement of Estate of Arsenio Ting that does not form part of the estate of Teng Ching Lay entitled "In the matter of Intestate Estate of Arsenio Ting Sp. Proc. No. 384."[10]

Petitioner filed a motion for reconsideration. It was partly granted by the trial court in an Order[11] dated 7 June 2007. The fallo reads:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby partially GRANTED. What remains the property of the estate are items 2 and 3 namely[:]

1) Residential lot located at Maug, Butuan City covered by T.D. NR-03041-0291 in favor of deceased Teng Ching Lay and Jacinto Chua consisting of 18,989 sq. m. (50%) (no TCT available). Tax Declaration only ₱474,675.00;

2) Industrial lot located at Maug, Butuan City, covered by T.D. No. NR-03-041-029 in favor of Teng Ching Lay and Jacinto Chua consisting of 26,826 sq. m. (50%) (no TCT available). Tax Declaration only ₱1,951,875.00.

Residential lot covered by TCT No. 134417 located at 1723 A. Vasquez St., Malate, Manila and the property included in the Inventory of December 31, 2004 filed by the Administrator with statement; Add other properties entrusted to Arsenion Ting should be excluded in the estate.

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[9] *Id*. at 75.

[10] *Id*. at 75-76.

[11] *Id*. at 83-84.

The petitioner's allegation that the properties entrusted to Arsenio Ting are advanced legitime, should be ventilated in another forum.[12] (Emphasis Supplied)

Aggrieved, petitioner filed a petition for certiorari before the Court of Appeals.

On 2 May 2008, the Court of Appeals denied the petition for lack of merit. The Court of Appeals found that the trial court did not act with grave abuse of discretion in issuing the assailed Orders excluding some properties from the Estate of Teng Ching Lay. The appellate court ruled that the trial court could determine whether or not properties may be included in the inventory to be administered by the administrator and any dispute as to ownership may be resolved in another forum. The appellate court affirmed the trial court's basis for exclusion. The appellate court also pointed out that in the case of *Hko Ah Pao*, the Court categorically ruled that the Malate property belonged to the estate of Arsenio.

Petitioner solely argues that the advancement alleged to have been made by the deceased to any heir should be heard and determined by the probate court, the RTC of Manila Branch 21 in this case, in accordance with Section 2, Rule 90 of the Rules of Court.

The petition is bereft of merit.

In the guise of raising a legal issue, petitioner urges the court *a quo* to resolve once again an ownership issue. Section 2, Rule 90 of the Rules of Court states that "questions as to advancement made, or alleged to have been made, by the deceased to any heir may be heard and determined by the court having jurisdiction of the estate proceedings; and the final order of the court thereon shall be binding on the person raising the questions and on the heir." But the rule, as correctly interpreted by respondent, presupposes a genuine issue of advancement.

Legitime is defined as that part of the testator's property which he cannot dispose of because the law has reserved it for

[12] *Id*. at 84.

certain heirs who are, therefore, called compulsory heirs.[13] Petitioner essentially asserts that properties were actually owned by Teng Ching Lay, and that Arsenio was merely a trustee of the said properties. Verily, petitioner is claiming that Teng Ching Lay owned the Malate property and therefore, it should be considered part of the legitime. This brings us precisely to the purpose of an inclusion/exclusion proceeding. Where a party in a probate proceeding prays for the inclusion in, or exclusion from, the inventory of a piece of property, the court may provisionally pass upon the question without prejudice to its final determination in a separate action.[14]

The exclusion of the Malate property from the inventory of Teng Ching Lay's estate is correctly ordered by the trial court primarily because said issue had already become covered by the principle of *res judicata*.

Under the doctrine of *res judicata*, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them in law or estate.[15]

There are two distinct concepts of *res judicata*. The first is bar by prior judgment under Rule 39, Section 47(b), thus:

SEC. 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having

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[13] Article 886 of the Civil Code of the Philippines.

[14] *Lachenal v. Salas*, 163 Phil. 252, 257 (1976) citing *Garcia v. Garcia*, 67 Phil. 353, 357 (1939); *Guinguing v. Abuton*, 48 Phil. 144, 147-148 (1925); *Junquera v. Borromeo*, 125 Phil. 1059, 1071 (1967); *Borromeo v. Canonoy*, 125 Phil. 1089, 1092-1093 (1967) citing *Junquera v. Borromeo*, 125 Phil. 1059, 1071 (1967).

[15] *Chu v. Cunanan*, 673 Phil. 12, 22-23 (2011).

jurisdiction to pronounce the judgment or final order, may be as follows:

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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; x x x

and the second is conclusiveness of judgment under Rule 39, Section 47(c), thus:

(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.

Pertinent to our case is the second concept, *i.e.* conclusiveness of judgment.

Conclusiveness of judgment applies when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively settled fact or question furthermore cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.[16]

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[16] *Degayo v. Magbanua-Dinglasan*, G.R. Nos. 173148, 6 April 2015, 755 SCRA 1, 12.

While conclusiveness of judgment does not have the same barring effect as that of a bar by former judgment that proscribes subsequent actions, the former nonetheless estops the parties from raising in a later case the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case. In other words, the dictum laid down in the earlier final judgment or order becomes conclusive and continues to be binding between the same parties, their privies and successors-in-interest, as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court in a later case; the binding effect and enforceability of that earlier dictum can no longer be re-litigated in a later case since the issue has already been resolved and finally laid to rest in the earlier case.[17]

In *Hko Ah Pao*, one of the petitioners therein, Henry Teng, is herein petitioner and therein respondents are likewise herein respondents. For *res judicata* in the concept of conclusiveness of judgment, identity of causes of action and subject matter is not required; it is the identity of issues that is material.[18] The issue presented in *Hko Ah Pao* is the ownership over the Malate property. We held that petitioners failed to prove by preponderance of evidence that Teng Ching Lay was the real owner of the Malate property. The Court of Appeals reiterated the pertinent ruling in *Hko Ah Pao*, to wit:

> It bears stressing that in the case of Hko Ah Pao, Henry Teng and Anna Teng *v.* Laurence Ting, Anthony Ting and Edmund Ting with herein petitioner and private respondents as among the parties therein, involving the same property located at 1723 Vasquez St., Malate, Manila, then covered by Transfer Certificate of Title No. 63991 in the name of the late Arsenio, which was subsequently cancelled and in lieu thereof TCT No. 134412 was issued in the name of herein private respondents on 03 July 1979, the Supreme Court held that, "(t)he evidence on record supports the assailed findings and conclusions specifically with regard to the ownership of the property in question that is reflected in the Torrens title which was issued in the name of

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

[18] *Layos v. Fil-Estate Golf and Dev't., Inc.,* 583 Phil. 72, 106 (2008).

Arsenio pursuant to the deed of sale." x x x "Consequently, since petitioners failed to prove that Teng Ching Lay was the real owner of the propert involved therein, their proposition that a constructive trust exists must likewise fail."[19]

In the instant case, petitioner's assertion that the issue of advanced legitime should be ventilated in another forum touches upon the issue of ownership. To consider the disputed property as part of the legitime presupposes that the testator owns the property. Disingenuously, petitioner is seeking to revive the already settled issue of provisional ownership which has been settled in *Hko Ah Pao*. It is clear that there is identity of parties and subject matter in the two cases.

Hko Ah Pao does not bar the institution of the probate case but the pronouncement of ownership of the property belonging to Arsenio is conclusive upon the trial court *a quo* thereby precluding it from re-litigating the same issue.

It is significant to stress that the jurisdiction of the RTC as a probate court relates only to matters having to do with the settlement of the estate and probate of a will of a deceased person, and does not extend to the determination of a question of ownership that arises during the proceedings. This is true whether or not the property is alleged to belong to the estate, unless the claimants to the property are all heirs of the deceased and they agree to submit the question for determination by the probate or administration court and the interests of third parties are not prejudiced; or unless the purpose is to determine whether or not certain properties should be included in the inventory, in which case the probate or administration court may decide *prima facie* the ownership of the property, but such determination is not final and is without prejudice to the right of interested parties to ventilate the question of ownership in a proper action. Otherwise put, the determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title by a court of competent jurisdiction. The separate action contemplated by the rule had in fact already been instituted by

[19] *Rollo*, p. 39.

herein petitioner in *Hko Ah Pao* through a petition for cancellation of title and partition with damages, which essentially questions ownership of the Malate property. At this juncture, we hold that there is no need to ventilate the issue of advanced legitime vis-à-vis ownership in another forum because *res judicata* in the concept of conclusiveness of judgment has already set in.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals' 2 May 2008 Decision and 28 August 2008 Resolution in CA-G.R. SP No. 100224 are hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187922. Septemeber 21, 2016]

MARPHIL EXPORT CORPORATION and IRENEO LIM, *petitioners, vs.* **ALLIED BANKING CORPORATION, substituted by PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS ARE CONCLUSIVE AND MAY NOT BE REVIEWED ON APPEAL; APPLICATION.— [T]his issue of whether Allied Bank confirmed L/C No. 21970 and assumed direct obligation on it is a question of fact that was resolved by both RTC and CA in the negative. This Court is not a trier of facts and does not normally undertake the re-examination of the evidence. This is especially true where the trial court's

factual findings are adopted and affirmed by the CA. Factual findings of the trial court affirmed by the CA are final and conclusive and may not be reviewed on appeal. Here, there is no reason to deviate from these findings of the RTC and CA.

2. COMMERCIAL LAW; LETTERS OF CREDIT; RESPONDENT, AS CORRESPONDENT BANK, DID NOT ACT AS CONFIRMING BANK SINCE IT DID NOT UNDERTAKE THE OBLIGATION OF THE ISSUING BANK.— We affirm the RTC and CA's findings that Allied Bank did not act as confirming bank in L/C No. 21970. x x x [W]hile we said in *Feati* that a correspondent bank may be held liable for accepting a faulty tender under the rule of strict compliance, its liability is necessarily defined by the role it assumed under the terms of the letter of credit. In order to consider a correspondent bank as a confirming bank, it must have assumed a direct obligation to the seller as if it had issued the letter of credit itself. We said that "[i]f the [correspondent bank] was a confirming bank, then a categorical declaration should have been stated in the letter of credit that the [correspondent bank] is to honor all drafts drawn in conformity with the letter of credit." Thus, if we were to hold Allied Bank liable to Marphil (which would result in a finding that the former's debit from the latter's account is wrong) based on the rule of strict compliance, it must be because Allied Bank acted as confirming bank under the language of L/C No. 21970. In finding that Allied Bank, as correspondent bank, did not act as confirming bank, the CA reviewed the instructions of Nanyang Bank to Allied Bank in L/C No. 21970. It found that based on the instructions, there is nothing to support Marphil's argument that Allied Bank undertook, as its own, Nanyang Bank's obligations in the letter of credit[.]

3. ID.; ID.; THE LETTER AGREEMENT IS A SEPARATE OBLIGATION ON THE PART OF PETITIONER CORPORATION TO REFUND THE FULL AMOUNT OF THE DRAFT TO RESPONDENT IN CASE OF DISHONOR.— In the Letter Agreement, Marphil expressly bound itself to refund the amount paid by Allied Bank in purchasing the export bill or draft, in case of its dishonor by the drawee bank[.] x x x The case of *Velasquez v. Solidbank Corporation* is instructive as to the nature of obligations arising from this form of undertaking. In that case, we ruled that the

obligation under a letter of undertaking, where the drawer undertakes to pay the full amount of the draft in case of dishonor, is independent from the liability under the sight draft. The letter of undertaking of this tenor is a separate contract the consideration for which is the promise to pay the bank the value of the sight draft if it was dishonored for any reason. The liability provided is direct and primary, without need to establish collateral facts such as the violation of the letter of credit connected to it. Similarly, the Letter of Agreement is a contract between Marphil and Allied Bank where the latter agreed to purchase the draft and credit the former its value on the undertaking that Allied Bank will be reimbursed in case the draft is dishonored. This obligation is direct, and is independent, not only from the obligation under the draft, but also from the obligation under L/C No. 21970. In this connection, the CA is incorrect to say that the Letter Agreement bolsters the bank's claim that it did not undertake direct obligation under the letter of credit. The Letter Agreement simply creates a separate obligation on Marphil's part to refund the amount of the proceeds, in case of dishonor. As an independent obligation, Marphil is bound to fulfill this obligation to reimburse Allied Bank.

4. ID.; ID.; ID.; WHILE RESPONDENT IS THE DEBTOR OF PETITIONER CORPORATION FOR THE AMOUNT IT CREDITED UNDER THE DRAFT, THE OBLIGATION UNDER THE LETTER AGREEMENT MADE RESPONDENT THE CREDITOR OF PETITIONER CORPORATION FOR THE SAME AMOUNT; HENCE, LEGAL COMPENSATION MAY TAKE PLACE; RESPONDENT PROPERLY EXERCISED ITS RIGHT TO SET OFF.— In this case, when Allied Bank credited the amount of ₱1,913,763.45 to Marphil's account, it became the debtor of Marphil. However, once Nanyang Bank dishonored the export documents and draft for L/C No. 21970, Marphil became the debtor of Allied Bank for the amount by virtue of its obligation to reimburse the bank under the Letter Agreement. This obligation consisting of sum of money became demandable upon notice of the dishonor by Nanyang Bank. Thus, legal compensation may take place between the two debts. In *Associated Bank*, we nevertheless emphasized that while the bank has the right to set off, the exercise of such right must be consistent with the required degree of diligence from banks, *i.e.*, highest degree of care. Thus, the question that needs to be resolved now is

whether Allied Bank properly exercised its right to set off. We rule that Allied Bank properly exercised its right to set off. Firstly, having signed the Letter Agreement, Marphil expressly undertook that in case of dishonor of the draft for the letter of the credit, it will refund to Allied Bank whatever the latter has credited in its favor. This places Marphil on its guard that the dishonor will create an obligation to refund the amount credited. Secondly, prior to debiting the amount, Allied Bank informed Marphil twice of Nanyang Bank's refusal to honor the tender of documents on L/C No. 21970. Thirdly, it immediately informed Marphil that it was debiting the amount of the dishonored draft from the credit line. Most importantly, the debiting of the account was not the proximate cause of the loss to Marphil brought about by the reshipment of goods back to Manila. The proximate cause of the loss is the subsequent dishonor of the documents by Nanyang Bank, which came before the debiting of the account. The ₱1,913,763.45 subject of the debit memo was already the costs incurred in relation to the financing and shipping of the goods to Hong Kong, and do not refer to the loss incurred when the goods were shipped back to Manila. Thus, the debiting of Marphil's account did not result in additional losses for Marphil.

5. CIVIL LAW; LOAN; INTEREST; IMPOSITION OF LEGAL INTEREST, MODIFIED.— The CA imposed the legal interest rate of twelve percent (12%) on this loan obligation. Notably, the CA made no factual determination that the amount of ₱1,913,763.45 was subject to any stipulated interest between the parties. Likewise, Allied Bank neither claimed for the application of a stipulated interest nor questioned the imposition of legal interest on the loan, as it no longer appealed the decision. Considering this, we are constrained to uphold that the amount of ₱1,913,763.45, as a loan obligation, is only subject to the legal interest applicable as of the time of this decision. This is in line with our ruling in *Nacar v. Gallery Frames* that in the absence of a stipulated interest, a loan obligation shall earn legal interest from the time of default, *i.e.*, from judicial or extrajudicial demand. We, however, modify the rate of legal interest imposed by the CA also in conformity with *Nacar*. The amount of ₱1,913,763.45 shall earn legal interest at the rate of six percent (6%) per *annum* computed from the time of judicial demand, *i.e.* from the date of the filing of the counterclaim in the Declaratory Relief Case on May 7, 1990, until the date

of finality of this judgment. The total amount shall thereafter earn interest at the rate of six percent (6%) per *annum* from such finality of judgment until its satisfaction.

6. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; CONCEPT AND ELEMENTS.— Forum shopping exists "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." Forum shopping is proscribed by the rules because of the vexation caused to the courts and parties-litigants by the filing of similar cases to claim the same reliefs. The rule against forum shopping aims to avoid the grave evil that may result in the rendition by two competent tribunals of two separate and contradictory decisions. Thus, any violation of the rule against forum shopping results in the dismissal of a case, or can result in holding of direct contempt against the actor. There is forum shopping when the elements of *litis pendentia* are present, or when a final judgment in one case amounts to *res judicata* in the other. It must be shown that the following elements are present: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.

7. ID.; ID.; ID.; RESPONDENT DID NOT COMMIT FORUM SHOPPING WHEN IT INITIATED A COLLECTION CASE AGAINST LIM DESPITE THE PENDENCY OF THE COUNTERCLAIM IN THE DECLARATORY RELIEF CASE SINCE THERE IS NO IDENTITY OF PARTIES AND CAUSE OF ACTION.— We rule that Allied Bank did not commit forum shopping when it initiated the Collection Case against Lim despite the pendency of the counterclaim in the Declaratory Relief Case, because there is no identity of parties and cause of action. x x x Here, the parties in the counterclaim in the Declaratory Relief Case are Allied Bank, as creditor, and Marphil, as principal debtor. On the other hand, the parties in the Collection Case are Allied Bank, as creditor, and Lim,

as surety. There is no identity of parties. Also, the causes of action pleaded are different because the counterclaim in the Declaratory Relief Case involves collection on the loan obligations, while Allied Bank in its complaint in the Collection Case seeks to collect on the surety obligation of Lim under the CG/CS Agreements. Another reason why forum shopping does not obtain here is the circumstance that the two cases were subsequently consolidated, jointly heard, and a single decision was rendered. Thus, the evil that the rule against forum shopping avoids, and the vexation on the court and parties-litigant, are wanting.

8. ID.; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; NATURE.— A writ of preliminary attachment is "a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant."

9. ID.; ID.; ID.; GROUNDS FOR DISSOLUTION.— Once issued, a writ of attachment may be dissolved or discharged on the following grounds: (a) the debtor has posted a counter-bond or has made the requisite cash deposit; (b) the attachment was improperly or irregularly issued as where there is no ground for attachment, or the affidavit and/or bond filed therefor are defective or insufficient; (c) the attachment is excessive, but the discharge shall be limited to the excess; (d) the property attachment is exempt from preliminary attachment; or (e) the judgment is rendered against the attaching creditor.

10. ID.; ID.; ID.; FAILURE TO SUFFICIENTLY ESTABLISH THE FACTUAL CIRCUMSTANCES OF THE ALLEGED FRAUD IN CONTRACTING THE OBLIGATION, THE WRIT OF PRELIMINARY ATTACHMENT SHOULD BE DISSOLVED THERE BEING NO GROUND FOR ITS ISSUANCE.— Allied Bank filed the application for the writ of preliminary attachment in the Collection Case against Lim as surety. However, the allegations of fraud refer to the execution of the promissory notes, and not on the surety agreement. The application was bereft of any allegation as to Lim's participation in the alleged conspiracy of fraud. Also, the writ of preliminary attachment was granted in the Collection Case against Lim as

surety, yet there was no allegation on Lim's fraudulent intention in incurring its obligation under the CG/CS Agreements. It cannot be inferred that Lim had, at the time of contracting the obligation, the preconceived intention to renege on his obligation under the CG/CS Agreements. Continuing guaranty and surety agreements are normally required by a bank or financing company anticipating to enter into a series of credit transactions with a particular principal debtor. This avoids a need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor. Here, the CG/CS Agreements were executed prior to the issuance of L/C No. 21970, and were in force during other transactions including the one involving L/C No. 22518 which encountered no problem. Thus, this transaction cannot be singled out to justify that the surety agreement has been contracted through fraud. Moreover, the filing of the Declaratory Relief Case cannot be evidence of a preconceived intention not to pay the surety's obligation because it was filed by Marphil, and not Lim. In any case, the filing of the case is a legitimate means resorted to by Marphil in seeking to clarify its existing obligations with Allied Bank. If its intention was to renege on its obligations, it would not have submitted itself to the jurisdiction of the court where it can be ordered to pay any existing obligations. The allegation that petitioners made representations to induce it to grant them a credit line is belied by the fact that it is only in the transaction involving L/C No. 21970 where Allied Bank encountered problems, because of Nanyang Bank's dishonor of the draft and documents. Also, the allegation that petitioners committed misrepresentation in shipping the cashew nuts at a volume less than that which was required by the foreign buyer, relates to the sale between Marphil and Intan, and not to the loan between Marphil and Allied Bank. From the foregoing, Allied Bank was not able to sufficiently establish the factual circumstances of the alleged fraud in contracting the obligation. Thus, there being no ground for its issuance, the writ of preliminary attachment should be dissolved.

APPEARANCES OF COUNSEL

Trinidad Narag & Associates for petitioners.
PNB Legal Group for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition[1] seeking to nullify the Court of Appeals' (CA) January 12, 2009 Decision[2] and May 12, 2009 Resolution[3] in CA-G.R. CV No. 89481. The CA modified[4] the April 23, 2007 Omnibus Decision[5] of Branch 61 of the Regional Trial Court (RTC), Makati City in the consolidated cases of petition for declaratory relief filed by petitioner Marphil Export Corporation (Marphil) against Allied Banking Corporation (Allied Bank), and the complaint for collection of sum of money with application for writ of attachment filed by Allied Bank against Marphil's surety, petitioner Ireneo Lim (Lim).

Facts

Marphil is a domestic company engaged in the exportation of cuttlefish, cashew nuts and similar agricultural products.[6] To finance its purchase and export of these products, Allied

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[1] *Rollo*, pp. 8-32.

[2] *Id.* at 34-51; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison.

[3] *Id*. at 53-55.

[4] *Id.* at 50. The *fallo* of the CA Decision reads:

> **WHEREFORE**, the foregoing considered, the appeal is hereby **PARTLY GRANTED**. The assailed decision dated 23 April 2007 is hereby **MODIFIED** declaring appellants liable to Allied in the amount of [₱]1,913,763.45 with interest fixed at the legal rate of 12% per annum from the time of the filing of the collection suit until the same is fully paid. The obligations of appellants under promissory notes Nos. 2463 and 2730 are hereby declared fully paid. The assailed decision is **AFFIRMED** in all other aspects.
>
> No costs.
>
> **SO ORDERED**.

[5] CA *rollo*, pp. 21-54; rendered by Judge Marissa Macaraig-Guillen.

[6] *Rollo,* pp. 8, 37; RTC records, Vol. I, p. 1.

Bank granted Marphil a credit line from which Marphil availed of several loans evidenced by promissory notes (PN).[7] These loans were in the nature of advances to finance the exporter's working capital requirements and export bills.[8] The loans were secured by three (3) Continuing Guaranty or Continuing Surety (CG/CS) Agreements[9] executed by Lim, Lim Shiao Tong and Enrique Ching.[10] Apart from the CG/CS Agreements, irrevocable letters of credits also served as collaterals for the loans obtained to pay export bills.[11] In turn, Allied Bank required Marphil, through its authorized signatories Lim and Rebecca Lim So, to execute a Letter of Agreement[12] where they undertake to reimburse Allied Bank in the event the export bills/drafts covering the letters of credit are refused by the drawee. Upon negotiations of export bills/drafts that Allied Bank purchases from Marphil, the amount of the face value of the letters of credit is credited in favor of the latter.[13]

The transaction involved in this petition is the export of cashew nuts to Intan Trading Ltd. Hongkong (Intan) in Hong Kong.

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[7] *Rollo*, p. 10. As admitted by Marphil in its complaint, the following amounts were obtained as loans from Allied Bank in the credit line:

PN No. 0100-88-00673	February 22, 1988	₱ 250,000.00
PN No. 0100-88-00691	February 24, 1988	₱ 300,000.00
PN No. 0100-88-01505	April 26, 1988	₱ 2,000,000.00
PN No. 0100-88-01815	May 16, 1988	₱ 450,000.00
PN No. 100-88-01963	May 26, 1988	₱ 500,000.00
PN No. 0100-88-02201	June 3, 1988	₱ 1,500,000.00

RTC records, Vol. I, pp. 1-3, 8-9, 14-15, 24-25, 26-27, 28-29, 35-36.

[8] *Rollo,* p. 10.

[9] CG/CS Agreement executed on June 1, 1988 for the amount of ₱1,000,000.00, CG/CS Agreement executed on June 2, 1987 for the amount of ₱500,000.00, and CG/CS Agreement executed on May 25, 1987 for the amount of ₱500,000.00. RTC records, Vol. I, pp. 2, 155, 166-168.

[10] RTC records, Vol. III, p. 21.

[11] RTC records, Vol. I, p. 470.

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

[13] RTC records, Vol. III, pp. 377-378.

Upon application of Intan, Nanyang Commercial Bank (Nanyang Bank), a bank based in China, issued irrevocable letters of credit. These were Letter of Credit (L/C) No. 22518 and L/C No. 21970, with Marphil as beneficiary and Allied Bank as correspondent bank.[14] These covered two (2) separate purchase contracts/orders for cashew nuts made by Intan.

The first order of cashew nuts was covered by L/C No. 22518. After the first shipment was made, Marphil presented export documents including drafts to Allied Bank. The latter credited Marphil's credit line the peso equivalent of the face value of L/C No. 22518 in the amount of ₱1,986,702.70 and this amount was deducted from the existing loans of Marphil.[15] There were no problems encountered for the shipment covered by L/C No. 22518. It was the second order covered by L/C No. 21970 that encountered problems.

When Intan placed a second order for cashew nuts, Marphil availed additional loans in their credit line evidenced by PN No. 0100-88-02463[16] (PN No. 2463) for ₱500,000.00 and PN No. 0100-88-02730[17] (PN No. 2730) for ₱500,000.00. Similar to the previous transaction, Intan applied for and opened L/C No. 21970 with Nanyang Bank in the amount of US$185,000.00, with Marphil as the beneficiary and Allied Bank as correspondent bank.[18] After receiving the export documents including the draft issued by Marphil, Allied Bank credited Marphil in the amount of ₱1,913,763.45, the peso value of the amount in the letter of credit.[19]

However, on July 2, 1988, Allied Bank informed Marphil that it received a cable from Nanyang Bank noting some

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[14] *Rollo,* pp. 35-38.

[15] *Id.* at 35-36; RTC records, Vol. I, p. 514.

[16] RTC records, Vol. I, pp. 37-38.

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

[18] *Rollo,* p. 36.

[19] RTC records, Vol. I, p. 39.

discrepancies in the shipping documents.[20] On July 16, 1988, Allied Bank again informed Marphil that it received another cable from Nanyang Bank still noting the discrepancies and that Intan refused to accept the discrepancies.[21] Consequently, Nanyang Bank refused to reimburse Allied Bank the amount the latter had credited in Marphil's credit line. In its debit memo, Allied Bank informed Marphil of the dishonor of L/C No. 21970 and that it was reversing the earlier credit entry of ₱1,913,763.45.[22] Lim was made to sign a blank promissory note, PN No. 0100-88-04202,[23] (PN No. 4202) on September 9, 1988 to cover for the amount.[24] This was later filled up by Allied Bank in the amount of ₱1,505,391.36.

On March 6, 1990, Marphil filed a Complaint[25] for declaratory relief and damages against Allied Bank (Declaratory Relief Case) raffled to Branch 61 of RTC Makati.[26] In its Complaint, Marphil asked the court to declare PN No. 4202 void, to declare as fully paid its other obligations to Allied Bank, and to award it actual, moral and exemplary damages, and attorney's fees.[27] Marphil maintained that it had fully paid its account with Allied Bank, and that PN No. 4202, which Lim executed on September 9, 1988, was void for lack of consideration. Marphil alleged that it was constrained to send back the shipment to the Philippines thereby incurring expenses and tremendous business losses. It attributed bad faith to Allied Bank because the latter did nothing to protect the former'its interest; Allied Bank merely accepted Nanyang Bank's position despite L/C No. 21970 being

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[20] *Rollo,* p. 38.

[21] *Id.*

[22] RTC records, Vol. I, p. 4.

[23] *Id.* at 42-43.

[24] *Rollo,* p. 36.

[25] RTC records, Vol. I, pp. 1-7.

[26] Docketed as Civil Case No. 90-640. *Id.* at 1.

[27] *Id.* at 7. The obligations referred to include loans incurred prior to the second shipment of cashew nuts to Intan.

irrevocable, and Allied Bank allegedly confirmed Nanyang Bank's revocation.

On May 7, 1990, Allied Bank filed its Answer with Compulsory Counterclaim and Petition for Writ of Preliminary Attachment.[28] Allied Bank maintained that PN No. 4202 was supported by consideration, and denied that Marphil has fully paid its obligation to it. As counterclaim, Allied bank sought to collect on three (3) promissory notes, PN Nos. 2463, 2730 and 4202.[29]

On September 14, 1990, Allied Bank filed a Complaint with Petition for Writ of Preliminary Attachment[30] (Collection Case) against Lim and Lim Shao Tong which was raffled to Branch 145 of RTC Makati. Allied Bank sued them as sureties under the CG/CS Agreements for the loan obligations of Marphil under three (3) promissory notes, PN Nos. 2463, 2730 and 4202, in the total amount of ₱2,505,391.36. It also prayed for the issuance of a writ of preliminary attachment on the ground that Lim was guilty of fraud in contracting his obligations.

On February 7, 1992-, Lim filed his Answer[31] in the Collection Case. He raised as defense that Marphil had fully paid the loans covered by PN Nos. 2463, 2730, while PN No. 4202 is null and void.[32] He likewise maintained he could not be held personally liable for the CG/CS Agreements because he could not remember signing them. Lim claimed that the issuance of the writ of preliminary attachment was improper because he never had any preconceived intention not to pay his obligations with the bank. He had been transacting with the bank for six (6) years and the gross value of the thirty-two (32) transactions between them amounted to US$640,188.51.[33]

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[28] *Id.* at 57-75.

[29] *Id.* at 67-68.

[30] Docketed as Civil Case No. 90-2584, RTC records Vol. II, pp. 339-350.

[31] RTC records, Vol. I, pp. 222-226.

[32] *Rollo,* p. 39.

[33] *Id.* at 40.

On March 15, 1994, Branch 145 of RTC Makati granted *ex parte* the prayer for preliminary attachment in the Collection Case.[34]

On May 7, 1991, Allied Bank filed a Motion to Consolidate/ Be Accepted[35] with Branch 61 of RTC Makati, which was granted by Order dated June 25, 1991.[36] The two civil cases were jointly heard before Branch 61 of RTC Makati.

On April 23, 2007, the RTC rendered the Omnibus Decision.[37] The RTC granted Marphil's complaint for declaratory relief, and declared PN No. 4202 void. However, it held Marphil and/or Ireneo Lim jointly and severally liable for any balance due on their obligation under PN Nos. 2463 and 2730, and additionally for the amount of ₱1,913,763.45 with interest rate fixed at 12% per *annum* until fully paid.[38]

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[34] CA *rollo*, p. 29.

[35] RTC records, Vol. I. pp. 151-153.

[36] *Id.* at 183.

[37] *Supra* note 5.

[38] CA *rollo*, pp. 53-54. The *fallo* reads:

> WHEREFORE, in view of the foregoing, judgment is rendered in the aforementioned consolidated cases granting the complaint for declaratory relief in that promissory No. [0100-88-0]4202 is herein declared NULL and VOID for want of consideration. Allied Bank is directed to compute the indebtedness of Marphil Export Corporation utilizing Promissory Notes [0100-88-0]2463 and [0100-88-0]2730 as basis for the computation, taking into consideration all payments made as reflected in the plaintiff Marphil's evidence.
>
> However, Marphil and/or Mr. Ireneo Lim are held jointly and severally liable for any balance due on the aforementioned obligations and in addition are held liable to pay Allied Bank the amount of [₱]1,913,763.45 with interest to be fixed at the legal rate of 12% per annum until fully paid.
>
> The parties' respective prayers for the award of damages and attorney's fees are denied for lack of merit.
>
> Because of the difficulty experienced in having summons served upon defendant Lim Shiao Tong in Civil Case No. 90-2485, this case shall remain ARCHIVED with respect to said defendant.
>
> Costs to be borne equally by both parties.
>
> SO ORDERED.

On May 9, 2007, petitioners filed a Notice of Appeal[39] with the RTC. Allied Bank did not appeal the RTC decision. Records were then forwarded to the CA, which began proceedings.[40]

The CA rendered its Decision[41] on January 12, 2009 modifying the RTC decision. The CA declared PN Nos. 2463 and 2730 fully paid, but held petitioners liable for the amount of ₱1,913,763.45, the amount equal to the face value of L/C No. 21970.[42]

The CA found that Allied Bank is not directly liable for the ₱1,913,763.45 under L/C No. 21970 because it was not a confirming bank and did not undertake to assume the obligation of Nanyang Bank to Marphil as its own. At most, it could only be a discounting bank which bought drafts under the letter of credit. Following the ruling in *Bank of America, NT & SA v. Court of Appeals*,[43] it held that Allied Bank, as the negotiating bank, has the ordinary right of recourse against the exporter in the event of dishonor by the issuing bank. A negotiating bank has a right of recourse against the issuing bank, and until reimbursement is obtained, the drawer of the draft continues to assume a contingent liability on the draft. That there is no assumption of direct obligation is further affirmed by the terms of the Letter Agreement. The CA also declared PN Nos. 2463 and 2730 as fully paid. The CA held that with these payments, the only obligation left of Marphil was the amount of the reversed credit of ₱1,913,763.45. On the writ of preliminary attachment, the CA noted that petitioners did not file any motion to discharge it on the ground of irregularly issue. The CA found that no forum shopping existed because the causes of actions for declaratory relief and collection suit are different.[44]

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

[40] *Id*. at 57.

[41] *Rollo*, pp. 34-51.

[42] *Id.* at 50.

[43] G.R. No. 105395, December 10, 1993, 228 SCRA 357.

[44] *Rollo,* pp. 45-49.

In a Resolution[45] dated May 12, 2009, the CA denied petitioners Motion for Partial Reconsideration[46] dated January 22, 2009.

Hence, this petition.

Meanwhile, Allied Bank and Philippine National Bank (PNB) jointly filed a Motion for Substitution of Party with Notice of Change of Address[47] on October 22, 2013 informing this Court that the Securities and Exchange Commission approved a merger between Allied Bank and PNB, with the latter as the surviving corporation. They prayed that Allied Bank be dropped and substituted by PNB as party respondent in this petition. This was granted by this Court in a Resolution[48] dated December 4, 2013.

Issues

The issues are as follows:

I. Whether Allied Bank's debit memo on Maprhil's credit line in the amount of ₱1,913,763.45 is valid.

II. Whether the RTC and CA created a new obligation when it held Marphil liable for the amount of ₱1,913,763.45.

III. Whether Allied Bank committed forum shopping in filing the Collection Case.

IV. Whether the writ of preliminary attachment should be dissolved.

Ruling

We partly grant the petition.

At the outset, Allied Bank did not appeal from the decisions of the RTC and CA respecting the nullification of PN No. 4202, and the extinguishment by payment of PN Nos. 2730 and 2463. Allied Bank (now PNB) can thus no longer seek their

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[45] *Supra* note 3.

[46] CA *rollo*, pp. 218-223.

[47] *Rollo*, pp. 93-95.

[48] *Id.* at 100-101.

modification or reversal, but may only oppose the arguments of petitioners on grounds consistent with the judgment of the RTC and CA.[49] Bearing this in mind, we proceed to dispose of the issues.

I. Validity of the debit memo

a. Allied Bank as correspondent bank in L/C No. 21970

Both the RTC and CA found that Allied Bank is not a confirming bank which undertakes Nanyang Bank's obligation as issuing bank, but at most, buys the drafts drawn by Marphil as exporter at a discount.

Marphil, however, argues that the RTC and CA erred in ruling that Allied Bank is not a confirming bank. It insists that Allied Bank as correspondent bank assumed the risk when it confirmed L/C No. 21970. It invokes the ruling in *Feati Bank & Trust Company v. Court of Appeals*[50] on the rule of strict compliance in letters of credit stating, that "[a] correspondent bank which departs from what has been stipulated under the letter of credit, as when it accepts a faulty tender, acts on its own risks and it may not thereafter be able to recover from the buyer or the issuing bank x x x."[51] Thus, Marphil claims that Allied Bank had no authority to debit the amount equivalent to the face value of L/C No. 21970 since the latter is directly liable for it.

We affirm the RTC and CA's findings that Allied Bank did not act as confirming bank in L/C No. 21970.

As noted by the CA, *Feati* is not in all fours with this case. The correspondent bank in that case refused to negotiate the letter of credit precisely because of the beneficiary's non-compliance with its terms. Here, it is Nanyang Bank, the issuing

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[49] *Communities Cagayan, Inc. v. Nanol*, G.R. No. 176791, November 14, 2012, 685 SCRA 453, 462-463, citing *Raquel-Santos v. Court of Appeals*, G.R. Nos. 174986, 175071 & 181415, July 7, 2009, 592 SCRA 169, 190-191.

[50] G.R. No. 94209, April 30, 1991, 196 SCRA 576.

[51] *Id*. at 586.

bank, which refused to make payment on L/C No. 21970 because there was no strict compliance by Marphil.[52]

Further, while we said in *Feati* that a correspondent bank may be held liable for accepting a faulty tender under the rule of strict compliance, its liability is necessarily defined by the role it assumed under the terms of the letter of credit. In order to consider a correspondent bank as a confirming bank, it must have assumed a direct obligation to the seller as if it had issued the letter of credit itself.[53] We said that "[i]f the [correspondent bank] was a confirming bank, then a categorical declaration should have been stated in the letter of credit that the [correspondent bank] is to honor all drafts drawn in conformity with the letter of credit."[54] Thus, if we were to hold Allied Bank liable to Marphil (which would result in a finding that the former's debit from the latter's account is wrong) based on the rule of strict compliance, it must be because Allied Bank acted as confirming bank under the language of L/C No. 21970.

In finding that Allied Bank, as correspondent bank, did not act as confirming bank, the CA reviewed the instructions of Nanyang Bank to Allied Bank in L/C No. 21970. It found that based on the instructions, there is nothing to support Marphil's argument that Allied Bank undertook, as its own, Nanyang Bank's obligations in the letter of credit:

> In the case of [*Bank of America*], the functions assumed by a correspondent bank are classified according to the obligations taken up by it. In the case of a notifying bank, the correspondent bank assumes no liability except to notify and/or transmit to the beneficiary the existence of the L/C. A negotiating bank is a correspondent bank which buys or discounts a draft under the L/C. Its liability is dependent upon the stage of the negotiation. If before negotiation, it has no liability with respect to the seller but after negotiation, a contractual relationship will then prevail between the negotiating bank and the seller. A confirming bank is a correspondent bank which assumes a

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[52] *Rollo*, p. 43.

[53] *Feati Bank & Trust Company v. Court of Appeals*, *supra* at 589.

[54] *Id.* at 590.

direct obligation to the seller and its liability is a primary)one as if the correspondent bank itself had issued the L/C.

In the instant case, the letter of Nanyang to Allied provided the following instructions: 1) the negotiating bank is kindly requested to forward all documents to Nanyang in one lot; 2) in reimbursement for the negotiation(s), Nanyang shall remit cover to Allied upon receipt of documents in compliance with the terms and conditions of the credit; 3) the drafts drawn must be marked "drawn under Nanyang Commercial Bank"; and 4) to advise beneficiary.

From the above-instructions, it is clear that Allied did not undertake to assume the obligation of Nanyang to Marphil as its own, as if it had itself issued the L/C. At most, it can only be a discounting bank which bought the drafts under the L/C. Following then the rules laid down in the case of Bank of America, a negotiating bank has a right of recourse against the issuing bank, and until reimbursement is obtained, the drawer of the draft continues to assume a contingent liability thereon. x x x[55]

In this regard, this issue of whether Allied Bank confirmed L/C No. 21970 and assumed direct obligation on it is a question of fact that was resolved by both RTC and CA in the negative. This Court is not a trier of facts and does not normally undertake the re-examination of the evidence.[56] This is especially true where the trial court's factual findings are adopted and affirmed by the CA.[57] Factual findings of the trial court affirmed by the CA are final and conclusive and may not be reviewed on appeal.[58] Here, there is no reason to deviate from these findings of the RTC and CA.

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[55] *Rollo*, pp. 45-46; citations omitted.

[56] *Pestaño v. Sumayang*, G.R. No. 139875, December 4, 2000, 346 SCRA 870, 878; *Bañas, Jr. v. Court of Appeals*, G.R. No. 102967, February 10, 2000, 325 SCRA 259, 271; *Borromeo v. Sun*, G.R. No. 75908, October 22, 1999, 317 SCRA 176, 182; *Lagrosa v. Court of Appeals*, G.R. Nos. 115981-82, August 12, 1999, 312 SCRA 298, 310; *Security Bank & Trust Company v. Triumph Lumber and Construction Corporation*, G.R. No. 126696, January 21, 1999, 301 SCRA 537, 548.

[57] *Borromeo v. Sun, supra*; *Lagrosa v. Court of Appeals, supra.*

[58] *Id*.

In any event, we find that Allied Bank may seek reimbursement of the amount credited to Marphil's account on an independent obligation it undertook under the Letter Agreement.

b. Allied Bank's right to reimbursement under the Letter Agreement

To recall, Marphil and Allied Bank executed the Letter Agreement dated June 24, 1988 the subject of which is the draft equivalent to the face value of L/C No. 21970.

In the Letter Agreement, Marphil expressly bound itself to refund the amount paid by Allied Bank in purchasing the export bill or draft, in case of its dishonor by the drawee bank:

> Purchase of the Draft shall be with recourse to me/us in the event of non-payment for any reason whatsoever. Notice of dishonor, non-acceptance, non-payment, protest and presentment for payment are hereby waived.
>
> x x x x x x x x x
>
> If, for any reason, my/our Draft is not finally honored or retired by the drawee, I/we hereby further undertake and bind myself/ourselves to refund to you, on demand, the full amount of this negotiation, together with the corresponding interest thereon as well as your or your correspondent's charges and expenses thereon, if any; and to compensate you fully for any damages that you might incur arising out of any suit, action or proceedings, whether judicial or extra-judicial that might be instituted by the buyer or importer on the ground of lack of faithful performance of the contract between said buyer or importer and myself/ourselves. Likewise, should my/our Draft be dishonored for any cause whatsoever, I/we hereby authorize you, at your discretion and without any responsibility on your part, to sell, or cause to be sold, either publicly or privately, the underlying goods, wherever they may be found, and, from the proceeds thereof, I/we hereby empower you to collect all expenses incident thereto, together with your commission, interest and other charges, as well as to reimburse yourself therefrom x x x the full amount of this negotiation, interest, charges and other expenses thereon, returning to me/us only whatever amount that may remain thereafter; and, should there be any deficiency still in your favor, notwithstanding the sale made as herein authorized, I/we likewise

bind myself/ourselves to pay the said deficiency to you upon demand.[59]

The case of *Velasquez v. Solidbank Corporation*[60] is instructive as to the nature of obligations arising from this form of undertaking. In that case, we ruled that the obligation under a letter of undertaking, where the drawer undertakes to pay the full amount of the draft in case of dishonor, is independent from the liability under the sight draft.[61] The letter of undertaking of this tenor is a separate contract the consideration for which is the promise to pay the bank the value of the sight draft if it was dishonored for any reason.[62] The liability provided is direct and primary, without need to establish collateral facts such as the violation of the letter of credit connected to it.[63]

Similarly, the Letter of Agreement is a contract between Marphil and Allied Bank where the latter agreed to purchase the draft and credit the former its value on the undertaking that Allied Bank will be reimbursed in case the draft is dishonored. This obligation is direct, and is independent, not only from the obligation under the draft, but also from the obligation under L/C No. 21970. In this connection, the CA is incorrect to say that the Letter Agreement bolsters the bank's claim that it did not undertake direct obligation under the letter of credit. The Letter Agreement simply creates a separate obligation on Marphil's part to refund the amount of the proceeds, in case of dishonor.[64] As an independent obligation, Marphil is bound to fulfill this obligation to reimburse Allied Bank.

However, a conflict arose because instead of waiting for Marphil's own initiative to return the amount, Allied Bank on its own debited from the former's credit line.

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[59] RTC records, Vol. I, p. 76.

[60] G.R. No. 157309, March 28, 2008, 550 SCRA 119.

[61] *Id*. at 128-131.

[62] *Id*. at 129.

[63] *Id*. at 130.

[64] *Id*. at 128-130.

c. Allied Bank's right to debit Marphil's account

We now proceed to determine whether Allied Bank may unilaterally debit the amount it credited to Marphil's account.

In the case of *Associated Bank v. Tan*,[65] we upheld the right of a collecting bank to debit a client's account for the value of a dishonored check it previously credited by virtue of the principle of legal compensation. Since the relationship between banks and depositors has been held to be that of creditor and debtor in a simple loan, legal compensation may take place when the conditions in Article 1279 of the Civil Code are present: (1) that each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) that both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) that the two debts be due; (4) that they be liquidated and demandable; and (5) that over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.[66]

In this case, when Allied Bank credited the amount of ₱1,913,763.45 to Marphil's account, it became the debtor of Marphil. However, once Nanyang Bank dishonored the export documents and draft for L/C No. 21970, Marphil became the debtor of Allied Bank for the amount by virtue of its obligation to reimburse the bank under the Letter Agreement. This obligation consisting of sum of money became demandable upon notice of the dishonor by Nanyang Bank. Thus, legal compensation may take place between the two debts.

In *Associated Bank*, we nevertheless emphasized that while the bank has the right to set off, the exercise of such right must be consistent with the required degree of diligence from banks, *i.e.*, highest degree of care. Thus, the question that needs to be resolved now is whether Allied Bank properly exercised its right to set off.[67]

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[65] G.R. No. 156940, December 14, 2004, 446 SCRA 282.

[66] *Id.* at 289-290.

[67] *Id.* at 290-291.

We rule that Allied Bank properly exercised its right to set off. Firstly, having signed the Letter Agreement, Marphil expressly undertook that in case of dishonor of the draft for the letter of the credit, it will refund to Allied Bank whatever the latter has credited in its favor. This places Marphil on its guard that the dishonor will create an obligation to refund the amount credited. Secondly, prior to debiting the amount, Allied Bank informed Marphil twice of Nanyang Bank's refusal to honor the tender of documents on L/C No. 21970. Thirdly, it immediately informed Marphil that it was debiting the amount of the dishonored draft from the credit line.

More Most importantly, the debiting of the account was not the proximate cause of the loss to Marphil brought about by the reshipment of goods back to Manila. The proximate cause of the loss is the subsequent dishonor of the documents by Nanyang Bank, which came before the debiting of the account. The ₱1,913,763.45 subject of the debit memo was already the costs incurred in relation to the financing and shipping of the goods to Hong Kong, and do not refer to the loss incurred when the goods were shipped back to Manila. Thus, the debiting of Marphil's account did not result in additional losses for Marphil.

In sum, we affirm that Allied Bank is not a confirming bank under L/C No. 21970. In any case, whether Allied Bank is directly liable as confirming bank will not affect Marphil's obligation to reimburse Allied Bank the amount of ₱1,913,763.45 because its liability to refund the amount arose under an independent contract, *i.e.* the Letter Agreement. And while Allied Bank is the debtor of Marphil for the amount it credited under the draft, the obligation under the Letter Agreement made Allied Bank the creditor of Marphil for the same amount. Being debtor and creditor of each other, Allied Bank was entitled to legal compensation by debiting the amount, which did not result in any loss to Marphil.

II. Obligation of ₱1,913,763.45 to Allied Bank

Marphil next argues that the RTC and CA erroneously held it liable to Allied for ₱1,913,763.45 as a new obligation.

We rule that there is no new obligation created when both the RTC and CA held petitioners liable for the ₱1,913,763.45. This was a prior and existing obligation of Marphil separate from the amount covered by the draft under L/C No. 21970. In filing the Declaratory Relief Case, Marphil asked the court not only to determine the status of its obligations evidenced by PN Nos. 2463, 2730 and 4202, but also to determine the status of its existing loans with Allied Bank, regardless of the counterclaim of the latter.

To recall, the arrangement between Marphil and Allied Bank is that advances were made by the bank in the form of loans to finance the exportation business of Marphil. When Allied Bank purchases the drafts for the letters of credit from Marphil, it credits the amount to the latter's credit line and deducts from the total amount of Marphil's existing loans from Allied Bank. This is what Allied Bank did in this case; it credited to Marphil's account the amount of ₱1,913,763.45 upon purchase of the draft. However, when L/C No. 21970 was dishonored by Nanyang Bank, it reversed the credit memo thereby leaving the parties in their situation prior to the credit memo – that Marphil has existing loan obligations arising from the advances made by Allied Bank. Simply put, Marphil is liable for the amount of ₱1,913,763.45 because this is the only amount not proven to be paid in the many loans obtained by Marphil in the credit line.

The CA imposed the legal interest rate of twelve percent (12%) on this loan obligation. Notably, the CA made no factual determination that the amount of ₱1,913,763.45 was subject to any stipulated interest between the parties. Likewise, Allied Bank neither claimed for the application of a stipulated interest nor questioned the imposition of legal interest on the loan, as it no longer appealed the decision. Considering this, we are constrained to uphold that the amount of ₱1,913,763.45, as a loan obligation, is only subject to the legal interest applicable as of the time of this decision. This is in line with our ruling in *Nacar v. Gallery Frames*[68] that in the absence of a stipulated

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

interest, a loan obligation shall earn legal interest from the time of default, *i.e.*, from judicial or extrajudicial demand.[69]

We, however, modify the rate of legal interest imposed by the CA also in conformity with *Nacar*. The amount of ₱1,913,763.45 shall earn legal interest at the rate of six percent (6%) per *annum* computed from the time of judicial demand, *i.e.* from the date of the filing of the counterclaim in the Declaratory Relief Case on May 7, 1990, until the date of finality of this judgment. The total amount shall thereafter earn interest at the rate of six percent (6%) per *annum* from such finality of judgment until its satisfaction.[70]

III. Forum Shopping

Marphil argues that in determining that Allied Bank committed forum shopping upon filing the Collection Case, the RTC and CA should have considered the counterclaim filed in the Declaratory Relief Case, and not the main petition itself. Marphil contends that Allied Bank is collecting on the same three promissory notes in its counterclaim in the two cases.

Forum shopping exists "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court."[71] Forum shopping is proscribed by the rules because of the vexation caused to the courts and parties-litigants by the filing of similar cases to claim the same reliefs.[72] The rule against forum shopping aims to avoid the grave evil that may result in the rendition by two competent tribunals of two separate and contradictory

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[69] *Id.* at 457-458.

[70] *Id.*

[71] *Heirs of Marcelo Sotto v. Palicte*, G.R. No. 159691, February 17, 2014, 716 SCRA 175, 178. Citation omitted.

[72] *Id*.

decisions.[73] Thus, any violation of the rule against forum shopping results in the dismissal of a case, or can result in holding of direct contempt against the actor.[74]

There is forum shopping when the elements of *litis pendentia* are present, or when a final judgment in one case amounts to *res judicata* in the other.[75] It must be shown that the following elements are present: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.[76]

We rule that there is no forum shopping, albeit for a reason different from that explained by the CA.

The CA concluded that there is no forum shopping because the cases involve different causes of action: the first case is a petition for declaratory relief while the second case is one of collection of sum of money. We find this analysis too sweeping and erroneous. The CA failed to take into account that it was Allied Bank who is being charged with violating the rule on forum shopping. As such, the cause of action that should have been considered is the counterclaim of Allied Bank in the Declaratory Relief Case, which is essentially a collection suit against the principal debtor Marphil. Subsequently, it also filed another Collection Case seeking to collect also on the surety Lim under the same three (3) promissory notes. These cases are the actions that the CA should have considered in deciding whether Allied Bank committed forum shopping.

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[73] *Guevara v. BPI Securities Corporation*, G.R. No. 159786, August 15, 2006, 498 SCRA 613, 638.

[74] *Arevalo v. Planters Development Bank*, G.R. No. 193415, April 18, 2012, 670 SCRA 252, 267.

[75] *Heirs of Marcelo Sotto v. Palicte*, *supra* at 178.

[76] *Id.* at 178-179.

We rule that Allied Bank did not commit forum shopping when it initiated the Collection Case against Lim despite the pendency of the counterclaim in the Declaratory Relief Case, because there is no identity of parties and cause of action.

In *Gilat Satellite Networks, Ltd. v. United Coconut Planters Bank General Insurance Co., Inc.*,[77] we explained that while a surety contract is merely ancillary to a principal obligation, the surety's liability is direct, primary and absolute. The surety's obligation is joint and solidary with that of the principal, and he becomes liable for the debt and duty of the principal, even without possessing a direct or personal interest in the principal obligation. As such, a surety may be sued separately or together with principal.[78] We emphasized this in *Ong v. Philippine Commercial International Bank*[79] where we held that the right to collect payment from the surety exists independently of its right to proceed directly against the principal debtor.[80] In fact, the creditor bank may go against the surety alone without prior demand for payment on the principal debtor.[81]

Here, the parties in the counterclaim in the Declaratory Relief Case are Allied Bank, as creditor, and Marphil, as principal debtor. On the other hand, the parties in the Collection Case are Allied Bank, as creditor, and Lim, as surety. There is no identity of parties. Also, the causes of action pleaded are different because the counter claim in the Declaratory Relief Case involves collection on the loan obligations, while Allied Bank in its complaint in the Collection Case seeks to collect on the surety obligation of Lim under the CG/CS Agreements. Another reason why forum shopping does not obtain here is the circumstance that the two cases were subsequently consolidated, jointly heard, and a single decision was rendered. Thus, the evil that the rule

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[77] G.R. No. 189563, April 7, 2014, 720 SCRA 726.

[78] *Id.* at 735.

[79] G.R. No. 160466, January 17, 2005, 448 SCRA 705.

[80] *Id.* at 709.

[81] CIVIL CODE, Art. 1216.

against forum shopping avoids, and the vexation on the court and parties-litigant, are wanting.

IV. Validity of the writ of preliminary attachment

In its application for a writ of preliminary attachment in the Collection Case against the surety Lim, Allied Bank alleged:

> 25. Defendants in conspiracy with Marphil and with one another, **committed fraud in contracting the obligations** upon which the first, second and third causes of action are brought (Sec. 1, par. (d) Rule 57, Rules of Court) when:
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> a.) There is a preconceived intention not to pay their obligations as further manifested by the premature and unjust filing of a complaint by Marphil against the plaintiff in Civil Case No. 90-640 before RTC, Makati, Branch 61;
>
> b.) To induce plaintiff to grant the credit accommodation, defendants and Marphil represented to the plaintiff that they would present the proper and sufficient documents to the issuing bank when in truth and in fact, there were discrepancies noted in the documents presented to the issuing bank by Marphil.
>
> c.) Further, defendants and Marphil committed misrepresentation in shipping the cashew nuts at a volume less than that which was required by the foreign buyer.[82] (Emphasis supplied.)

Subsequently, Branch 145 of RTC Makati issued the writ of preliminary attachment *ex parte*. When the case reached it, the CA summarily disposed of the issue of the propriety of the writ by stating that petitioners did not file any motion to discharge. However, the records show that Lim filed his Motion to Discharge Attachment[83] dated May 20, 1994 before Branch 61 of RTC Makati where Lim raised that no ground exists for the writ of attachment, making it irregularly and improperly issued.

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[82] RTC records, Vol. I, pp. 159-160.

[83] *Id.* at 327-329.

We grant the petition as to the dissolution of the writ of preliminary attachment.

A writ of preliminary attachment is "a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant."[84] Section 1, Rule 57 of the Revised Rules of Court provides for the grounds upon which the writ may issue. For this case, it is grounded under Section 1-(d) of Rule 57 of the Revised Rules of Court:

> Sec. 1. *Grounds upon which attachment may issue*. — At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:
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> x x x x x x x x x
>
> (d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;
>
> x x x x x x x x x

Once issued, a writ of attachment may be dissolved or discharged on the following grounds: (a) the debtor has posted a counter-bond or has made the requisite cash deposit; (b) the attachment was improperly or irregularly issued as where there is no ground for attachment, or the affidavit and/or bond filed therefor are defective or insufficient; (c) the attachment is excessive, but the discharge shall be limited to the excess; (d) the property attachment is exempt from preliminary attachment; or (e) the judgment is rendered against the attaching creditor.[85]

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[84] *Cuartero v. Court of Appeals*, G.R. No. 102448, August 5, 1992, 212 SCRA 260, 264.

[85] See *Bank of the Philippine Islands v. Lee*, G.R. No. 190144, August 1, 2012, 678 SCRA 171, 182-183.

In *Ng Wee v. Tankiansee*,[86] we explained that to justify the attachment of the debtor's property under Section 1(d) of Rule 57 of the Rules of Court, the applicant must show that in incurring the obligation sued upon, fraud must be the reason which induced the other party into giving its consent. In addition, the particular acts constituting the fraud imputed to the defendant must be alleged with specificity. We held:

> In the case at bench, the basis of petitioner's application for the issuance of the writ of preliminary attachment against the properties of respondent is Section 1(d) of Rule 57 of the Rules of Court which pertinently reads:
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> x x x x x x x x x
>
> For a writ of attachment to issue under this rule, the applicant must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. The applicant must then be able to demonstrate that the debtor has intended to defraud the creditor. In *Liberty Insurance Corporation v. Court of Appeals*, we explained as follows:
>
> > "To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1 (d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. Fraud is a state of mind and need not be proved by direct evidence but may be inferred from the circumstances attendant in each case."
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> In the instant case, petitioner's October 12, 2000 Affidavit is bereft of any factual statement that respondent committed a fraud. The affidavit narrated only the alleged fraudulent transaction between Wincorp and Virata and/or Power Merge, which, by the way, explains

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[86] G.R. No. 171124, February 13, 2008, 545 SCRA 263.

why this Court, in G.R. No. 162928, affirmed the writ of attachment issued against the latter. As to the participation of respondent in the said transaction, the affidavit merely states that respondent, an officer and director of Wincorp, connived with the other defendants in the civil case to defraud petitioner of his money placements. No other factual averment or circumstance details how respondent committed a fraud or how he connived with the other defendants to commit a fraud in the transaction sued upon. In other words, petitioner has not shown any specific act or deed to support the allegation that respondent is guilty of fraud.

The affidavit, being the foundation of the writ, must contain such particulars as to how the fraud imputed to respondent was committed for the court to decide whether or not to issue the writ. Absent any statement of other factual circumstances to show that respondent, at the time of contracting the obligation, had a preconceived plan or intention not to pay, or without any showing of how respondent committed the alleged fraud, the general averment in the affidavit that respondent is an officer and director of Wincorp who allegedly connived with the other defendants to commit a fraud, is insufficient to support the issuance of a writ of preliminary attachment. In the application for the writ under the said ground, compelling is the need to give a hint about what constituted the fraud and how it was perpetrated because established is the rule that fraud is never presumed. Verily, the mere fact that respondent is an officer and director of the company does not necessarily give rise to the inference that he committed a fraud or that he connived with the other defendants to commit a fraud. While under certain circumstances, courts may treat a corporation as a mere aggroupment of persons, to whom liability will directly attach, this is only done when the wrongdoing has been clearly and convincingly established.[87] (Citations omitted.)

We also reiterated in *Ng Wee* that the rules on the issuance of the writ of preliminary attachment as a provisional remedy are strictly construed against the applicant because it exposes the debtor to humiliation and annoyance.[88] The applicant must show that all requisites are present.[89] Otherwise, if issued on

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[87] *Id.* at 272-274.

[88] *Id*. at 274.

[89] *Id*. at 275.

false or insufficient allegations, the court acts in excess of its jurisdiction which must be corrected.[90]

In this case, the writ of preliminary attachment was improperly or irregularly issued because there is no ground for the attachment.

To begin with, Allied Bank filed the application for the writ of preliminary attachment in the Collection Case against Lim as surety. However, the allegations of fraud refer to the execution of the promissory notes, and not on the surety agreement. The application was bereft of any allegation as to Lim's participation in the alleged conspiracy of fraud. Also, the writ of preliminary attachment was granted in the Collection Case against Lim as surety, yet there was no allegation on Lim's fraudulent intention in incurring its obligation under the CG/CS Agreements. It cannot be inferred that Lim had, at the time of contracting the obligation, the preconceived intention to renege on his obligation under the CG/CS Agreements. Continuing guaranty and surety agreements are normally required by a bank or financing company anticipating to enter into a series of credit transactions with a particular principal debtor.[91] This avoids a need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor.[92] Here, the CG/CS Agreements were executed prior to the issuance of L/C No. 21970, and were in force during other transactions including the one involving L/C No. 22518 which encountered no problem. Thus, this transaction cannot be singled out to justify that the surety agreement has been contracted through fraud.

Moreover, the filing of the Declaratory Relief Case cannot be evidence of a preconceived intention not to pay the surety's obligation because it was filed by Marphil, and not Lim. In any case, the filing of the case is a legitimate means resorted

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[90] *Id*.

[91] See *Totanes v. China Banking Corporation*, G.R. No. 179880, January 19, 2009, 576 SCRA 323, 329.

[92] *Id*. at 329-330.

to by Marphil in seeking to clarify its existing obligations with Allied Bank. If its intention was to renege on its obligations, it would not have submitted itself to the jurisdiction of the court where it can be ordered to pay any existing obligations. The allegation that petitioners made representations to induce it to grant them a credit line is belied by the fact that it is only in the transaction involving L/C No. 21970 where Allied Bank encountered problems, because of Nanyang Bank's dishonor of the draft and documents. Also, the allegation that petitioners committed misrepresentation in shipping the cashew nuts at a volume less than that which was required by the foreign buyer, relates to the sale between Marphil and Intan, and not to the loan between Marphil and Allied Bank.

From the foregoing, Allied Bank was not able to sufficiently establish the factual circumstances of the alleged fraud in contracting the obligation. Thus, there being no ground for its issuance, the writ of preliminary attachment should be dissolved.

WHEREFORE, the petition for review on *certiorari* is **PARTLY GRANTED**. The January 12, 2009 Decision and May 12, 2009 Resolution of the Court of Appeals are **MODIFIED**. Marphil Export Corporation and Ireneo Lim are ordered to pay jointly and severally Allied Banking Corporation (now Philippine National Bank) the principal amount of ₱1,913,763.45, with interest at the rate of six percent (6%) per *annum* computed from May 7, 1990, until the date of finality of this judgment. The total amount shall thereafter earn interest at the rate of six percent (6%) per *annum* from the finality of judgment until its satisfaction. Let the writ of preliminary attachment issued against Ireneo Lim's property be **DISSOLVED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 188646. September 21, 2016]

GEORGE C. CORDERO, *petitioner, vs.* **BOARD OF NURSING,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PHILIPPINE REGULATORY COMMISSION (PRC) MODERNIZATION ACT OF 2000 (RA 8981) *VIS-À-VIS* THE PHILIPPINE NURSING ACT OF 2002 (RA 9173); THE BOARD OF NURSING (BOARD) IS NOT PRECLUDED TO INITIATE AN ADMINISTRATIVE CASE ON ITS OWN EVEN IN THE ABSENCE OF A COMPLAINANT OR A FORMAL COMPLAINT; AN ADMINISTRATIVE CHARGE FILED BY THE BOARD ITSELF NEED NOT BE UNDER OATH AND THE SIGNATURE OF ITS CHAIRPERSON IS SUFFICIENT.— The Board is not precluded from filing an administrative case *motu proprio* and initiate an administrative investigation on its own. Having determined the existence of a *prima facie* case against Cordero, there is no more need to wait for a complainant, or a formal complaint, much more file the same at the offices mentioned in the PRC Rules. In proceedings before quasi-judicial and administrative bodies, the general rule has always been liberality. Strict compliance with the rules of procedure in administrative cases is not required by law. We have previously ruled that the allegation of improper venue and the fact that a complaint was not under oath are not sufficient grounds for the dismissal of a complaint. x x x On the requirement that the complaint/Formal Charge be under oath, we agree with the Board that the signature of Chairperson Abaquin is sufficient, considering that it is the Board itself which is the complainant. In an administrative proceeding involving government employees, we ruled that an administrative charge filed by the head [or] chief of the office concerned need not be under oath, for it is only when the complaint be filed by another person that it be required to be under oath to protect respondents from malicious complaints filed only for the purpose of harassing them. In the same manner, there is no need for the formal charge to be under oath in this case since the Board

itself initiated the charge and its Chairperson signed the same in her capacity as head of the Board of Nursing and under her oath of office. The danger of a malicious complaint is no longer present.

2. ID.; ID.; ID.; PETITIONER, AS RESPONDENT IN AN ADMINISTRATIVE CASE, IS NOT ENTITLED TO BE FURNISHED WITH THE AFFIDAVITS OF WITNESSES AND COPIES OF DOCUMENTARY EVIDENCE AGAINST HIM.— Even the Board's alleged failure to furnish Cordero affidavits of witnesses and certified true copy/ies of documentary evidence, copies of the NBI Report and the Board's findings, is not fatal to the administrative case. In *Pefianco v. Moral,* a respondent in an administrative case is not entitled to be informed of the findings and recommendations of any investigating committee created to inquire into charges filed against him. He is entitled only to the administrative decision based on substantial evidence made of record, and a reasonable opportunity to meet the charges and the evidence presented against her during the hearings of the investigation committee. Indeed, Cordero is not entitled to copies of the documents, but as pointed out by the Board, Cordero is not precluded from asking copies of the NBI Report and the Board's findings, but he did not. The Formal Charge was apparently sufficient, since Cordero was able to file his detailed Answer to the charges—he denied any participation in the leakage, pointed to the possible source of the leakage, narrated pertinent portions of the testimonies taken in the Senate hearing, and concluded that the Formal Charge failed to state the basis for a possible administrative sanction against him. The allegations in his Answer constitute proof that he had sufficient notice and understanding of the accusations against him.

3. ID.; ID.; ID.; INHERENT IN ITS AUTHORITY TO SUPERVISE AND REGULATE THE NURSING PROFESSION IS THE BOARD'S JURISDICTION TO HEAR AND DECIDE ADMINISTRATIVE CASES AGAINST NURSING PROFESSIONALS; THE PROSECUTION OF THE CASE IS LEFT TO THE PRC'S SPECIAL PROSECUTOR.— The Board's jurisdiction to hear and decide administrative cases against nursing professionals is inherent in its authority to supervise and regulate the nursing profession. Meanwhile, the power to institute an administrative

case *motu proprio,* as well as the conduct of the proceedings by the special prosecutors and hearing officers delegated by the PRC or the Board is provided for in the PRC Rules. As explained by the Board, it participates in the administrative proceedings in its capacity as adjudicating body and does not wield any amount of control or supervision relative to the prosecution of the case, and decides *motu proprio* cases based on the presence or absence of evidence and not in any way on the basis of the formal charge it initiated. The prosecution of the case is left to the special prosecutors who are under the direct control and supervision of the Legal and Investigation Division of the PRC. x x x In fact, the only prohibition under Book VII of the Administrative Code of 1987 is that no hearing officer shall engage in both adjudicatory and prosecutory functions.

4. ID.; ID.; ID.; PETITIONER'S RIGHT TO DUE PROCESS WAS NOT VIOLATED AS HE WAS INFORMED OF THE SUBJECT MATTER OF THE CHARGES AGAINST HIM AND WAS GIVEN THE OPPORTUNITY TO DISPUTE THE SAME.— We emphasize that in administrative proceedings, such as the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. To reiterate, Cordero was informed of the subject matter of the charges against him. He was given the opportunity to dispute the charges through his Answer. Cordero cannot fully claim that he was not afforded due process, or even claim partiality on the part of the Board at this stage because the administrative proceedings have only reached the pre-trial stage, due mainly to Cordero's numerous pleadings asserting violation of due process. All told, Cordero's right to due process was not violated.

APPEARANCES OF COUNSEL

Valdez Domondon & Associates for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

JARDELEZA, *J.*:

The case before us traces its origin from the controversial June 2006 Philippine Regulatory Commission (PRC) Nursing Licensure Exams which involved leakage of actual examination questions, damaging the credibility of the professional examinations in the country and tarnishing the reputation of the Philippine nursing profession. One of the review centers involved in the controversy is INRESS Review Center (INRESS) headed by petitioner George C. Cordero (Cordero).

On November 16, 2006, Cordero received a Summons[1] dated November 8, 2006 from the Board of Nursing (Board) requiring him to file his counter-affidavit/verified answer to the attached Formal Charge[2] for violation of Section 15 (a) of Republic Act (RA) No. 8981[3] and Section 23 (a), (b) and (f) of Article IV of RA No. 9173.[4] Both documents were signed by then Chairperson

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[1] *Rollo*, p. 44.

[2] *Id.* at 30, 45-46. The Formal Charge was dated November 7, 2006, and docketed as Administrative Case No. 419.

[3] The PRC Modernization Act of 2000.

Sec. 15. *Penalties for Manipulation and Other Corrupt Practices in the Conduct of Professional Examinations*–

(*a*) Any person who manipulates or rigs licensure examination results, secretly informs or makes known licensure examination questions prior to the conduct of the examination or tampers with the grades in professional licensure examinations shall, upon conviction, be punished by imprisonment of not less than six (6) years and one (1) day to not more than twelve (12) years or a fine of not less than Fifty thousand pesos (₱50,000.00) to not more than One hundred thousand pesos (₱100,000.00) or both such imprisonment and fine at the discretion of the court.

[4] The Philippine Nursing Act of 2002.

Sec. 23. *Revocation and suspension of Certificate of Registration/ Professional License and Cancellation of Special/Temporary Permit.*– The Board shall have the power to revoke or suspend the certificate of registration/ professional license or cancel the special/temporary permit of a nurse upon any of the following grounds:

of the Board, Carmencita Abaquin (Abaquin). The Formal Charge described Cordero's violations as follows:

> Being associated with the INRESS Review Center, you made known or caused to make known alone or together with other person/s, the licensure examination questions in Tests III and V of the June 2006 Nurse Licensure Examinations to your reviewees prior to the conduct of the said examination on June 11 and 12, 2006.
>
> On June 8 and 9, 2006, prior to the conduct of the June 11 and 12, 2006 Nurse Licensure Examination, you and INRESS Review Center held a final coaching review session at a cinema in SM Manila. During the session, several topics were discussed through a powerpoint presentation where various questions on hypothetical scenarios and their corresponding answers were discussed. Among the topics discussed were on the subject Psych[i]atric Nursing (Test V) and Medical-surgical (Test III). Twenty five (25) items in Test III and ninety (90) items in Test V discussed during the aforesaid review session were actual test questions which came out in the June 2006 Nurse Licensure Examination. The powerpoint presentation disclosed that the same had identical contents with the photocopies of the various typewritten questions with corresponding choices of answers with an encircle on the prescribed answer and the one submitted by Ms. Anesia B. Dionisio to the Board of Nursing. A review of the answers given in Test V with the photocopies of various handwritten questions in Test III and Test V with the corresponding handwritten answers likewise confirmed the similarity in the answers in the powerpoint presentation. The power point presentation showed test questions on Test III (Psychiatric Nursing) and Test V (Medical Surgical), prepared by Board members Anesia B. Dionisio and Virginia D. Madeja.[5]

In his Answer,[6] Cordero argued that the Formal Charge was not supported by documentary evidence or sworn statements

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> (a) For any of the causes mentioned in the preceding section;
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> (b) For unprofessional and unethical conduct;
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> x x x x x x x x x
>
> (f) For violation of this Act, the rules and regulations, Code of Ethics for nurses and technical standards for nursing practice, policies of the Board and the Commission, or the conditions and limitations for the issuance of the temporarily/special permit; x x x

[5] *Rollo,* pp. 45-46.

[6] CA *rollo,* pp. 60-67.

covering the testimony of witnesses which would support the charges.[7] Hence, there is no basis for the finding of a *prima facie* case against him. It also failed to apprise him of the nature and cause of the accusations against him thus violating his right to due process.[8] He averred that the Board, in initiating a *motu proprio* administrative investigation, failed to follow the provisions in filing a formal complaint in accordance with Resolution No. 06-342 (A)[9] Series of 2006 or the PRC Rules of Procedure (PRC Rules).[10] The Board did not also file the complaint with the Legal Division of the Central Office or a Regional Office of the Commission having territorial jurisdiction over him.[11] Moreover, the Board is acting as a complainant and at the same time, as prosecutor and judge against him.[12]

Cordero claimed that there is nothing in the Formal Charge to support the allegation that he had possession of the actual licensure examination questions prior to the conduct of the examinations on June 11 and 12, 2006.[13] Until such time that the PRC computers have randomly chosen test questions using their Test Question Data Bank System (TQDS) and these tests are printed, there were no licensure examination questions that may be made known. Thus, if there was any leakage of the examination questions, the leak could not have come from anywhere else except from the PRC itself.[14] Cordero pointed out that during the hearings at the House of Representatives, PRC officials testified that the alleged leaked questions that

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[7] *Id.* at 61.

[8] *Id.*

[9] New Rules of Procedure in Administrative Investigations in the Professional Regulation Commission and the Professional Regulatory Boards.

[10] CA *rollo,* p. 61.

[11] *Id.* at 62.

[12] *Id.*; *rollo,* p. 31.

[13] CA *rollo*, pp. 62-63.

[14] *Id.* at 63.

were circulated before, during and after the licensure examinations originated from the PRC.[15]

Cordero stated that it is not unusual that questions discussed during last minute reviews come out in the actual examinations, considering that examiners and reviewers "share the same pool of knowledge from where the questions were drawn."[16] He claimed that the content in the Power Point presentation shown in the enhancement review was different from the questions from the board examiner shown to him during the Senate investigation.[17] Moreover, his participation in the final enhancement review was limited to welcoming "reviewees, give them some pep talk, brief them on the do and [dont's] x x x and x x x how to conduct themselves properly during the x x x examination."[18] After such briefing, he left the premises as he does not personally conduct the reviews.[19]

Finally, Cordero maintained that the Formal Charge failed to specify the factual basis constituting the unprofessional and unethical conduct being complained of and which violates the provisions of RA No. 8981, RA No. 9173 and the Code of Ethics for Registered Nurses that could be made the basis for the revocation or suspension of his certificate of registration/ professional license.[20]

Before the start of the pre-trial conference held on March 13, 2008, Cordero again raised the issue of jurisdiction and competence of the Board to hear and try his case.[21] Subsequently,

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[15] *Id.* at 63-64.

[16] *Id.* at 66.

[17] *Id.*

[18] CA *rollo*, p. 65.

[19] *Id.*

[20] CA *rollo,* pp. 64-65.

[21] *Rollo,* p. 47. Pre-trial was scheduled as early as February 8, 2007 (CA *rollo*, p. 81), but Cordero's counsel asked that it be allowed to file a pleading about allegedly "some legal issues that should be resolved before conducting the trial," (*id.* at 83) which turned out to be his allegation of

he filed a Manifestation and Motion[22] where he emphasized that there is no complaint filed in accordance with the provisions of the PRC Rules.[23] Cordero argued that since the Board issued the Formal Charge based on the National Bureau of Investigation (NBI) findings in the latter's October 12, 2006 Report, the complainant should be the NBI. However, the NBI could not be the complainant since it is not an office, section or division of the PRC.[24] If, on the other hand, it were the Board which had *motu proprio* filed the complaint, such *motu proprio* filing does not exempt it from complying with the provisions of Sections 1 and 2, Article II of the PRC Rules, that there must be a complaint and a complainant.[25] If the Board is the complainant in this case, it would be unjust for him to be tried by the Board who simultaneously acts as the complainant, prosecutor and judge.[26]

The Special Prosecutors of the Legal and Investigation Division, on the other hand, argued in their Comment/ Opposition[27] that the pleading filed by Cordero is a prohibited pleading since it is a motion to dismiss.[28] Moreover, a liberal construction of procedural rules applies in administrative cases. The provisions invoked by Cordero must be harmonized with

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improper delegation by the PRC to the hearing officers, and a Motion for Inhibition (*id.* at 85-89) of the hearing officer of the PRC assigned to his case, on the ground that the same hearing officer is the counsel of PRC in the criminal case filed by the NBI-PRC against Cordero with the Department of Justice. These issues dragged on for months due to the several pleadings and manifestation of the parties. When the issue of inhibition was finally settled, Cordero once more raised the issue of jurisdiction and due process, the same issues which reached the Court in this petition.

[22] *Rollo,* pp. 47-50.

[23] *Id.* at 48.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] CA *rollo,* pp. 156-161.

[28] *Id.* at 156-157.

Section 1[29] of Article III of the PRC Rules.[30] The Prosecutors contend that by authority of RA No. 9173, the Board, in the exercise of its power to regulate the nursing profession and protect the public, is acting within its power to investigate, hear and decide complaints of violations of its rules and for unethical and unprofessional conduct.[31] The Board, in filing the charge, is only a nominal party in *motu proprio* cases, while the prosecutors of the case will be the Special Prosecutor and not the Board itself.[32]

In a Resolution[33] dated May 16, 2008, the Board denied Cordero's Manifestation and Motion for lack of merit and set the pre-trial once more.[34] It ruled that no verified complaint is necessary since it, or the PRC itself, may bring an administrative action against any registered professional whose practice and privileges come under its regulation. Further, nothing from the PRC Rules imposes the signing of the Formal Charge by the head of the office, section or division of the PRC. The Chairman, in signing the Formal Charge on the basis of reports against Cordero, merely affirmed the determination of a *prima facie* case against the latter. There is also no denial of due process because the Board will act as an adjudicating body and not the prosecutor; the job of the latter will be left to the special prosecutors.

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[29] Sec. 1. *Complainant*. – The complainant shall be the office, section or unit of the Commission which initiates the action or where the respondent-examinee commits an infraction or violation of the law, rules and regulations, instructions or policies of the Commission or the Board.

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An administrative action against an examinee shall commence with a formal charge which shall be written in a clear, simple and concise language so as to apprise him of the nature and cause of the complaint against him and to enable him to intelligently prepare his defense.

[30] CA *rollo,* pp. 157-158.

[31] *Id.* at 158-159.

[32] *Id.*

[33] *Rollo*, pp. 59-63.

[34] *Id.* at 62. The dispositive portion reads:

Cordero subsequently filed a Motion for Reconsideration[35] which was denied in a Resolution[36] dated September 11, 2008.

Aggrieved, Cordero elevated the case to the Court of Appeals (CA) via a Petition for *Certiorari,*[37] imputing grave abuse of discretion on the part of the Board.

In a Decision[38] dated April 30, 2009, the CA denied the petition. It found that the Board did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in proceeding with Administrative Case No. 419.[39] Despite Cordero's insistence that there must first be a complaint, and that Section 2, Article II, of the PRC Rules should be construed as exclusively vesting upon the office, section or division of the PRC where the respondent committed the violation, the provision invoked does not negate the right of the Board, by itself, to initiate the administrative case after a *prima facie* finding, by filing of a formal charge and in effect, be the complainant.[40]

According to the CA, the Board not only has adjudicatory powers but has regulatory and investigatory powers as well for the public interest.[41] The Board, as the aggrieved party and acting on behalf of the public, should be the proper complainant.[42]

WHEREFORE, the respondent's Manifestation and Motion is hereby denied for lack of merit. Let the pre-trial of this case be set on July 16, 2008 at 1:30 PM. Respondent is hereby advised to observe the rules on the conduct of pre-trial conference.

SO ORDERED.

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

[36] *Id.* at 69-70.

[37] CA *rollo,* pp. 2-22.

[38] *Rollo*, pp. 27-42. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Pampio A. Abarintos and Marlene Gonzales-Sison, concurring.

[39] *Id.* at 36.

[40] *Id.* at 38.

[41] *Id.* at 39.

[42] *Id.*

The power to investigate and prosecute violations of the PRC/ Board rules and regulations is an adjunct and an intrinsic element to the Board's regulatory powers in the practice of the nursing profession.[43] Moreover, in administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[44] Finally, the Board's impartiality could not be questioned. Abaquin, on behalf of the Board, nominally signed the Formal Charge. The case was filed only on *prima facie* evidence which is subject to refutation.[45]

The CA denied Cordero's Motion for Reconsideration in a Resolution[46] dated June 26, 2009. Hence, this Petition for Review on *Certiorari*.[47]

Cordero maintains that the Board is not exempt from complying with the procedure in initiating an administrative complaint as clearly spelled out in Article II of the PRC Rules, and that in the absence of a complaint and a complainant, the Board has no jurisdiction to hear and decide the case.[48] He claims that he is being deprived of his right to due process on account of the absence of a complaint and a complainant.[49] Lastly, his right to a fair and impartial trial is not guaranteed because the Board, who is acting as complainant, will also render the decision.[50]

The Board, in its Comment,[51] argues that it has jurisdiction to issue a formal charge against Cordero, and to hear and decide

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[43] *Id.*

[44] *Rollo,* p. 40.

[45] *Id.*

[46] *Rollo,* p. 43.

[47] *Id.* at 3-26.

[48] *Id.* at 17.

[49] *Id.* at 21.

[50] *Id.* at 23.

[51] *Id.* at 91-111.

the administrative case. While the PRC Rules prescribe who may file a complaint for purposes of order in procedure, it does not preclude the Board from initiating an administrative action.[52] Administrative rules are not to be applied rigidly. Lastly, the Board argues that Cordero has not been denied due process because he was not denied an opportunity to be heard.[53] In fact, the administrative investigation against him has not yet advanced because of his persistent attempts to stall it.[54] The Board has not in any way shown partiality against him.[55]

We deny the petition.

The PRC is responsible for the administration, implementation and enforcement of regulatory policies on the regulation and licensing of various professions and occupations under its jurisdiction.[56] Under Section 5 of RA No. 8981, the PRC is mandated to establish and maintain a high standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of all licensure examinations. Under the same law, the various professional regulatory boards of the PRC, the Board of Nursing included, are given the following powers, functions and responsibilities:

> Sec. 9. *Powers, Functions and Responsibilities of the Various Professional Regulatory Boards.* – The various, professional regulatory boards shall retain the following powers, functions and responsibilities:
>
> *(a)* **To regulate the practice of the professions** in accordance with the provisions of their respective professional regulatory laws;
>
> x x x x x x x x x
>
> *(c)* **To hear and investigate cases arising from violations of their respective laws, the rules and regulations** promulgated

[52] *Id.* at 101.

[53] *Id.* at 106.

[54] *Id.* at 107.

[55] *Id.*

[56] Functions of the PRC. (http://www.prc.gov.ph/about/) <Last accessed on September 6, 2016.>

thereunder and their Codes of Ethics and, for this purpose, may issue summons, *subpoena* and *subpoena duces tecum* to alleged violators and/or witnesses to compel their attendance in such investigations or hearings: *Provided*, That, the decision of the Professional Regulatory Board shall, unless appealed to the Commission, become final and executory after fifteen (15) days from receipt of notice of judgment or decision;

x x x x x x x x x

(g) After due process, to **suspend, revoke or reissue, reinstate certificate** of registration or licenses for causes provided by law.

x x x x x x x x x

(Emphasis supplied.)

These powers are echoed in the provisions of RA No. 9173.[57]

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[57] Promulgated on October 21, 2002. The powers of the Board of Nursing include:

Sec. 9. *Powers and Duties of the Board.* - The Board shall supervise and regulate the practice of the nursing profession and shall have the following powers, duties and functions:

x x x x x x x x x

(b) Issue, suspend or revoke certificates of registration for the practice of nursing;

(c) Monitor and enforce quality standards of nursing practice in the Philippines and exercise the powers necessary to ensure the maintenance of efficient, ethical and technical, moral and professional standards in the practice of nursing taking into account the health needs of the nation;

x x x x x x x x x

(e) Conduct hearings and investigations to resolve complaints against nurse practitioners for unethical and unprofessional conduct and violations of this Act, or its rules and regulations and in connection therewith, issue *subpoena ad testificandum* and *subpoena duces tecum* to secure the appearance of respondents and witnesses and the production of documents and punish with contempt persons obstructing, impeding and/or otherwise interfering with the conduct of such proceedings, upon application with the court;

x x x x x x x x x

Pursuant to RA No. 8981, the PRC issued Resolution No. 06-342 (A) in 2006, providing for the rules of procedure governing administrative investigations in the PRC and the Boards under it. These rules governed the proceedings in this case.[58]

Cordero does not deny the power of the Board to initiate administrative investigations against erring professionals.[59] However, he insists that the Board did not acquire jurisdiction to hear and decide the administrative case against him because of the former's failure to comply with the procedure in initiating an administrative complaint. We disagree.

Article II of the PRC Rules provides how a complaint should be filed, to wit:

> Sec. 1. *Complaint*. – A complaint shall be in writing and **under oath** or **embodied in an affidavit**.
>
> Sec. 2. *Who May File*. – The complaint may be filed by any person, firm, partnership, association or corporation, through its duly authorized representative. The Commission or **the Board may, *motu proprio*,** initiate an administrative investigation, in which case, **the complainant shall be the office, section, or division of the Commission where the respondent committed the actionable conduct or violation of the rule or regulation of the Commission or the Board**.
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> x x x x x x x x x
>
> Sec. 5. *Where to File a Complaint*. – A complaint may be filed at the **Legal and Investigation Division (Legal Division) of the Central Office or at the Regional Office of the Commission having territorial jurisdiction** over the parties at the option of the complainant. (Emphasis supplied.)

Cordero points out that the Formal Charge was not subscribed under oath. It was not also filed by the office, section or division

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[58] In 2013, the PRC promulgated Resolution No. 2013-775, "Revised Rules and Regulations in Administrative Investigations" repealing Resolution No. 06-342 (A).

[59] *Rollo*, p. 19.

of the PRC where the respondent committed the actionable conduct or violation of the rule or regulation of the PRC or the Board.

The Board is not precluded from filing an administrative case *motu proprio* and initiate an administrative investigation on its own. Having determined the existence of a *prima facie* case against Cordero, there is no more need to wait for a complainant, or a formal complaint, much more file the same at the offices mentioned in the PRC Rules.

In proceedings before quasi-judicial and administrative bodies, the general rule has always been liberality.[60] Strict compliance with the rules of procedure in administrative cases is not required by law.[61] We have previously ruled that the allegation of improper venue and the fact that a complaint was not under oath are not sufficient grounds for the dismissal of a complaint. We held:

> x x x Well to remember, the case was an administrative case and as such, technical rules of procedure are liberally applied. In administrative cases, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense. The intention is to resolve disputes brought before such bodies in the most expeditious and inexpensive manner possible.[62]

On the requirement that the complaint/Formal Charge be under oath, we agree with the Board that the signature of Chairperson Abaquin is sufficient, considering that it is the Board itself which is the complainant. In an administrative proceeding involving government employees, we ruled that an administrative charge filed by the head of chief of the office concerned need not be under oath, for it is only when the complaint be filed by another person that it be required to be under oath to protect respondents from malicious complaints filed only for the purpose

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[60] *Besaga v. Acosta*, G.R. No. 194061, April 20, 2015, 746 SCRA 93, 105.

[61] *Barcelona v. Lim*, G.R. No. 189171, June 3, 2014, 724 SCRA 433, 451.

[62] *Puse v. Delos Santos-Puse*, G.R. No. 183678, March 15, 2010, 615 SCRA 500, 518.

of harassing them.[63] In the same manner, there is no need for the formal charge to be under oath in this case since the Board itself initiated the charge and its Chairperson signed the same in her capacity as head of the Board of Nursing and under her oath of office. The danger of a malicious complaint is no longer present.

Even the Board's alleged failure to furnish Cordero affidavits of witnesses and certified true copy/ies of documentary evidence, copies of the NBI Report and the Board's findings, is not fatal to the administrative case. In *Pefianco v. Moral,*[64] a respondent in an administrative case is not entitled to be informed of the findings and recommendations of any investigating committee created to inquire into charges filed against him. He is entitled only to the administrative decision based on substantial evidence made of record, and a reasonable opportunity to meet the charges and the evidence presented against her during the hearings of the investigation committee.[65] Indeed, Cordero is not entitled to copies of the documents, but as pointed out by the Board, Cordero is not precluded from asking copies of the NBI Report and the Board's findings,[66] but he did not. The Formal Charge was apparently sufficient, since Cordero was able to file his detailed Answer to the charges—he denied any participation in the leakage, pointed to the possible source of the leakage, narrated pertinent portions of the testimonies taken in the Senate hearing, and concluded that the Formal Charge failed to state the basis for a possible administrative sanction against him. The allegations in his Answer constitute proof that he had sufficient notice and understanding of the accusations against him.

Finally, Cordero's argument that the Board is acting as complainant, prosecutor and judge at the same time is also baseless.

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[63] *Jacob v. Director of Lands,* G.R. No. L-20798, June 21, 1966, 17 SCRA 415, 417; *Maloga v. Gella*, G.R. No. L-20281, November 29, 1965, 15 SCRA 370, 372.

[64] G.R. No. 132248, January 19, 2000, 322 SCRA 439.

[65] *Id.* at 449.

[66] *Rollo*, p. 106.

The Board's jurisdiction to hear and decide administrative cases against nursing professionals is inherent in its authority to supervise and regulate the nursing profession. Meanwhile, the power to institute an administrative case *motu proprio,* as well as the conduct of the proceedings by the special prosecutors and hearing officers delegated by the PRC or the Board is provided for in the PRC Rules. As explained by the Board,[67] it participates in the administrative proceedings in its capacity as adjudicating body and does not wield any amount of control or supervision relative to the prosecution of the case, and decides *motu proprio* cases based on the presence or absence of evidence and not in any way on the basis of the formal charge it initiated.[68] The prosecution of the case is left to the special prosecutors who are under the direct control and supervision of the Legal and Investigation Division of the PRC. In *Emin v. De Leon*,[69] we ruled that—

> Neither is there merit in petitioner's assertion that he was denied the right to due process when the CSC Regional Office, according to him, acted as investigator, prosecutor, judge and executioner. He laments that Director Buenaflor who formally filed the charge nominally was also the hearing officer, and that prosecutor Atty. Anabelle Rosell was also the one who submitted the recommendation to the CSC for the dismissal of petitioner. Recall, however, that it was ultimately the Civil Service-Chairman who promulgated the decision. The report submitted by Atty. Resell based on the hearing where Director Buenaflor sat as hearing officer, was merely recommendatory in character to the Civil Service Commission itself. **Such procedure is not unusual in an administrative proceeding.**[70] (Emphasis supplied.)

In fact, the only prohibition under Book VII of the Administrative Code of 1987 is that no hearing officer shall engage in both adjudicatory and prosecutory functions.[71] Besides,

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[67] Resolution dated May 16, 2008, *rollo*, pp. 59-63.

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

[69] G.R. No. 139794, February 27, 2002, 378 SCRA 143.

[70] *Id.* at 155.

[71] Sec. 24. *Hearing Officers.* –

any perceived error on the decision of the Board is appealable to the PRC, and thereafter, to the CA.[72] Moreover, on a more practical note, the composition of the Board of Nursing changes every three years.[73] The current Board is now composed of new members. Therefore, the evil of having a partial tribunal is no longer extant.

We emphasize that in administrative proceedings, such as the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.[74] To reiterate, Cordero was informed of the subject matter of the charges against him. He was given the opportunity to dispute the charges through his Answer. Cordero cannot fully claim that he was not afforded due process, or even claim partiality on the part of the Board at this stage because the administrative proceedings have only reached the pre-trial stage, due mainly to Cordero's numerous pleadings asserting violation of due process. All told, Cordero's right to due process was not violated.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals dated April 30, 2009 is **AFFIRMED**.

SO ORDERED.

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

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(1) Each agency shall have such number of qualified and competent members of the base as hearing officers as may be necessary for the hearing and adjudication of contested cases.

(2) No hearing officer shall engaged in the performance of prosecuting functions in any contested case or any factually related case.

[72] *Cayao-Lasam v. Spouses Ramolete,* G.R. No. 159132, December 18, 2008, 574 SCRA 439, 450-451.

[73] RA No. 9173, Section 6 reads:

Sec. 6. *Term of Office.*– The Chairperson and Members of the Board shall hold office for a term of three (3) years and until their successors shall have been appointed and qualified: *Provided,* That the Chairperson and members of the Board may be re-appointed for another term.

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[74] *Vivo v. Philippine Amusement and Gaming Corporation,* G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281.

THIRD DIVISION

[G.R. No. 188952. September 21, 2016]

PEÑAFRANCIA SHIPPING CORPORATION and SANTA CLARA SHIPPING CORPORATION, *petitioners, vs.* **168 SHIPPING LINES, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; TEST TO DETERMINE THE EXISTENCE THEREOF.—** There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.

2. **ID.; ID.; ID.; THERE IS NO FORUM SHOPPING SINCE THE MORATORIUM PETITION PRAYS FOR A RELIEF DIFFERENT FROM THE MAIN CASE.—** There is no forum shopping. x x x The moratorium petition prays for a relief different from that sought in the main case, from which the present petition arose. In the moratorium petition, the petitioners did not pray for the cancellation or revocation of the CPC issued to the respondent. What petitioners prayed for was a "moratorium or stoppage in the grant of Certificates of Public Convenience for carriage of passengers and cargoes involving the routes MATNOG, SORSOGON – ALLEN, NORTHERN SAMAR or MATNOG, SORSOGON – DAPDAP, ALLEN, NORTHERN

SAMAR, or MATNOG, SORSOGON – SAN ISIDRO, NORTHERN SAMAR AND VICE VERSA." Thus, any decision of the MARINA on the moratorium petition will not affect the CPC already issued in favor of the respondent and appealed before the CA, the subject matter of the present case.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES; DIRECT RESORT TO THE COURT OF APPEALS AGAINST THE ADVERSE RULING OF THE MARITIME INDUSTRY AUTHORITY (MARINA) BOARD IS NOT ALLOWED FOR IT VIOLATES THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.—** [A]s correctly pointed out by the respondent, paragraph 2, Section 1, Rule XV of the IRR applies only to an appeal of the order, ruling, decision or resolution of the MARINA Administrator. There is no procedure for appeal of the decisions of the MARINA Board. Hence, the IRR cannot be the basis for petitioners' appeal. Moreover, no procedure for appeal before the courts is provided by R.A. No. 9295. Rules and regulations issued to implement a law cannot go beyond its terms and provisions. Rule 43 governs all appeals from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of quasi-judicial functions. Resort to the CA is authorized by Section 9 of Batas Pambansa Blg. 129 which provides that the CA shall have jurisdiction over the decisions or final orders of quasi-judicial agencies. The MARINA is a quasi-judicial agency, and though it is not among the enumerated agencies in Rule 43, the list is not meant to be exclusive. However, while Rule 43 provides for the appeal procedure from quasi-judicial agencies to the CA, the aggrieved party must still exhaust administrative remedies prior to recourse to the CA.

4. **ID.; ID.; ID.; CONCEPT AND RATIONALE.—** The doctrine of exhaustion of administrative remedies empowers the OP to review any determination or disposition of a department head. The doctrine allows, indeed requires, an administrative decision to first be appealed to the administrative superiors up to the highest level before it may be elevated to a court of justice for review. The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both

legal and practical reasons for the principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts—for reasons of law, comity, and convenience—will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.

5. ID.; ID.; PRESIDENTIAL DECREE NO. 474, EXECUTIVE ORDER NO. 546, AND EXECUTIVE ORDER NO. 1011 *VIS-À-VIS* THE ADMINISTRATIVE CODE OF 1987; WHILE DECISIONS OF MARINA ARE NOT SUBJECT TO THE REVIEW OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATION (DOTC), THEY ARE PROPER SUBJECTS OF APPEAL TO THE OFFICE OF THE PRESIDENT (OP).— The MARINA was created under Presidential Decree No. 474 as an agency under the Office of the President. Under Executive Order No. 546, the MARINA was designated as an attached agency of the Ministry of Transportation and Communications. Under Executive Order No. 1011, the MARINA was granted the quasi-judicial functions formerly exercised by the Board of Transportation pertaining to water transportation. The Administrative Code of 1987 reiterated that the MARINA is an attached agency of the DOTC[.] x x x The status of the MARINA as an attached agency of the DOTC is crucial to the determination of whether the DOTC has the power to review the decisions of the MARINA Board. Under Section 38, Chapter VII, Book IV of the Administrative Code of 1987, there are three kinds of administrative relationship: (1) supervision and control; (2) administrative supervision; and (3) attachment. x x x Reading Section 39 together with Section 38, the decision of an attached agency such as the MARINA in the exercise of its quasi-judicial function *is not subject to review by the department*. Section 39 makes it clear that the supervision and control exercised by the department over agencies under it with respect to matters including the exercise of discretion (performance of quasi-judicial function) do not apply to attached agencies. Thus, in this respect, petitioners are correct in saying that the decisions of the MARINA are *not subject to the review*

of the DOTC Secretary. This is not to say, however, that decisions of the MARINA are not proper subjects of appeal to the OP.

6. ID.; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; DOCTRINE OF QUALIFIED POLITICAL AGENCY; WHERE HEADS OF THE VARIOUS EXECUTIVE DEPARTMENTS ARE THE ALTER EGOS OF THE PRESIDENT, THE ACTIONS TAKEN BY SUCH HEADS IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES ARE DEEMED THE ACTS OF THE PRESIDENT UNLESS THE PRESIDENT HIMSELF SHOULD DISAPPROVE SUCH ACTS.— Under the doctrine of qualified political agency, heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This is a recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.

7. ID.; ID.; ID.; ID.; THE DOCTRINE OF QUALIFIED POLITICAL AGENCY DOES NOT APPLY IN THE PRESENT CASE SINCE THE ACTIONS OF THE DOTC SECRETARY AND THE EXECUTIVE SECRETARY AS *EX OFFICIO* MEMBERS OF THE MARINA BOARD WERE MADE NOT IN THEIR CAPACITY AS ALTER EGOS OF THE PRESIDENT.— But the doctrine of qualified political agency does not apply to the actions of heads of executive departments in the performance of their duties as *ex officio* members of the various agencies or entities under the executive department. x x x In this case, the DOTC Secretary and the Executive Secretary are *ex officio* members of the MARINA Board by virtue of Section 7 of Presidential Decree No. 474, as amended[.] x x x Following our ruling in *Manalang-Demegillo*, the actions of the DOTC Secretary and the Executive Secretary, as *ex officio* members of the MARINA Board were

made not in their capacity as alter egos of the President. As such, an appeal to the OP is still warranted. If petitioners are still dissatisfied with the decision of the OP, then it would be the proper time to file a petition for review under Rule 43 with the CA. To summarize, the DOTC Secretary does not have supervision and control over the MARINA, which is an attached agency to the DOTC. Consequently, it cannot review the decisions of the MARINA Board. However, decisions of the MARINA Board are proper subjects of appeal to the OP, having been made by its members in their *ex officio* capacity, and not as his alter egos. Failing to avail of such appeal, petitioners' petition for review with the CA was properly dismissed.

APPEARANCES OF COUNSEL

John Arlin P. Caingat for petitioners.
Hernandez & Surtida Attorneys-at-Law for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This case questions the propriety of the dismissal by the Court of Appeals (CA) of a Rule 43 petition for review of a decision of the Maritime Industry Authority (MARINA), for failure to appeal the same to the Secretary of the Department of Transportation and Communications (DOTC), and subsequently, to the Office of the President (OP).

Facts

On September 28, 2007, respondent 168 Shipping Lines, Inc. (respondent) filed with the MARINA Regional Office V (MARINA RO V), Legaspi City an application[1] for the issuance of a Certificate of Public Convenience (CPC) to operate M/V Star Ferry I, a roll-on-roll-off vessel, in the route Matnog, Sorsogon to Allen, Northern Samar, and vice versa. The schedule of trips as reflected in the application has 90 departures from

[1] Docketed as LMRO Case No. 07-027. *Rollo*, pp. 425-434.

the port of Matnog, Sorsogon and 86 departures from the port of Allen, Northern Samar.[2]

Peñafrancia Shipping Corporation and Santa Clara Shipping Corporation (petitioners), existing operators who own and operate ferry boats serving the ports of Allen, Northern Samar and Matnog, Sorsogon, intervened in the proceeding and opposed[3] the application on the following grounds: (1) respondent failed to submit a Certificate of Berthing as required under MARINA Memorandum Circular No. 74-B;[4] (2) the proposed schedule of trips in the original application is physically impossible to perform by the applicant's lone vessel, the M/V Star Ferry I;[5] and (3) there exists an overtonnage in the route applied for by the respondent, thus warranting the intervention of MARINA.[6] Respondent countered that under Republic Act (R.A.) No. 9295[7] and its Implementing Rules and Regulations (IRR): (1) an application for CPC is not adversarial in character and thus, a motion to intervene and opposition are not allowed; and (2) there is no requirement for the CPC applicant to secure a Certificate of Berthing from the Philippine Ports Authority.[8]

On December 13, 2007, the MARINA RO V required respondent to file an amended CPC application with workable sailing frequencies/schedule of trips.[9] However, instead of complying with the directive, respondent merely submitted a pleading denominated as RE: ADOPTION OF AMENDED SCHEDULE OF TRIPS.[10]

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[2] *Id.* at 427-429.

[3] *Id.* at 139-152.

[4] *Id.* at 143-147.

[5] *Id.* at 147.

[6] *Id.* at 147-150.

[7] The Domestic Shipping Development Act of 2004.

[8] *Rollo*, pp. 130-138.

[9] *Id.* at 155-156.

[10] *Id.* at 157-158.

The MARINA RO V, in its Decision[11] dated February 1, 2008, denied due course to respondent's application. Respondent filed its Motion for Reconsideration but this was denied.[12]

Respondent filed a Notice of Appeal on March 26, 2008 before the Office of the MARINA Administrator.[13]

On August 8, 2008, MARINA Administrator Vicente T. Suazo, Jr., joined by Deputy Administrator for Operations Primo V. Rivera, all acting by authority of the Board, reversed the Decision of the MARINA RO V and granted respondent's application for issuance of a CPC.[14] Thus, petitioners sought reconsideration of the MARINA Decision, but their motion was denied through a Resolution[15] signed by the MARINA Officer-in-Charge Maria Elena H. Bautista who was then concurrent Undersecretary for Maritime Transport of the DOTC.

Petitioners appealed to the CA via Rule 43 of the Rules of Court. However, the CA dismissed the petition for failure of the petitioners to exhaust administrative remedies, hence, for lack of cause of action.[16]

The CA dismissed the petition through its Resolution[17] dated March 24, 2009, holding that:

> Contrary to petitioners' stance that the Maritime Industry Authority (MARINA) is an independent agency and that it has the final say in the outcome of its adjudication in any contested matter, this Court finds and holds that MARINA is an entity within the Executive

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[11] *Id.* at 171-183.

[12] *Id.* at 184-187.

[13] Cited in the Appellant's Memorandum filed before the MARINA, *id.* at 198.

[14] *Id.* at 108-121.

[15] *Id.* at 122-127.

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

[17] *Id.* at 62-64; penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Jose Catral Mendoza (now Member of this Court) and Ramon M. Bato, Jr., concurring.

Department. It will be noted that Presidential Decree No. 474 (Maritime Industry Decree of 1974) organized MARINA under the Office of the President. This was modified on July 23, 1979 by Executive Order No. 546 wherein MARINA was made an attached agency of the then Ministry of Transportation and Communications (MOTC) for policy and program coordination. This was confirmed by the Administrative Code of 1987 x x x which explicitly provides that MARINA is an agency attached to the Department of Transportation and Communication (DOTC).

Hence, MARINA is not independent of the executive structural organization and the ruling of the MARINA Administrator is subject to the consecutive reviews of the DOTC Secretary and the Office of the President as its administrative superiors in the Executive Department pursuant to the doctrine of exhaustion of administrative remedies which requires an administrative decision to first be appealed to the administrative superiors up to the highest level before it may be elevated to a court of justice for review. Thus, if a remedy within the administrative machinery can still be had by giving the administrative body concerned the opportunity to decide on the matter that comes within its jurisdiction, then such remedy should be priorly exhausted before the court's judicial power is invoked.

Petitioners' failure to resort to the DOTC Secretary and then the Office of the President, in case of an adverse decision, and the filing of the herein petition before this Court is a premature invocation of the Court's intervention which renders the instant petition without cause of action, hence, dismissible.[18] (Underscoring supplied; citations omitted.)

Petitioners filed a motion for reconsideration but this was denied.[19] Hence, this petition.

Petitioners, relying on the IRR of R.A. No. 9295, argue that: (1) a petition for review under Rule 43 of the Rules of Court is the immediate and direct remedy from the adverse rulings of the MARINA;[20] (2) the proper forum for review of the decision

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[18] *Id.* at 62-63.

[19] *Id.* at 67-68.

[20] *Id.* at 37-40, citing *San Pablo v. Sta. Clara Shipping Corporation,* CA-G.R. SP No. 86811, July 31, 2006, *id.* at 704-715.

rendered by a quasi-judicial agency is the CA;[21] (3) the decision and resolution subject of the Rule 43 petition were acts of the MARINA Board, and not merely by the Administrator;[22] (4) assuming an appeal to the DOTC Secretary and the Office of the President is necessary, this case is an exception because an appeal would be a superfluity;[23] (5) the doctrine of qualified political agency applies because the DOTC Secretary, who is the chairman of the MARINA Board, is the alter ego of the President;[24] and (6) it would be impractical to file an appeal with the OP because an individual from the OP is also a member of the MARINA Board.[25]

In its Comment,[26] respondent counters that: (1) the IRR provision on appeal is void and cannot supplant Section 19, Chapter IV, Book VII of the Administrative Code of 1987 which provides that an appeal from a final decision of the agency may be taken to the Department Head unless otherwise provided by law;[27] (2) the IRR is inapplicable since it did not provide for the mode of appeal of the decisions of the MARINA Board, rather, it provided for appeals from an order, ruling, decision or resolution of the MARINA Administrator;[28] (3) the DOTC is an attached agency under the control of the executive department and the decisions or rulings rendered by the MARINA Board in the exercise of its quasi-judicial functions are subject to the review of the DOTC Secretary and the OP;[29] (4) the

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[21] *Id.* at 38, citing *Republic v. Damayan ng Purok 14, Inc.*, G.R. No. 143135, April 4, 2003, 400 SCRA 664 and *Sy v. Commission on Settlement of Land Problems,* G.R. No. 140903, September 12, 2001, 365 SCRA 49.

[22] *Id.* at 42.

[23] *Id.* at 49.

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

[25] *Id.* at 44-45.

[26] *Id.* at 741-765.

[27] *Id.* at 759-760.

[28] *Id.* at 761.

[29] *Id.* at 751-752.

MARINA was never taken out of the framework of the executive department;[30] (5) even assuming that the decisions by the MARINA are not reviewable by the DOTC, the Constitution and the Administrative Code of 1987 provide that the President shall have control of all the executive departments, bureaus and offices;[31] and (6) the case is not an exception to the doctrine of exhaustion of administrative remedies.[32]

Respondent moved to dismiss the petition on the ground that petitioners committed a willful act of forum shopping.[33] Petitioners filed a Petition[34] (moratorium petition) dated March 22, 2010 before the MARINA, praying the latter to issue a moratorium in the grant of CPCs for carriage of passengers and cargoes covering the routes Matnog, Sorsogon – Allen, Northern Samar or Matnog; Sorsogon – Dapdap, Allen, Northern Samar or Matnog; Sorsogon – San Isidro, Northern Samar and vice-versa. They contend that the moratorium petition is an attempt by the petitioners to achieve what they sought to achieve in the present case, *i.e.*, to prevent respondent or other entities from operating in the subject routes.[35]

Petitioners, in their Comment (To Respondent's Manifestation/ Submission with Leave of Court dated June 1, 2010),[36] maintain that there is no forum shopping since the two cases have different causes of action. In the present case, if the judgment is favorable to petitioners, the effect will be retroactive, *i.e.*, voidance of the CPC already issued by the MARINA to respondent. Meanwhile, if the moratorium petition is granted, the effect of

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[30] *Id.* at 746.

[31] *Id.* at 746-747.

[32] *Id.* at 748-755.

[33] See Manifestation/Submission (with Leave of Court) filed on June 7, 2010, *id.* at 774-784.

[34] *Id.* at 785-793.

[35] *Id.* at 774-775.

[36] *Id.* at 796-807.

the moratorium will be prospective, *i.e.*, the freezing of new applications for CPC or additional bottoms in the subject route.

Issues

(1) Whether petitioners committed forum shopping when they filed the moratorium petition; and

(2) Whether the decision of the MARINA Board in the exercise of its quasi-judicial function should be appealed first to the DOTC Secretary, and subsequently to the OP, before appeal to the CA.

Our Ruling

We deny the petition.

I. No forum shopping.

There is no forum shopping. There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court."[37] The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.[38]

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[37] *Heirs of Marcelo Sotto v. Palicte,* G.R. No. 159691, February 17, 2014, 716 SCRA 175, 178, citing *Chua v. Metropolitan Bank & Trust Company,* G.R. No. 182311, August 19, 2009, 596 SCRA 524, 535.

[38] *Id.* at 178-179.

The moratorium petition prays for a relief different from that sought in the main case, from which the present petition arose. In the moratorium petition, the petitioners did not pray for the cancellation or revocation of the CPC issued to the respondent. What petitioners prayed for was a "moratorium or stoppage in the grant of Certificates of Public Convenience for carriage of passengers and cargoes involving the routes MATNOG, SORSOGON – ALLEN, NORTHERN SAMAR or MATNOG, SORSOGON – DAPDAP, ALLEN, NORTHERN SAMAR, or MATNOG, SORSOGON – SAN ISIDRO, NORTHERN SAMAR AND VICE VERSA."[39] Thus, any decision of the MARINA on the moratorium petition will not affect the CPC already issued in favor of the respondent and appealed before the CA, the subject matter of the present case.

II. The CA properly dismissed the appeal.

Petitioners justify their direct resort to the CA by invoking the IRR of R.A. No. 9295,[40] which provides for a procedure for appeal of decisions involving CPCs,[41] to wit:

RULE XV
APPEALS

Sec. 1. *Appeal on Decisions Involving the CPC* – Any order, ruling, decision or resolution of the CO/MRO Director/OIC relating to the application for issuance of Entity/Company CPC shall become final and executory fifteen (15) days unless a Motion for Reconsideration is filed within the same period with the CO/MRO Director/OIC concerned after the receipt of a copy thereof by the party affected. The decision of the CO/MRO Director/OIC shall be final and executory unless within the same period an appeal to the MARINA Administrator has been perfected.

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[39] *Rollo*, pp. 790-791.

[40] Rules And Regulations Implementing Republic Act No. 9295, Entitled "An Act Promoting The Development Of Philippine Domestic Shipping, Shipbuilding, And Ship Repair And Ship Breaking, Ordaining Reforms In Government Policies Towards Shipping In The Philippines, And For Other Purposes" (2004).

[41] *Rollo,* pp. 45-46.

The order, ruling decision or resolution of the MARINA Administrator shall be final and executory within fifteen (15) days unless an administrative appeal is filed with the MARINA Board or petition for judicial review is filed with the Court of Appeals or Supreme Court in accordance with the provisions of the Revised Rules of Court. (Underscoring supplied.)

Petitioners claim that this provision of the IRR shows that "the appropriate remedy against the adverse ruling of the MARINA Board is a petition for review to the Honorable Court of Appeals under Rule 43 of the Rules of Court."[42] However, as correctly pointed out by the respondent, paragraph 2, Section 1, Rule XV of the IRR applies only to an appeal of the order, ruling, decision or resolution of the MARINA Administrator. There is no procedure for appeal of the decisions of the MARINA Board. Hence, the IRR cannot be the basis for petitioners' appeal. Moreover, no procedure for appeal before the courts is provided by R.A. No. 9295. Rules and regulations issued to implement a law cannot go beyond its terms and provisions.[43]

Rule 43 governs all appeals from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of quasi-judicial functions. Resort to the CA is authorized by Section 9 of Batas Pambansa Blg. 129[44] which provides that the CA shall have jurisdiction over the decisions or final orders of quasi-judicial agencies. The MARINA is a quasi-judicial agency, and though it is not among the enumerated agencies in Rule 43, the list is not meant to be exclusive.[45]

However, while Rule 43 provides for the appeal procedure from quasi-judicial agencies to the CA, the aggrieved party must still exhaust administrative remedies prior to recourse to

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[42] *Id.* at 46.

[43] *China Banking Corporation v. Members of the Board of Trustees, Home Development Mutual Fund*, G.R. No. 131787, May 19, 1999, 307 SCRA 443, 459.

[44] The Judiciary Reorganization Act of 1980.

[45] *Monetary Board v. Philippine Veterans Bank*, G.R. No. 189571, January 21, 2015, 746 SCRA 508, 517-518.

the CA. Thus, Executive Order No. 292 otherwise known as the Administrative Code of 1987 provides for the framework of administrative appeal prior to judicial review:

BOOK VII – ADMINISTRATIVE PROCEDURE

CHAPTER 4 – ADMINISTRATIVE APPEAL IN CONTESTED CASES

Sec. 19. *Appeal.*—Unless otherwise provided by law or executive order, an appeal from a final decision of the agency may be taken to the Department head.

Sec. 20. *Perfection of Administrative Appeals.*—

(1) Administrative appeals under this Chapter shall be perfected within fifteen (15) days after receipt of a copy of the decision complained of by the party adversely affected, by filing with the agency which adjudicated the case a notice of appeal, serving copies thereof upon the prevailing party and the appellate agency, and paying the required fees.
(2) If a motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal.
(3) The agency shall, upon perfection of the appeal, transmit the records of the case to the appellate agency.

Sec. 21. *Effect of Appeal.*—The appeal shall stay the decision appealed from unless otherwise provided by law, or the appellate agency directs execution pending appeal, as it may deem just, considering the nature and circumstances of the case.

Sec. 22. *Action on Appeal.*—The appellate agency shall review the records of the proceedings and may, on its own initiative or upon motion, receive additional evidence.

Sec. 23. *Finality of Decision of Appellate Agency.*—In any contested case, the decision of the appellate agency shall become final and executory fifteen (15) days after the receipt by the parties of a copy thereof.

x x x x x x x x x

Sec. 25. *Judicial Review*.—

(1) Agency decisions shall be subject to judicial review in accordance with this chapter and applicable laws.
(2) Any party aggrieved or adversely affected by an agency decision may seek judicial review.
(3) The action for judicial review may be brought against the agency, or its officers, and all indispensable and necessary parties as defined in the Rules of Court.
(4) Appeal from an agency decision shall be perfected by filing with the agency within fifteen (15) days from receipt of a copy thereof a notice of appeal, and with the reviewing court a petition for review of the order. Copies of the petition shall be served upon the agency and all parties of record. The petition shall contain a concise statement of the issues involved and the grounds relied upon for the review, and shall be accompanied with a true copy of the order appealed from, together with copies of such material portions of the records as are referred to therein and other supporting papers. The petition shall be under oath and shall show, by stating the specific material dates, that it was filed within the period fixed in this chapter.
(5) The petition for review shall be perfected within fifteen (15) days from receipt of the final administrative decision. One (1) motion for reconsideration may be allowed. If the motion is denied, the movant shall perfect his appeal during the remaining period for appeal reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the appellant shall have fifteen (15) days from receipt of the resolution to perfect his appeal.
(6) The review proceeding shall be filed in the court specified by statute or, in the absence thereof, in any court of competent jurisdiction in accordance with the provisions on venue of the Rules of Court.
(7) Review shall be made on the basis of the record taken as a whole. The findings of fact of the agency when supported by substantial evidence shall be final except when specifically provided otherwise by law.

The above procedure notwithstanding, decisions of the various agencies of government have been appealed to the OP, consistent with the President's power of control over all the executive

departments, bureaus, and offices.[46] We defined the presidential power of control over the executive branch of government as "the power of [the President] to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter."[47]

The doctrine of exhaustion of administrative remedies empowers the OP to review any determination or disposition of a department head. The doctrine allows, indeed requires, an administrative decision to first be appealed to the administrative superiors up to the highest level before it may be elevated to a court of justice for review.[48]

The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts—for reasons of law, comity, and convenience—will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[49]

While the doctrine of exhaustion of administrative remedies is flexible and may be disregarded in certain instances,[50] we find, however, that the case does not fall under any of the

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[46] Section 1, Chapter I, Title I, Book III of the Administrative Code of 1987.

[47] *Carpio v. Executive Secretary*, G.R. No. 96409 February 14, 1992, 206 SCRA 290, 295 citing *Mondano v. Silvosa*, 97 Phil. 143, 148 (1955).

[48] *Land Car, Inc. v. Bachelor Express, Inc.,* G.R. No. 154377, December 8, 2003, 417 SCRA 307, 312.

[49] *University of the Philippines v. Catungal, Jr.,* G.R. No. 121863, May 5, 1997, 272 SCRA 221, 240-241.

[50] The exceptions include:

recognized exceptional circumstances. Petitioners claim that appeal to the DOTC Secretary, who is already the chairman of the MARINA Board, is a needless superfluity, the latter being the alter ego of the President. Moreover, petitioners state that filing an appeal with the Office of the President would be impractical because a member of the MARINA Board also came from the Office of the President. Both arguments fail to convince.

A quick look into the nature and functions of the MARINA is necessary to understand its nature, powers, and relationship to the executive department, and in turn determine the applicability of the doctrine of exhaustion of administrative remedies.

The MARINA was created under Presidential Decree No. 474[51] as an agency under the Office of the President.[52] Under Executive

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(1) when there is a violation of due process,
(2) when the issue involved is purely a legal question,
(3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction,
(4) when there is *estoppel* on the part of the administrative agency concerned,
(5) when there is irreparable injury,
(6) when the respondent is a department secretary whose acts as an alter ego of the President bears [*sic*] the implied and assumed approval of the latter,
(7) when to require exhaustion of administrative remedies would be unreasonable,
(8) when it would amount to a nullification of a claim,
(9) when the subject matter is a private land in land case proceedings,
(10) when the rule does not provide a plain, speedy and adequate remedy,
(11) when there are circumstances indicating the urgency of judicial intervention,
(12) when no administrative review is provided by law,
(13) where the rule of qualified political agency applies, and
(14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

Estrada v. Court of Appeals, G.R. No. 137862, November 11, 2004, 442 SCRA 117, 127-128.

[51] Providing For The Reorganization Of The Maritime Functions In The Philippines, Creating The Maritime Industry Authority, And For Other Purposes (1974).

[52] Sec. 4, Presidential Decree No. 474.

Order No. 546,[53] the MARINA was designated as an attached agency of the Ministry of Transportation and Communications.[54] Under Executive Order No. 1011,[55] the MARINA was granted the quasi-judicial functions formerly exercised by the Board of Transportation pertaining to water transportation.[56] The Administrative Code of 1987 reiterated that the MARINA is an attached agency of the DOTC:

BOOK IV – THE EXECUTIVE BRANCH
TITLE XV – TRANSPORTATION AND COMMUNICATIONS
CHAPTER 6 – ATTACHED AGENCIES

Sec. 23. *Attached Agencies and Corporations*.—The following agencies and corporations are attached to the Department: The Philippine National Railways, the Maritime Industry Authority, the Philippine National Lines, the Philippine Aerospace Development Corporation, the Metro Manila Transit Corporation, the Office of Transport Cooperatives, the Philippine Ports Authority, the Philippine Merchant Marine Academy, the Toll Regulatory Board, the Light Rail Transit Authority, the Transport Training Center, the Civil Aeronautics Board, the National Telecommunications Commission and the Manila International Airport Authority.

R.A. No. 9295, which was enacted on May 3, 2004, provides the jurisdiction, power and duties of the MARINA including the power to:

Section 10. *Jurisdiction; Powers; and Duties of MARINA*.—

x x x x x x x x x

(2) Issue certificates of public convenience or any extensions or amendments thereto, authorizing the operation of all kinds, classes and types of vessels in domestic shipping: Provided,

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[53] Creating A Ministry Of Public Works And A Ministry Of Transportation And Communications (1979).

[54] Sec. 20, Executive Order No. 546.

[55] Establishing The Land Transportation Commission In The Ministry Of Transportation And Communications, And For Other Purposes (1985).

[56] Sec. 13, Executive Order No. 1011.

That no such certificate shall be valid for a period of more than twenty-five (25) years;

x x x x x x x x x

The status of the MARINA as an attached agency of the DOTC is crucial to the determination of whether the DOTC has the power to review the decisions of the MARINA Board. Under Section 38, Chapter VII, Book IV of the Administrative Code of 1987,[57] there are three kinds of administrative

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[57] Sec. 38. *Definition of Administrative Relationships.*—Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

(1) Supervision and Control.—Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "control" shall encompass supervision and control as defined in this paragraph.

(2) Administrative Supervision.—

(a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

(b) *Such authority shall not, however, extend to:* (1) appointments and other personnel actions in accordance with the decentralization

relationship: (1) supervision and control; (2) administrative supervision; and (3) attachment.

Among the three, the relationship of supervision and control between a department and a subordinate agency is the most stringent since the department has the power to review the decisions of the subordinate agency. This power is not available

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of personnel functions under the Code, except when appeal is made from an action of the appointing authority, in which case the appeal shall be initially sent to the department or its equivalent, subject to appeal in accordance with law; (2) contracts entered into by the agency in the pursuit of its objectives, the review of which and other procedures related thereto shall be governed by appropriate laws, rules and regulations; and *(3) the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions;* and

(c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph.

(3) Attachment.—

(a) This refers to the *lateral relationship* between the department or its equivalent and the attached agency or corporation *for purposes of policy and program coordination.* The coordination may be accomplished by having the department represented in the governing board of the attached agency or corporation, either as chairman or as a member, with or without voting rights, if this is permitted by the charter; having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of programs and projects; and having the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency;

(b) Matters of day-to-day administration or all those pertaining to internal operations shall be left to the discretion or judgment of the executive officer of the agency or corporation. In the event that the Secretary and the head of the board or the attached agency or corporation strongly disagree on the interpretation and application of policies, and the Secretary is unable to resolve the disagreement, he shall bring the matter to the President for resolution and direction;

in administrative supervision as Section 38 expressly states that the department shall have no power to review the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions. As to the relationship of attachment, while the law is silent on the presence or absence of such power to review by the department, Section 38(3) would indicate that the Legislature did not intend that the decisions of an attached agency be subject to review by the department prior to appealing before the proper court. Section 38(3) indicates the most lenient kind of administrative relationship since the *lateral* relationship is limited to policy and program coordination. Thus, in *Beja v. Court of Appeals,*[58] we distinguished an attached agency from one which is under departmental supervision and control or administrative supervision:

> An attached agency has a larger measure of independence from the Department to which it is attached than one which is under departmental supervision and control or administrative supervision. This is borne out by the "lateral relationship" between the Department and the attached agency. The attachment is merely for "policy and program coordination." With respect to administrative matters, the independence of an attached agency from Departmental control and supervision is further reinforced by the fact that even an agency under a Department's administrative supervision is free from Departmental interference with respect to appointments and other personnel actions "in accordance with the decentralization of personnel functions" under the Administrative Code of 1987. **Moreover, the Administrative**

(c) Government-owned or controlled corporations attached to a department shall submit to the Secretary concerned their audited financial statements within sixty (60) days after the close of the fiscal year; and

(d) Pending submission of the required financial statements, the corporation shall continue to operate on the basis of the preceding year's budget until the financial statements shall have been submitted. Should any government-owned or controlled corporation incur an operation deficit at the close of its fiscal year, it shall be subject to administrative supervision of the department; and the corporation's operating and capital budget shall be subject to the department's examination, review, modification and approval. (Emphasis supplied.)

[58] G.R. No. 97149, March 31, 1992, 207 SCRA 689.

Code explicitly provides that Chapter 8 of Book IV on supervision and control shall not apply to chartered institutions attached to a Department.[59] (Emphasis supplied; citations omitted.)

Section 39, Chapter VIII, Book IV of the Administrative Code of 1987 expressly states that the chapter on supervision and control shall not apply to chartered institutions or government-owned or controlled corporations attached to the department. Section 39 provides:

> Sec. 39. *Secretary's Authority*.—
> (1) The Secretary shall have supervision and control over the bureaus, offices, and agencies under him, subject to the following guidelines:
>
> x x x x x x x x x
>
> (2) This Chapter shall not apply to chartered institutions or government-owned or controlled corporations attached to the department.

Reading Section 39 together with Section 38, the decision of an attached agency such as the MARINA in the exercise of its quasi-judicial function *is not subject to review by the department*. Section 39 makes it clear that the supervision and control exercised by the department over agencies under it with respect to matters including the exercise of discretion (performance of quasi-judicial function) do not apply to attached agencies. Thus, in this respect, petitioners are correct in saying that the decisions of the MARINA are *not subject to the review of the DOTC Secretary.*

This is not to say, however, that decisions of the MARINA are not proper subjects of appeal to the OP.

In *Phillips Seafood (Philippines) Corporation v. Board of Investments,*[60] we recognized that under Administrative Order No. 18,[61] a decision or order issued by a department or agency

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[59] *Id.* at 697.

[60] G.R. No. 175787, February 4, 2009, 578 SCRA 113.

[61] Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines (1987). This has been repealed by Administrative

need not be appealed to the OP when there is a special law that provides for a different mode of appeal.[62] R.A. No. 9295 does not provide for an appeal procedure; thus, the assailed decision and resolution from the MARINA should have been appealed with the OP.

More importantly, contrary to the petitioners' claim, the doctrine of qualified political agency does not apply in this case.

Under the doctrine of qualified political agency, heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This is a recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.[63]

Order No. 22, Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines (2011).

[62] Section 1 of Administrative Order No. 18, reads:

> **Sec. 1**. **Unless otherwise governed by special laws**, an appeal to the Office of the President shall be taken within thirty (30) days from the receipt by the aggrieved party of the decision/resolution/order complained of or appealed from. x x x (Emphasis supplied).

Section 1 of Administrative Order No. 22, reads:

> **Sec. 1. Period to appeal. Unless otherwise provided by special law**, an appeal to the Office of the President shall be taken fifteen (15) days from notice of the aggrieved party of the decision/resolution/order appealed from, or of the denial, in part or in whole, of a motion for reconsideration duly filed in accordance with the governing law of the department or agency concerned.

[63] *Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*, G.R. No. 168613, March 5, 2013, 692 SCRA 359, 373-374.

But the doctrine of qualified political agency does not apply to the actions of heads of executive departments in the performance of their duties as *ex officio* members of the various agencies or entities under the executive department.[64]

Ex officio, is defined in *Civil Liberties Union v. Executive Secretary*[65] as:

> x x x The term *ex-officio* means "from office; by virtue of office." It refers to an "authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position." *Ex-officio* likewise denotes an "act done in an official character, or as a consequence of office, and without any other appointment or authority than that conferred by the office." An *ex-officio* member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment. x x x[66]

In *Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*[67] (TIDCORP), we held that the doctrine of qualified political agency cannot be extended to the acts of the Board of Directors of the TIDCORP, though some of its members are cabinet members. We clarified that even if the Secretary of Finance, the Secretary of Trade and Industry, the Governor of the Bangko Sentral ng Pilipinas, the Director-General of the National Economic and Development Authority, and the Chairman of the Philippine Overseas Construction Board are members of the cabinet, they sat on the TIDCORP Board by virtue of Presidential Decree No. 1080, as amended by R.A. No. 8494 and by reason of their office or function, or in their *ex officio capacity*, and not because of their direct appointment to the Board by the President. Thus, they were acting as members of the Board, and not as alter egos of the President. We said:

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[64] *Id.* at 374-375.

[65] G.R. No. 83896, February 22, 1991, 194 SCRA 317.

[66] *Id.* at 333.

[67] G.R. No. 168613, March 5, 2013, 692 SCRA 359.

But the doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet. Under Section 10 of Presidential Decree No. 1080, as further amended by Section 6 of Republic Act No. 8494, the five *ex officio* members were the Secretary of Finance, the Secretary of Trade and Industry, the Governor of the Bangko Sentral ng Pilipinas, the Director-General of the National Economic and Development Authority, and the Chairman of the Philippine Overseas Construction Board, while the four other members of the Board were the three from the private sector (at least one of whom should come from the export community), who were elected by the *ex officio* members of the Board for a term of not more than two consecutive years, and the President of TIDCORP who was concurrently the Vice-Chairman of the Board. Such Cabinet members sat on the Board of Directors of TIDCORP *ex officio*, or by reason of their office or function, not because of their direct appointment to the Board by the President. Evidently, it was the law, not the President, that sat them in the Board.

Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, they were acting as the responsible members of the Board of Directors of TIDCORP constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the *alter egos* of the President. We cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred.[68]

In this case, the DOTC Secretary and the Executive Secretary are *ex officio* members of the MARINA Board by virtue of Section 7 of Presidential Decree No. 474, as amended, which provides:

Sec. 7. *Composition and Organization.*—The Board shall be composed of eight members as follows: The Secretary of Trade, the Secretary of Public Works, ***Transportation and Communications,*** the Secretary of National Defense, ***the Executive Secretary***, the Chairman of the Board of Investments, the Chairman of the Development Bank of the Philippines, the Chairman of the Board of Transportation and the Maritime Administrator. The Chairman of

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[68] *Id.* at 374-376.

the Board shall be appointed by the President of the Philippines from among its members. x x x[69] (Emphasis supplied.)

Following our ruling in *Manalang-Demegillo*, the actions of the DOTC Secretary and the Executive Secretary, as *ex officio* members of the MARINA Board were made not in their capacity as alter egos of the President. As such, an appeal to the OP is still warranted. If petitioners are still dissatisfied with the decision of the OP, then it would be the proper time to file a petition for review under Rule 43 with the CA.

To summarize, the DOTC Secretary does not have supervision and control over the MARINA, which is an attached agency to the DOTC. Consequently, it cannot review the decisions of the MARINA Board. However, decisions of the MARINA Board are proper subjects of appeal to the OP, having been made by its members in their *ex officio* capacity, and not as his alter egos. Failing to avail of such appeal, petitioners' petition for review with the CA was properly dismissed.

WHEREFORE, the petition is **DENIED**. The Court of Appeals Resolutions dated March 24, 2009 and July 23, 2009 are hereby **AFFIRMED.**

SO ORDERED.

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

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[69] The composition of the MARINA Board has been amended by Section 1, Executive Order No. 783, promulgated on March 16, 1982, to include the Philippine Ports Authority General Manager as member of the MARINA Board. Section 5, R.A. No. 10635, promulgated on March 13, 2014, further amended its composition by including the Commandant of the Philippine Coast Guard in lieu of the Secretary of the National Defense.

THIRD DIVISION

[G.R. No. 193837. September 21, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENATO M. PANGAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ELEMENTS.— To sustain a conviction for the complex crime of robbery with homicide, primarily an offense against property, the robbery must be proved beyond reasonable doubt. Proof of the homicide alone is not sufficient to support a conviction for the aforesaid complex crime. In robbery with homicide cases, it is incumbent that the prosecution prove that: (a) the taking of personal property is perpetrated by means of violence or intimidation against a person; (b) the property taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi*; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide is committed. The prosecution should establish the offender's intent to take personal property before the killing, regardless of the time when the homicide is actually carried out. When the prosecution fails to conclusively prove that the homicide was committed for the purpose of robbing the victim, no accused can be convicted of robbery with homicide.

2. ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR ARE INSUFFICIENT TO ESTABLISH APPELLANT'S GUILT BEYOND REASONABLE DOUBT.— Two things stand out in the case at bar: there were no eyewitnesses to the robbery or to the homicide; and among the items stolen, only a mobile phone of doubtful provenance and compromised integrity was presented in evidence. There is no other evidence on record that could support the conclusion that appellant's primary motive was to rob the victim and that he was able to execute it. While the trial court noted that there had been no eyewitnesses to the robbery, it nevertheless ruled that the robbery aspect of the special complex crime was sufficiently proven because the appellant had been the last person seen with the victim and appellant had allegedly been seen in possession of a mobile

phone purportedly belonging to the victim. The trial court's conclusion is speculative. Appellant was the last person seen with the victim, thus, the suspicion that he was author of the crime. Although this circumstance admittedly breeds speculation, it is insufficient to establish appellant's guilt. And even if indeed it was true that appellant had in his possession the victim's mobile phone, the evidence is not definitive, among many possibilities, x x x. In point of fact, mere suspicions and speculations can never be bases of conviction in a criminal case. Notably, there is no conclusive proof that the mobile phone belonged to the victim.

3. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; GUIDELINES THAT MUST BE OBSERVED TO SUSTAIN A CONVICTION BY CIRCUMSTANTIAL EVIDENCE.— [I]t is not only by direct evidence that an accused may be convicted, but for circumstantial evidence to sustain a conviction, the following are the guidelines: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is as such as to produce a conviction beyond reasonable doubt. Decided cases expound that the circumstantial evidence presented and proved must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person. All the circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rationale except that of guilt.

4. ID.; ID.; ID.; CIRCUMSTANTIAL EVIDENCE PRESENTED BY THE PROSECUTION DOES NOT CLEARLY MAKE AN UNBROKEN CHAIN WHICH LEADS TO A FAIR AND REASONABLE CONCLUSION THAT APPELLANT PERPETRATED THE CRIME.— The circumstantial evidence relied upon by the trial court engenders doubt rather than moral certainty of appellant's guilt. Moreover, said evidence does not completely preclude the possibility that another person or persons perpetrated the crime. That appellant had been last seen with the appellant and had been allegedly seen in possession of the victim's mobile phone do not necessarily mean he authored the crime. These circumstances do arouse suspicion but fail to muster the quantum of proof required in criminal cases that is

guilt beyond reasonable doubt. In addition, the pieces of circumstantial evidence do not clearly make an unbroken chain which leads one to a fair and reasonable conclusion that appellant perpetrated the crime. The events that transpired from the time appellant had been last seen with the victim at five o'clock in the afternoon of 21 August 2003 to the morning of 24 August 2003, the time when the victim's body was discovered, are unaccounted for. There is also no proof showing that appellant was with the victim during that span of time. Records also do not show when the victim was actually killed. It is even questionable why the discovery of the victim's death in the morning of said date was reported late in the afternoon of that day. Considering the weakness of the prosecution evidence against appellant, the possibility that another person or persons could have committed the crime cannot be discounted. The evidence at hand neither proves beyond cavil appellant's complicity nor precludes the possibility of another person's liability for the crime. It bears underscoring that no independent physical evidence that could connect appellant to the crime, e.g. fingerprints, was found at the scene of the crime or on the object evidence, if any, gathered by the police.

5. **ID.; ID.; PRESUMPTION; CONVICTION OF THE ACCUSED CANNOT BE BASED ON A PRESUMPTION; PRESUMPTION CAN NEVER BE A SUBSTITUTE FOR PROOF.—** The appellate court affirmed the conviction by the trial court of the appellant relying on, among others, the presumption laid down by Section 3 (j), Rule 131 of the Revised Rules of Evidence that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act. It is well to stress that in criminal cases, presumptions should be taken with caution especially in light of serious concerns that they might water down the requirement of proof beyond reasonable doubt. As special considerations must be given to the right of the accused to be presumed innocent, there should be limits on the use of presumptions against an accused. x x x While a presumption imposes on a party against whom it is directed the burden of going forward with evidence to rebut such presumption, the burden of producing evidence of guilt does not extend to the burden of proving the accused's innocence of the crime as the burden of persuasion does not shift and remains throughout the trial upon the prosecution. In the case at bar, appellant disputes the prosecution's assertion

of his possession of the victim's mobile phone. Prosecution thus must rely on the strength of its evidence to establish said possession. Even if such possession of the mobile phone was true, the subject phone bore no proof of ownership. Besides, the mobile phone presented in evidence had remained in the personal safekeeping of SPO1 Ramos until its marking in court, raising doubts on its identity and integrity. Further assuming that appellant had in his possession the victim's mobile phone, this circumstance alone is not conclusive of his authorship of the special complex crime. Presumption is never a substitute for proof.

6. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; THE COURT ACQUITS THE ACCUSED OF ROBBERY WITH HOMICIDE BECAUSE OF REASONABLE DOUBT.— Robbery with homicide is a special complex crime against property. Absent clear and convincing evidence that the crime of robbery was perpetrated, and that, on occasion or by reason thereof, a homicide was committed, an accused cannot be found guilty of robbery with homicide, but only of homicide or murder, as the case may be. There is scarce evidence to show appellant's complicity in the killing of the victim. The Court cannot convict appellant of the special complex crime of robbery with homicide or of the separate crimes of robbery or homicide when the circumstantial evidence relied upon by the trial court is plainly inadequate and unconvincing in proving appellant's guilt beyond reasonable doubt. In the final analysis, the circumstances narrated by the prosecution engender doubt rather than moral certainty on the guilt of appellant. In our criminal justice, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. Where there is reasonable doubt as to the guilt of the accused, he must be acquitted even though his innocence may be doubted since the constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt.

APPEARANCES OF COUNSEL

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D E C I S I O N

PEREZ, *J.*:

For review is the Decision[1] dated 30 April 2010 of the Court of Appeals, Thirteenth Division, in CA-G.R. CR-H.C. No. 03730 affirming *in toto* the Decision[2] dated 8 April 2008 of the Regional Trial Court (RTC), Branch 53 of Guagua, Pampanga in Criminal Case No. G-6466, which found appellant Renato Pangan *y* Madlambayan guilty beyond reasonable doubt of the crime of Robbery with Homicide.

In the Information dated 12 February 2004, appellant was charged with the crime of robbery with homicide, to wit:

> That on or about the 21st day of August 2003, in Brgy. Pabanlag, Municipality of Floridablanca, Province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, did then and there willfully, unlawfully and feloniously take, steal and carry away Rodolfo Ocampo's cellphone and other personal belongings in the total amount of Php 17,060.00.
>
> That by reason or on the occasion thereof, the above-named accused, armed with a bladed weapon, with intent to kill, did then and there willfully, unlawfully and feloniously attack and assault Rodolfo Ocampo, hacking him in the head and neck, resulting in the latter's death.[3]

Appellant pleaded not guilty during his arraignment. Trial proceeded. The prosecution presented as witnesses Ernesto Aguinaldo (Aguinaldo), the widow Carmencita Ocampo (Ocampo), Michael Aragon (Aragon), Rialyn Napicog (Napicog), Senior Police Officer 1 (SPO1) Rosby Ramos (SPO1 Ramos), Dr. Jude Doble (Dr. Doble) and Mauricio Magtoto (Magtoto).

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[1] *Rollo*, pp. 2- 13; Penned by Associate Justice Romeo F. Barza with Associate Justices Rosalinda Asuncion-Vicente and Amy C. Lazaro-Javier concurring.

[2] Records, pp. 331-342; Penned by Presiding Judge Maria Concepcion A. Yumang Pangan.

[3] *Id*. at 3.

During trial, the defense had admitted the sworn statements of Aguinaldo, Ocampo and Aragon as their respective testimonies; thus, their direct and cross-examinations were disregarded.[4]

Aguinaldo narrated that on 21 August 2003, at about four o'clock in the afternoon, he saw the victim talking with appellant near the hut the victim had been renting out from Aguinaldo. An hour later, around five o'clock in the afternoon, he had left the place with the two (2) still together.[5] The following day, 22 August 2003, Ocampo, the victim's wife, called Aguinaldo and requested assistance as her husband could not be reached through his mobile phone. A male voice would answer her calls and subsequently turn it off. Aguinaldo thus visited the hut in the morning of 23 August 2003, found the same padlocked and thought that the victim had gone out. In the morning of the next day, 24 August 2003, Aguinaldo revisited the hut and through the window saw the victim's decomposing body on the bed.[6]

Around five o'clock in the afternoon on even date, SPO1 Ramos received an information from a certain *Kagawad* Bansil concerning the death of the victim. SPO1 Ramos immediately proceeded to the location and found the victim with hack wounds on the head and the neck.[7] In the course of the crime investigation, Aragon supplied information that in the morning of 22 August 2013, he saw appellant in possession of a mobile phone, a Nokia 3310. Appellant purportedly sought help refilling the load of said phone and in the process, Aragon saw the names Rowena and Rudy in its phonebook. Aragon further observed that appellant would receive calls on said phone but would immediately turn the power off.[8]

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[4] TSN, 15 October 2004, p. 4; TSN, 12 November 2004, p. 5 and TSN, 6 May 2005, pp. 7-8.

[5] Records, pp. 276-277; Exhibits "H" and "H-1".

[6] *Id*. at 268-269 and 17-18; Exhibit "A", "B", and "G".

[7] *Id*. at 270; Exhibit "C"; TSN, 18 February 2005, pp. 3-9.

[8] *Id*. at 272; Exhibit "E."

SPO1 Ramos allegedly confronted appellant with this information and asked for the mobile phone. Appellant supposedly replied that the same had been given to Napicog while the SIM card had been left in a grassy area near a river where indeed it was as avowed later recovered. SPO1 Ramos asserted he went with appellant to see Napicog who produced the subject mobile phone without a SIM card. Napicog purportedly reasoned that appellant had given her the mobile phone in the afternoon of 22 August 2003. Napicog confirmed that the mobile phone had borne no proof of ownership.[9] SPO1 Ramos however professed the same had belonged to the victim; and kept custody of the subject phone from the time he had come into its possession to its presentation to the court on 21 July 2006 when it was first marked.[10]

Dr. Doble, who conducted the autopsy of the victim and executed the certificate of death and the medico-legal report, confirmed that the victim had died of hemorrhage and shock resulting from the hack wounds.[11] His medico-legal report had no finding in regard to the victim's approximate time of death.[12]

Magtoto, the victim's son-in-law, asserted that appellant had owned up to him the killing of the victim. Magtoto claimed that said confession had been made in the presence of the *barangay* chairman of Pabanlag, the widow, Ocampo, and her children while outside the prosecutor's office during the preliminary investigation.[13] On cross-examination, it was threshed out that said confession had curiously never been discussed in the subsequent affidavit of Ocampo and that neither of the ones who had supposedly heard the confession submitted sworn statements attesting to its execution.[14]

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[9] *Id*. at 273; Exhibit "F;" TSN, 16 June 2006, pp. 2-13.

[10] TSN, 21 July 2006, pp. 3-7.

[11] TSN, 12 August 2005, pp. 3-12.

[12] Records, p. 271.

[13] TSN, 20 January 2006, pp. 10-13.

[14] TSN, 17 March 2006, pp. 3-7.

Appellant denied the allegations against him. He claimed that he had been home with his siblings the whole day of 21 August 2003. He admitted to knowing the victim as they lived in adjacent lots; but has never had any misunderstanding with the victim. Appellant was arrested at home by SPO1 Ramos on 26 August 2003 and was thereafter brought to the police station. Appellant asserted that SPO1 Ramos had told him to admit to committing the crimes of killing the victim and taking the mobile phone. Afterward, he was incarcerated. Appellant maintained on the witness stand that he had never handed Napicog any mobile phone.[15]

On 8 April 2008, while admitting there had been no eyewitnesses to the crime of robbery with homicide nor any direct evidence linking the appellant to its commission, the trial court, based on circumstantial evidence, found appellant guilty beyond reasonable doubt of the crime of robbery with homicide:

> **IN LIGHT OF THE FOREGOING,** this Court finds the accused Renato Pangan *y* Madlambayan GUILTY beyond reasonable doubt of Robbery with Homicide under Article 294, paragraph 1 of the Revised Penal Code, as amended by Rep. Act. No. 7659, and hereby sentences him to suffer the penalty of *reclusion perpetua*. Likewise, the said accused is hereby ORDERED to pay the heirs of the victim the amount of ₱20,000 as actual damages; ₱75,000 as civil indemnity; ₱75,000 as moral damages, and ₱25,000 as exemplary damages; Costs *de oficio*.[16]

On 30 April 2010, the Court of Appeals affirmed *in toto* the trial court's decision. The Court of Appeals agreed with the trial court's conviction of appellant based on circumstantial evidence. It likewise found appellant's failure to give an explanation for possession of the victim's mobile phone crucial to the determination of his guilt in the commission of the crime.[17]

After a careful and thorough review of the facts and evidence on record, the Court rules for appellant's acquittal.

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[15] TSN, 25 October 2007, pp. 2-10.

[16] Records, p. 342.

[17] *Rollo*, pp. 10-11.

Every criminal conviction requires the prosecution to prove two things: (1) the fact of the crime, *i.e.* the presence of all the elements for which the accused stands charged; and (2) the fact that the accused is the perpetrator of the crime.[18] The Court finds the prosecution unable to prove both elements and is thus left with no option but to acquit on reasonable doubt.

To sustain a conviction for the complex crime of robbery with homicide, primarily an offense against property, the robbery must be proved beyond reasonable doubt.[19] Proof of the homicide alone is not sufficient to support a conviction for the aforesaid complex crime.[20]

In robbery with homicide cases, it is incumbent that the prosecution prove that: (a) the taking of personal property is perpetrated by means of violence or intimidation against a person; (b) the property taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi*; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide is committed.[21]

The prosecution should establish the offender's intent to take personal property before the killing, regardless of the time when the homicide is actually carried out. When the prosecution fails to conclusively prove that the homicide was committed for the purpose of robbing the victim, no accused can be convicted of robbery with homicide.[22]

Two things stand out in the case at bar: there were no eyewitnesses to the robbery or to the homicide; and among the

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[18] *People v. Urzais*, G.R. No. 207662, 13 April 2016.

[19] *People v. Geron*, 346 Phil. 14, 27 (1997); *People v. Parel*, 330 Phil. 453, 467 (1996) both cited in *People v. Asis*, 439 Phil. 707, 726 (2002).

[20] *Id.; Id.* both cited in *People v. Asis*, 439 Phil. 707, 726 (2002) and *People v. Pagal*, 169 Phil. 550, 557 (1977).

[21] *People v. Robles*, 388 Phil. 762, 776 (2000); *People v. Datu*, 367 Phil. 14, 27 (1999) cited in *People v. Asis*, 439 Phil. 707, 726 (2002).

[22] *People v. Sanchez*, 358 Phil. 527, 537 (1998) cited in *People v. Chavez*, G.R. No. 207950, 22 September 2014, 735 SCRA 728, 738.

items stolen, only a mobile phone of doubtful provenance and compromised integrity was presented in evidence. There is no other evidence on record that could support the conclusion that appellant's primary motive was to rob the victim and that he was able to execute it. While the trial court noted that there had been no eyewitnesses to the robbery, it nevertheless ruled that the robbery aspect of the special complex crime was sufficiently proven because the appellant had been the last person seen with the victim and appellant had allegedly been seen in possession of a mobile phone purportedly belonging to the victim.

The trial court's conclusion is speculative. Appellant was the last person seen with the victim, thus, the suspicion that he was author of the crime. Although this circumstance admittedly breeds speculation, it is insufficient to establish appellant's guilt. And even if indeed it was true that appellant had in his possession the victim's mobile phone, the evidence is not definitive, among many possibilities, whether said phone had been lent to him before the homicide, whether appellant had just taken it and thereafter the victim was killed by another or whether appellant merely found the same in the victim's body or some other place after the homicide perpetrated by another person. In point of fact, mere suspicions and speculations can never be bases of conviction in a criminal case.[23] Notably, there is no conclusive proof that the mobile phone belonged to the victim. Even assuming the mobile phone was the victim's own, the fact that it remained in the personal custody of the investigating officer from the time he had supposedly received it from Napicog and only surrendered it at the time of its presentation necessarily compromised its integrity.

The evidence to establish the homicide aspect of the special complex crime also falls short of proving that appellant committed the attendant killing. Appellant was linked to the victim's death as he had been seen last with the latter and was allegedly been seen in possession of the latter's mobile phone. Significantly, SPO1 Ramos testified as follows:

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[23] *People v. Lugod*, 405 Phil. 125, 150 (2001); *People v. Albao*, 350 Phil. 573, 597 (2001) both cited in *People v. Asis*, 439 Phil. 707, 725 (2002).

Atty. Beltran:

Q Let us make this clear Mr. witness, the death of the victim in this case was not witnessed by any witnesses?
A Yes, sir.

Q And there were only three persons you interviewed in the conduct of your investigation is that correct?
A Yes, sir.

Q The first person you interviewed Ernesto Aguinaldo has no knowledge about the death of the victim?
A Yes, sir.

Q Michael Aragon also do (sic) not have any personal knowledge about the circumstance of the death of the victim?
A Yes, sir.

Q Same with Realyn Napicog?
A Yes, sir.

Q In short Mr. witness, the accused in this case is being implicated with the death of the victim in this because of the cellphone?
A Yes, sir.

Q Which according to Michael Aragon and Realyn Napicog was found in the possession of the accused?
A Yes, sir.

Q So that is the only circumstance which links the accused in the death of the victim?
A Yes, sir.

Q Mr. witness, apart from this circumstance linking the accused to the death of the victim there is no other circumstance?
A None sir.[24] (Emphasis supplied)

Certainly, it is not only by direct evidence that an accused may be convicted, but for circumstantial evidence to sustain a conviction, the following are the guidelines: (1) there is more than one circumstance; (2) the facts from which the inferences

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[24] TSN, 18 February 2005, pp. 8-10.

are derived are proven; and (3) the combination of all the circumstances is as such as to produce a conviction beyond reasonable doubt.[25] Decided cases expound that the circumstantial evidence presented and proved must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person. All the circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rationale except that of guilt.[26]

The circumstantial evidence relied upon by the trial court engenders doubt rather than moral certainty of appellant's guilt. Moreover, said evidence does not completely preclude the possibility that another person or persons perpetrated the crime. That appellant had been last seen with the appellant and had been allegedly seen in possession of the victim's mobile phone do not necessarily mean he authored the crime. These circumstances do arouse suspicion but fail to muster the quantum of proof required in criminal cases that is guilt beyond reasonable doubt.

In addition, the pieces of circumstantial evidence do not clearly make an unbroken chain which leads one to a fair and reasonable conclusion that appellant perpetrated the crime. The events that transpired from the time appellant had been last seen with the victim at five o'clock in the afternoon of 21 August 2003 to the morning of 24 August 2003, the time when the victim's body was discovered, are unaccounted for. There is also no proof showing that appellant was with the victim during that span of time. Records also do not show when the victim was actually killed. It is even questionable why the discovery of the victim's death in the morning of said date was reported late in the afternoon of that day.

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[25] Revised Rules of Court, Rule 133, Section 4.

[26] *People v. Urzais, supra* note 18 citing *People v. Geron*, 346 Phil. 14, 24 (1997); *People v. Quitorio*, 349 Phil. 114, 129 (1998), *People v. Reyes*, 349 Phil. 39, 58 (1998) citing *People v. Binamira*, 343 Phil. 1, 21 (1997) citing *People v. Adofina*, G.R. No. 109778, 8 December 1994, 239 SCRA 67, 76-77. See also *People v. Payawal*, 317 Phil. 507, 515 (1995).

Considering the weakness of the prosecution evidence against appellant, the possibility that another person or persons could have committed the crime cannot be discounted. The evidence at hand neither proves beyond cavil appellant's complicity nor precludes the possibility of another person's liability for the crime. It bears underscoring that no independent physical evidence that could connect appellant to the crime, e.g. fingerprints, was found at the scene of the crime or on the object evidence, if any, gathered by the police.

The appellate court affirmed the conviction by the trial court of the appellant relying on, among others, the presumption laid down by Section 3 (j), Rule 131 of the Revised Rules of Evidence that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act.

It is well to stress that in criminal cases, presumptions should be taken with caution especially in light of serious concerns that they might water down the requirement of proof beyond reasonable doubt. As special considerations must be given to the right of the accused to be presumed innocent, there should be limits on the use of presumptions against an accused.[27]

On this point, *People v. Geron*[28] tells us:

> x x x At any rate, the mere possession by the accused of items allegedly stolen, without more, cannot conduce to a single conclusion that robbery indeed took place or at least was the primary motive for the killings. In the absence of positive and indubitable evidence showing unlawful taking by the accused by means of violence against or intimidation of persons, the prosecution cannot rely with certitude on the fact of possession alone. The Court's application of the presumption that a person found in possession of the personal effects belonging to the person robbed and killed is considered the author of the aggression, the death of the person, as well as the robbery committed, has been invariably limited to cases where such possession is either unexplained or that the proffered explanation is rendered implausible in view of independent evidence inconsistent thereto.[29]

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[27] *Mabunga v. People*, 473 Phil. 555, 565 (2004).

[28] *Supra* note 19.

[29] *Id.* at 25.

While a presumption imposes on a party against whom it is directed the burden of going forward with evidence to rebut such presumption, the burden of producing evidence of guilt does not extend to the burden of proving the accused's innocence of the crime as the burden of persuasion does not shift and remains throughout the trial upon the prosecution.[30]

In the case at bar, appellant disputes the prosecution's assertion of his possession of the victim's mobile phone. Prosecution thus must rely on the strength of its evidence to establish said possession. Even if such possession of the mobile phone was true, the subject phone bore no proof of ownership. Besides, the mobile phone presented in evidence had remained in the personal safekeeping of SPO1 Ramos until its marking in court, raising doubts on its identity and integrity. Further assuming that appellant had in his possession the victim's mobile phone, this circumstance alone is not conclusive of his authorship of the special complex crime. Presumption is never a substitute for proof.

Robbery with homicide is a special complex crime against property. Absent clear and convincing evidence that the crime of robbery was perpetrated, and that, on occasion or by reason thereof, a homicide was committed, an accused cannot be found guilty of robbery with homicide, but only of homicide or murder, as the case may be.[31] There is scarce evidence to show appellant's complicity in the killing of the victim. The Court cannot convict appellant of the special complex crime of robbery with homicide or of the separate crimes of robbery or homicide when the circumstantial evidence relied upon by the trial court is plainly inadequate and unconvincing in proving appellant's guilt beyond reasonable doubt. In the final analysis, the circumstances narrated by the prosecution engender doubt rather than moral certainty on the guilt of appellant.

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[30] *Mabunga v. People*, *supra* note 27 at 569-570.

[31] *People v. Canlas*, 423 Phil. 665, 686 (2001) citing *People v. Arondain*, 418 Phil. 354, 367 (2001).

In our criminal justice, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.[32] Where there is reasonable doubt as to the guilt of the accused, he must be acquitted even though his innocence may be doubted since the constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt.[33]

In conclusion, because of reasonable doubt as to the guilt of the appellant, he must be acquitted. Every accused is presumed innocent until the contrary is proved; that presumption is solemnly guaranteed by the Bill of Rights. The contrary requires proof beyond reasonable doubt, or that degree of proof that produces conviction in an unprejudiced mind. Short of this, it is not only the right of the accused to be freed; it is even the constitutional duty of the court to acquit him.[34]

WHEREFORE, in view of the foregoing, the Decision dated 30 April 2010 of the Court of Appeals, Thirteenth Division in CA-G.R. CR-H.C. No. 03730 is **REVERSED** and **SET ASIDE.** RENATO PANGAN *y* MADLAMBAYAN is **ACQUITTED** on reasonable doubt of the crime of robbery with homicide. His immediately release from confinement is hereby ordered, unless he is being held for some other lawful case.

SO ORDERED.

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

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[32] *People v. Aspiras*, 427 Phil. 27, 41 (2002).

[33] *People v. Baulite*, 419 Phil. 191, 198-199 (2001).

[34] *People v. Valeriano*, G.R. Nos. 103604-05, 23 September 1993, 226 SCRA 694, 714 citing *People v. Pido*, 277 Phil. 52, 54 (1991).

SECOND DIVISION

[G.R. No. 201354. September 21, 2016]

PABLO M. PADILLA, JR. and MARIA LUISA P. PADILLA, *petitioners, vs.* **LEOPOLDO MALICSI, LITO CASINO, and AGRIFINO GUANES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; FACTUAL QUESTIONS ARE NOT THE PROPER SUBJECT OF AN APPEAL BY CERTIORARI; EXCEPTIONS, APPLIED.— The Rules of Court categorically states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by certiorari. It is not this Court's function to analyze or weigh all over again evidence that has already been considered in the lower courts. However, these rules admit exceptions. *Medina v. Mayor Asistio, Jr.* lists down 10 recognized exceptions: x x x A careful study of the records leads this Court to conclude that this case falls under the exceptions cited in *Medina*, particularly in that "the inference made is manifestly mistaken"; and that "[t]he findings of the Court of Appeals are contrary to those of the trial court, necessitating a review of the question of fact raised before this Court."

2. CIVIL LAW; CIVIL CODE; OWNERSHIP; BUILDER IN GOOD FAITH, DEFINED.— A builder in good faith is a builder who was not aware of a defect or flaw in his or her title when he or she introduced improvements on a lot that turns out to be owned by another. *Philippine National Bank v. De Jesus* explains that the essence of good faith is an honest belief of the strength and validity of one's right while being ignorant of another's superior claim at the same time[.]

3. ID.; ID.; ID.; IN VIEW OF RESPONDENTS' FAILURE TO SUBSTANTIATE THEIR CLAIM, THEY CANNOT BE CONSIDERED AS BUILDERS IN GOOD FAITH.—

Respondents say that they believed De Mossessgeld when she told them that the lot belonged to her. Yet, the records show that De Mossessgeld was a complete stranger to them. The lack of blood relation should have been enough to put respondents on guard and convince them not to rely on her claim of ownership. If respondents had looked into the ownership of the lot, they would have easily discovered that it was titled to petitioner Pablo M. Padilla, Jr.'s mother as early as 1963 under Transfer Certificate of Title No. T-8303. In *Baltazar v. Court of Appeals*, the burden of proving the status of a purchaser in good faith lies on the person asserting that status. It is not enough to invoke the ordinary presumption of good faith; that is, that everyone is presumed to act in good faith. Respondents, as the party asserting the status of builder in good faith, must substantiate their claim through preponderance of evidence. To support their assertion, respondents claim that they were made to believe by De Mossessgeld that she owned the lot. Respondents also claim that they received permission from De Mossessgeld to build their houses on the land, subject to their eventual purchase of the portions where their houses stood. However, aside from this naked and self-serving testimony, respondents failed to present any evidence to bolster their claim. Respondents likewise failed to adduce evidence that they entered into an agreement to sell with De Mossessgeld, or that they paid her 40.00 per month as rent, pending full payment of the areas they were occupying. x x x Failing to substantiate their claim, respondents cannot be considered as builders in good faith. Therefore, the benefits and rights provided under Article 448 of the Civil Code do not apply.

4. ID.; ID.; ID.; RESPONDENTS' RIGHT AS BUILDERS IN BAD FAITH *VIS-À-VIS* PETITIONERS AS LANDOWNERS, EXPLAINED.— As builders in bad faith, respondents have no right to recover their expenses over the improvements they have introduced to petitioners' lot under Article 449 of the Civil Code[.] x x x Under Article 452 of the Civil Code, a builder in bad faith is entitled to recoup the necessary expenses incurred for the preservation of the land. However, respondents neither alleged nor presented evidence to show that they introduced improvements for the preservation of the land. Therefore, petitioners as landowners became the owners of the improvements on the lot, including the residential buildings constructed by respondents, if they chose to appropriate the

> accessions. However, they could instead choose the demolition of the improvements at respondents' expense or compel respondents to pay the price of the land under Article 450 of the Civil Code[.] x x x Whether petitioners choose to appropriate the improvements, compel their demolition, or compel respondents to pay the price of the land, they are entitled to damages under Article 451 of the Civil Code.

APPEARANCES OF COUNSEL

Villar and Reyes Law Offices for petitioners.
Felipe R. De Belen for respondents.

D E C I S I O N

LEONEN, *J.*:

This resolves the Petition for Review on Certiorari[1] filed by Spouses Pablo M. Padilla, Jr. and Maria Luisa P. Padilla (Spouses Padilla) assailing the Decision[2] dated March 19, 2012 of the Court of Appeals, which reversed and set aside the Decision[3] dated July 15, 2009 of Branch 30 of the Regional Trial Court of Cabanatuan City.

Spouses Padilla bought a parcel of land in Magsaysay Norte, Cabanatuan City in 1984.[4] The lot was covered by Transfer Certificate Title No. T-45565 and had an area of 150 square meters.[5] It had an assessed value of more than ₱20,000.00.[6]

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[1] *Rollo*, pp. 9-22.

[2] *Id*. at 29-40. The Decision was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Normandie B. Pizarro and Rodil V. Zalameda of the Third Division, Court of Appeals, Manila.

[3] *Id*. at 23–28. The Decision was penned by Presiding Judge Virgilio G. Caballero.

[4] *Id*. at 23.

[5] *Id*.

[6] *Id*. at 13.

Sometime in 1998, Spouses Padilla discovered that Leopoldo Malicsi, Lito Casino, and Agrifino Guanes (Malicsi, et al.) constructed houses on their lot.[7]

Spouses Padilla made repeated verbal and written demands for Malicsi, et al. to vacate the premises and pay a monthly rental of ₱2,000.00, but Malicsi, et al. refused to heed Spouses Padilla's demands.[8]

The matter was referred to the Katarungang Pambarangay for conciliation proceedings and amicable settlement, but all efforts at conciliation failed.[9]

On August 6, 2007, Spouses Padilla filed a complaint for recovery of possession against Malicsi, et al., along with three (3) others: Larry Marcelo, Diosdado dela Cruz, and Rolando Pascua.[10]

In their Answer with Compulsory Counterclaim, Malicsi, et al. alleged that they believed in all honesty and good faith that the lot belonged to Toribia Vda. De Mossessgeld (De Mossessgeld).[11] They claimed that they possessed the land and built their houses on the lot only after receiving De Mossessgeld's permission.[12]

Malicsi, et al. also claimed that they and De Mossessgeld agreed that she would sell them the areas occupied by their houses, provided that pending full payment, they would pay her ₱40.00 per month as rent.[13]

Between 1980 and 1983, Malicsi, et al. constructed their respective houses on the lot in the belief that they would

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[7] *Id*. at 30.

[8] *Id*. at 23.

[9] *Id*.

[10] *Id*. at 14 and 23.

[11] *Id*. at 24.

[12] *Id*.

[13] *Id*.

eventually own the areas they were occupying. Malicsi and Casino even introduced improvements to the houses they had built.[14]

Malicsi, et al. stated that they first found out about Spouses Padilla's claim of ownership sometime in 2002.[15] They admitted receiving the demand letters to vacate and pay rentals, but they refused to leave the premises.[16] They denied that conciliation and mediation proceedings for amicable settlement were ever conducted before the Katarungang Pambarangay.[17]

On September 3, 2008, a commission was created to determine the actual valuation of the lot, including the improvements erected on it.[18] In its Report, the Commission found that "the prevailing valuation of similar lots in the vicinity ranges from ₱4,000 to ₱6,000 per [square] [meter] or an average valuation of ₱5,000.00/ [square] [meter] as per information gathered from several bank appraisers in the locality."[19]

The Commissioner's Report likewise quoted the appraised value of the improvements on the lot, thus:

> The Computation of the value of the property
>
> The appraised value of the property subject of this case were [sic] computed using the straightline method of depreciation with the formula:
>
> Appraised Value = Market value x Remaining Life (building)/ Life of the building
>
> A. The 2-level residential house occupied by Sps. Angelito & Carmelita Casino:
>
> Appraised Value = ₱183,040 x 22/25 = **₱161,075.20**

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[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 24-25.

[18] *Id*. at 25.

[19] *Id*.

B. The 2-level residential building house occupied by Sps. Larry & Candida Marcelo:

Appraised Value = ₱199,280 x 22/25 = **₱175,366.40**

C. The bungalow type residential building occupied by Mr. Diosdado dela Cruz:

Appraised Value = ₱68,000 x 22/25 = **₱59,840**

D. The 2-level residential house occupied by Sps. Leopoldo Malicsi

Appraised Value = ₱183,040 x 22/25 = **₱161,075.20**

E. [T]he 2-level residential house occupied by Sps. Agri[f]ino & Aida Guane[s]:

Appraised Value = ₱208,000 x 22/25 = **183,040**[20]
(Emphasis in the original)

On January 30, 2009, Spouses Padilla, exercising their option to sell the land to Malicsi, et al. under Article 448 of the Civil Code in the amount of ₱5,000.00 per square meter, filed a Motion and Manifestation with Offer to Sell. In their Comment, Malicsi, et al. stated that by filing the Motion and Manifestation, Spouses Padilla had, in effect, recognized Malicsi, et al.'s standing as builders in good faith. They did not accept the offer to sell.[21]

In the Decision[22] dated July 15, 2009, the Regional Trial Court ruled that Malicsi, et al. cannot be considered as builders in good faith.[23] The dispositive of the Regional Trial Court Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the [Spouses Padilla] and against [Malicsi, et al.] ordering the latter:

1. To vacate the property covered by TCT-T-45565 of the Registry of Deeds of Cabanatuan City and surrender possession of the same to [Spouses Padilla];

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

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

[22] *Id*. at 23-28.

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

2. To pay [Spouses Padilla] jointly and severally attorney's fees in the amount of ₱20,000.00 and litigation expenses in the amount of ₱10,000.00.

SO ORDERED.[24] (Emphasis in the original)

Malicsi, et al. appealed to the Court of Appeals. On March 19, 2012, the Court of Appeals reversed and set aside the Regional Trial Court Decision.[25]

The Court of Appeals gave credence to Malicsi, et al.'s allegation that they relied on De Mossessgeld's representation that she owned the lot and gave them permission to build their houses on it.[26] The dispositive of the Court of Appeals Decision reads:

WHEREFORE, premises considered, the decision appealed from is hereby **REVERSED** and **SET ASIDE**. In lieu thereof, another is entered as follows:

1. Declaring [respondents] as builders in good faith.
2. Ordering [respondents] to purchase the subject land unless the fair market value of the land is considerably more than the fair market value of the improvements thereon, in which case, a forced lease shall be created between the parties on terms to be mutually agreed upon by them or, in case of disagreement, to be fixed by the court.
3. Deleting the award of attorney's fees and litigation expenses for lack of basis.

SO ORDERED.[27] (Emphasis in the original)

Petitioners Spouses Pablo M. Padilla, Jr. and Maria Luisa P. Padilla elevated the case to this Court. In their Petition for Review on Certiorari,[28] they point out that respondents Leopoldo

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[24] *Id*. at 28.

[25] *Id*. at 29-40.

[26] *Id*. at 36-37.

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

[28] *Id*. at 9-22.

Malicsi, Lito Casino, and Agrifino Guanes failed to substantiate their claim of being builders in good faith:

> While the law says, that presumption of good faith leans in favor of the respondents and the burden rests upon the petitioners, yet from the surroundings [sic] circumstances and the evidenced [sic] adduced before the Regional Trial Court, it appears that respondents' declaration that Toribia Vda. De Mossessgeld permitted them to stay in the premises in question is not an evidence at all to prove them to be builders in good faith. Mossessgeld was never presented as a witness nor there was an evidence [sic], that Mossessgeld is the owner thereof. Is that sufficient evidence to support the claim of the respondents that they are builders in good faith?[29]

In their Comment,[30] respondents maintain that the question of whether they were builders in good faith has already been settled by the Court of Appeals, and that there is no reason to deviate from its findings.[31]

The sole issue for this Court's resolution is whether respondents are builders in good faith.

I

The Rules of Court categorically states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion."[32] The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45[33] since factual questions are not the proper subject of

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[29] *Id*. at 18.

[30] *Id*. at 44-49.

[31] *Id*. at 45-47.

[32] RULES OF COURT, Rule 45, Sec. 6.

[33] RULES OF COURT, Rule 45, Sec. 1 provides:

> 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.

an appeal by certiorari. It is not this Court's function to analyze or weigh all over again evidence that has already been considered in the lower courts.[34]

However, these rules admit exceptions. *Medina v. Mayor Asistio, Jr.*[35] lists down 10 recognized exceptions:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[36]

Pascual v. Burgos[37] instructs that parties must demonstrate by convincing evidence that the case clearly falls under the exceptions to the rule:

> Parties praying that this court review the factual findings of the Court of Appeals must demonstrate and prove that the case clearly falls under the exceptions to the rule. They have the burden of proving to this court that a review of the factual findings is necessary. Mere assertion and claim that the case falls under the exceptions do not suffice.[38] (Citation omitted)

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[34] *Quintos v. Nicolas*, 736 Phil. 438, 451 (2014) [Per *J.* Velasco, Third Division].

[35] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

[36] *Id.* at 232.

[37] G.R. No. 171722, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> [Per *J.* Leonen, Second Division].

[38] *Id.*

Petitioners claim that the Court of Appeals erred in reversing the trial court's finding that respondents were not builders in good faith. However, that the findings of the Court of Appeals and of the trial court are opposite does not warrant this Court's automatic review of factual findings.[39] This only presents a *prima facie* basis for recourse to this Court. *Fernan v. Court of Appeals*[40] cautions that this Court's review of the factual findings of the lower courts "must be invoked and applied only with great circumspection and upon a clear showing that manifestly correct findings have been unwarrantedly rejected or reversed."[41]

A careful study of the records leads this Court to conclude that this case falls under the exceptions cited in *Medina*, particularly in that "the inference made is manifestly mistaken";[42] and that "[t]he findings of the Court of Appeals are contrary to those of the trial court, necessitating a review of the question of fact raised before this Court."[43]

II

A builder in good faith is a builder who was not aware of a defect or flaw in his or her title when he or she introduced improvements on a lot that turns out to be owned by another.[44]

Philippine National Bank v. De Jesus[45] explains that the essence of good faith is an honest belief of the strength and validity of one's right while being ignorant of another's superior claim at the same time:

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[39] *Uniland Resources v. Development Bank of the Philippines*, 277 Phil. 839, 844 (1991) [Per *J.* Gancayco, First Division].

[40] 260 Phil. 594 (1990) [Per *J.* Narvasa, First Division].

[41] *Id.* at 598.

[42] *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per *J.* Bidin, Third Division].

[43] *Id.*

[44] *Pleasantville Development Corporation v. Court of Appeals*, 323 Phil. 12, 22 (1996) [Per *J.* Panganiban, Third Division].

[45] 458 Phil. 454 (2003) [Per *J.* Vitug, First Division].

Good faith, here understood, is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another[.][46] (Citations omitted)

The following provisions of the Civil Code are relevant as regards the remedies available to a landowner and builder in good faith:

Article 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

. . . . . .

Article 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

. . . . . .

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

Article 548. Expense for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successors in the possession do not prefer to refund the amount expended.

Article 448 of the Civil Code gives a builder in good faith the right to compel the landowner to choose between two (2) options: (1) to appropriate the building by paying the indemnity required by law; or (2) to sell the land to the builder. *Ignacio v. Hilario*[47] summarized the respective rights of the landowner and builder in good faith as follows:

> The owner of the building erected in good faith on a land owned by another, is entitled to retain the possession of the land until he is paid the value of his building, under Article [546]. The owner of the land, upon the other hand, has the option, under Article [448], either to pay for the building or to sell his land to the owner of the building. But he cannot, as respondents here did, refuse both to pay for the building and to sell the land and compel the owner of the building to remove it from the land where it is erected. He is entitled to such remotion only when, after having chosen to sell his land, the other party fails to pay for the same.[48]

Rosales v. Castelltort[49] has emphasized that the choice belongs to the landowner, but the landowner must choose from the two (2) available options:

> The choice belongs to the owner of the land, a rule that accords with the principle of accession, *i.e.*, that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. The landowner cannot refuse to exercise either option and compel instead the owner of the building to remove it from the land.[50] (Citations omitted)

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[47] 76 Phil. 605 (1946) [Per *C.J.* Moran, *En Banc*].

[48] *Id.* at 608.

[49] 509 Phil. 137 (2005) [Per *J.* Carpio Morales, Third Division].

[50] *Id*. at 153.

Even before the Regional Trial Court rendered its Decision, petitioners had already intimated their willingness to sell the property to respondents at ₱5,000.00 per square meter, which was the valuation recommended in the Commissioner's Report. However, respondents refused to accept the offer to sell.[51]

Respondents claim to be builders in good faith because they believed that the lot was owned by De Mossessgeld.[52] Operating under this belief, they entered into an agreement with her where she would sell them the areas occupied by their respective houses, and pending full payment, they would each pay her ₱40.00 monthly as rent.[53]

However, the Regional Trial Court was not swayed by respondents' assertion of being builders in good faith since it found that the property was titled, as early as 1963, to petitioner Pablo M. Padilla, Jr.'s mother, while respondents only entered the lot sometime between 1980 and 1983, thus:

> Undoubtedly, [Malicsi, et al.] can not claim that they were builders in good faith because they relied on the promise of one Mrs. Toribia Vda. De Mossessgeld who will sell the same to them but such allegations are contrary to the actual circumstances obtaining in this case.
>
> A check with the Office of the Register of Deeds will show that the property in question had already been registered in the name of the mother of [Pablo M. Padilla, Jr.] way back in 1963 under TCT-T-8303 such that [Malicsi, et al.] can not claim good faith when they constructed their residential houses thereon in 1980 and 1983. Said Mrs. Mossessgeld had never been an owner thereof to sell the same to them.
>
> [Pablo M. Padilla, Jr.] is merely giving [Malicsi, et al.] some liberalities by allowing them to buy the lots they occupy but the latter adamantly refused as can be gleaned from their written Comment dated March 27, 2009.[54]

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[51] *Rollo*, p. 26.

[52] *Id*. at 24.

[53] *Id*.

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

Upon appeal, the Court of Appeals reversed the findings of the Regional Trial Court and found respondents to be builders in good faith:

> Here, [Malicsi, et al.] constructed their houses on the subject parcel of land on their mistaken belief that it was owned by Toribia vda de Mossessgeld. It was the latter who gave them permission to build their houses thereat. This situation is no different from that in ***Sarmiento vs. Agana*** where the private respondents who constructed their residential house on a property they had mistakenly believed to be owned by their mother but later turned out to belong to another, were considered as builders in good faith.
>
> This ruling was reiterated in the case of ***Spouses Ismael and Teresita Macasaet vs. Spouses Vicente and Rosario Macasaet***[.][55] (Emphasis in the original, citations omitted)

We do not agree with the Court of Appeals.

The Court of Appeals relied heavily on *Sarmiento v. Agana*[56] and *Spouses Macasaet v. Spouses Macasaet*[57] to support its reversal of the Regional Trial Court Decision. A judicious reading of the cited jurisprudence, however, shows that the facts in this case greatly differ from those in *Sarmiento* and *Spouses Macasaet*.

In *Sarmiento*, Spouses Ernesto and Rebecca Valentino were allowed by Ernesto's mother to build a house on what she claimed was her lot. The couple then built their house on the lot, but later found out that the lot was titled to Mr. and Mrs. Jose C. Santos, who had sold the lot to Leonila Sarmiento.[58] This Court ruled that Spouses Ernesto and Rebecca Valentino were builders in good faith "in view of the peculiar circumstances under which they had constructed the residential house."[59]

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[55] *Id*. at 36-37.

[56] 214 Phil. 101 (1984) [Per *J*. Melencio-Herrera, Second Division].

[57] 482 Phil. 853 (2004) [Per *J*. Panganiban, Third Division].

[58] *Sarmiento v. Agana*, 214 Phil. 101, 103 (1984) [Per *J*. Melencio-Herrera, Second Division].

[59] *Id*. at 104.

In *Spouses Macasaet*, a mother and father owned a parcel of land. They told their son and daughter-in-law to build a house on a part of the lot so that the family could live near each other and they could help out in the family business. After some time, relations became strained between the family members.[60] The parents filed an ejectment suit against their son and daughter-in-law, saying that their stay was only based on tolerance.[61] This Court deemed the son and daughter-in-law to be builders in good faith as they introduced improvements on the lot with the knowledge and consent of their parents, the registered lot owners.[62]

No such peculiar circumstance of close family relations can be found here.

Respondents say that they believed De Mossessgeld when she told them that the lot belonged to her. Yet, the records show that De Mossessgeld was a complete stranger to them. The lack of blood relation should have been enough to put respondents on guard and convince them not to rely on her claim of ownership. If respondents had looked into the ownership of the lot, they would have easily discovered that it was titled to petitioner Pablo M. Padilla, Jr.'s mother as early as 1963 under Transfer Certificate of Title No. T-8303.

In *Baltazar v. Court of Appeals*,[63] the burden of proving the status of a purchaser in good faith lies on the person asserting that status.[64] It is not enough to invoke the ordinary presumption of good faith; that is, that everyone is presumed to act in good faith.[65] Respondents, as the party asserting the status of builder

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[60] *Spouses Macasaet v. Spouses Macasaet*, 482 Phil. 853, 858 (2004) [Per *J.* Panganiban, Third Division].

[61] *Id*. at 857.

[62] *Id*. at 873.

[63] 250 Phil. 349 (1988) [Per *J.* Feliciano, Third Division].

[64] *Id*. at 366.

[65] *Id*.

in good faith, must substantiate their claim through preponderance of evidence.[66]

To support their assertion, respondents claim that they were made to believe by De Mossessgeld that she owned the lot. Respondents also claim that they received permission from De Mossessgeld to build their houses on the land, subject to their eventual purchase of the portions where their houses stood. However, aside from this naked and self-serving testimony, respondents failed to present any evidence to bolster their claim.

Respondents likewise failed to adduce evidence that they entered into an agreement to sell with De Mossessgeld, or that they paid her ₱40.00 per month as rent, pending full payment of the areas they were occupying.

Furthermore, respondents neither presented De Mossessgeld herself nor submitted proof on which she might have based her purported ownership of the lot. If De Mossessgeld proved elusive, respondents could then have presented statements from disinterested third parties who could testify that it was so well-known in the community that De Mossessgeld owned the lot that they had to believe her claim of ownership. Respondents likewise failed to prove that they exercised the necessary diligence required by their situation. They did not examine the tax declarations or the title to the property before they built on it.

Failing to substantiate their claim, respondents cannot be considered as builders in good faith. Therefore, the benefits and rights provided under Article 448 of the Civil Code do not apply.

As builders in bad faith, respondents have no right to recover their expenses over the improvements they have introduced to petitioners' lot under Article 449 of the Civil Code, which provides:

Article 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.

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[66] *Id*.

Under Article 452[67] of the Civil Code, a builder in bad faith is entitled to recoup the necessary expenses incurred for the preservation of the land. However, respondents neither alleged nor presented evidence to show that they introduced improvements for the preservation of the land.

Therefore, petitioners as landowners became the owners[68] of the improvements on the lot, including the residential buildings constructed by respondents, if they chose to appropriate the accessions. However, they could instead choose the demolition of the improvements at respondents' expense or compel respondents to pay the price of the land under Article 450 of the Civil Code, which provides:

> Article 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

Whether petitioners choose to appropriate the improvements, compel their demolition, or compel respondents to pay the price of the land, they are entitled to damages under Article 451[69] of the Civil Code.

Heirs of Durano v. Spouses Uy[70] has summarized the remedies available to the landowner:

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[67] CIVIL CODE, Art. 452 provides:

> Article 452. The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land.

[68] CIVIL CODE, Art. 445 provides:

> Article 445. Whatever is built, planted or sown on the land of another and the improvements or repairs made thereon, belong to the owner of the land, subject to the provisions of the following articles.

[69] CIVIL CODE, Art. 451 provides:

> Article 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.

[70] 398 Phil. 125 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

The Civil Code provides:

> Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right of indemnity.
>
> Art. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.
>
> Art. 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.

Based on these provisions, the owner of the land has three alternative rights: (1) to appropriate what has been built without any obligation to pay indemnity therefor, or (2) to demand that the builder remove what he had built, or (3) to compel the builder to pay the value of the land. In any case, the landowner is entitled to damages under Article 451, abovecited.[71] (Citations omitted)

Considering that petitioners pray for the reinstatement of the Regional Trial Court Decision ordering respondents to vacate the lot and surrender its possession to them, petitioners are deemed to have chosen to appropriate the improvements built on their lot without any obligation to pay indemnity to respondents.

WHEREFORE, premises considered, the Decision dated March 19, 2012 of the Court of Appeals in CA-G.R. CV No. 96141 is **REVERSED** and **SET ASIDE**. The Decision dated July 15, 2009 of Branch 30 of the Regional Trial Court of Cabanatuan City in Civil Case No. 5469 is **REINSTATED *IN TOTO***.

SO ORDERED.

Brion (Acting Chairperson), del Castillo, and *Mendoza, JJ.,* concur.

Carpio, J., on official leave.

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[71] *Id.* at 153-154.

THIRD DIVISION

[G.R. No. 205200. September 21, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LEONARDO CRUZ *Y* ROCO**, *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; TESTIMONY OF THE VICTIM SUFFICIENTLY ESTABLISHED THE CRIME OF RAPE.—** Although AAA, in her testimony, was not able to explicitly state that it was the penis of the appellant that penetrated her vagina, she was able to provide ample details from which the conclusion of consummated sexual intercourse can be had. x x x AAA's detailed narration reveals the different *circumstances* that make up the *factual context* of that critical moment when she felt *something* penetrate her vagina ("*Naramdaman ko po na may pumasok po sa organ k*o"). x x x With the foregoing circumstances serving as context of AAA's penetration, it becomes abundantly clear that the *something* or the "*meron*" that AAA felt penetrating her "*organ*" is actually and can only be the penis of the appellant. Indeed, under those circumstances, no other reasonable supposition can be had. A conclusion that AAA's vagina could have been penetrated by something else other than the appellant's penis is, in fact, simply farfetched and unlikely given the context provided by AAA's testimony. Verily, the testimony of AAA suffices to establish the fact that appellant had carnal knowledge of AAA. That fact, coupled with AAA's recollection of how the appellant employed force, threat and intimidation against her to accomplish the dastardly act, makes the testimony of AAA substantially complete to prove the crime charged against the appellant.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; ASSESSMENT OF THE TRIAL COURT IN MATTERS PERTAINING TO THE CREDIBILITY OF WITNESSES, ACCORDED RESPECT; APPELLANT'S DENIAL AND SWEETHEART DEFENSE UNAVAILING AS AGAINST VICTIM'S TESTIMONY.—** The long-standing rule in our jurisdiction is that the assessment of a trial court in matters pertaining to the

credibility of witnesses, are accorded great respect—if not finality—on appeal. The rationale of this rule is the recognition of the trial court's unique and distinctive position to be able to observe, first hand, the demeanor, conduct and attitude of the witness whose credibility has been put in issue. x x x [W]e find that AAA's testimony is truly deserving of the full weight and credence accorded to it by the RTC and the Court of Appeals. The testimony was categorical, explicit and replete with the details of how appellant carried out his carnal designs against AAA. With such testimony, and in the absence of any strong evidence supporting the appellant's denial and sweetheart defenses, we find no reason to depart from the rulings of the RTC and the Court of Appeals anent the conviction of the appellant for the crime charged.

3. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; CIVIL LIABILITY; AWARD OF DAMAGES, INCREASED.—** [W]e find it necessary to modify the amount of damages adjudged by the RTC and the Court of Appeals against the appellant as follows: 1. As to the appellant's **civil liability *ex delicto***, the same is increased from ₱50,000.00 to ₱75,000.00. 2. As to the appellant's liability for **moral damages**, the same is increased from ₱50,000.00 to ₱75,000.00. 3. As to the appellant's liability for **exemplary damages**, the same is increased from ₱25,000.00 to ₱75,000.00. The civil liability *ex delicto*, moral damages and exemplary damages thus payable by the appellant are subject to interest at the rate of six percent (6%) *per annum* from the finality of this decision until fully paid.

4. **REMEDIAL LAW; APPLICATION OF CERTAIN RULES IN CIVIL PROCEDURE TO CRIMINAL CASES; RESOLUTION OF THE MOTION TO WITHDRAW APPEAL RESTS UPON COURT'S DISCRETION.—** It has come to our attention that on 7 April 2016, the appellant filed a motion to withdraw the present appeal. It must be noted, however, that the filing of such motion only came after the appellee had already filed a manifestation waiving its right to file a supplemental brief and after the appellant himself filed a supplemental brief. Hence, pursuant to Section 3 of Rule 50 in relation to Section 18 of Rule 124 of the Rules of Court, the fate of the motion rightly rests upon our discretion. Our decision in the instant case leaves no doubt as to which way we opted to exercise our discretion. The present appeal was already deemed

submitted for decision way before the appellant's motion was filed. We exercise our prerogative to decide. The appellant's motion to withdraw the present appeal is, therefore, denied.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Legal Aid Group Bureau of Corrections for appellant.

D E C I S I O N

PEREZ, *J.*:

At bench is an appeal[1] from the Decision[2] dated 24 January 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04473, which affirmed the conviction of herein (appellant) Leonardo Cruz *y* Roco for rape under Article 266-A (1)(a) of the Revised Penal Code (RPC).

The antecedents:

On 11 January 2006, a criminal information[3] for rape under Article 266-A (1)(a) of the RPC was filed against the appellant before the Regional Trial Court (RTC) of Pasig City. The information accused the appellant of having carnal knowledge of his thirteen (13) year-old goddaughter and piano tutee, AAA,[4]

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[1] By way of an ordinary appeal pursuant to Section 13(c) of Rule 124 of the Rules of Court.

[2] The decision was penned by Associate Justice Angelita A. Gacutan for the Thirteenth (13th) Division of the Court of Appeals with Associate Justices Magdangal M. De Leon and Francisco P. Acosta concurring. *Rollo*, pp. 2-22.

[3] Records, pp. 1-2.

[4] The real name of the victim is withheld pursuant to Section 44 of Republic Act No. 9262 and Section 40 of the Rule on Violence Against Women and their Children. See *People v. Cabalquinto*, 533 Phil. 703 (2006), wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their

through the use of force, threat and intimidation. The information was raffled to Branch 159 of the Pasig RTC and was docketed as Criminal Case No. 132364-H.

After being apprised of the accusation against him, the appellant entered a plea of not guilty. Trial thereafter followed.

The prosecution presented the testimony of AAA herself[5] to prove the charge against appellant. AAA's testimony centered on the events that took place on 2 January 2006—the day when the appellant purportedly raped her. The substance of AAA's narration is as follows:

1. On 2 January 2006, AAA was at her school—the XYZ school[6] in Pateros—for a dance practice. At around 1:00 in the afternoon, she received a text message from the appellant inviting her to come with him to a pictorial. AAA, who had known the appellant for more than two (2) years then as her godfather[7] and piano tutor, accepted the invitation.

2. Shortly thereafter, the appellant arrived in his motorcycle at the XYZ school to fetch AAA. AAA boarded the motorcycle and the appellant drove off.

3. The appellant drove the motorcycle all the way to Pasig City and proceeded to the area of the city where motels were prevalent. The appellant stopped at one of the motels, later identified to be the Queen's Court motel in Pasig,[8] and parked his motorcycle.

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immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

[5] TSN of AAA, 1 August 2006, pp. 42-82.

[6] The real name of the school is withheld pursuant to Section 44 of Republic Act No. 9262 and Section 40 of the Rule on Violence Against Women and their Children. See *People v. Cabalquinto*, *supra* note 4.

[7] A godfather in confirmation. See AAA's Certificate of Confirmation (Records, p. 83). See also TSN of AAA, 1 August 2006, p. 44.

[8] *Id*. at 57.

4. After parking, the appellant alighted from his motorcycle, held both hands of AAA and told the latter: "*Huwag ka nang magulo at huwag kang sisigaw at hindi ka na makakauwi*."[9] The appellant then dragged AAA, who was then still wearing a helmet, to one of the rooms of the Queen's Court.

5. Once inside the room, the appellant removed AAA's blouse and brassiere as well as the helmet worn by the latter. AAA tried to resist by pushing the appellant away from her, but the appellant only pushed her back towards the bed. On the bed, AAA threw kicks at the appellant, but the latter stood firm and was able to remove the remaining articles of AAA's clothing. The appellant then held both hands of AAA and started to remove his own clothes.

6. After undressing, the appellant laid on top of AAA where the former had his "*organ*" directly pointed at the latter's.[10] At that position, AAA felt something penetrate her "*organ*."[11] The appellant then threatened AAA not to shout or else he was going to kill her. AAA could no longer recall how many times her "*organ*" was penetrated at that moment, but she knew that the entire incident lasted for about fifteen (15) to twenty (20) minutes.[12]

7. After the appellant had finished, AAA was left crying at the edge of the bed. AAA was then told by the appellant to put her clothes back on. Once AAA was dressed, the appellant dragged her towards his parked motorcycle and made her board the same. The appellant then drove back to XYZ school.

8. The appellant dropped AAA off at the XYZ school at around 4:00 in the afternoon. Before leaving, the

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[9] *Id*. at 49.

[10] *Id*. at 53.

[11] *Id*. at 52.

[12] *Id*.

appellant told AAA not to report to anyone what happened between them. AAA then went home.

9. AAA was, at that time, only thirteen (13) years of age.[13]

AAA further related that, due to her fear of the appellant, she was not able to immediately tell her parents what had happened to her.[14] According to AAA, she was only able to confide to her parents what she had gone through on 4 January 2006 or two (2) days after the incident.[15]

In addition to the testimony of AAA, the prosecution also presented the testimony of one Dr. Joseph C. Palmero (Dr. Palmero) of the Philippine National Police (PNP) Crime Laboratory. Dr. Palmero was the medico-legal officer who conducted a clinical examination of AAA on 4 January 2006 and the author of *Initial Medico Legal Report Case No. RO6-31*[16] and *Final Medico-Legal Report No. RO6-31*[17] that detail the results of such examination. Dr. Palmero testified to affirm and explain the results of his examination as contained in the medico-legal reports:

1. Dr. Palmero testified that his examination of AAA revealed that the latter's hymen had "*a deep healed laceration at 3 o'clock position and a shallow healed laceration at 9 o'clock position*" that are consistent with "*blunt force or penetrating trauma*."[18] He, however, acknowledged the possibilities that said lacerations could

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[13] AAA's birth certificate; records, p. 82. The certificate was marked as Exhibit "H" for the prosecution.

[14] TSN of AAA, 1 August 2006, pp. 54-55.

[15] *Id*. at 55-56. Supplemented by the testimony of AAA's mother, TSN, 1 August 2006, pp. 7-42.

[16] Issued on 4 January 2006. The report was marked as Exhibit "C" of the prosecution; records, p. 8.

[17] Issued on 16 January 2006. The report was marked as Exhibit "F" of the prosecution; *id*. at 80.

[18] *Id*. at 8 and 80. See also TSN of Dr. Joseph C. Palmero, 6 June 2006, pp. 8-9.

have been more than two (2) days old at the time of AAA's examination[19] and that they could have been produced by causes other than sexual intercourse.[20]

2. Dr. Palmero also stated that his examination of AAA registered a "*negative*" result in the "*periurethral and vaginal smears*," which meant that AAA's vagina had no traces of sperm in it at the time it was examined.[21]

The defense, on the other hand, countered the prosecution's story with its own version of events anchored chiefly on the testimony of the appellant.[22]

The appellant denied having raped AAA. The truth, according to the appellant, was that he and AAA were lovers and had been so since December of 2005.[23] On that end, the appellant conceded that he had been with AAA on 2 January 2006; though he clarified that such meeting was of a completely different nature and under an entirely different set of circumstances than those narrated and described by the prosecution. His recollection of what transpired on 2 January 2006 is as follows:[24]

1. At around 2:00 in the afternoon of 2 January 2006, the appellant was in his house fixing a *pugon* with his wife Lea Cruz (Lea).

2. At around 4:00 in the afternoon of 2 January 2006, the appellant left the house to meet AAA at an apartment that the two had been renting in Tipas, Taguig City. The meeting was AAA's idea; AAA, who had just returned from a long vacation with her family, supposedly had missed the appellant and had wanted to see the latter.

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[19] TSN of Dr. Joseph C. Palmero, 6 June 2006, pp. 14-15.

[20] *Id*. at 24.

[21] *Id*. at 80. See also TSN of Dr. Joseph C. Palmero, 6 June 2006, p. 11.

[22] TSN of Leonardo Cruz, 29 June 2009, pp. 1-57.

[23] TSN of Leonardo Cruz, 14 September 2009, p. 21.

[24] TSN of Leonardo Cruz, 29 June 2009, pp. 5-21.

3. The appellant stayed with AAA at the apartment for about less than an hour. Afterwards, the appellant left. By 5:00 in the afternoon, the appellant was already at his house.

4. At around 6:00 in the evening, the appellant left his house to have a drinking spree with his friend, Tristan Santos (Tristan). The appellant stayed out all night and only returned home at about 1:00 in the morning of the next day. After sending a text message to AAA bidding her good night, the appellant went to sleep.

The appellant further related that, upon waking up at around 6:00 in the morning of 3 January 2006, he was confronted by Lea about his relationship with AAA.[25] Lea, as it turned out, had tinkered with the appellant's mobile phone after the latter went to sleep and was able to discover therein an incriminating photograph showing the appellant half-naked with a blanket-covered AAA sitting on his lap.[26] The appellant said that he confessed to Lea his relationship with AAA later that day.[27] The appellant also testified that it was Lea who informed the parents of AAA about the AAA's trysts with the appellant.[28]

The testimony of the appellant was corroborated by the testimonies of Lea[29] and Tristan.[30]

Lea confirmed that she in fact confronted the appellant on 3 January 2006 after seeing an incriminating photograph of the appellant and AAA in the former's mobile phone;[31] and that she was the one who informed the parents of AAA about the AAA's trysts with the appellant.[32] Lea claimed that, fuming

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[25] *Id*. at 22.

[26] *Id*.

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

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

[29] TSN of Lea Cruz, 2 June 2009, pp. 1-59.

[30] TSN of Tristan Santos, 7 December 2009, pp. 1-22.

[31] TSN of Lea Cruz, 2 June 2009, pp. 19-20, 28.

[32] *Id*. at 22, 30-32.

over the information she divulged, the parents of AAA had now caused the filing of the present rape charge against the appellant.[33]

Tristan, on the other hand, seconded the portion of the appellant's testimony pertaining to their drinking spree.[34] Tristan likewise attested having seen the incriminating photograph of the appellant and AAA in the former's mobile phone.[35]

Aside from the testimonies of the appellant, Lea and Tristan, the defense also presented the testimonies of a certain Preciosa Gillado Landrito (Preciosa)[36] and one Edwin Cenita (Edwin)[37] to disprove certain factual allegations made by AAA in her testimony. The gist of Preciosa's and Edwin's testimonies:

1. Preciosa was the Principal of XYZ school. She testified that the XYZ school held no classes and sanctioned no activities on 2 January 2006 and had sanctioned no activities on that date.[38]
2. Edwin, on the other hand, is the Officer-in-Charge (OIC) of the Queen's Court motel. Edwin testified that from 2003 to 2008, he did not come to know of any untoward incident within the motel that required any police investigation.[39]

Ruling of the RTC

On 30 March 2010, the RTC rendered judgment[40] finding the appellant *guilty* beyond reasonable doubt of rape under Article

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[33] Decision of the RTC; CA *rollo*, p. 20.

[34] TSN of Tristan Santos, 7 December 2009, pp. 6-9.

[35] *Id*. at 10.

[36] TSN of Preciosa Gillado Landrito, 11 February 2008, pp. 15-29.

[37] TSN of Edwin Cenita, 24 March 2008, pp. 1-17.

[38] TSN of Preciosa Gillado Landrito, 11 February 2008, pp. 16-17.

[39] TSN of Edwin Cenita, 24 March 2008, pp. 10-11.

[40] Records, pp. 12-22.

266-A (1)(a) of the RPC. In so finding, the RTC accorded full weight and credence upon the testimony of AAA.

Accordingly, the RTC sentenced the appellant to suffer *reclusion perpetua* and to pay the following amounts to AAA: (a) ₱50,000.00 by way of civil indemnity, (b) ₱50,000.00 by way of moral damages and (c) ₱25,000.00 by way of exemplary damages. The dispositive part of the judgment of the RTC reads:[41]

> WHEREFORE, in view of the foregoing, this Court finds [appellant] GUILTY beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code as amended by R.A. 8353 in relation to Section 5(a) of R.A. 8369, [APPELLANT] is hereby sentenced to suffer the penalty of *reclusion perpetua* and to indemnify [AAA] in the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages, Fifty Thousand Pesos (₱50,000.00) as civil indemnity ex delicto and Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages.
>
> SO ORDERED.

Aggrieved, the appellant filed an appeal with the Court of Appeals.

Ruling of the Court of Appeals

On 24 January 2012, the Court of Appeals rendered a decision[42] denying the appellant's appeal and sustaining the judgment of conviction by the RTC. Thus:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated 30 March 2010 of the Regional Trial Court, Branch 159 of Pasig City finding the accused GUILTY beyond reasonable doubt of the crime of Rape under Art. 266-A (a) of RA 8369 [is affirmed].
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> SO ORDERED.[43]

Undeterred, appellant filed the present appeal before this Court.

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[41] *Id*.

[42] *Rollo*, pp. 2-22.

[43] *Id*. at 21.

The Present Appeal

The appellant claims that the RTC and the Court of Appeals erred in according full weight and credence to the testimony of AAA at the expense of his testimony and the testimonies of other defense witnesses. He argues that a scrutiny of the testimony of AAA will reveal that it is both deficient and unreliable:[44]

1. The testimony of AAA is *deficient* for it lacked the necessary details to be able to establish the crime of rape under Article 266-A (1)(a) of the RPC. AAA never categorically testified that it was the appellant's penis that penetrated her vagina. Hence, in effect, the testimony of AAA failed to prove that appellant had *carnal knowledge* of AAA.

2. AAA, moreover, was shown to be *inherently unreliable and untrustworthy*. Key parts of AAA's testimony have been soundly refuted by the statements of Preciosa and Edwin and even by the medico-legal findings of Dr. Palmero, thereby giving indication that AAA merely fabricated her whole narration.

In view of the apparent insufficiency and incredibility of AAA's testimony, the appellant thus urges this Court to consider his alternate version of events as the truth of what happened in this case and, ultimately, to acquit him of the crime charged.[45]

OUR RULING

We dismiss the appeal.

Testimony of AAA Sufficient to Establish Rape Under Article 266-A (1)(a) of the RPC

The first issue raised by the appellant pertains to the sufficiency of the testimony of AAA to prove the crime of rape under Article 266-A (1)(a) of the RPC. The appellant posits that the testimony was substantially *deficient* for it failed to establish that he had carnal knowledge of AAA, which is one of the basic elements

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[44] *See* Brief for the Accused-Appellant; CA *rollo*, pp. 43-59.

[45] *Id*.

of the rape charged against him. On this end, the appellant points out that AAA, in her testimony, never specifically stated that it was his penis that penetrated her vagina, AAA only being able to recount having felt *something* penetrate her organ while the appellant was purportedly on top of her. The appellant submits that, in view of such omission, the testimony of AAA cannot be validly used as the basis of his conviction for rape under Article 266-A (1)(a) of the RPC.

We do not agree.

Although AAA, in her testimony, was not able to explicitly state that it was the penis of the appellant that penetrated her vagina, she was able to provide ample details from which the conclusion of consummated sexual intercourse can be had. The pertinent portion of AAA's testimony provides:[46]

ATTY. CAMPANILLA

Q: Inside the room, what happened?

AAA

A: Doon na po nagsimula at sinabi niya [appellant] sa akin na huwag akong magulo at huwag akong sumigaw.

Q: When you say "nagsimula," what are you referring to?
A: **[Appellant] removed my blouse and the bra that I was wearing, sir**.

x x x x x x x x x

Q: What happened next, if any?
A: **[Appellant] pushed me on the bed, sir**.

x x x x x x x x x

Q: How about the clothes when [appellant] pushed you, were you still wearing your clothes?

x x x x x x x x x

A: **After that, [appellant] removed my clothes, sir**.

x x x x x x x x x

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[46] TSN of AAA, 1 August 2006, pp. 50-53.

Q: Then, what happened next, if any?
A: **[Appellant] started removing his clothes then while he was holding both of my hands, sir**.

x x x x x x x x x

Q: After removing his [appellant] clothes, what happened next?
A: **Naramdaman ko po na may pumasok po sa organ ko po**.

Q: How many times?
A: I could not recall anymore, sir.

Q: Why can't you remember?
A: Hindi ko na po kasi alam kung anong nangyayari noong araw na yun.

x x x x x x x x x

COURT

Q: Did you find out what went inside your organ?

AAA

A: No, sir.

Q: **When you felt that something went inside your organ, what was the relative position of the [appellant]?**
A: **He was on top of me, sir**.

Q: **When you said, "he was on top of me," was [appellant's] organ directly in front of your organ?**
A: **Yes, sir**.

AAA's detailed narration reveals the different *circumstances* that make up the *factual context* of that critical moment when she felt *something* penetrate her vagina ("*Naramdaman ko po na may pumasok po sa organ k*o"). Such circumstances are:

1. That, at the time AAA felt something penetrate her organ, the appellant was positioned on top of AAA;[47]

2. That, at the same time, both the appellant and AAA were naked.[48]

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[47] TSN of AAA, 1 August 2006, p. 53.

[48] *Id*. at 50-52. The appellant had already taken off his (*[Appellant] started removing his clothes then while he was holding both of my hands,*

3. That, at such position in the state of nakedness, the appellant's "*organ*" was directly in front AAA's "*organ*."[49]

With the foregoing circumstances serving as context of AAA's penetration, it becomes abundantly clear that the *something* or the "*meron*" that AAA felt penetrating her "*organ*" is actually and can only be the penis of the appellant. Indeed, under those circumstances, no other reasonable supposition can be had. A conclusion that AAA's vagina could have been penetrated by something else other than the appellant's penis is, in fact, simply farfetched and unlikely given the context provided by AAA's testimony.

Verily, the testimony of AAA suffices to establish the fact that appellant had carnal knowledge of AAA. That fact, coupled with AAA's recollection of how the appellant employed force, threat and intimidation against her to accomplish the dastardly act, makes the testimony of AAA substantially complete to prove the crime charged against the appellant.

AAA is a Credible Witness; Appellant's Denial and Sweetheart Theory Unavailing as Against AAA's Testimony

The second issue raised by the appellant focuses on the credibility of AAA as a witness. The appellant posits that AAA was shown to be an untrustworthy witness after key parts of her version of events were soundly refuted by the testimonies of Preciosa and Edwin as well as the medico-legal findings of Dr. Palmero. Thus:[50]

1. AAA's claim that she was at XYZ school for a dance rehearsal on 2 January 2006 was refuted by Preciosa's testimony that XYZ school held no classes and sanctioned no activities on such date.

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sir) and AAA's *([Appellant] removed my blouse and the bra that I was wearing, sir x x x After that, [appellant] removed my clothes, sir*) clothes**.**

[49] *Id.* at 53.

[50] Brief for the Accused-Appellant; CA *rollo*, pp. 43-59.

2. AAA's claim that she was dragged by the appellant to a room in Queen's Court motel was debunked by Edwin who testified that, from 2003 to 2008, he did not come to know of any untoward incident within the motel that required any police investigation.

3. AAA's claim that the appellant raped her on 2 January 2006 was contradicted by the medico-legal findings of Dr. Palmero revealing that: (1) the lacerations in AAA's hymen were already healed when the latter was examined on 4 January 2006, which is just two (2) days after the purported rape, and (2) there was no sperm found in AAA's vagina at the time of examination.

The appellant postulates that the refutation of key parts of AAA's narration renders her whole testimony suspect, if not completely unreliable. The appellant, therefore, submits that it was plain error for the RTC and the Court of Appeals to have still accorded AAA's testimony full weight and credence at the expense of his testimony and the testimonies of other defense witnesses.

We do not agree.

The long-standing rule in our jurisdiction is that the assessment of a trial court in matters pertaining to the credibility of witnesses, are accorded great respect—if not finality—on appeal.[51] The rationale of this rule is the recognition of the trial court's unique and distinctive position to be able to observe, first hand, the demeanor, conduct and attitude of the witness whose credibility has been put in issue.[52]

Be that as it may, the above rule is *not* absolute. Indeed, this Court, in not a few cases, had underscored that factual findings of a trial court, including its assessment of credibility of a witness, may—by way of exception to the rule—be disturbed on appeal whenever there is a clear showing that it had

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[51] *People v. Piosang*, 710 Phil. 519, 526 (2013).

[52] *People v. Costelo*, 375 Phil. 381, 391 (1999).

"*overlooked certain facts of substance and value that, if considered, might affect the result of the case*."[53]

The appellant, in raising his second issue, seems to believe that the exception, rather than the general rule, ought to be applied by us. He, in essence, claims that the RTC and the Court of Appeals had overlooked the significance of the testimonies of Preciosa and Edwin as well the medico-legal findings of Dr. Palmero that, if considered, would not only cast doubt on the veracity of AAA's narration but also lend believability to the version of the defense.

We, however, perused the testimonies of Preciosa and Edwin as well as the medico-legal findings of Dr. Palmero. From our review, we found nothing in the said testimonies and findings that discredits AAA's version of events or gives credence to the version of defense:

First. AAA's claim that she was at XYZ school for a dance rehearsal on 2 January 2006 was not rendered unbelievable by the testimony of Preciosa. Preciosa merely testified that XYZ school held no classes and other school activities on 2 January 2006 since it was a holiday.[54] Such testimony, however, does not categorically exclude the possibility that AAA could have been at XYZ school on 2 January 2006 just the same; especially when no other evidence was presented showing that the premises of the school were absolutely closed for students on that day or whether its gates have then been padlocked. Preciosa herself even testified that she *did not know* whether, in fact, the premises of the school were closed or padlocked on that day.[55]

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[53] *People v. Realon*, 187 Phil. 765, 787 (1980) citing *People v. Repato*, 180 Phil. 388, 395 (1979) and *People v. Espejo*, 146 Phil. 894, 913-914 (1970). *See* also *People v. Laganzon*, 214 Phil. 294, 307 (1984) citing *People v. Surban*, 208 Phil. 203, 216 (1983); *People v. Balmaceda*, 176 Phil. 430, 438-439 (1978); *People v. Ancheta*, 158 Phil. 542, 547-548 (1974); *People v. Geronimo*, 153 Phil. 1, 13 (1973); *People v. Abboc*, 152 Phil. 436, 445 (1973).

[54] TSN of Preciosa Gillado Landrito, 11 February 2008, pp. 16-17.

[55] *Id*. at 18.

Second. AAA's claim that she was dragged by the appellant to a room in Queen's Court motel was not debunked by the testimony of Edwin. Edwin did not testify that no untoward incident happened in the Queen's Court motel on 2 January 2006. Rather, what Edwin merely stated was that he *does not know* of any untoward incident that happened within the motel from 2003 to 2008.[56] Edwin even disclosed that, as OIC of Queen's court motel, he would only know of any untoward incident happening within the motel if and when the other motel employees report to him the happening of any such incident.[57] Hence, as Edwin himself acknowledged, in the absence of a report given to him by the motel's employees, it is still very possible for any untoward incident to take place in the motel without his knowledge.[58] Consequently, AAA's claim that she was dragged by the appellant into the Queen's Court motel remained entirely plausible.

Third. AAA's claim of rape is not discounted by the mere fact that the results of her medico-legal examination revealed no fresh lacerations in her hymen. As elucidated by Dr. Palmero, the absence of fresh lacerations was only an indication that, prior to 2 January 2006, AAA's hymen may have already been torn *via* penetration from a blunt object or even an accident.[59] Such finding, however, does not preclude the possibility of AAA having been raped on 2 January 2006 since a newly ruptured hymen on the part of the victim is not, and has never been, an element of rape.[60]

In the same vein, the medico-legal finding that noted the absence of sperm in AAA's vagina also does not foreclose the possibility of AAA being raped by the appellant. The absence of sperm in AAA's vagina during the time she was examined

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[56] TSN of Edwin Cenita, 24 March 2008, pp. 10-11.

[57] *Id.* at 11.

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

[59] TSN of Dr. Joseph C. Palmero, 6 June 2006, pp. 14-15, 17.

[60] *People v. Opong*, 577 Phil. 571, 592 (2008).

could have been caused by a number of reasons—none of which, however, would have any bearing on whether AAA was in fact raped or not. Rape under Article 266-A (1)(a) of the RPC, it must be remembered, is deemed consummated from the moment the offender's penis "*touches*" the *labia majora* or *labia minora* of the victim's genitals[61] regardless of whether the former ejaculates or not. Thus, like how a newly ruptured hymen on the part of the victim is not an element of rape, so too is ejaculation on the part of perpetrator not an essential ingredient of the crime.[62]

Fourth. Moreover, we find the denial and the "sweetheart theory" of the appellant to be unavailing as against the testimony of AAA. Such denial and theory lacked the backing of strong corroborating evidence that is necessary to overcome their inherent weakness as defenses.[63] As aptly pointed out by the Court of Appeals:

> [Appellant] failed to present strong evidence to support his claim that he and AAA were in a relationship. First, he failed to present the photograph of them together. We cannot even assume its existence because while the [appellant] claims that, in the photograph, AAA was sitting on his lap, the other witness, [Tristan], testified that the accused and AAA were seated side by side. Furthermore, [appellant] claims that only AAA was covered with blanket which is contrary to [Tristan's] statement that both [appellant] and AAA were covered. Clearly, such conflicting statements cannot deserve any credence.
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> The [RTC] even noticed the lack of sincerity on the part of Lea as she was often seen smiling during her testimony while she was narrating a harrowing story of a jilted wife which according to her led to the fabricated charge against [appellant].[64]

All told, we find that AAA's testimony is truly deserving of the full weight and credence accorded to it by the RTC and the

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[61] *People v. Campuhan*, 385 Phil. 912, 921 (2000).

[62] *People v. Belgar*, G.R. No. 182794, 8 September 2014, 734 SCRA 347, 360-361.

[63] *People v. Nogpo, Jr.*, 603 Phil. 722, 742 (2009).

[64] *Rollo*, pp. 19-20.

Court of Appeals. The testimony was categorical, explicit and replete with the details of how appellant carried out his carnal designs against AAA. With such testimony, and in the absence of any strong evidence supporting the appellant's denial and sweetheart defenses, we find no reason to depart from the rulings of the RTC and the Court of Appeals anent the conviction of the appellant for the crime charged.

RE: Damages

In line with prevailing jurisprudence,[65] however, we find it necessary to modify the amount of damages adjudged by the RTC and the Court of Appeals against the appellant as follows:

1. As to the appellant's **civil liability *ex delicto***, the same is increased from ₱50,000.00 to ₱75,000.00.
2. As to the appellant's liability for **moral damages**, the same is increased from ₱50,000.00 to ₱75,000.00.
3. As to the appellant's liability for **exemplary damages**, the same is increased from ₱25,000.00 to ₱75,000.00.

The civil liability *ex delicto*, moral damages and exemplary damages thus payable by the appellant are subject to interest at the rate of six percent (6%) *per annum* from the finality of this decision until fully paid.

RE: Motion to Withdraw Appeal

One final thing.

It has come to our attention that on 7 April 2016, the appellant filed a motion to withdraw the present appeal.[66] It must be noted, however, that the filing of such motion only came after the appellee had already filed a manifestation waiving its right to file a supplemental brief[67] and after the appellant himself

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

[66] *Rollo*, pp. 46-51.

[67] The appellee, through the Office of the Solicitor General, filed the manifestation on 24 April 2013; *id*. at 33-34.

filed a supplemental brief.[68] Hence, pursuant to Section 3 of Rule 50[69] in relation to Section 18 of Rule 124[70] of the Rules of Court, the fate of the motion rightly rests upon our discretion.

Our decision in the instant case leaves no doubt as to which way we opted to exercise our discretion. The present appeal was already deemed submitted for decision way before the appellant's motion was filed. We exercise our prerogative to decide. The appellant's motion to withdraw the present appeal is, therefore, denied.

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The Decision dated 24 January 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04473 is hereby **AFFIRMED** with the following **MODIFICATIONS**: (1) that the amount of civil liability *ex delicto* is increased from ₱50,000.00 to ₱75,000.00; (2) that the amount of moral damages is increased from ₱50,000.00 to ₱75,000.00; and (3) that the amount of exemplary damages is increased from ₱25,000.00 to ₱75,000.00. The civil liability *ex delicto*, moral damages and exemplary damages thus payable by the appellant are subject to interest at the rate of six percent (6%) *per annum* from the finality of this decision until fully paid.

SO ORDERED.

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

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[68] The appellant filed his supplemental brief on 15 May 2013; *rollo*, pp. 38-41.

[69] SECTION 3. *Withdrawal of appeal.* An appeal may be withdrawn as of right at any time before the filing of the appellees brief. Thereafter, the withdrawal may be allowed in the discretion of the court.

[70] SECTION 18. *Application of certain rules in civil procedure to criminal cases*. The provisions of Rules 42, 44 to 46, and 48 to 56 relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule.

[*] As per Raffle dated 11 April 2016.

SECOND DIVISION

[G.R. No. 208979. September 21, 2016]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **ROGELIO F. MANALO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GROSS NEGLECT OF DUTY; DULY ESTABLISHED IN CASE AT BAR; PENALTY.— [I]t was respondent's task to determine the completeness and authenticity of the source documents submitted to him, before he can create a policy record which the GSIS member-applicant shall use to secure ELA, SOS, and/or ESL. However, it turned out that respondent created policy records of fictitious and previously terminated employee-applicants from the City Government of Manila, totaling seventeen (17), and as a result, ₱621,165.00 worth of loans were released and lost through these irregular policies. These policies were traced to respondent's computer access/operator code "A6HT" and terminal ID "A8GJ" by the GSIS's Internal Audit Service Group (IASG), meaning that it was respondent who processed and created them based on source documents that were forged, questionable, incomplete, and/or not signed by the authorized endorsing officials of the City Government of Manila. x x x [R]espondent was grossly negligent in evaluating and authenticating the source documents accompanying 17 application forms filed by fictitious individuals or separated employees of the Manila city government; the mere fact that respondent failed to discover in the first instance that the applicants were fictitious or have been separated from office at once qualifies his negligence as gross. All that was required in determining the identities of these applicants and authenticity of their respective applications and supporting documents was a simple and effortless coordination with the Manila city government, in addition to an examination of the accompanying source documents and referring to the list of authorized endorsing and approving officials and their specimen signatures, and other supporting and authenticating documents, submitted by the Manila city government. x x x For failing to perform his duty

which thus caused the creation of 17 anomalous policy records which were in turn used to defraud GSIS of ₱621,165.00, respondent is guilty not of grave misconduct or dishonesty, but gross neglect of duty which is punished with dismissal under Rule 10, Section 46(A)(2) of the Revised Rules of Administrative Cases in the Civil Service.

2. ID.; ID.; ID.; ID.; IN CASES INVOLVING PUBLIC OFFICIALS, GROSS NEGLIGENCE OCCURS WHEN A BREACH OF DUTY IS FLAGRANT AND PALPABLE.— "Gross neglect of duty or gross negligence 'refers to negligence characterized by the want of even slight care, or by acting or **omitting to act in a situation where there is a duty to act**, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the **omission of that care that even inattentive and thoughtless men never fail to give to their own property**.' It denotes a **flagrant and culpable refusal or unwillingness of a person to perform a duty**. In cases involving public officials, gross negligence occurs when a **breach of duty is flagrant and palpable**."

3. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; ONE MAY BE FOUND GUILTY OF GROSS NEGLECT EVEN IF THE CHARGE AGAINST HIM WAS FOR DISHONESTY OR GRAVE MISCONDUCT, FOR WHAT IS CONTROLLING IS THE ALLEGATION OF THE ACTS COMPLAINED OF AND NOT THE DESIGNATION OF THE OFFENSE.— There is nothing wrong in finding respondent guilty of gross neglect when the charge against him was for dishonesty or grave misconduct; the allegations in the August 29, 2007 Formal Charge also make out a case for gross neglect of duty, as in fact he was also so charged. "[W]hat is controlling is the allegation of the acts complained of, not the designation of the offense." So long as respondent was given the opportunity to confront the allegations against him, which in fact he did, there should be no issue in this regard.

APPEARANCES OF COUNSEL

GSIS Legal Services Group for petitioner.
J.O.B. Lorenzo and Associates Law Firm for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the Court of Appeals' March 21, 2013 Decision[2] and August 30, 2013 Resolution[3] denying herein petitioner's motion for reconsideration in CA-G.R. SP No. 118452.

Factual Antecedents

The narration of the facts by the Civil Service Commission (CSC) is most concise and accurate:

> In 2004, Rogelio F. Manalo,[4] Computer Operator IV, Government Service Insurance System (GSIS) was assigned as membership processor at the Membership Department I (Manila) where his main duty was to process membership applications. Particularly, he was tasked to check the completeness of the documents submitted to support membership application and verify the authenticity of the signatures of the authorized officials before creating an applicant's membership record and policy. To enable Manalo to access the system's membership database, he was assigned computer access/operator code "A6HT" and terminal ID "A8GJ."
>
> Sometime in 2005, the Internal Audit Service Group (IASG), GSIS, conducted an audit examination and found that on several occasions in July 2004, Manalo's operator code and terminal ID was used in creating the membership records and policies of fictitious and terminated employees of the City Government of Manila (CGM). These fictitious and terminated employees were granted loans because of their membership records and policies. The names of the fictitious CGM employees who were able to secure loans from the GSIS are the following: Leonardo De Jesus, Melanie Mendoza, Jose Ramirez,

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[1] *Rollo*, pp. 10-39.

[2] *Id*. at 41-57; penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

[3] *Id*. at 59-60.

[4] Herein respondent.

Elizabeth Roces, Eduardo Salcedo, Mary Jane Santiago and Jovelyn Traje. On the other hand, the following terminated CGM employees were able to secure loans: Richard Bernardo, Agnes Patrocinio, Irene Patrocinio, Willianie Patrocinio, Corazon Sahagun and Fernando Sunga. The City Government of Manila issued a certification that these names do not belong to any of the employees of the said agency.

Additionally, it was discovered that the specimen signatures of the individuals who purportedly endorsed the membership applications were not found in the list of authorized endorsing officials of the City Government of Manila. The names of the fictitious endorsers were the following: Alfredo Bernabe, Carlos dela Fuente, Ernesto Guevarra, Cesar P. Ocampo, Ruben Ramos, Alicia V. San Jose, Armando C. Toribio, Anselmo T. Trinidad, Antonio T. Villanueva and Oscar Villarama. The City Personnel Office confirmed that endorsing officials have never been employed by the CGM.

After examining the documents and records, such as the specimen signatures of endorsing officials, membership and loan application forms and service records, the IASG concluded that the processor and the official tasked to review his output failed to detect the apparent defects in the supporting documents used to create membership records and policy contracts. Hence, membership records were created in the database and policy contracts were issued in favor of the fictitious and separated CGM employees, which became the basis for granting of unauthorized loans.

Based on these findings, in a Memorandum dated May 29, 2006, Manalo was directed to submit an explanation under oath why he should not be charged administratively for his role in the creation of spurious membership records and policy contracts. In a notarized letter dated June 6, 2006, Manalo explained that the "*said policy contracts were issued by me because when I processed the applications, I had checked the specimen signatures of the then endorsing officer and when all the documents were in order, I caused to be issued (sic) the contract. As far as I am concerned, I was just doing my job as stated in the charter of commitment…and doing it in good faith…*"

Finding no merit in the explanation, Manalo was formally charged on August 29, 2007 with Serious Dishonesty, Grave Misconduct and Gross Neglect of Duty, as follows:

> *'In various occasions in July 2004, Respondent, using his operator Code 'A6HT' and terminal ID 'A8GJ' created policies and membership records for the following individuals, making*

it appear that they were employed by the City Government of Manila at the time of the creation of the policy records when in fact, they were not...

'x x x x x x x x x

'Respondent, using his operator code and terminal ID also created new policies for the following individuals, making it appear that they were currently employed by the City Government of Manila at the time of the creation of their new policies when in fact they were already separated from the service...

'x x x x x x x x x

'Respondent also used or allowed others to use his terminal ID in creating new policies for the following individuals, making it appear that they were still employed by the City Government of Manila at the time of the creation of their policies when in fact they were already separated from the service...

'x x x x x x x x x

'The said creation of policies was based on falsified documents, unsubstantiated by appointment papers and plantilla as required under the existing rules and regulations for creation of Member's Service Profile (MSP);

'The said creation of policies and membership records paved the way for the immediate granting of loans to the fictitious and separated government employees...

'x x x x x x x x x

'The fraudulent scheme of creating policies and membership records for fictitious and separated government employees to make them qualify for the System's loan program caused the System to incur a loss of approximately Php621,165.00.

'Respondent's knowing, intentional, and malicious participation in the said fraudulent scheme is contrary to laws, existing GSIS rules and regulations, morals, good customs and public policy.'

During the hearing of the case, the prosecution showed that the access/operator code "A6HT" and terminal ID "A8GJ" issued to appellant Manalo were used to create membership records and policy contracts for separated or fictitious employees of CGM which resulted

in the grant of several spurious loans. In support of the same, the following witnesses were presented:

NAME	POSITION
Bernadette Flores	Chief Executive Officer, Internal Audit Service Group (IASG)
Alex B. Alba	Computer Operator, Administrative Division, City Treasurer's Office, City Government of Manila
Reynaldo V. Gatchalian	Assistant Department Head III, City Government of Manila
Ma. Ethelda A. Antonio	Manager, Systems Administration and Database Department
Emerlinda Loredo	Division Chief III, Records Management Division I
Grace Navalta	Former Division Chief, Manila District Office

On the other hand, Manalo was the only witness for his defense. He alleged that he had been with the GSIS for 31 years and denied that he was the reason for the anomalous creation of membership records and electronic policies.

In a Decision[5] dated August 12, 2008, former GSIS President and General Manager Winston F. Garcia found Manalo guilty of Serious Dishonesty and Grave Misconduct and imposed upon him the penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and the perpetual disqualification from re-employment in the government service.

The motion for reconsideration filed by Manalo was denied by the GSIS in its Resolution[6] dated June 2, 2009.

On July 14, 2009, Manalo appealed the said GSIS Decision and Resolution to the Commission.[7]

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[5] *Rollo*, pp. 193-218.

[6] *Id*. at 219-222; penned by then GSIS President and General Manager Winston F. Garcia.

[7] *Id*. at 227-230.

Ruling of the Government Service Insurance System

In its August 12, 2008 Decision as adverted to above, the GSIS in finding respondent guilty of serious dishonesty and grave misconduct held that —

> The resolution of the culpability of the respondent rests on the following: (1) whether Mr. Manalo's tale that he merely relied on the representation of his supervisors that the documents were in order in creating the membership records and the electronic policies inspires belief; and (2) if not, whether said creations of membership records and the electronic policies leading to unlawful grant of loan constitute serious dishonesty, grave misconduct and/or gross neglect of duty.
>
> The prosecution adduced substantial evidence that respondent was guilty as charged.
>
> *First*, Mr. Manalo's defense of reliance on the say so [sic] of his supervisors is not believable. In respondent's Letter-Explanation to the Show Cause Memorandum x x x, in his Answer x x x, and in his testimony x x x, he incorporated as part of his evidence the '*Additional Notes to the Detailed Procedures of the Manila District Office (MDO)*,' signed by Mesdames Santos and San Miguel and prepared by Ms. Gloria C. Zuniga from the IASG. Said guidelines make clear that the processors, such as respondent, receive the supporting documents and on the bases [sic] of said documents, create the membership records and electronic policies. After the creation of the membership records, only then are the documents forwarded to the Section Chief for review and the policies printed. It must be noted that the granting of the loans depends on the electronic data in the membership records and not whether the policy contract was released. Pertinent portion is quoted:
>
> > 3. Forward AFs [Application Forms] without Policy Nos[.] to the Membership Department on the second floor for processing.
> > x x x x x x x x x
> >
> > 4. Distribute the AFs among the personnel for the creation/ issuance of a policy record performing the following procedures:
> >
> > - Require the following source documents:
> > - MIS [Membership Information Sheet]/IMI [Membership Information]
> > - Service Record (SR)
> > - Appointment papers
> > - Plantilla

> Examine and evaluate if the submitted source documents are complete, authentic and in order; if the signatories are the authorized officials and if the endorsing officials are complete and their signatures authentic based on their specimen signatures on file. (Every 6 months, the specimen signature forms are required to be reviewed by the authorized signatories.)
>
> The SR/appointment/plantilla, although not original may be accepted as long as it is a certified true copy as certified by a duly authorized official.
>
> If all are found to be in order, execute the following steps:
>
> - Create a policy record and assign a policy number
>
> - If with number print MAIP and attach to the supporting documents
>
> - Forward all the above documents to the Section Chief (SC) for review and if in order, the policy contract may be printed. The SC or Division Chief signs on Policy Contract.

Thus, from these procedures, it is clear that it was respondent who had the initial obligation to evaluate the supporting documents. From this, it is clear that he cannot now foist the blame on his supervisors and hold them accountable for his failure to perform his job.

Second, the defects in the supporting documents were patent. Considering the 31 years of respondent in the GSIS, he should have been able to easily spot these defects. In respondent's Reply to the show-cause memorandum, he specifically stated that he examined the specimen signatures of the endorsing officers in the specimen signature cards on file with the GSIS. x x x

x x x x x x x x x

There was no way that these defects could have been overlooked in these separate instances, had there been even a cursory check with the records of purported employees of the CGM. The non-detection in so many instances leads to the conclusion that there was no intention at all to check the records.

In the case of *Corpuz v. Ramite[r]re*,[8] dishonesty is defined as a 'disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack

[8] 512 Phil. 506 (2005).

of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.'

In this case, considering Mr. Manalo's 31 years in the service, the patent defects of the documents; and that he created these fictitious records, there is more than substantial evidence indicating that he knew he was creating fictitious membership records and electronic policies. By the creation of said data, he made it appear that said employees were government employees when they in fact, were not. The proximity of account creations and the grant of loans moreover shows the tight relationship between the two; the creation was the vital means to the fraudulent grant of loans.

This brings us to the charge of grave misconduct. The Supreme Court, in the case of *Vertudes v. Buenaflor and Bureau of Immigration*,[9] ruled as follows:

> *Misconduct has been defined as an intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.* ***Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and rights of others.*** *An act need not be tantamount to a crime for it to be considered as grave misconduct as in fact, crimes involving moral turpitude are treated as a separate ground for dismissal under the administrative code.*

As adverted, Mr. Manalo's exploit was an intentional wrongdoing. His act of taking advantage of his position to create these fictitious membership records and electronic policies by itself, constitute grave misconduct. It is an offense that becomes far worse when considered that he created the same fictitious records to pave the way to the perpetuation [sic] of a series of fraud on the pension fund.

WHEREFORE, the Government Service Insurance System finds respondent Rogelio F. Manalo, guilty of Serious Dishonesty and Grave

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[9] 514 Phil. 399 (2005).

Misconduct. He is meted the penalty of **DISMISSAL** which shall carry with it cancellation of eligibility; forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service.

It is so ordered.[10] (Emphasis in the original)

Ruling of the Civil Service Commission

In an October 19, 2010 Decision,[11] the CSC affirmed respondent's dismissal from the GSIS. It held:

The issue to be resolved is whether the GSIS Decision finding Manalo guilty of Serious Dishonesty and Grave Misconduct and imposing upon him the penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and the perpetual disqualification from re-employment in the government service is proper.

Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive or betray and an intent to violate the truth.

x x x x x x x x x

On the other hand, the Commission defined the offense of Grave Misconduct as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer x x x.

It must be emphasized that the quantum of evidence required in administrative proceedings is substantial evidence or 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.

In this case, there is substantial evidence to find Manalo guilty of Serious Dishonesty and Grave Misconduct.

As a membership processor, Manalo was tasked to thoroughly check the completeness of the documents submitted to support membership application and verify the authenticity of the signatures

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[10] *Rollo*, pp. 205-218.

[11] *Id.* at 223-235.

of the authorized officials before creating an applicant's membership record and issuing a policy contract.

Contrary to his sworn duty, Manalo deliberately used his assigned access/operator code "A6HT" and terminal ID "A8GJ" to process the membership records and policy contracts of fictitious and terminated CGM employees resulting in several unauthorized loan grants to the prejudice of GSIS Fund. As found by the prosecution, the said creation of policies was based on falsified documents, unsubstantiated by appointment papers and *plantilla* as required under the existing rules and regulations for creation of Member's Service Profile (MSP). It is highly unlikely that Manalo who has served the GSIS for 31 years failed to notice that the names of the applicants and the endorsers were fictitious while the other applicants were no longer connected with the City Government of Manila.

Manalo's act of processing membership records and policy contracts caused the immediate granting of loans to several fictitious and separated CGM employees bearing the following names:

x x x x x x x x x

At this point, Manalo is reminded of the gravity of his misdeed. His act of using his position to create spurious membership records and policy contracts caused the loss of GSIS funds. Said funds belong to its members who are government employees. Consequently, all government employees were prejudiced by the wrongdoing of Manalo.

With respect to the imposable penalty, **Sections 2 (a) and 3 of CSC Resolution No. 06-0538 dated April 4, 2006 (*Rules on the Administrative Offense of Dishonesty*)** provide, as follows:

> *'Section 2. Classifications of Dishonesty. – The classification of the offense of Dishonesty and their corresponding penalties are as follows:*
>
> *'a. Serious Dishonesty punishable by dismissal from the service*
>
> *'x x x x x x x x x*
>
> *'Section 3. Serious Dishonesty. – The presence of any one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty:*
>
> *'x x x x x x x x x*

'b. The respondent gravely abused his authority in order to commit the dishonest act.

'x x x x x x x x x

'd. The dishonest act exhibits moral depravity on the part of the respondent.

'e. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment.'

While **Section 52 A (3) of the Uniform Rules on Administrative Cases in the Civil Service**[12] provides that the principal penalty for the offenses of Grave Misconduct is dismissal from the service, as follows:

'Section 52. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service:

'A. The following are grave offenses with their corresponding penalties:

'x x x x x x x x x

'3. Grave Misconduct
1st offense – Dismissal

'x x x x x x x x x

'Section 55. Penalty for the Most Serious Offense. If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.'

In sum, the Commission finds the GSIS Decision finding Manalo guilty of Serious Dishonesty and Grave Misconduct and imposing upon him the penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and the perpetual disqualification from re-employment in the government service, proper.

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[12] Or Resolution No. 99-1936 dated August 31, 1999.

WHEREFORE, the appeal of Rogelio F. Manalo, former Computer Operator IV, Government Service Insurance System (GSIS), is hereby **DISMISSED**. Accordingly, the Decision dated August 12, 2008 finding Manalo guilty of Serious Dishonesty and Grave Misconduct and imposing upon him the penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and the perpetual disqualification from re-employment in the government service, and the Resolution dated June 2, 2009 denying his motion for reconsideration, are **AFFIRMED**. The accessory penalty of bar from taking any civil service examination in the future is likewise imposed upon him.[13] (Emphasis in the original)

Respondent moved to reconsider, but, finding no new evidence or convincing argument to reverse its original findings, the CSC held its ground via a February 1, 2011 Resolution.[14]

Ruling of the Court of Appeals

Respondent filed a Petition for Review before the CA, docketed as CA-G.R. SP No. 118452, contesting the CSC's findings and insisting he is innocent. On March 21, 2013, the CA issued the assailed Decision, decreeing thus:

Petitioner[15] contends that he cannot be held guilty of serious dishonesty, grave misconduct and gross neglect of duty because his duty as computer operator was purely ministerial in character; that he acted in good faith in evaluating the membership applications, their supporting documents and signatures of authorized officials; that he had no participation in the issuance of the alleged fictitious GSIS policy contracts, which had already been previously scrutinized and approved by his immediate supervisors, and the subsequent granting of the anomalous loan applications/transactions.

Petitioner's contentions are partly meritorious.

x x x x x x x x x

In this case, there is no doubt that petitioner committed misconduct in his duties as computer operator/membership processor when

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[13] *Rollo*, pp. 230-235.

[14] *Id.* at 236-240.

[15] Herein respondent.

fictitious persons and persons already separated from the service were entered into the membership database and issued membership records. However, after a careful review of the records, the Court finds that petitioner's misconduct cannot be characterized as grave. No substantial evidence was adduced to support the elements of corruption, or clear intent to violate the law, or flagrant disregard of established rules, that must be present to characterize the misconduct as grave.

Foremost, petitioner's primary duty was to process membership applications forms submitted by various government agencies, i.e., to examine and evaluate if supporting documents, such as service records, appointment papers and plantilla positions, are complete, authentic and in order; and to verify signatures of authorized endorsing officials based on their specimen signatures on file. As such, his duties were ministerial in character. There is nothing in the records to show that petitioner, acting alone and with flagrant intent to disregard procedural guidelines, arbitrarily approved membership applications or issued contract policies to fictitious persons and separated government employees. This Court notes that prior to the issuance of GSIS contract policies, each membership application is subjected to close scrutiny and verification not just by petitioner alone as a membership processor, but by several department personnel and chief officers of GSIS as shown in the *Additional Notes to the Detailed Procedures of the Manila District Office (MDO)*. Based on the outlined procedure, membership application forms are submitted by various government agencies to the GSIS membership servicing unit. If all supporting documents to the membership application are found to be in order, the membership processor, using the user ID and terminal ID, assigns a policy number and creates a membership record in the database. All supporting documents are then forwarded to the Section or Division Chief for review and if in order, the policy contract is issued.

Second, respondent GSIS failed to present substantial evidence to prove that petitioner directly participated in the approval and grant of unauthorized or spurious loans, or that he connived with a co-employee to effect the same. Even if GSIS policy contracts were indeed issued to fictitious and/or separated government employees, the grant or approval of their loan applications was not necessarily automatic. It bears emphasis that requirements and procedural guidelines in the approval or grant of GSIS loan applications are completely separate and distinct from membership applications and

issuance of policy contracts, and that petitioner's duties did not include approval of such loans. Again, this Court notes that in the *Additional Notes to the Detailed Procedures of the Manila District Office (MDO)*, petitioner's supervisor and division chief admitted to an incident in the Manila District Office Membership Department when superiors directed the issuance of dummy policies and granted double loans in favor thereof. Notwithstanding such admission, petitioner's actual participation in this anomalous scheme was never proven by GSIS.

Third, respondent GSIS failed to present substantial evidence to prove the element of corruption or that petitioner actually derived some benefit for himself or for another person, which directly resulted in financial losses for GSIS.

Anent the penalty to be imposed, petitioner's liability under the given facts only involves simple misconduct. Simple misconduct is a less grave offense and penalized by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense, under Section 52 (B) (2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service. Section 54 (a) of the same law also provides that the minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present. In this case, considering petitioner's length of service of 31 years and that this is petitioner's first offense, the penalty of suspension for two (2) months shall be imposed upon him.

It is worthy to emphasize at this point that when a public officer or employee is disciplined, the object sought is not the punishment of that officer or employee, but the improvement of the public service and the preservation of the public's faith and confidence in the government. Petitioner is reminded that 'the Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. These constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.'

WHEREFORE, the petition for review is PARTIALLY GRANTED. The assailed decision no. 100157 dated October 19, 2010 is AFFIRMED WITH MODIFICATION that petitioner Rogelio Manalo is found guilty of simple misconduct and is suspended form service

for a period of two (2) months reckoned from the time his preventive suspension elapsed.

SO ORDERED.[16]

Petitioner moved to reconsider, but the CA remained unconvinced. Hence, the present Petition.

In an October 13, 2014 Resolution,[17] this Court resolved to give due course to the Petition.

Issues

Petitioner contends that –

I

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN PARTIALLY GRANTING THE RESPONDENT'S PETITION ON THE GROUND THAT THERE WAS NO SUBSTANTIAL EVIDENCE ADDUCED TO SUPPORT THE EXISTENCE OF THE ELEMENTS OF CORRUPTION, OR CLEAR INTENT TO VIOLATE THE LAW, OR FLAGRANT DISREGARD OF ESTABLISHED RULES, WHICH CHARACTERIZES RESPONDENT'S MISCONDUCT AS GRAVE.

II

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN FINDING RESPONDENT LIABLE FOR ONLY SIMPLE MISCONDUCT AND IMPOSING THE PENALTY OF SUSPENSION FOR TWO (2) MONTHS.

III

THE HONORABLE COURT OF APPEALS ERRED IN NOT ACCORDING RESPECT AND CREDIT TO THE FINDINGS OF THE GSIS AND THE CSC, WHICH ARE SUPPORTED BY MORE THAN THE REQUIRED SUBSTANTIAL EVIDENCE.[18]

Petitioner's Arguments

Praying that the assailed CA dispositions be reversed and set aside, and that its August 12, 2008 Decision together with

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[16] *Rollo*, pp. 51-56.

[17] *Id.* at 315-316.

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

the CSC's October 19, 2010 Decision be reinstated, GSIS argues in its Petition and Reply[19] that contrary to the assailed CA pronouncement, there is substantial evidence to find respondent guilty of corruption and grave misconduct, and not mere simple misconduct; that the evidence – particularly the *Additional Notes to the Detailed Procedures of the Manila District Office per Manual of Operations for the Creation/Issuance of the Policy Record by the Membership Department, MDO During the Granting of the Emergency Assistance Loan (ELA)/Summer One-Month Loan (SOS)/Enhanced Salary Loan (ESL) from January 1, 2004 to June 30, 2005*[20] (Additional Notes) – shows that it was part of respondent's assigned duties and responsibilities to examine and determine that the documents submitted in support of the membership applications are complete, authentic, and in order before the members' policy records can be created – that is, respondent must first examine and evaluate from the source documents (Membership Information Sheet, Service Record, appointment papers, and plantilla) if the signatories are authorized officials and if endorsing officials are complete and their signatures are authentic based on their specimen signatures on file; that his admitted failure to perform his duty and mere reliance on the examination supposedly made by his supervisors show that he intentionally violated the rules and procedure required, resulting in the creation of bogus membership profiles and policies based on incomplete, forged, and fake applications and source documents submitted, as well as the consequent release of loans to bogus members; that respondent's claim of reliance upon his superiors' examination and pre-approval of the applications and source documents is not a valid defense, because this pre-examination and pre-approval is not part of the procedure laid down in the Additional Notes – on the contrary, respondent as membership processor is the "first evaluator" of the applications and source documents, the "first line of defense against fraudulent applications"; that respondent's supervisors or superiors, Minaflor Santos (Santos) and Susan

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[19] *Id.* at 300-313.

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

San Miguel (San Miguel), have been held accountable for gross neglect of duty; and that it is not necessary to prove by direct evidence that respondent benefited directly from the grant of dubious loans.

Finally, petitioner submits that the findings of the GSIS and CSC should be affirmed, claiming that it is a well-entrenched rule in this jurisdiction that findings of fact of administrative agencies based on substantial evidence are respected and deemed conclusive, as they possess the relevant expertise and are in the best position to assess the probative value of the evidence presented before them.

Respondent's Arguments

Pleading affirmance of the assailed judgment in his Comment,[21] respondent claims that he is a victim of "institutional injustice" within the GSIS; that his case is an attempt to mask the activities of a syndicate that extends loans to "ghost GSIS policy holders" and he is being made a scapegoat of the "grand conspiracy;" that he sought an investigation into the activities of the syndicate, but his plea fell on deaf ears; that he had no hand in the "pre-processing of the GSIS application for membership prior to policy creation, as well as, the processing of the anomalous loan transactions extended to GSIS ghost policy holders," which seems to have coincided with the 2004 elections – indicating that the money might have been used in said presidential elections; that the GSIS Decision is thus biased and not based on evidence; that his superiors Santos and San Miguel retired with full benefits in the millions of pesos, while he is being made the victim of a cover-up; that contrary to petitioner's claim, when the documents reach his office, "the same are deemed completed staff work (CSW) from his immediate superiors"; and that the Additional Notes – which he submitted as part of his evidence (Exhibit "4-D") – were not considered in his favor, in that they would show that he followed strictly the procedure laid out therein.

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[21] *Id.* at 278-292.

Our Ruling

The Petition must be granted.

The discrepancy between the conclusions of the petitioner and the CSC on the one hand, and the CA on the other, requires the Court to make a thorough review of the case. Particularly, the CA appears to have overlooked undisputed facts which, if properly considered, would justify a different conclusion.

While petitioner and the CSC found that respondent was guilty of serious dishonesty and grave misconduct for his failure to perform his task of checking the completeness and authenticity of the application forms and supporting documents submitted and for deliberately using his access/operator and terminal codes to process fake membership records and create policy contracts – which thus led to the granting of anomalous loans to non-existent GSIS members, the CA held that respondent's task of creating an applicant's policy contract is purely ministerial in that the application forms and supporting documents that are forwarded to him have been previously pre-processed, scrutinized, and verified by several GSIS personnel and officers pursuant to the Additional Notes, and he had no power to arbitrarily approve these application forms or contract policies. The CA added that there is no evidence to prove that respondent directly participated in the approval and grant of spurious loans to these fake members, or that he benefited from these loans; his only fault is that "fictitious persons and persons already separated from the service were entered into the membership database and issued membership records."

The resolution of the case lies in a better understanding of respondent's responsibilities and tasks as set forth in the Additional Notes, which he introduced and forms part of his evidence below:

ADDITIONAL NOTES TO THE DETAILED PROCEDURES OF THE MANILA DISTRICT OFFICE PER MANUAL OF OPERATIONS FOR THE CREATION/ISSUANCE OF THE POLICY RECORD BY THE MEMBERSHIP DEPARTMENT, MDO DURING THE GRANTING OF THE EMERGENCY

ASSISTANCE LOAN (ELA)/SUMMER ONE-MONTH LOAN (SOS)/ENHANCED SALARY LOAN (ESL) FROM JANUARY 1, 2004 TO JUNE 30, 2005

- After about five months in updating members' records and stoppage of loans processing, GSIS granted the Emergency Assistance Loan (ELA) to its members in October, 2003 to February, 2004. Before the ELA applications could all be processed/granted, Management offered the SOS Loan around March 15, 2004 and shortly after, the ESL by May, 2004. Majority of the MDO members availed of these loans resulting to [sic] voluminous transactions which necessitated the engagement of the MDO Membership Department personnel at the Metropolitan Office to serve as Members Relations Unit (MRU) on a rotation basis with each employee rendering MRU duties ranging from 3 hours to half a day.

- The procedures followed by the Membership Department acting as MRU may be summarized as follows:

1. Receive from the Liaison Officer/s the application forms (AFs) and stamp date of receipt.

2. Personnel from Loans pick up/forward Loan AFs to the MDO Cluster Unit for loan granting/check printing and forward Loan AFs for updating to Membership Department, if necessary.

3. Forward AFs without Policy Nos. to the Membership Department on the second floor for processing.

   Note: At the time, Membership Department personnel had no particular/specific loading but were doing work using the 'bayanihan style'.

4. Distribute the AFs among the personnel for the creation/ issuance of a policy record performing the following procedures:

   - Require the following source documents:

     - MIS/IMI
     - Service Record (SR)
     - Appointment papers
     - Plantilla

- Examine and evaluate if the submitted source documents are complete, authentic and in order; if the signatories are the authorized officials and if the endorsing officials are complete and their signatures authentic based on their specimen signatures on file. (Every 6 months, the specimen signature forms are required to be renewed by the authorized signatories.)

  The SR/appointment/plantilla, although not original may be accepted as long as it is a certified true copy of the original as certified by a duly authorized official.

- If all are found to be in order, execute the following steps:

  o Create a policy record and assign a policy number;

  o If with number, print MAIP and attach to the supporting documents

- Forward all the above documents to the Section Chief (SC) for review and if in order, the policy contract may be printed. The SC or Division Chief signs on Policy Contract.

  Note: Not all the time the policy contract is printed immediately after creation of a policy record unless a member requests for one. Most of the time, policy contracts are printed in batch and the accredited LO comes to pick up said policy contracts. Releasing of Policy Contracts is basically done thru LOs who acknowledge receipt of said policies per Logbooks although a member may also receive it directly.

- There was a time when the MDO Membership Dept. was told by their superiors to drop everything and issue Dummy Policies with Dummy Date of Birth to facilitate the posting of unmatched payments from different agencies. There were occasions when double loans were granted thru such Dummy Policies.

- Although we were supposed to be premium based already, we went thru abnormal situations whereby a newly issued policy contract could not be verified then if premiums were paid in fact. The AAIP facility became available only in late Sept.-Oct., 2004.

It may be of interest to note that at one time while processing applications requiring the creation/issuance of a policy record for a group of 4 supposedly employees of the Manila City Hall, the Division Chief being interviewed went out of her way to visit the Manila City Hall Office to inquire and verify if said employees who submitted complete supporting documents were bonafide (sic) employees of the MCH and they were all proven fictitious and all the documents had spurious signatures. This was properly reported to the MDO Manager at the time.

Noted by Interviewees:

(signed)
MINAFLOR SANTOS
Division Chief
Membership Division, MDO

(signed)
SUSAN SAN MIGUEL
Section Chief
Membership Division, MDO[22]

Thus, it appears that respondent, as membership processor at the GSIS's Membership Department I (Manila), was required – upon being given Application Forms for Emergency Assistance Loan (ELA), Summer One-Month Loan (SOS), or Enhanced Salary Loan (ESL) together with the accompanying required source documents (Membership Information Sheet, Service Record, Appointment Paper, and Plantilla) – to "examine and evaluate if the submitted source documents are complete, authentic and in order; if the signatories are the authorized officials and if the endorsing officials are complete and their signatures authentic based on their specimen signatures on file." Thereafter, if he finds these documents to be in order, then he shall create a policy record, assign a policy number thereto, and then forward all the documents to the Section Chief (SC) for review. In other words, it was respondent's task to determine the completeness and authenticity of the source documents submitted to him, before he can create a policy record which the GSIS member-applicant shall use to secure ELA, SOS, and/or ESL.

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

However, it turned out that respondent created policy records of fictitious and previously terminated employee-applicants from the City Government of Manila, totaling seventeen (17),[23] and as a result, ₱621,165.00 worth of loans were released and lost through these irregular policies. These policies were traced to respondent's computer access/operator code "A6HT" and terminal ID "A8GJ" by the GSIS's Internal Audit Service Group (IASG), meaning that it was respondent who processed and created them based on source documents that were forged, questionable, incomplete, and/or not signed by the authorized endorsing officials of the City Government of Manila.[24] Without belaboring the point, respondent was grossly negligent in evaluating and authenticating the source documents accompanying 17 application forms filed by fictitious individuals or separated employees of the Manila city government; the mere fact that respondent failed to discover in the first instance that the applicants were fictitious or have been separated from office at once qualifies his negligence as gross. All that was required in determining the identities of these applicants and authenticity of their respective applications and supporting documents was a simple and effortless coordination with the Manila city government, in addition to an examination of the accompanying source documents and referring to the list of authorized endorsing and approving officials and their specimen signatures, and other supporting and authenticating documents, submitted by the Manila city government.

Respondent justifies his mistake by claiming that he processed and created the spurious policies relying on the previous completed work of his superiors, who he claims were part of a syndicate out to defraud the GSIS, and that he was being made the sacrificial lamb in this nefarious scheme. The Additional Notes, however, do not indicate that before the application forms are submitted to respondent for processing, they have been pre-screened or pre-processed by his superiors; on the contrary, they state that these forms are brought to him for updating and

[23] *Id.* at 196-198.

[24] *Id.* at 208-215.

processing in the first instance immediately upon seeing that the application forms are not covered by corresponding policy numbers. They instead show that upon receiving these application forms, respondent shall secure or require the submission of the source documents (Membership Information Sheet or Membership Information, Service Record, Appointment Papers, and Plantilla) which he shall then examine and evaluate, making sure that they are complete, authentic, and in order – **in other words, he must make sure that the applicants are indeed employed by the Manila city government and are incumbent members of the GSIS who are thus eligible to apply for the loans being offered**. Upon determination that the documents are in order, he shall then create a policy record and assign a policy number in favor of the applicant, and then forward his work to his Section Chief for review.

The evidence on record, which respondent does not dispute, shows that apart from failing to discover at once that the loan applicants were fictitious individuals and/or separated employees of the Manila city government, respondent relied on source documents that were signed, certified and/or issued by a) unidentified individuals, b) individuals who were not even authorized signatories or representatives of the Manila city government in the first place, and c) individuals purporting to sign in behalf of authorized signatories but whose names and positions were not indicated; application forms were not backed by the corresponding plantilla; and signatures of officers appearing on source documents were materially different from those in the specimen signature cards submitted by the city government.[25] All these indicate that respondent failed to perform his duty, not only once or twice, but *repeatedly*, and that he was grossly negligent for ignoring the patent irregularities in the source documents submitted to him. This is downright incompetence and carelessness on respondent's part; an abject indifference to his fundamental duties and responsibilities; a complete abdication of duty with regard to the 17 accounts.

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[25] *Id.* at 208-215.

If respondent believed that there was a syndicate operating within the GSIS out to defraud the System, then it was more incumbent upon him to have performed his duties with more care and circumspect, knowing that the syndicate was ready to take advantage of every opportunity. Instead, he was repeatedly extremely careless and blind to the most glaring and patent irregularities in the source documents before him. As a result, the GSIS lost a large sum from these conduit policies. One might be tempted to believe that by his actions, respondent is part of the alleged conspiracy he now condemns, though the evidence is insufficient to generate such a view. Even then, the Court wonders how such a patent irregularity could have escaped notice by respondent's superiors, who are presumed to have reviewed his work as a matter of course pursuant to the procedure laid down in the Additional Notes.

For failing to perform his duty which thus caused the creation of 17 anomalous policy records which were in turn used to defraud GSIS of ₱621,165.00, respondent is guilty not of grave misconduct or dishonesty, but gross neglect of duty which is punished with dismissal under Rule 10, Section 46(A)(2) of the Revised Rules of Administrative Cases in the Civil Service.[26]

As compared to Simple Neglect of Duty which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference, **Gross Neglect of Duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty**.

Misconduct, on the other hand, is a transgression of some established and definite rule of action, more particularly, unlawful behavior or

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[26] Section 46. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service :

x x x x x x x x x

2. Gross Neglect of Duty;

x x x x x x x x x

gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.

Finally, Dishonesty is defined as a disposition to lie, cheat, deceive, or defraud; unworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive, or betray.

Needless to say, these constitute conduct prejudicial to the best interest of the service as they violate the norm of public accountability and diminish – or tend to diminish – the people's faith in the Judiciary.

x x x x x x x x x

Under the Revised Rules of Administrative Cases in the Civil Service (RRACCS), Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty are grave offenses which merit the penalty of dismissal from service even for the first offense. Corollary thereto, such penalty carries with it the following administrative disabilities: (a) cancellation of civil service eligibility; (b) forfeiture of retirement and other benefits, except accrued leave credits, if any; (c) perpetual disqualification from reemployment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution; and (d) bar from taking civil service examinations.[27] (Emphasis supplied)

"Gross neglect of duty or gross negligence 'refers to negligence characterized by the want of even slight care, or by acting or **omitting to act in a situation where there is a duty to act**, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may

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[27] *Office of the Court Administrator v. Viesca*, A.M. No. P-12-3092, April 14, 2015, 755 SCRA 385, 395-397.

be affected. It is the **omission of that care that even inattentive and thoughtless men never fail to give to their own property**.' It denotes a **flagrant and culpable refusal or unwillingness of a person to perform a duty**. In cases involving public officials, gross negligence occurs when a **breach of duty is flagrant and palpable**."[28]

> Gross neglect of duty refers to negligence that is characterized by **glaring want of care**; by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. Gross inefficiency is closely related to gross neglect as both involve specific acts of omission on the part of the employee resulting in damage to the employer or to the latter's business.[29] (Emphasis supplied)

There is nothing wrong in finding respondent guilty of gross neglect when the charge against him was for dishonesty or grave misconduct; the allegations in the August 29, 2007 Formal Charge also make out a case for gross neglect of duty, as in fact he was also so charged.[30] "[W]hat is controlling is the allegation of the acts complained of, not the designation of the offense."[31] So long as respondent was given the opportunity to confront the allegations against him, which in fact he did, there should be no issue in this regard.

With the foregoing view taken, the Court finds no need to further address the other issues raised by the parties.

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[28] *Office of the Ombudsman v. de Leon*, 705 Phil. 26, 37-38 (2013), citing *Fernandez v. Office of the Ombudsman*, 684 Phil. 377, 389 (2012) and *Philippine Retirement Authority v. Rupa*, 415 Phil. 713, 720-721 (2001).

[29] *Guerrero-Boylon v. Boyles*, 674 Phil. 565, 575-576 (2011).

[30] CA *rollo*, p. 79.

[31] *Philippine Amusement and Gaming Corporation v. Marquez*, 711 Phil. 385, 397 (2013).

WHEREFORE, the Petition is **GRANTED**. The March 21, 2013 Decision and August 30, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 118452 are **REVERSED** and **SET ASIDE**. Respondent Rogelio F. Manalo is ordered **DISMISSED** from the Government Service Insurance System for gross neglect of duty, with cancellation of civil service eligibility; forfeiture of retirement and other benefits, except accrued leave credits, if any; perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution; and bar from taking civil service examinations.

SO ORDERED.

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

Carpio, J. (Chairperson), on official leave.

THIRD DIVISION

[G.R. No. 211680. September 21, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BELBAN SIC-OPEN *y* DIMAS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS, ELEMENTS OF.— 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:

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[*] Per Special Order No. 2374 dated September 14, 2016.

(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.

2. ID.; ID.; ID.; ALL THE REQUISITES OF ILLEGAL SALE OF MARIJUANA WERE ESTABLISHED; NON-PRESENTATION OF THE TEXT MESSAGES PERTAINING TO SALE TRANSACTION IS IMMATERIAL AS LONG AS THE PROOF THAT THE SALE TRANSPIRED COUPLED WITH EVIDENCE OF *CORPUS DELICTI* WERE PRESENTED.— In this case, all the requisites of the illegal sale of marijuana were met. The identities of the buyer, the seller, the prohibited drug, and the marked money have all been proven beyond reasonable doubt by the testimonies of the prosecution witnesses and the supporting documents they presented and offered in evidence. x x x It is inconsequential that the text messages between Chumanao and Belban pertaining to all communications prior to the alleged consummation of the illegal sale of marijuana were not presented as evidence. What matters is the proof that the transaction or sale transpired, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence. As the RTC and the CA found, taken together, the testimonies of Chumanao, Mosing, and Asiong as to what transpired before, during, and after the buy-bust operation are consistent on material and relevant points.

3. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL AND FRAME-UP ARE UNAVAILING IN VIEW OF THE OVERWHELMING EVIDENCE OF THE PROSECUTION. — Against the overwhelming evidence for the prosecution, Belban merely denied the accusations against him. We have invariably viewed with disfavor the defense of denial and frame-up because it can easily be concocted and it is a common and standard defense ploy in prosecutions for violation of R.A. No. 9165. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence. The burden of proof is on Belban to defeat the presumption that the police officers properly performed their official duties. He failed. No bad faith was actually shown. He did not substantiate any illicit motive on the part of the police officers, as to why, of all the

allegedly numerous passengers who were also waiting for the bus near the school canteen, they would choose to falsely implicate him in a very serious crime that would cause his imprisonment for life. For this failure, the testimonies of the prosecution witnesses deserve full faith and credit.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; UNBROKEN CHAIN OF CUSTODY OVER THE SEIZED ILLEGAL DRUGS ESTABLISHED WITH MORAL CERTAINTY AND PROVED BEYOND REASONABLE DOUBT.— [T]he prosecution was able to establish with moral certainty and prove to the Court beyond reasonable doubt that there is an unbroken chain of custody over the confiscated illegal 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 prosecution presented every person who touched the exhibit. They described how and from whom the seized marijuana was received, where it was and what happened to it while in their possession, the condition in which it was received, the condition it was 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.
E.L. Gayo and Associates for appellant.

D E C I S I O N

PERALTA, ***J.*:**

On appeal is the July 23, 2013 Decision[1] and October 9, 2013 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CR-HC

[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Franchito N. Diamante and Melchor Q. C. Sadang, concurring; *rollo*, pp. 2-29, 174-201.

[2] CA *rollo*, pp. 229-230.

No. 05546, which affirmed the February 28, 2012 Decision[3] and April 24, 2012 Order[4] of the Regional Trial Court (*RTC*), Branch 8, La Trinidad, Benguet, in Criminal Case No. 09-CR-7596, convicting appellant Belban Sic-open *y* Dimas (*Belban*) of illegal sale of marijuana in violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002.*

In an Information dated February 26, 2009, Belban was charged as follows:

> That on or about the 4th day of February, 2009, at Poblacion, Municipality of Kibungan, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there knowingly, willfully and unlawfully sell and deliver to **Intelligence Officer 1 Berto C. Chumanao**, a member of the Philippine Drug Enforcement Agency who acted as poseur-buyer, **Thirty (30) bricks of dried Marijuana**, a dangerous drug, with a total weight of **Twenty-Six Thousand Seven Hundred Sixty-Eight & 3/10 (26,768.3) grams**, in violation of said law.
>
> CONTRARY TO LAW.[5]

In his arraignment, Belban entered a plea of "Not Guilty."[6] Trial ensued while he was under detention. The prosecution presented Intelligence Officer (*IO*) 1 Berto Chumanao (*Chumanao*), IO Maydette Mosing (*Mosing*), and IO Honoria Asiong (*Asiong*), Senior Police Officer (*SPO*) 4 Romeo Abordo (*Abordo*), Police Senior Inspector (*PSI*) Rowena Fajardo Canlas (*Canlas*), and PO1 Dennis Delos Reyes (*Delos Reyes*). Only Belban testified for the defense.

Evidence for the Prosecution

In the second week of December 2008, a male informant walked at the office of the Philippine Drug Enforcement Agency-

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[3] Records, pp. 365-374; *id.* at 65-74.

[4] Records, p. 391.

[5] *Id.* at 1.

[6] *Id.* at 39.

Cordillera Administrative Region (*PDEA-CAR*) in Camp Bado Dangwa, La Trinidad, Benguet. As the one on duty at the time, Chumanao attended to the informant, who reported that a certain Belban was selling marijuana and looking for a buyer. The informant revealed that he was actually a middleman personally known to and engaged by Belban to find buyers, but he wanted to change his life. After the disclosure, Chumanao turned him over to Police Chief Inspector and Officer-in-Charge Edgar S. Apalla (*Apalla*), who authorized him to "build-up" the case and form a buy-bust team if needed. Upon Chumanao's request, the informant gave him the cellphone number of Belban. The informant was likewise told to call Belban and introduce him as a buyer. Chumanao started communicating with Belban two to three days after. As the informant told him that Belban was from Kibungan, Benguet, he talked to him in Kankanaey dialect since he stayed in Sagpat, Kibungan for some years after getting married there. He texted Belban that he was the person who would buy the marijuana as told to him (*Belban*) by the informant. On December 15, 2008, Chumanao received a text message from Belban inquiring if he was still interested in buying marijuana. After replying in the affirmative, Belban said that the marijuana, which he referred to as *"nateng"* (vegetable), would be available in February 2009. When asked how many bricks he could sell, Belban responded that he could deliver thirty (30) bricks.

On February 3, 2009, Chumanao received a text message from Belban that the marijuana were already available at dawn of the following day. It was agreed that he would pick them up in Poblacion, Kibungan near the school between 3:00 a.m. and 4:00 a.m. With the information, Chumanao called IOs Macad, Mosing, and Asiong, who arrived at 3:00 p.m. They were briefed that they would proceed to Kibungan to meet Belban, who would be selling them marijuana. Their respective tasks as members of the buy-bust team were assigned – Chumanao as poseur-buyer, Asiong as arresting officer, Mosing as seizing officer, and Macad as the one who would read the constitutional rights of the accused. Also, the team prepared the boodle money consisting of two (2) Five Hundred Peso (₱500.00) bills and

fifty-eight (58) mimeo papers cut into money size. Chumanao placed his initials (*"BCC"*) on the genuine ₱500.00 bills. By 12 midnight, they "jumped off" to the meeting place from the PDEA field office in Melvin Jones, Baguio City using a service vehicle (Toyota Revo) with a driver. At 3:00 a.m. of February 4, they arrived in the area and parked at the Dangwa terminal located at the turning point of the Dangwa bus in Poblacion, Kibungan. After waiting for a few minutes, Belban approached them. Chumanao knew him because he texted him upon arrival and their service vehicle was the only one parked in the vicinity. Not wanting to stay long in the area, he immediately asked him where the marijuana was. Belban directed Chumanao to follow him. He alighted from the vehicle and went with him towards the road proceeding to the back of the school, which was about 30-45 meters away. The other members of the buy-bust team slowly followed using the service vehicle.

At the road side, two brown cartons tied with straw were placed near the school canteen. When Belban told Chumanao that they contained the marijuana, the latter checked one of the cartons. He untied a carton and saw square-shaped items individually wrapped in newspaper. After opening an item, he confirmed that it was marijuana in brick form. When Belban demanded the payment, Chumanao handed to him the boodle money. As Belban put it in the left pocket of his polo shirt, Chumanao grabbed his arm and told him, *"Arestado ka!*,*"* which was the pre-arranged signal. The rest of the buy-bust team, who witnessed the unfolding of events while they were inside the trailing vehicle, then rushed to the scene and assisted in the arrest. Asiong handcuffed Belban, Mosing conducted a body search, and Macad read his constitutional rights. Mosing recovered a Nokia 6110 cellular phone, which she marked with her initial, signature, and date. The two cartons containing the marijuana bricks were taken and loaded inside the back of the vehicle. Chumanao opened the cartons and counted fifteen (15) bricks in each carton. The 15 bricks were individually wrapped in newspapers and were collectively wrapped in a green plastic bag that was placed in each carton. Considering that it was still too dark and the team was anxious for its safety, a preliminary

inventory of the seized items was made in the presence of Belban and the buy-bust team members. Using a Pentel pen, Chumanao wrote his initials, signature, and date on each of the 30 bricks, the two (2) green plastic bag, and the two cartons.

Thereafter, the buy-bust team, together with Belban, made a short stop at the Kibungan Police Station for the police blotter as well as to show the seized items and the person arrested.[7] They immediately proceeded to Camp Dangwa, where they arrived at past 7:00 a.m. There, the team prepared the affidavits of the members of the buy-bust team, the booking sheet and arrest report, and the requests for physical examination on Belban and laboratory test on the drug items. Chumanao, Asiong, Macad, and Mosing then turned-over the drug (marijuana bricks with the containers) and non-drug items (cellular phone and boodle money) to SPO4 Abordo, who, as the Evidence Custodian of PDEA-CAR, conducted the inventory of the seized items.

The confiscated items were inventoried in the presence of the police officers, Belban, and the representatives of the Department of Justice (Special Prosecutor Winston T. Suaking), the media (Manny Fortuny), and the barangay (Kagawad Ponciano N. Tero), who then signed the inventory. Photographs of the inventory held were also taken. Thereafter, Abordo kept the non-drug items at the evidence room of Camp Dangwa, while he delivered the marijuana bricks to the PNP Crime Laboratory. PSI Canlas, the Forensic Chemist of PNP-CAR, was the one who actually received the request and the illegal drug. She was the one who conducted the physical, chemical, and confirmatory examinations, and concluded that all the specimens submitted were positive for the presence of marijuana. After issuing the final report, she turned-over the marijuana bricks to PO1 Delos Reyes, the Evidence Custodian of then PNP Crime Laboratory at Camp Dangwa, who locked them up in the evidence room for safekeeping until he brought them to the trial upon court order.

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[7] However, Chumanao testified that they went back to the PDEA field office in Melvin Jones. (See TSN, March 23, 2010, p. 17).

Evidence for the Defense

Belban, who was a resident of Legab, Kayapa, Bakun, Benguet, had been engaged in planting rice for fifteen (15) years. On February 4, 2009, he was in Kibungan because his brother, Sixto Sic-open, who was married in that place sent him a text message a day before. He was asked if he would like to come and see the Sayote Plantation in Epit, Kibungan that he (Sixto) was leasing and to decide if he would like to rent it also. He started to hike from Kayapa, Bakun at 9:00 p.m. and arrived at Poblacion, Kibungan around 2:00 a.m. He proceeded directly to the school canteen to wait for the 3:00 a.m. bus trip to Baguio City. While there, he noticed that there were other waiting passengers. The school canteen was in fact open and there were people inside drinking coffee. To secure a seat, he decided to go to the bus terminal, which was about forty (40) meters away. While on his way, a male passenger of a white vehicle asked him the location of the school canteen. When the man requested for a company, he agreed to go with him thinking that he was probably a new visitor. Upon reaching the back of the school canteen, which was the one facing the road, there were two cartons left. The man directly went to it and opened it. Less than a minute later, while he was walking back towards the terminal, the man suddenly handcuffed him without any explanation. Knowing that there were people inside the canteen, he attempted to shout but the man pointed a gun to his mouth. He was then directed to board the vehicle. When he questioned them, they replied that maybe the cartons were his baggages. Despite saying that he did not know anything and that he did not own them, they insisted and did not believe him. He asked what were the contents of the cartons and they answered that they contained marijuana. He reiterated that he did not know anything about them. They then went to Kibungan Police Station where he was made to sit down and stay for thirty (30) minutes while the alleged marijuana bricks were left inside the vehicle. They then proceeded to Camp Dangwa, where they arrived at around 8:00 a.m. There, he was made to sit in a small room for about seven (7) hours. By 4:00 p.m., they let him out and brought him to their office where he noticed marijuana bricks on the

table. They asked him to go near them for a photo shoot. He saw some persons around, but did not know their names. He did not recall if somebody asked him to sign any document or paper. The Inventory of Seized Items was never shown to him. He did not recall that Atty. Suaking, Fortuny or Kag. Tero were introduced to him.

RTC Ruling

On February 28, 2012, the RTC found Belban guilty of the crime charged and sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of Five Hundred Thousand Pesos (₱500,000.00). In ruling that the prosecution evidence proved with moral certainty that the sale of marijuana bricks was consummated, the trial court opined:

> x x x [T]he **commission of the offense of illegal sale of dangerous drugs merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller**. As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, **the crime is already consummated**.
>
> Were these elements established? The court answers in the positive. PDEA Agent Chumanao testified that he was the designated poseur-buyer who made the arrangements with the seller for the purchase of thirty bricks of dried marijuana. The date and place of the sale was agreed upon with the further agreement that it would be the buyer who would go to the agreed place to pick up the marijuana bricks. Thus[,] on February 4, 2009, the team of Agent Chumanao found its way to Kibungan, Benguet to meet with the seller and pick up the marijuana bricks. True enough, the seller met them at the designated place and led them to the object of the sale. Satisfied that the object was indeed marijuana bricks, poseur-buyer Agent Chumanao parted with the purchase price. Once the purchase price was in the hands of the seller, the poseur-buyer effected the arrest. x x x.[8]

It was also held that the chain of custody of the seized marijuana bricks had been unbroken:

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[8] Records, p. 371; CA *rollo*, p. 71.

In the case at bar, the prosecution evidence shows that right after the arrest of the accused the two boxes containing the marijuana bricks were loaded into the vehicle. Right there and then Agent Chumanao marked the bricks with his initials "BCC" and indicated the date and time of seizure on all the bricks in the presence of the accused. Considering that it was still dark and the place was quite isolated, the team left the place and went back to their office. The marijuana bricks were turned over to the PDEA Evidence Custodian SPO4 Romeo Abordo.

Upon receipt of the marijuana bricks that morning of February 4, 2009, SPO4 Abordo conducted the inventory. The marijuana bricks were laid out on the table and all the bricks bore the initials of the poseur-buyer. Witnessing the inventory were the accused, Prosecutor Winston Suaking, Barangay Kagawad Ponciano N. Tero and media member Manny Fortuny. The prosecution evidence also consists of pictures taken during the inventory.

There is no doubt then that the inventory required by law has been conducted in the presence of all those required by law to be present. Further, the inventory has been documented.

The seized items were then brought to the Crime Laboratory and Forensic Chemist PSI Rowena Canlas testified that what she received were thirty bricks of marijuana all with the markings "BCC", the date "02/04/09" and a signature. She compared the items she received with the description on the letter-request for examination and they were exactly the same.

After her examination, she turned over the marijuana bricks to the Crime Laboratory Evidence Custodian. The evidence custodian, PO1 Dennis delos Reyes brought the marijuana bricks to court and the court saw for itself the markings made by the poseur-buyer and the forensic chemist. Also, in his testimony, the poseur-buyer Agent Chumanao identified the marijuana bricks brought by PO1 Delos Reyes as the same items he seized from the accused. In the same vein, Forensic Chemist Canlas identified the same items as the one turned over to her by the PDEA Evidence Custodian and which she subjected to laboratory examination.

Clearly then the marijuana bricks seized from the accused were the same marijuana bricks brought to court. The chain of custody of the illegal drugs has not been compromised.[9]

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[9] *Id*. at. 372-373; *Id*. at 72-73.

CA Ruling

On appeal, the CA sustained Belban's conviction. After adopting the narration of facts of the RTC, it concluded that all the elements of the crime were established beyond reasonable doubt. The appellate court noted that the testimony of Chumanao was corroborated by Mosing and Asiong in material points. Add to this the fact that all of them executed an affidavit relative to the buy-bust operation and identified Belban in open court. Further, the presumption of regularity in the performance of official duties was not successfully disputed because no improper motive on the part of police authorities was proven. Finally, as to compliance with Section 21, Article II of R.A. No. 9165, the CA held that, based on the testimonial and documentary evidence of the prosecution and contrary to the unsubstantiated claim of Belban, there was no gap in the chain of custody of the seized marijuana. For the appellate court, minor discrepancies in the testimonies and inconsistencies on peripheral matters neither vitiate the essential integrity of the evidence in its entirety nor reflect adversely on the credibility of the prosecution witnesses.

In his Supplemental Brief,[10] Belban manifested that, as he had consistently pleaded in the Appellant's Brief, Reply Brief and Motion for Reconsideration filed before the CA, the chain of custody rule was not followed by the buy-bust team; hence, the trial court decision must be reversed and a new one be rendered acquitting him of the crime charged.

The Court's Ruling

We dismiss the appeal.

For a successful prosecution of illegal sale of dangerous drugs under Section 5,[11] Article II of R.A. 9165, the following elements

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[10] *Rollo*, pp. 36-45.

[11] 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)

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.[12] The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.[13]

In this case, all the requisites of the illegal sale of marijuana were met. The identities of the buyer, the seller, the prohibited drug, and the marked money have all been proven beyond reasonable doubt by the testimonies of the prosecution witnesses and the supporting documents they presented and offered in evidence. In open court, Chumanao identified the person of Belban; the 30 bricks of marijuana he marked; the markings he placed on the two cartons, green plastic bags, and the sack used to cover the cartons; and the boodle money he prepared.[14] Likewise, in her testimony, Mosing identified Belban; the two cartons, the green plastics, and the 30 bricks of marijuana which were marked by Chumanao in her presence; the booking sheet; and the requests for physical examination of the accused and laboratory examination of the suspected illegal drugs.[15] On her part, Asiong affirmed the Joint affidavit she executed with Mosing and Macad as well as identified Belban, the inventory sheet, and the photographs taken.[16]

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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.

[12] *People v. Dalawis*, G.R. No. 197925, November 9, 2015; *People v. Enad,* G.R. No. 205764, February 3, 2016; *People v. Dela Cruz*, G.R. No. 205414, April 4, 2016; and *People v. Amaro*, G.R. No. 207517, June 1, 2016.

[13] *People v. Dalawis*, G.R. No. 197925, November 9, 2015; *People v. Enad,* G.R. No. 205764, February 3, 2016; and *People v. Amaro*, G.R. No. 207517, June 1, 2016.

[14] TSN, March 23, 2010, pp. 20-24.

[15] TSN, June 22, 2010, pp. 10, 12-17.

[16] TSN, September 30, 2010, pp. 3-4, 16-17.

It is inconsequential that the text messages between Chumanao and Belban pertaining to all communications prior to the alleged consummation of the illegal sale of marijuana were not presented as evidence. What matters is the proof that the transaction or sale transpired, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.[17] As the RTC and the CA found, taken together, the testimonies of Chumanao, Mosing, and Asiong as to what transpired before, during, and after the buy-bust operation are consistent on material and relevant points.

Against the overwhelming evidence for the prosecution, Belban merely denied the accusations against him. We have invariably viewed with disfavor the defense of denial and frame-up because it can easily be concocted and it is a common and standard defense ploy in prosecutions for violation of R.A. No. 9165.[18] In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.[19] The burden of proof is on Belban to defeat the presumption that the police officers properly performed their official duties. He failed. No bad faith was actually shown. He did not substantiate any illicit motive on the part of the police officers, as to why, of all the allegedly numerous passengers who were also waiting for the bus near the school canteen, they would choose to falsely implicate him in a very serious crime that would cause his imprisonment for life. For this failure, the testimonies of the prosecution witnesses deserve full faith and credit.

Furthermore, the Court holds that the chain of custody of the seized marijuana did not suffer from significant flaws.

Pertinent portion of Section 21, Article II of R.A. No. 9165 mandates:

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[17] *People v. Dalawis*, G.R. No. 197925, November 9, 2015; *People v. Enad,* G.R. No. 205764, February 3, 2016; *People v. Dela Cruz*, G.R. No. 205414, April 4, 2016; and *People v. Amaro*, G.R. No. 207517, June 1, 2016.

[18] See *Miclat, Jr. v. People,* 672 Phil. 191, 210 (2011).

[19] *Miclat, Jr. v. People, supra.*

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;
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> (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;
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> (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;
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> x x x x x x x x x

Section 21 (a) of the Implementing Rules and Regulations (IRR) further provides:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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[.]

Belban insists that the marijuana bricks should have been physically inventoried and photographed by the apprehending team at Kibungan, Benguet in the presence of the representatives of the media, the DOJ, and the barangay.

We are not persuaded.

As long as the integrity and evidentiary value of an illegal drug were not compromised, non-compliance with R.A. No. 9165 and its IRR may be excused. The Court, in *People v. Asislo*,[20] *People v. Lara III*,[21] *Miclat, Jr. v. People*,[22] and *People v. Felipe*,[23] to cite a few, sustained the conviction of the accused despite the fact that the physical inventory and photograph of the illegal drug were not immediately done at the place where it was seized/confiscated. Moreover, contrary to Belban's view, the apprehending team offered a satisfactory explanation. Chumanao reasonably stated that they had a preliminary inventory of the seized items inside the car because it was too dark at the time

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[20] G.R. No. 206224, January 18, 2016.

[21] G.R. No. 198796, September 16, 2015.

[22] *Supra* note 18.

[23] 663 Phil. 132 (2011).

and they were being cautious of their own safety.[24] Similarly, Mosing said that they were not sure if there were other persons within the vicinity aside from the accused.[25] As to the apparent lack of any photograph at the scene of the crime, both Mosing and Asiong were uniform in claiming that they forgot to bring a camera in Kibungan.[26]

In *People v. Ros*,[27] 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.
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> x x x x x x x x x
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> 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

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[24] TSN, May 18, 2010, p. 5.

[25] TSN, August 10, 2010, pp. 3-4.

[26] *Id.* at 6, 8-10; TSN, September 30, 2010, pp. 5-6.

[27] G.R. No. 201146, April 15, 2015, 755 SCRA 518.

value of the seized/confiscated illegal drugs since they will be used to determine the guilt or innocence of the accused.[28]

The illegal drug being the *corpus delicti*, it is essential for the prosecution to establish with moral certainty and prove to the court beyond reasonable doubt that the illegal drug presented to the trial court as evidence is the same illegal drug seized from the accused, tested and found to be positive for dangerous substance.[29] Here, the body of evidence adduced by the prosecution supports the conclusion that the integrity and evidentiary value of the subject marijuana were successfully and properly preserved and safeguarded through an unbroken chain of custody. Both the testimonial and documentary evidence indubitably show the following:

1. Immediately after the arrest of Belban and the seizure of the marijuana bricks, Chumanao marked the illegal drugs and their containers in the presence of Belban and the other members of the buy-bust team.[30]

2. Abordo, to whom the buy-bust team turned-over the confiscated items upon its arrival in Camp Dangwa, conducted the inventory of all the seized items in the presence of the members of the apprehending team, Belban, and the representatives of the DOJ, the media, and the barangay.[31] The inventory sheet was signed by the DOJ, media, and barangay representatives.[32] Photographs of the proceedings were also taken.[33]

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[28] *People v. Ros*, *supra,* at 536-537. (Citations omitted) See also *People v. Flores,* G.R. No. 201365, August 3, 2015; *People v. Lara III,* G.R. No. 198796, September 16, 2015; *People v. Asislo,* G.R. No. 206224, January 18, 2016; and *People v. Dela Cruz,* G.R. No. 205414, April 4, 2016.

[29] *People v. Amaro*, G.R. No. 207517, June 1, 2016.

[30] TSN, March 23, 2010, pp. 15-17; TSN, May 18, 2010, p. 5; TSN, June 22, 2010, pp. 9-10; TSN, September 30, 2010, p. 12.

[31] TSN, October 20, 2009, pp. 8-9; TSN, May 18, 2010, pp. 5-7.

[32] Records, pp. 19-21.

[33] *Id*. at 110.

3. After the inventory, Abordo kept the non-drug items at the evidence room of Camp Dangwa, while he delivered the marijuana bricks with containers to the PNP Crime Laboratory.[34]

4. Canlas personally received the request for laboratory examination and the marijuana bricks.[35] Before actually conducting the physical, chemical, and confirmatory examinations, she scrutinized if the markings written in the letter-request were the same markings written on the specimens submitted and found out that they were the same.[36] She also placed her own markings on the seized items.[37] In her initial and final reports, she concluded that all the suspected illegal drugs were positive for the presence of marijuana.[38] She testified that the cartons and plastic bags presented before the court were the same items, in the same condition, that were turned over to her for examination.[39]

5. Subsequent to the laboratory examinations, the marijuana bricks were turned-over by Canlas to Delos Reyes, who placed them in the evidence room for safekeeping until they were brought to trial upon court order. Delos Reyes testified that, at the time of turn-over, the items were in normal condition, in brick form, and no showing of tampering; that he went over all the markings on each brick, which were the same all throughout; and that the marked cartons and green plastic bags presented in court were the same ones containing the marijuana bricks at the time they were turned-over to him.[40]

Verily, the prosecution was able to establish with moral certainty and prove to the Court beyond reasonable doubt that

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[34] *Id.* at 13-15; TSN, July 13, 2009, pp. 4-6; TSN, October 20, 2009, p. 11.

[35] Records, pp. 13-15; TSN, July 13, 2009, pp. 4-6.

[36] TSN, July 13, 2009, pp. 5-6.

[37] *Id.* at 14.

[38] Records, pp. 27, 43-44.

[39] TSN, July 13, 2009, pp. 16, 24.

[40] TSN, October 20, 2009, pp. 4-6.

there is an unbroken chain of custody over the confiscated illegal 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 prosecution presented every person who touched the exhibit. They described how and from whom the seized marijuana was received, where it was and what happened to it while in their possession, the condition in which it was received, the condition it was 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.[41]

WHEREFORE, premises considered, the July 23, 2013 Decision and October 9, 2013 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 05546, which affirmed *in toto* the February 28, 2012 Decision and April 24, 2012 Order of the Regional Trial Court, Branch 8, La Trinidad, Benguet, in Criminal Case No. 09-CR-7596, convicting appellant Belban Sic-open *y* Dimas of illegal sale of marijuana in violation of Section 5, Article II of Republic Act No. 9165, are **AFFIRMED**.

SO ORDERED.

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

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[41] See *People v. Enad*, G.R. No. 205764, February 3, 2016.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 1, 2014.

THIRD DIVISION

[G.R. No. 213418. September 21, 2016]

ALFREDO S. RAMOS, CONCHITA S. RAMOS, BENJAMIN B. RAMOS, NELSON T. RAMOS and ROBINSON T. RAMOS, *petitioners, vs.* **CHINA SOUTHERN AIRLINES CO. LTD**., *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACT OF CARRIAGE; IN AN ACTION BASED ON A BREACH OF CONTRACT OF CARRIAGE, ALL THAT THE AGGRIEVED PARTY HAS TO PROVE IS THE EXISTENCE OF THE CONTRACT AND THE FACT OF ITS NON-PERFORMANCE BY THE CARRIER, THROUGH THE LATTER'S FAILURE TO CARRY THE PASSENGER TO ITS DESTINATION.— A contract of carriage, in this case, air transport, is intended to serve the traveling public and thus, imbued with public interest. The law governing common carriers consequently imposes an exacting standard of conduct x x x. When an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If that does not happen, then the carrier opens itself to a suit for breach of contract of carriage. In an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All he has to prove is the existence of the contract and the fact of its non-performance by the carrier, through the latter's failure to carry the passenger to its destination. It is beyond question in the case at bar that petitioners had an existing contract of air carriage with China Southern Airlines as evidenced by the airline tickets issued by Active Travel. x x x The petitioners were issued two-way tickets with itineraries indicating the date and time of their return flight to Manila. These are binding contracts of carriage. China Southern Airlines allowed petitioners to check in their luggage and issued the necessary claim stubs showing that they were part of the flight.

It was only after petitioners went through all the required check-in procedures that they were informed by the airline that they were merely chance passengers. Airline companies do not, as a practice, accept pieces of luggage from passengers without confirmed reservations. Quite tellingly, all the foregoing circumstances lead us to the inevitable conclusion that petitioners indeed were bumped off from the flight. We cannot from the records of this case deduce the true reason why the airlines refused to board petitioners back to Manila. What we can be sure of is the unacceptability of the proffered reason that rightfully gives rise to the claim for damages.

2. **ID.; ID.; ID.; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; IMPOSED WHEN THE EXISTENCE OF THE CONTRACT AND THE FACT OF ITS NON-PERFORMANCE WERE PROVEN.—** There is no doubt that petitioners are entitled to actual or compensatory damages. Both the RTC and the CA uniformly held that there was a breach of contract committed by China Southern Airlines when it failed to deliver petitioners to their intended destination, a factual finding that we do not intend to depart from in the absence of showing that it is unsupported by evidence. As the aggrieved parties, petitioners had satisfactorily proven the existence of the contract and the fact of its non-performance by China Southern Airlines; the concurrence of these elements called for the imposition of actual or compensatory damages.

3. **ID.; ID.; ID.; ID.; MORAL DAMAGES; GRANTED IN CASES OF BREACH OF CONTRACT OF CARRIAGE WHERE BAD FAITH WAS ESTABLISHED; BAD FAITH, DEFINED.—** With respect to moral damages, x x x [Article 2220] of the New Civil Code is instructive x x x. Bad faith does not simply connote bad judgment or negligence. It imports dishonest purpose or some moral obliquity and conscious doing of a wrong. It means breach of a known duty through some motive, interest or ill will that partakes the nature of fraud. Bad faith is in essence a question of intention. In *Japan Airlines v. Simangan,* the Court took the occasion to expound on the meaning of bad faith in a breach of contract of carriage that merits the award of moral damages x x x. We find that the airline company acted in bad faith in insolently bumping petitioners off the flight after they have completed all the pre-departure routine. Bad faith is evident when the ground personnel

of the airline company unjustly and unreasonably refused to board petitioners to the plane which compelled them to rent a car and take the train to the nearest airport where they bought new sets of plane tickets from another airline that could fly them home. Petitioners have every reason to expect that they would be transported to their intended destination after they had checked in their luggage and had gone through all the security checks. Instead, China Southern Airlines offered to allow them to join the flight if they are willing to pay additional cost; this amount is on top of the purchase price of the plane tickets. The requirement to pay an additional fare was insult upon injury. It is an aggravation of the breach of contract. Undoubtedly, petitioners are entitled to the award of moral damages. The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering [that] he has undergone by reason of defendant['s] culpable action.

4. ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES; AWARDED IN CONTRACTUAL OBLIGATIONS IF THE DEFENDANT ACTED IN WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE OR MALEVOLENT MANNER. — China Southern Airlines is also liable for exemplary damages as it acted in a wantonly oppressive manner x x x against the petitioners. Exemplary damages which are awarded by way of example or correction for the public good, may be recovered in contractual obligations, as in this case, if defendant acted in wanton, fraudulent, reck1ess, oppressive or malevolent manner.

5. ID.; ID.; ID.; ID.; THE ASSESSMENT OF DAMAGES IS LEFT TO THE DISCRETION OF THE COURT BUT THE AMOUNT OF DAMAGES MUST BE FAIR, REASONABLE AND PROPORTIONATE TO THE INJURY SUFFERED.— Article 2216 of the Civil Code provides that assessment of damages is 1eft to the discretion of the court according to the circumstances of each case. This discretion is limited by the principle that the amount awarded should not be palpably excessive as to indicate that it was the result of prejudice or corruption on the part of the trial court. Simply put, the amount of damages must be fair, reasonable and proportionate to the injury suffered. With fairness as the benchmark, We find adequate the amount of ₱300,000.00 each for moral and exemplary damages imposed by the trial court.

6. ID.; ID.; ID.; INTEREST RATES FOR MONEY JUDGMENTS; THE 6% RATE OF INTEREST PER ANNUM SHALL BE RECKONED FROM THE DATE OF EXTRAJUDICIAL DEMAND UNTIL THE DATE OF FINALITY OF JUDGMENT AND THE TOTAL AMOUNT SHALL THEREAFTER EARN INTEREST AT THE RATE OF 6% PER ANNUM FROM SUCH FINALITY OF JUDGMENT UNTIL ITS SATISFACTION.— The last issue is the reckoning point of the 6% interest on the money judgment. Following this Court's ruling in *Nacar v. Gallery Frames,* we agree with the petitioners that the 6% rate of interest per annum shall be reckoned from the date of their extrajudicial demand on 18 August 2003 until the date of finality of this judgment. The total amount shall thereafter earn interest at the rate of six percent (6%) per annum from such finality of judgment until its satisfaction.

APPEARANCES OF COUNSEL

Beltran Koa & Mendoza for petitioners.
Altamira Cas & Collado Law Offices for respondent.

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 petitioners Alfredo S. Ramos, Conchita S. Ramos, Benjamin B. Ramos, Nelson T. Ramos and Robinson T. Ramos, seeking to reverse and set aside the Decision[2] dated 19 March 2013 and Resolution[3] dated 9 July 2014 of the Court of Appeals (CA) in CA-G.R. CV. No. 94561. The assailed decision and resolution affirmed with modification the 23 March 2009 Decision[4] of the Regional Trial Court (RTC) of Manila,

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[1] *Rollo,* pp. 17-29.

[2] *Id*. at 31-37; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr., concurring.

[3] *Id*. at 39-42.

[4] *Id*. at 135-151.

Branch 36, which ordered respondent China Southern Airlines to pay petitioners the amount of ₱692,000.00, representing the amount of damages and attorney's fees. On appeal, the appellate court affirmed the award of actual damages but deleted the order for payment of moral and exemplary damages in the amount of ₱600,000.00.[5]

The Facts

On 7 August 2003, petitioners purchased five China Southern Airlines roundtrip plane tickets from Active Travel Agency for $985.00.[6] It is provided in their itineraries that petitioners will be leaving Manila on 8 August 2003 at 0900H and will be leaving Xiamen on 12 August 2003 at 1920H.[7] Nothing eventful happened during petitioners' flight going to Xiamen as they were able to successfully board the plane which carried them to Xiamen International Airport. On their way back to Manila, however, petitioners were prevented from taking their designated flight despite the fact that earlier that day an agent from Active Tours informed them that their bookings for China Southern Airlines 1920H flight are confirmed.[8] The refusal came after petitioners already checked in all their baggages and were given the corresponding claim stubs and after they had paid the terminal fees. According to the airlines' agent with whom they spoke at the airport, petitioners were merely chance passengers but they may be allowed to join the flight if they are willing to pay an additional 500 Renminbi (RMB) per person. When petitioners refused to defray the additional cost, their baggages were offloaded from the plane and China Southern Airlines 1920H flight then left Xiamen International Airport without them.[9] Because they have business commitments waiting for them in Manila, petitioners were constrained to rent a car that took them

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[5] *Id*. at 37.

[6] *Id*. at 49.

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

[8] *Id*. at 137-140.

[9] *Id*.

to Chuan Chio Station where they boarded the train to Hongkong.[10] Upon reaching Hong Kong, petitioners purchased new plane tickets from Philippine Airlines (PAL) that flew them back to Manila.[11]

Upon arrival in Manila, petitioners went to Active Travel to inform them of their unfortunate fate with China Southern Airlines. In their effort to avoid lawsuit, Active Travel offered to refund the price of the plane tickets but petitioners refused to accept the offer. Petitioners then went to China Southern Airlines to demand for the reimbursement of their airfare and travel expenses in the amount of ₱87,375.00. When the airline refused to accede to their demand, petitioners initiated an action for damages before the RTC of Manila against China Southern Airlines and Active Travel. In their Complaint docketed as Civil Case No. 04-109574, petitioners sought for the payment of the amount of ₱87,375.00 as actual damages, ₱500,000.00 as moral damages, ₱500,000.00 as exemplary damages and cost of the suit.[12]

In their Answer,[13] China Southern Airlines denied liability by alleging that petitioners were not confirmed passengers of the airlines but were merely chance passengers. According to the airlines, it was specifically provided in the issued tickets that petitioners are required to re-confirm all their bookings at least 72 hours before their scheduled time of departures but they failed to do so which resulted in the automatic cancellation of their bookings.

The RTC then proceeded with the reception of evidence after the pre-trial conference.

On 23 March 2009, the RTC rendered a Decision[14] in favor of the petitioners and ordered China Southern Airlines to pay damages in the amount of ₱692,000.00, broken down as follows:

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[10] *Id*.

[11] *Id*.

[12] *Id*. at 67.

[13] *Id*. at 54-58.

[14] *Supra* note 4.

"WHEREFORE, judgment is hereby rendered ordering the defendant [China Southern Airlines] to pay [petitioners]:

1. The sum of [₱]62,000.00 as actual damages;
2. The sum of [₱]300,000.00 as moral damages;
3. The sum of [₱]300,000.00 as exemplary damages; and
4. The sum of [₱]30,000.00 for attorney's fees.

The defendants' counterclaim against plaintiffs are [hereby] dismissed for insufficiency of evidence [enough] to sustain the damages claimed." [15]

On appeal, however, the CA modified the RTC Decision by deleting the award for moral and exemplary damages. According to the appellate court, petitioners failed to prove that China Southern Airlines' breach of contractual obligation was attended with bad faith.[16] The disquisition of the CA reads:

"x x x. Where in breaching the contract, the defendant is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of the obligation and which the parties had foreseen or could reasonably have foreseen; and in that case, such liability would not include liability for moral and exemplary damages.

In this case, We are not persuaded that [China Southern Airlines'] breach of contractual obligation had been attended by bad faith or malice or gross negligence amounting to bad faith. On the contrary, it appears that despite [petitioner's] failure to "re-confirm" their bookings, [China Southern Airlines] exerted diligent efforts to comply with its obligation to [petitioners]. If at the outset, [China Southern Airlines] simply did not intend to comply with its promise to transport [petitioners] back to Manila, it would not have taken the trouble of proposing that the latter could still board the plane as "chance passengers" provided [that] they will pay the necessary pay and penalties.

Thus, We believe and so hold that the damages recoverable by [petitioners] are limited to the peso value of the PAL ticket they had purchased for their return flight from Xiamen, plus attorney's fees,

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[15] *Id*. at 151.

[16] *Id*. at 31-37.

in the amount of [₱]30,000.00, considering that [petitioners] were ultimately compelled to litigate their claim[s] against [China Southern Airlines]."[17]

Since China Southern Airlines' refusal to let petitioners board the plane was not attended by bad faith, the appellate court decided not to award petitioners moral and exemplary damages. The CA disposed in this wise:

"**WHEREFORE**, premises considered, the instant appeal is hereby **AFFIRMED** with **MODIFICATION** in that the award of moral and exemplary damages are hereby **DELETED**."[18]

Dissatisfied, petitioners timely interposed a Motion for Partial Reconsideration which was partially granted by the CA in a Resolution[19] dated 9 July 2014, to wit:

"**ACCORDINGLY**, the instant Motion is **PARTIALLY GRANTED**. The Decision dated 19 March 2013 rendered by this Court in CA-G.R. CV No. 94561 is hereby **MODIFIED** in that [China Southern Airlines] is **ORDERED** to pay [petitioners] interest of **6% per annum** on the ₱62,000.00 as actual damages from the finality of this Court's Decision until the same is fully satisfied."[20]

Unflinching, petitioners elevated the matter before the Court by filing the instant Petition for Review on *Certiorari* assailing the CA Decision and Resolution on the following grounds:

The Issues

I.

THE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR WHEN IT DELETED THE AWARDS OF MORAL AND EXEMPLARY DAMAGES, A DEPARTURE FROM ESTABLISHED DOCTRINES THAT PASSENGERS WHO ARE BUMPED-OFF ARE ENTITLED TO MORAL AND EXEMPLARY DAMAGES;

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[17] *Id*. at 36.

[18] *Id*. at 37.

[19] *Id*. at 39-42.

[20] *Id*. at 42.

II.

THE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR WHEN IT DECLARED THAT BUMPING OFF OF THE PETITIONERS WAS NOT ATTENDED BY BAD FAITH AND MALICE CONTRARY TO THE FINDINGS OF THE LOWER COURT;

III.

THE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR WHEN IT HELD THAT THE LEGAL INTEREST COMMENCE ONLY FROM THE FINALITY OF THE DECISION INSTEAD OF FROM THE DATE OF EXTRA-JUDICIAL DEMAND ON 18 AUGUST 2003.[21]

The Court's Ruling

We resolve to grant the petition.

A contract of carriage, in this case, air transport, is intended to serve the traveling public and thus, imbued with public interest.[22] The law governing common carriers consequently imposes an exacting standard of conduct,[23] *viz*:

> "1755 of the New Civil Code. A common carrier is bound to carry passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances."

When an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If that does not happen, then the carrier opens itself to a suit for breach of contract of carriage.[24] In an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault

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[21] *Id*. at 20.

[22] *Northwest Airlines v. Chiong*, 567 Phil. 289, 304 (2008).

[23] *Id*.

[24] *Alitalia Airways v. Court of Appeals*, 265 Phil. 791, 798 (1990).

or was negligent. [25] All he has to prove is the existence of the contract and the fact of its non-performance by the carrier, through the latter's failure to carry the passenger to its destination.[26]

It is beyond question in the case at bar that petitioners had an existing contract of air carriage with China Southern Airlines as evidenced by the airline tickets issued by Active Travel. When they showed up at the airport and after they went through the routine security check including the checking in of their luggage and the payment of the corresponding terminal fees, petitioners were not allowed by China Southern Airlines to board on the plane. The airlines' claim that petitioners do not have confirmed reservations cannot be given credence by the Court. The petitioners were issued two-way tickets with itineraries indicating the date and time of their return flight to Manila. These are binding contracts of carriage.[27] China Southern Airlines allowed petitioners to check in their luggage and issued the necessary claim stubs showing that they were part of the flight. It was only after petitioners went through all the required check-in procedures that they were informed by the airlines that they were merely chance passengers. Airlines companies do not, as a practice, accept pieces of luggage from passengers without confirmed reservations. Quite tellingly, all the foregoing circumstances lead us to the inevitable conclusion that petitioners indeed were bumped off from the flight. We cannot from the records of this case deduce the true reason why the airlines refused to board petitioners back to Manila. What we can be sure of is the unacceptability of the proffered reason that rightfully gives rise to the claim for damages.

The prologue shapes the body of the petitioners' rights, that is, that they are entitled to damages, actual, moral and exemplary.

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[25] *Sps. Viloria v. Continental Airlines*, Inc., 679 Phil. 61, 84-85 (2012).

[26] *Japan Airlines v. Simangan*, 575 Phil. 359, 375 (2008).

[27] *Cathay Pacific Airways v. Reyes*, G.R. No. 185891, June 26, 2013, 699 SCRA 725.

There is no doubt that petitioners are entitled to actual or compensatory damages. Both the RTC and the CA uniformly held that there was a breach of contract committed by China Southern Airlines when it failed to deliver petitioners to their intended destination, a factual finding that we do not intend to depart from in the absence of showing that it is unsupported by evidence. As the aggrieved parties, petitioners had satisfactorily proven the existence of the contract and the fact of its non-performance by China Southern Airlines; the concurrence of these elements called for the imposition of actual or compensatory damages.

With respect to moral damages, the following provision of the New Civil Code is instructive:

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

Bad faith does not simply connote bad judgment or negligence. It imports dishonest purpose or some moral obliquity and conscious doing of a wrong. It means breach of a known duty through some motive, interest or ill will that partakes the nature of fraud. Bad faith is in essence a question of intention.[28]

In *Japan Airlines v. Simangan*,[29] the Court took the occasion to expound on the meaning of bad faith in a breach of contract of carriage that merits the award of moral damages:

> "Clearly, JAL is liable for moral damages. It is firmly settled that moral damages are recoverable in suits predicated on breach of a contract of carriage where it is proved that the carrier was guilty of fraud or bad faith, as in this case. Inattention to and lack of care for the interests of its passengers who are entitled to its utmost consideration, particularly as to their convenience, amount to bad faith which entitles the passenger to an award of moral damages.

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[28] *Supra* note 22 at 305.

[29] *Supra* note 26 at 376.

What the law considers as bad faith which may furnish the ground for an award of moral damages would be bad faith in securing the contract and in the execution thereof, as well as in the enforcement of its terms, or any other kind of deceit."

Applying the foregoing yardstick in the case at bar, We find that the airline company acted in bad faith in insolently bumping petitioners off the flight after they have completed all the pre-departure routine. Bad faith is evident when the ground personnel of the airline company unjustly and unreasonably refused to board petitioners to the plane which compelled them to rent a car and take the train to the nearest airport where they bought new sets of plane tickets from another airline that could fly them home. Petitioners have every reason to expect that they would be transported to their intended destination after they had checked in their luggage and had gone through all the security checks. Instead, China Southern Airlines offered to allow them to join the flight if they are willing to pay additional cost; this amount is on top of the purchase price of the plane tickets. The requirement to pay an additional fare was insult upon injury. It is an aggravation of the breach of contract. Undoubtedly, petitioners are entitled to the award of moral damages. The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering [that] he has undergone by reason of defendant['s] culpable action.[30]

China Southern Airlines is also liable for exemplary damages as it acted in a wantonly oppressive manner as succinctly discussed above against the petitioners. Exemplary damages which are awarded by way of example or correction for the public good, may be recovered in contractual obligations, as in this case, if defendant acted in wanton, fraudulent, reckless, oppressive or malevolent manner.[31]

Article 2216 of the Civil Code provides that assessment of damages is left to the discretion of the court according to the

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[30] *PAL v. Court of Appeals*, 587 Phil. 568, 583 (2008).

[31] *Supra* note 26 at 377.

circumstances of each case. This discretion is limited by the principle that the amount awarded should not be palpably excessive as to indicate that it was the result of prejudice or corruption on the part of the trial court. Simply put, the amount of damages must be fair, reasonable and proportionate to the injury suffered.[32] With fairness as the benchmark, We find adequate the amount of ₱300,000.00 each for moral and exemplary damages imposed by the trial court.

The last issue is the reckoning point of the 6% interest on the money judgment. Following this Court's ruling in *Nacar v. Gallery Frames*,[33] we agree with the petitioners that the 6% rate of interest per annum shall be reckoned from the date of their extrajudicial demand on 18 August 2003 until the date of finality of this judgment. The total amount shall thereafter earn interest at the rate of six percent (6%) per annum from such finality of judgment until its satisfaction.

WHEREFORE, premises considered, the petition is **GRANTED**. The Court hereby **AWARDS** petitioners the following amounts:

(a) ₱62,000.00 as actual damages, with 6% interest per annum from date of extrajudicial demand on 18 August 2003 until finality of this judgment, and the total amount to thereafter earn interest of 6% per annum from finality of judgment until full satisfaction;

(b) ₱300,000.00 as moral damages; and

(c) ₱300,000.00 as exemplary damages.

SO ORDERED.

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

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[32] *Supra* note 30.

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

SECOND DIVISION

[G.R. No. 218009, September 21, 2016]

MARVIN G. FELIPE and REYNANTE L. VELASCO, *petitioners*, *vs.* **DANILO DIVINA TAMAYO KONSTRACT, INC. (DDTKI) and/or DANILO DIVINA TAMAYO, President/Owner**, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE ENTERTAINED BY THE COURT; THE ISSUE OF WHETHER PETITIONERS WERE PROJECT OR REGULAR EMPLOYEES IS FACTUAL IN NATURE.—** The issue as to whether petitioners were project employees or regular employees is factual in nature. Well-entrenched is the rule in our jurisdiction that only questions of law may be entertained by this Court in a petition for review on *certiorari*. Moreover, the factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the LA. Such factual findings are given more weight when the same are affirmed by the CA as in this case. There is no reason to depart from these rules. The CA did not err in affirming the findings of the NLRC that petitioners were project employees of DDTKI.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; PROJECT EMPLOYEE DISTINGUISHED FROM REGULAR EMPLOYEE.—** A project employee is assigned to a project which begins and ends at determined or determinable times. Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as "project employees" may be lawfully terminated at the completion of the project. According to jurisprudence, the principal test for determining if particular employees are properly characterized as "project employees," as distinguished from "regular employees," is whether or not the employees are assigned to carry out a "specific project or undertaking," the duration (and scope) of which are

specified at the time they are engaged for that project. The project can either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation.

3. ID.; ID.; PETITIONERS WERE PROJECT EMPLOYEES WHOSE EMPLOYMENT WAS TERMINATED DUE TO EXPIRATION OF THE PERIOD FOR WHICH THEY WERE CONTRACTED; AS SUCH, THEY ARE NOT ENTITLED TO REINSTATEMENT AND BACKWAGES.— In this case, the LA, the NLRC and the CA were one in finding that petitioners were project employees hired by DDTKI for a specific task within a particular period already determined at the time of their hiring as evidenced by their employment contracts. As correctly noted by the CA, petitioners' employment was terminated due to the expiration of the period for which they were contracted. Considering that their employment contract for the US Embassy New Office Annex 1 Project (MNOX-1) had been terminated on September 18, 2010, the CA correctly ruled that their termination from work was not illegal but that the project for which they were hired merely expired. x x x Therefore, being project employees who have been validly terminated by reason of the completion of the specific project, MNOX-1, for which they were hired, petitioners Felipe and Velasco are not entitled to reinstatement and back wages.

4. ID.; ID.; ID.; PROJECT EMPLOYEES WHO HAVE NOT RENDERED AT LEAST ONE YEAR OF CONTINUOUS SERVICE ARE NOT ENTITLED TO SERVICE INCENTIVE LEAVE.— On the issue of non-payment of service incentive leave, the Court rules that petitioners are not entitled to this benefit either. Based on records and as correctly noted by respondents, they have not rendered at least one year of continuous service.

APPEARANCES OF COUNSEL

Legal Advocates For Workers' Interest (LAWIN) for petitioners.
Bernas Law Offices for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the annulment of the March 27, 2013 Decision[1] and the March 26, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 123413, which affirmed the September 30, 2011 Decision[3] and the December 7, 2011 Resolution[4] of the National Labor Relations Commission (*NLRC*), in a case of illegal dismissal filed by petitioners Marvin G. Felipe (*Felipe*) and Reynante L. Velasco (*Velasco*) against respondents Danilo Divina Tamayo Konstract, Inc. (*DDTKI*) and its president/owner, Danilo Divina Tamayo (*Tamayo*).

The Antecedents:

DDTKI hired Felipe as Formworks Aide on December 19, 2005, and Velasco as Warehouse Aide on March 14, 2007. Felipe and Velasco claimed regular employment status for having continuously worked for DDTKI until September 2010 when they were no longer given working assignments. They wrote a letter, dated September 28, 2010, to the respondents inquiring about their employment status and why they were not transferred to the Glorietta Project which supposedly started on September 17, 2010, based on a document denominated as a Manpower Requisition Form (*MRF*). The respondents, however, did not reply to their letter.[5]

On October 12, 2010, Felipe and Velasco filed their complaint for illegal dismissal and non-payment of service incentive leave

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[1] Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Vicente S.E. Veloso, and Eduardo B. Peralta, Jr. concurring. *Rollo*, pp. 31-41.

[2] Associate Justice Samuel H. Gaerlan, additional member due to Associate Justice Veloso's retirement. *Id.* at 43-44.

[3] *Id.* at 64-73.

[4] *Id.* at 75-76.

[5] *Id.* at 32-33.

and 13th month pay against the respondents before the arbitration branch of the NLRC.[6]

The respondents, on the other hand, claimed that the petitioners were former project employees of DDTKI who were hired for a particular project. They presented various project employment contracts duly signed by Felipe and Velasco to support their claim that these employees were hired for specific construction projects for a specific period, and that they were informed of the nature and duration of their employment from the beginning of their engagement.[7]

The respondents further averred that as of September 2010, Felipe and Velasco were not rehired as the company "did not need any more workers after the completion of their respective projects." After the completion of their last project, the US Embassy New Office Annex 1 Project (MNOX-1), Felipe and Velasco were not rehired and their termination was reported to the Department of Labor and Employment (*DOLE*) as "completion of phase of work." DDTKI stressed that they were never employed for the Glorietta Project and the illegally obtained MRF, a confidential document of DDTKI, did not serve as its employment contract with Felipe and Velasco.[8]

At the Labor Level

On March 28, 2011, the Labor Arbiter (*LA*) rendered his decision[9] dismissing the complaint for utter lack of merit. The LA found that Felipe and Velasco were project employees as borne out by their contracts of employment and, thus, ruled that they were not illegally dismissed. It was pointed out that:

> A close examination of their respective employment contracts would readily reveal that they specifically mention the duration of the contract for a specific client. On the last part thereof, **there is a specific**

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

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

[8] *Id*. at 34.

[9] *Id*. at 78-87. Penned by Labor Arbiter Antonio R. Macam.

provision that the period indicated shall serve as a notice to the employee for the termination of the project employment.[10] [Emphasis supplied]

On appeal, the NLRC affirmed the ruling of the LA that the termination of the services of Felipe and Velasco on the ground of the expiration of their project employment contracts was legitimate and valid. The decision was, however, modified as DDTKI was directed to pay Felipe and Velasco their proportionate 13th month pay. The latter moved for reconsideration, but their motion was denied.

At the CA Level

Aggrieved, petitioners filed their petition for *certiorari* before the CA. In its assailed Decision, dated March 27, 2013, the CA denied the petition after finding that the NLRC did not act whimsically or arbitrarily to warrant the nullification of its judgment. Further, the CA reiterated that the length of service and the continuous rehiring of petitioners did not automatically accord them regular status. DDTKI contracted petitioners for specific undertakings, the scope and duration of which had been determined and made known to them. Their termination from work was found by the CA not illegal, as the specific project for which they were hired merely expired. The CA stated that the MRF, an internal memo for administrative purposes, did not constitute a project employment contract between DDTKI and petitioners. It, therefore, could not serve as basis for the rehiring of petitioners.[11] Thus, the CA disposed the case as follows:

WHEREFORE, the instant Petition is DENIED and the assailed Decision dated 30 September 2011 and Resolution dated 07 December 2011 of the National Labor Relations Commission are hereby AFFIRMED *in toto*.

SO ORDERED.[12]

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[10] *Id*. at 35.

[11] *Id*. at 39-40.

[12] *Id*. at 40.

Unsatisfied, petitioners moved for reconsideration, but their motion was denied in the assailed CA Resolution, dated March 26, 2015, for being a mere rehash of the arguments that were already raised and passed upon in their petition.

Hence, the present petition raising the following

ISSUES

I.

WHETHER OR NOT PETITIONERS WERE REGULAR (WORK POOL) EMPLOYEES OF THE PRIVATE RESPONDENTS.

II.

WHETHER OR NOT PETITIONERS WERE ILLEGALLY DISMISSED.

III.

WHETHER OR NOT PETITIONERS ARE ENTITLED TO ALL THEIR MONETARY CLAIMS, INCLUDING MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[13]

Petitioners contend that there was grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the CA in denying their petition for *certiorari* and their motion for reconsideration despite the evidence they presented in support of their petition. They argue that contrary to the findings of the CA, it cannot be said that their employment was project-based because there was no project contract presented by the respondents supporting the one (1) month duration of their employment contract and stating that the phase of the project ended on particular dates mentioned in their employment contracts. They insist that they were regular employees considering that they had been employed to perform activities which were usually necessary or desirable in the usual business or trade of their employer, continuously for a period of four

[13] *Id*. at 15.

(4) years, and contracted for a total of seven (7) successive projects. Felipe's position as Formworks Aide and Velasco's as Warehouse Aide clearly required them to perform tasks inculcated in the usual operation of DDTKI's construction business. As regular employees, they claim that they were entitled to security of tenure and could only be dismissed for a just or authorized cause. The alleged cause of dismissal (completion of project) was not a valid cause under Articles 282 and 283 of the Labor Code. Thus, petitioners posit that they were entitled to reinstatement to their former or equivalent positions without loss of seniority rights and other privileges; to their full back wages, inclusive of allowances; and to their other benefits or their monetary equivalent computed from the time their compensations were withheld up to the time of their actual reinstatement. Petitioners also argue that having rendered uninterrupted service for four (4) years, they were, under the law, entitled to service incentive leave pay three (3) years backward from the filing of the case.[14]

Respondents' Position

Respondents DDKTI and Tamayo (*respondents*), in their Comment,[15] dated August 24, 2015, counter that the petition should be dismissed because grave abuse of discretion is not the proper subject matter of a petition under Rule 45. Even assuming that grave abuse of discretion may be used as basis, petitioners failed to show grave abuse on the part of the CA. Respondents insist that petitioners were project employees because they were contracted to work for a specific task not permanently continuing within a particular period that was already determined at the time of their hiring. An uninterrupted service for four (4) years did not automatically make them regular employees. Hence, they were not entitled to reinstatement, back wages, moral and exemplary damages, and attorney's fees.

Basically, petitioners are asking the Court to resolve whether the CA correctly ruled that there was no grave, abuse of discretion

[14] *Id.* at 17-24

[15] *Id.* at 513-543.

on the part of the NLRC, thus, affirming the finding that petitioners were project employees.

The Court's Ruling

The issue as to whether petitioners were project employees or regular employees is factual in nature. Well-entrenched is the rule in our jurisdiction that only questions of law may be entertained by this Court in a petition for review on *certiorari*. Moreover, the factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the LA.[16] Such factual findings are given more weight when the same are affirmed by the CA as in this case.

There is no reason to depart from these rules. The CA did not err in affirming the findings of the NLRC that petitioners were project employees of DDTKI. Article 280 of the Labor Code, which distinguishes a project employee from a regular employee, provides:

> Art. 280. Regular and casual employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, **except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee**, or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. [Emphasis supplied]

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[16] *Oasay, Jr. v. Palacio del Gobernador Condominium Corporation, et al.*, 681 Phil. 69, 79 (2012).

A project employee is assigned to a project which begins and ends at determined or determinable times. Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as "project employees" may be lawfully terminated at the completion of the project. According to jurisprudence, the principal test for determining if particular employees are properly characterized as "project employees," as distinguished from "regular employees," is whether or not the employees are assigned to carry out a "specific project or undertaking," the duration (and scope) of which are specified at the time they are engaged for that project. The project can either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation.[17]

In this case, the LA, the NLRC and the CA were one in finding that petitioners were project employees hired by DDTKI for a specific task within a particular period already determined at the time of their hiring as evidenced by their employment contracts.

As correctly noted by the CA, petitioners' employment was terminated due to the expiration of the period for which they were contracted. Considering that their employment contract for the US Embassy New Office Annex 1 Project (MNOX-1) had been terminated on September 18, 2010, the CA correctly ruled that their termination from work was not illegal but that the project for which they were hired merely expired.

On their contention that they were regular employees due to their uninterrupted service for DDTKI for four (4) years and the continuous employment contract renewal every month, petitioners are mistaken. In *Aro v. NLRC*,[18] the Court explained:

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[17] *Gadia v. Sykes Asia, Inc.*, G.R. No. 209499, January 28, 2015, 748 SCRA 633, 643, citing *Omni Hauling Services, Inc. v. Bon*, G.R. No. 199388, September 3, 2014, 734 SCRA 270, 279.

[18] 683 Phil. 605 (2012).

[T]he **length of service or the re-hiring of construction workers on a project-to-project basis does not confer upon them regular employment status**, since their, re-hiring is only a natural consequence of the fact that experienced construction workers are preferred. Employees who are hired for carrying out a separate job, distinct from the other undertakings of the company, the scope and duration of which has been determined and made known to the employees at the time of the employment, are properly treated as project employees and their services may be lawfully terminated upon the completion of a project. x x x.[19] [Emphasis supplied]

Therefore, being project employees who have been validly terminated by reason of the completion of the specific project, MNOX-1, for which they were hired, petitioners Felipe and Velasco are not entitled to reinstatement and back wages.

On the issue of non-payment of service incentive leave, the Court rules that petitioners are not entitled to this benefit either. Based on records and as correctly noted by respondents, they have not rendered at least one year of continuous service.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

Carpio, J., on official leave.

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[19] *Id*. at 614, citing *Hanjin Heavy Industries and Co., Ltd. v. Ibaez*, 578 Phil. 497, 510 (2008).

FIRST DIVISION

[G.R. No. 220605. September 21, 2016]

COCA-COLA FEMSA PHILIPPINES, INC.,[*] *petitioner, vs.* **BACOLOD SALES FORCE UNION-CONGRESS OF INDEPENDENT ORGANIZATION-ALU,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR ARBITERS; ACT IN A QUASI-JUDICIAL CAPACITY AND THEIR JUDGMENTS WHICH ARE DECLARED FINAL BY LAW ARE NOT EXEMPT FROM JUDICIAL REVIEW WHICH IS INHERENT IN COURTS.— In the context of labor law, arbitration is the reference of a labor dispute to an impartial third person for determination on the basis of evidence and arguments presented by such parties who have bound themselves to accept the decision of the arbitrator as final and binding. However, in view of the nature of their functions, voluntary arbitrators act in a quasi-judicial capacity; ***hence, their judgments or final orders which are declared final by law are not so exempt from judicial review when so warranted***. "**Any agreement stipulating that 'the decision of the arbitrator shall be final and unappealable' and 'that no further judicial recourse if either party disagrees with the whole or any part of the arbitrator's award may be availed of' cannot be held to preclude in proper cases the power of judicial review which is inherent in courts**." Case law holds that the proper remedy to reverse or modify a Voluntary Arbitrator's or a Panel of Voluntary Arbitrators' decision or award is to appeal the award or decision before the CA under Rule 43 of the Rules on questions of fact, of law, mixed questions of fact and law, or a mistake of judgment. However, in several cases, the Court allowed the filing of a petition for *certiorari* from the VA's judgment to the CA under Rule 65 of the same Rules, where the VA was averred to have acted without or in

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[*] "Coca-Cola Bottlers Philippines, Inc." in the CA proceedings (see *rollo*, pp. 64 and 73). "Coca-Cola Bottlers Phils., Inc." in the Department of Labor and Employment arbitration proceedings (see *id*. at 129 and 141).

excess of his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. In this case, petitioner availed of the correct mode of review of the VA Decision by filing a petition for review with the CA under Rule 43 of the Rules, and in conformity with prevailing jurisprudence. x x x The Court sees the *prima facie* reasonableness of petitioner's asseverations and finds that the merits of its case, based on such argumentation, properly warrant judicial review. x x x Verily, courts "should not shirk from exercising their power to review, where under applicable laws and jurisprudence, such power may be rightfully exercised," as in this case.

APPEARANCES OF COUNSEL

Viesca Dones & Malang Law Offices for petitioner.
Bimbo D. Lavides for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated December 22, 2014 and the Resolution[3] dated September 8, 2015 of the Court of Appeals (CA) in CA-G.R. CEB-SP. No. 06892, which denied petitioner Coca-Cola Femsa Philippines, Inc.'s (petitioner) petition for review and upheld the Decision[4] dated February 3, 2012 of the Panel of Voluntary Arbitrators (VA) of the National Conciliation and Mediation Board (NCMB)-Department of Labor and Employment in Case Nos. AC-777-RB6-06-01-10-2011, AC-782-RB6-06-01-10-2011, and AC-960-RB6-06-01-10-2011 on the ground that the same had already attained finality.

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

[2] *Id*. at 64-70. Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Edgardo L. Delos Santos and Jhosep Y. Lopez concurring.

[3] *Id*. at 73-75.

[4] *Id*. at 129-140. Penned by Chairman Jose I. Lapak, Jr. with Members Juvy A. Victoriano-Dioso and Elias A. Gatanela, Jr. concurring.

The Facts

Petitioner is a corporation engaged in the manufacture of non-alcoholic beverages. Sometime in 2001, Cosmos Bottling Corporation (Cosmos) ceded its sales functions to petitioner which resulted in the integration of a number of Cosmos's salesmen, including Fernando T. Oquiana, Norman F. Vinarta, and Santiago B. Espino, Jr. (Cosmos integrees) into petitioner's workforce as route salesmen. The Cosmos integrees were given salary adjustments that would align with that of petitioner's own route salesmen. At the time of integration, petitioner's system of product distribution was by direct selling, but it subsequently adopted the route-to-market (RTM) system of distribution which led to the abolition of the route salesman position and its replacement by the account developer (AD) position. Thus, through an internal selection process, the Cosmos integrees' positions were eventually designated as ADs.[5]

Meanwhile, petitioner hired new ADs who were, however, subject to a different set of qualifications from the Cosmos integrees. The newly-hired ADs received a higher basic monthly pay although, allegedly, occupying the same position, job description, and functions as that of the Cosmos integrees. Furthermore, the newly-hired ADs were given, upon union membership, a monthly 45-kilogram (kg.) rice provision with a corresponding monthly deduction of the amount of ₱550.00 from their salaries.[6]

Aggrieved by the difference in treatment, respondent Bacolod Sales Force Union-Congress of Independent Organization-ALU, the recognized collective bargaining agent of the rank-and-file sales personnel of petitioner's Bacolod Plant[7] (respondent), submitted its concerns to the grievance machinery in accordance with the Collective Bargaining Agreement (CBA), demanding, among others, that: (*a*) the salary rates of the Cosmos integrees

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[5] *Id*. at 64-65. See also *id*. at 129-130.

[6] *Id*. at 65. See also *id*. at 130.

[7] *Id*. at 64 and 129.

be readjusted to equal to that of the newly-hired ADs' salary rates;[8] (*b*) the conversion of the ₱550.00 monthly deduction from the salaries of the Bacolod Plant sales personnel into a 45-kg. rice provision be declared as a violation of the non-diminution rule under Article 100[9] of the Labor Code, as amended; and (*c*) the employees concerned be reimbursed for the amounts illegally deducted.[10]

After the grievance process failed, the parties agreed to submit the unresolved matters to voluntary arbitration pursuant to Article 5 of the CBA, and filed a preventive mediation case before the NCMB raising the aforesaid issues.[11]

Respondent claimed that the Cosmos integrees were being discriminated against the newly-hired ADs, in light of the disparity between their salaries[12] and reiterated that the monthly ₱550.00 deduction from the basic salaries of the new union members constitutes a violation of the non-diminution rule.[13]

For its part, petitioner maintained that the fixing of hiring rates is a management prerogative, adding that the Cosmos integrees and the newly-hired ADs were not similarly situated due to the apparent variance in the manner by which they were appointed and hired, as well as their qualifications, skills, and responsibilities for the position.[14] Further, it claimed that the Cosmos integrees failed to meet all the basic qualifications for

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[8] *Id*. at 65.

[9] Article 100 of the Labor Code reads:

> Article 100. Prohibition Against Elimination or Diminution of Benefits.– Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code."

[10] See respondent's position paper dated November 8, 2011; *rollo*, p. 322.

[11] *Id*. at 65. See also *id.* at 160-161.

[12] *Id*. at 131.

[13] *Id*. at 133. See also discussions in respondent's position paper; *id*. at 317-319.

[14] *Id*. at 132.

the AD position, such as age and educational attainment.[15] For another, it contended that the rice subsidy of ₱550.00 per month to non-union members was automatically converted into an actual 45-kg. sack of rice upon union membership, which is, in reality, valued more than the amount of said subsidy and, thus, was not tantamount to any diminution of benefits.[16]

The VA's Ruling

In a Decision[17] dated February 3, 2012 (VA Decision), the VA: (*a*) declared that the disparity in the wages of the Cosmos integrees and the newly-hired ADs was discriminatory for lack of substantial basis or valid criteria; (*b*) directed petitioner to realign or readjust the Cosmos integrees' basic salaries at par with that of the newly-hired ADs; (*c*) declared that the ₱550.00 deduction from the union members' basic salary in lieu of one (1) 45-kg. sack of rice every month was a violation of Article X[18] of the CBA and Article 100 of the Labor Code, as amended; and (*d*) directed petitioner to comply with Article X of the CBA by giving rice ration free of charge, and to cease and desist from deducting ₱550.00 from the monthly salaries of the concerned employees, effective February 2012.[19]

The VA held that the lower salary rate given to the Cosmos integrees smacks of discrimination given that they hold the same position, perform the same work, share the same functions, and have the same job description as that of the newly-hired

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[15] *Id*. at 133.

[16] *Id*. See also discussions in petitioner's position paper dated November 2, 2011; *id*. at 165-166, 170-171, and 174-175.

[17] *Id*. at 129-140.

[18] Article X of the CBA, reads:

ARTICLE X – RICE RATION

The COMPANY shall continue the practice in connection with the granting of the rice ration and the employee in active service shall, as heretofore, continue to receive, free of charge, one (1) sack of rice (45 kilos) per month. (See *id.* at 191.)

[19] See *id*. at 66 and 139-140.

ADs. Thus, under the principle of "equal pay for equal work," the Cosmos integrees' failure to meet the new set of qualifications for ADs in view of their "over-age and lack of educational attainment" did not justify their lower salary rates.[20] Moreover, the ₱550.00 deduction from a union member's monthly salary and its conversion into a 45-kg. sack of rice ration constituted: (*a*) non-compliance with Article X of the CBA, which clearly provides that the grant of rice ration to employees shall be free of charge; and (*b*) a violation of the non-diminution rule under Article 100 of the Labor Code, as amended, because the said benefit has become part of the employment contract.[21]

Petitioner moved for reconsideration,[22] which was denied in a Resolution[23] dated April 25, 2012 (VA Resolution).

The CA Proceedings

Petitioner received notice of the VA Resolution on May 21, 2012,[24] and filed its petition for review[25] under Rule 43 of the Rules of Court (Rules) before the CA on June 5, 2012.[26]

Respondent countered,[27] among others, that the VA Decision had become final and executory after ten (10) calendar days from receipt thereof pursuant to Article 262-A[28]

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[20] See *id*. at 135-137.

[21] See *id*. at 138-139.

[22] See motion for reconsideration dated February 22, 2012; *id*. at 353-375.

[23] *Id*. at 141-148. Signed by Panel Members Juvy A. Victoriano-Dioso and Elias A. Gatanela, Jr. Panel Chairman Jose I. Lapak, Jr. filed a separate Concurring Opinion dated April 27, 2012; see *id*. at 149-155.

[24] See *id*. at 77.

[25] Dated June 4, 2012. *Id*. at 76-119.

[26] See *id*. at 76.

[27] See Comments of the Respondent dated November 6, 2012; *id*. at 389-394.

[28] Article 262-A of the Labor Code, as amended (now Article 276 of the Labor Code, as renumbered under Republic Act No. 10151 entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING

of the Labor Code, as amended; hence, the CA petition must, perforce, fail.[29]

Subsequently, a writ of execution[30] dated July 26, 2013 was issued by the VA and served upon petitioner. Thereafter, petitioner: (*a*) aligned the salaries of the Cosmos integrees with the newly-hired ADs; (*b*) paid the corresponding wage differentials; (*c*) refunded the amounts deducted from the union members' salaries; and (*d*) stopped the ₱550.00 monthly deductions from their salaries.[31]

In a Decision[32] dated December 22, 2014, the CA denied the petition on the ground that the VA Decision had attained finality pursuant to Section 5,[33] Article 5 of the CBA, which explicitly

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ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES" approved on June 21, 2011; see also See Department of Labor and Employment Department Advisory No. 01, Series of 2015 entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," approved on April 21, 2015) provides:

Art. 262-A Procedures. – x x x.

x x x x x x x x x

The award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

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[29] *Rollo*, p. 390.

[30] Not attached to the *rollo*.

[31] See Affidavit dated December 14, 2015 of Cyrus U. Javelosa, a regular employee of petitioner with a position of AD; *rollo*, p. 463.

[32] *Id.* at 64-70.

[33] Article 5 (Voluntary Arbitration), Section 5 of the CBA reads:

Section 5. During the effectivity of this Agreement, the Arbitration Committee shall have no power to add, to subtract from, or modify any of the terms of this Agreement or any terms made supplementary thereto. **The decision of the Arbitration Committee shall be final and binding upon the COMPANY and the UNION, and the employees and may be enforced in any court of competent jurisdiction**. (Emphasis supplied; see *id.* at 187.)

provides that "[t]he decision of the Arbitration Committee shall be final and binding upon the COMPANY and the UNION, and the employees and may be enforced in any court of competent jurisdiction."[34]

Petitioner filed its motion for reconsideration,[35] which was, however, denied in a Resolution[36] dated September 8, 2015; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly held that the VA Decision can no longer be the subject of its review for having attained finality pursuant to the express provision under Section 5, Article 5 of the CBA.

The Court's Ruling

In the context of labor law, arbitration is the reference of a labor dispute to an impartial third person for determination on the basis of evidence and arguments presented by such parties who have bound themselves to accept the decision of the arbitrator as final and binding.[37] However, in view of the nature of their functions, voluntary arbitrators act in a quasi-judicial capacity;[38] ***hence, their judgments or final orders which are declared final by law are not so exempt from judicial review when so warranted***.[39] "**Any agreement stipulating that 'the decision of the arbitrator shall be final and unappealable' and 'that no further judicial recourse if either party disagrees with the whole or any part of the arbitrator's award may be availed**

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[34] *Id*. at 68-69.

[35] See motion for reconsideration dated February 18, 2015; *id*. at 411-442.

[36] *Id*. at 73-75.

[37] *Luzon Dev. Bank v. Association of Luzon Dev. Bank Employees*, 319 Phil. 262, 266 (1995).

[38] See *id*. at 271. See also *Chung Fu Industries (Phils.), Inc. v. CA*, G.R. No. 96283, February 25, 1992, 206 SCRA 545, 556.

[39] See *Chung Fu Industries (Phils.), Inc. v. CA*, *id.*

of' cannot be held to preclude in proper cases the power of judicial review which is inherent in courts."[40]

Case law holds that the proper remedy to reverse or modify a Voluntary Arbitrator's or a Panel of Voluntary Arbitrators' decision or award is to appeal the award or decision before the CA under Rule 43 of the Rules[41] on questions of fact, of law, mixed questions of fact and law,[42] or a mistake of judgment.[43] However, in several cases, the Court allowed the filing of a petition for *certiorari* from the VA's judgment to the CA under Rule 65 of the same Rules,[44] where the VA was averred to have acted without or in excess of his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[45]

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[40] See *ABS-CBN Broadcasting Corp. v. World Interactive Network Systems (WINS) Japan Co., LTD.,* 568 Phil. 282, 293 (2008).

[41] See *Philippine Electric Corporation v. CA*, G.R. No. 168612, December 10, 2014, 744 SCRA 361, 377-378; *Royal Plant Workers Union v. Coca-Cola Bottlers Philippines, Inc.-Cebu Plant*, 709 Phil. 350, 361 (2013); *Samahan ng mga Manggagawa sa Hyatt v. Magsalin*, 665 Phil. 584, 594-595 (2011); *Samahan ng mga Manggagawa sa Hyatt-Nuwhrain-APL v. Bacungan*, 601 Phil. 365, 370 (2009); *AMA Computer College-Santiago City, Inc. v. Nacino*, 568 Phil. 465, 470 (2008); *Leyte IV Electric Cooperative, Inc. v. LEYECO IV Employees Union-ALU*, 562 Phil. 743, 754 (2007); *Centro Escolar University Faculty and Allied Workers Union-Independent v. CA*, 523 Phil. 427, 436-437 (2006); *Manila Midtown Hotel v. Borromeo,* 482 Phil. 137, 141-142 (2004); and *Sevilla Trading Company v. Semana*, 472 Phil. 220, 229 (2004). See also *ABS-CBN Broadcasting Corp. v. World Interactive Network Systems (WINS) Japan Co., LTD., id.* at 292-294.

[42] See Section 3, Rule 43 of the Rules.

[43] *Centro Escolar University Faculty and Allied Workers Union-Independent v. CA*, *supra* note 41, at 438.

[44] See *Mora v. Avesco Marketing Corporation,* 591 Phil. 827, 834-836 (2008); and *Unicraft Industries Int'l. Corp. v. CA*, 407 Phil. 527, 538-540 (2001). See also *Leyte IV Electric Cooperative*, *Inc. v. LEYECO IV Employees Union-ALU*, *supra* note 41, at 754-756.

[45] See *ABS-CBN Broadcasting Corp. v. World Interactive Network Systems (WINS) Japan Co*., *LTD., supra* note 40, at 294; and *Leyte IV Electric Cooperative*, *Inc. v. LEYECO IV Employees Union-ALU*, *supra* note 41, at 756.

In this case, petitioner availed of the correct mode of review of the VA Decision by filing a petition for review with the CA under Rule 43 of the Rules, and in conformity with prevailing jurisprudence. In said petition, petitioner assailed the arbitral award, first, on the ground that "[t]he Panel seriously erred in declaring [that] the disparity between the wages of [the] Cosmos [i]ntegrees and [the] newly-hired [ADs] as discriminatory, and [in] directing [petitioner] to [realign] or [readjust] the basic salary rate of the Cosmos [i]ntegrees equivalent to that of the newly-hired [ADs]."[46] In this light, petitioner pointed out that the Cosmos [i]ntegrees "were not hired by [petitioner] for the AD Position because they met the qualifications therefor. Rather they were appointed as such because they passed the internal selection process which [petitioner] specifically applied to them" and, "[i]n fact, x x x all three (3) Cosmos [i]ntegrees failed to meet all the basic qualifications for the AD position, such as age and educational attainment."[47] On the other hand, the newly-hired ADs "were engaged on the basis of the qualifications they presented to [petitioner] at the time they applied for the job," and "were no longer required to undergo the same selection process applied to the Cosmos [i]ntegrees inasmuch as they already possessed, at the time of their application, the minimum requirements for the job."[48] Based on the differences in the selection processes and qualifications, petitioner claimed that the "doctrine [of] 'equal pay for equal work' x x x has no application in the present case."[49] Further, it added that the measure of providing for higher salary rates was not done arbitrarily and illegally to discriminate against the Cosmos [i]ntegrees. Moreover, it claimed that "[b]eing an exercise of management prerogative, [petitioner] may very well offer newly-hired ADs a more competitive compensation scheme in order to attract more qualified candidates for the position."[50]

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[46] *Rollo*, p. 90.

[47] *Id.* at 98.

[48] *Id.*

[49] *Id.*

[50] *Id.* at 96.

In its petition before the Court, petitioner, citing certain cases on the matter,[51] restated the same position, postulating that "the unilateral adoption [of] an upgraded salary scale that increased hiring rates of newly-hired employees without increasing the salary rates of the old employees [should be treated as] a valid exercise of business judgment prerogative, based on the high productivity of that particular group and the need to increase the company's hiring rate[;] otherwise[,] the employer's hands would be completely tie[d], and [it would be] discourage[d] from adjusting the salary rates for fear that it would result to x x x [the] demand [by] all employees, for a similar increase, especially if the financial condition of the business cannot address an across the board increase."[52]

The Court sees the *prima facie* reasonableness of petitioner's asseverations and finds that the merits of its case, based on such argumentation, properly warrant judicial review. As such, the CA should look into the soundness of the VA rulings in relation to the nuances averred, particularly, the impact of the differences in the selection processes applied and relevant qualifications between the Cosmos integrees and the newly-hired ADs. Moreover, the CA ought to determine the proper application of the "equal pay for equal work" principle vis-à-vis the business decision of an employer to adopt a more competitive compensation scheme in light of the demands in human resource. Thus, borrowing the language in *Chung Fu Industries (Phils.) Inc. v. CA*[53] – which similarly involved a restrictive stipulation on appeal from an arbitral award – the Court finds that the CA erred in refusing "to look into the merits of [this] case, despite [a] *prima facie* showing of the existence of grounds warranting judicial review," which, thus, "effectively deprived petitione[r] of [the] opportunity to prove or substantiate [its] allegations."[54]

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[51] See *id*.

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

[53] *Supra* note 38.

[54] *Id*. at 558.

In fact, aside from the above stated-issue, the following separate issues were left untouched by the CA: (*a*) as raised by petitioner, whether or not the conversion of the monthly ₱550.00 rice subsidy into one (1) 45-kg. sack of rice upon union membership constitutes a violation of Article 100 of the Labor Code, as amended, and non-compliance with Article X of the CBA;[55] and (*b*) as raised by respondent, whether or not the petition for review was filed out of time.[56] The materiality of these issues all the more reinforces the conclusion that the CA should not have refused to exercise judicial review of the assailed VA rulings, notwithstanding the CBA stipulation that the decision of the Arbitration Committee, *i.e.*, the VA, shall be final and binding upon the parties. In fine, a remand to the CA for the prompt resolution of all these issues, including any other ancillary issues which the parties may have raised before it, is, therefore, in order. Verily, courts "should not shirk from exercising their power to review, where under applicable laws and jurisprudence, such power may be rightfully exercised,"[57] as in this case.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated December 22, 2014 and the Resolution dated September 8, 2015 of the Court of Appeals (CA) in CA-G.R. CEB-SP. No. 06892 are hereby **SET ASIDE**. The case is **REMANDED** to the CA for the prompt resolution of the aforementioned issues, including any other ancillary issues which the parties may have raised before it.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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[55] *Rollo*, p. 107.

[56] See *id*. at 390.

[57] *Chung Fu Industries (Phils.), Inc. v. CA*, *supra* note 38, at 558.

THIRD DIVISION

[G.R. No. 222424. September 21, 2016]

FONTANA DEVELOPMENT CORP., DENNIS PAK as General Manager, PASTOR ISAAC as Director of Human Resources, CHRIS CHENG[*] as Deputy Group Financial Controller, JESUS CHUA, Representative MICHAEL FELICIANO, ALMA EREDIANO, LEILANI VALIENTE, MAN CHOI as Group Financial Controller, and JAIME VILLAREAL as Chief Engineer, *petitioners, vs.* **SASCHA VUKASINOVIC,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; WHEN PRESENT.— There is forum shopping when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court. Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets. x x x The test for determining the existence of forum shopping is whether a final judgment in one case amounts to *res judicata* in another or whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens.*

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[*] "Chris Chen" in some parts of the records.

2. ID.; ID.; ID.; A FINDING OF FORUM SHOPPING WARRANTS THE DISMISSAL OF ALL PENDING ACTIONS ON THE SAME CLAIM FILED IN ANY COURT.— It is well-settled that once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court. This is so because twin dismissal is the punitive measure to those who trifle with the orderly administration of justice. The rule originated from the 1986 case of *Buan v. Lopez, Jr.* x x x The rule essentially penalizes the forum shopper by dismissing all pending actions on the same claim filed in any court. Because of the severity of the penalty of the rule, an examination must first be made on the purpose of the rule. The purpose of the rule is to avoid multiplicity of suits and to prevent a party from instituting two or more actions or proceeding involving the same parties for the same cause of action, either *simultaneously or successively,* on the supposition that one or the other court would make a favorable disposition. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues. Willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.

3. ID.; ID.; ID.; SHALL BE A GROUND FOR SUMMARY DISMISSAL OF A CASE WITH PREJUDICE.— Rule 7, Section 5 of the Rules of Court mandates that a willful and deliberate forum shopping shall be a ground for summary dismissal of a case with prejudice x x x. [T]he CA should have dismissed the case outright without rendering a decision on the merits of the case. Respondent should be penalized for willfully and deliberately trifling with court processes. The purpose of the law will be defeated if respondent will be granted the relief prayed for despite his act of deliberately committing forum shopping.

4. REMEDIAL LAW; ACTIONS; ILLEGAL DISMISSAL CASES; A CASE THAT INVOLVES AN ILLEGAL DISMISSAL IS AN ACTION THAT DOES NOT SURVIVE THE DEATH OF A PARTY, SINCE THE PROPERTY AND

PROPERTY RIGHTS AFFECTED ARE ONLY INCIDENTAL TO HIS COMPLAINT FOR ILLEGAL DISMISSAL.— The instant case involves an illegal dismissal which is an action that does not survive the death of the accused. x x x Since the property and property rights of the respondent are only incidental to his complaint for illegal dismissal, the same does not survive his death. Nonetheless, considering the x x x disposition dismissing respondent's petition before the CA and ergo his complaint for illegal dismissal, the Court can proceed with the resolution of the petition even without the need for substitution of the heirs of respondent.

APPEARANCES OF COUNSEL

Zambrano & Gruba Law Offices for petitioners.
Mosuela Buan & Associates Law Offices for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated April 28, 2015 and the Resolution[2] dated January 18, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 125945.

The Facts

In July 2009, respondent Sascha Vukasinovic was hired by petitioner Fontana Development Corporation (FDC) as its Director for Business Development for one year. His employment was renewed for another year at the end of his first contract.[3]

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[1] *Rollo*, pp. 22-34. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Isaias P. Dicdican and Elihu A. Ybañez.

[2] *Id*. at 36-38.

[3] *Id*. at 24.

Sometime in May 2010, he allegedly received a text message from one Jenny Mallari (Mallari) informing him that Nestor Dischoso (Dischoso) and Chief Hotel Engineer Jaime Villareal (Engr. Villareal), both officers of petitioner FDC, were receiving commissions from company transactions.

Thereafter, respondent met with Mallari and offered her money in exchange for evidence that will support her allegations. Mallari handed over to respondent a photocopy of a check issued to Engr. Villareal, as proof of receiving commission. The check, however, had an alteration so respondent asked Mallari to execute an affidavit and provide more proof. Respondent then paid Mallari the total amount of fourteen thousand pesos (₱14,000) on different occasions.

Mallari eventually gave respondent two invoices issued by one of the suppliers of petitioner FDC as proof of her allegations. Again, respondent discovered discrepancies. Consequently, in his Inter-Office Memorandum dated June 7, 2010, respondent recommended to Dennis Pak, petitioner FDC's General Manager, to conduct further investigations on the alleged corruptions of Engr. Villareal.

On June 15, 2010, FDC's Safety and Security Department brought Engr. Villareal and Mallari to the National Bureau of Investigation (NBI) Office for questioning.[4] During the inquiry, Mallari denied that Engr. Villareal asked for commissions from her and revealed that she merely fabricated the story against Engr. Villareal so that she can ask money from respondent.

Following this turn of events, petitioner FDC received a complaint from Engr. Villareal claiming that respondent paid Mallari a substantial amount of money to concoct a story depicting Engr. Villareal as a corrupt employee.[5]

On October 2, 2010, respondent received a Show Cause/ Preventive Suspension Order from petitioner FDC's Human

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[4] *Id*. at 4.

[5] *Id*. at 25.

Resources Department, informing him of the complaint filed by Engr. Villareal and directing him to explain why no disciplinary action should be taken against him for violating the provisions of the Company Code of Conduct on Dishonesty.

Respondent did not deny the allegations against him and, instead, admitted that he gave money to Mallari because "*it is a common practice in Fontana to give money to informants for vital information.*"[6]

Thus, petitioner FDC approved the recommendation of the Investigating Panel and terminated respondent's employment after finding him guilty of acts of dishonesty in the form of "*bribery in any form or manner*" under Rule 1, Section 4 of petitioner FDC's Code of Conduct,[7] which carries the maximum penalty of dismissal. The Decision and the Notice of Termination were served on November 2, 2010. Respondent, however, refused to acknowledge its receipt and, instead, filed a complaint for illegal dismissal, illegal suspension, regularization, non-payment of salaries, service incentive leave, 13th month pay, actual, moral and exemplary damages, attorney's fees and demands for his reinstatement with full backwages against petitioner FDC and its officers. The case was docketed as NLRC Case No. RAB-III-11-16967-10.

The Ruling of the Labor Arbiter

On June 27, 2011, Labor Arbiter Mariano L. Bactin (Bactin) dismissed the complaint for lack of factual or legal basis, and ruled that respondent cannot be regularized as he is an employee with a legal and valid fixed-term employment and that his dismissal was for a just cause. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, a Decision has been rendered **DISMISSING** this case with prejudice for lack of merit.

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[6] *Id*.

[7] *Id*. at 26.

His claim for regularization, as well as his money claims, damages and attorney's fees must also be dismissed with prejudice for lack of legal and factual basis.

SO ORDERED.[8]

Respondent appealed the said Decision to the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

The NLRC rendered a Resolution[9] dated March 15, 2012, dismissing the appeal and affirming the Decision of Labor Arbiter Bactin, as follows:

WHEREFORE, premises considered, the appeal filed by complainant is DISMISSED. The Decision of the Labor Arbiter Mariano L. Bactin dated June 27, 2011 is hereby AFFIRMED.

SO ORDERED.[10]

In so ruling, the NLRC noted that respondent had previously filed another complaint before the same branch of the NLRC in San Fernando, Pampanga, involving the same facts, issues, and prayer, entitled *Sascha Vukasinovic v. Jimei International Ltd., Suk Man Choi, as Group Financial Comptroller, and Chris Cheng, as Deputy Group Financial Comptroller*, and docketed as NLRC Case No. RAB III-09-18113-11. This previous case has been dismissed[11] by Labor Arbiter Reynaldo Abdon (Abdon) on the ground of forum shopping. The dismissal was eventually sustained by both the NLRC and the CA. In its, March 16, 2015 Decision in CA-G.R. SP No. 126225, the 13th Division of the CA affirmed that there was, indeed, forum shopping. The CA Decision has become final there being no appeal interposed by respondent.

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[8] *Id*. at 54.

[9] *Id*. at 56-63.

[10] *Id*. at 63.

[11] On December 5, 2011.

Respondent then filed a petition for certiorari with the CA which was docketed as CA-G.R. SP No. 125945 and raffled to its 9th Division.

The Ruling of the CA

The CA agreed with the NLRC when it ruled that herein respondent's employment had not ripened into regular employment and that he was validly dismissed. Respondent, being a managerial employee, can be terminated on the ground of loss of trust and confidence. However, contrary to the Decision of the NLRC, the CA ordered the award of unpaid salaries to respondent. The CA held that petitioner FDC failed to present evidence to show payment of the salaries of respondent for the period claimed. The dispositive portion of the April 28, 2015 Decision reads:

> **WHEREFORE,** premises considered, the assailed March 15, 2012 Resolution is **AFFIRMED** with the **MODIFICATION** that petitioner's salaries for July 2009 to October 2009 and January 2010 to October 21, 2010 are hereby awarded.
>
> This case is **REMANDED** to the Labor Arbiter for the computation, with dispatch, of the amounts due.
>
> **SO ORDERED.**[12]

Petitioners filed a petition for review before this Court, contending that the CA erred in not dismissing outright respondent's petition in CA-G.R. SP No. 125945. They claim that given the final decision in CA-G.R. SP No. 126225, wherein all the elements of *litis pendentia* were found, the CA should have refused to take cognizance of the case.

The Issue

The pivotal issue in this case is whether the CA gravely erred in not dismissing the petition in CA-G.R. SP No. 125945 for deliberate forum shopping.

The Court's Ruling

The petition is meritorious.

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[12] *Rollo*, p. 34.

Respondent is guilty of forum shopping

There is forum shopping when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court. Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes.[13] It degrades the administration of justice and adds to the already congested court dockets.[14]

In *Gloria S. Dy v. Mandy Commodities Co., Inc.*,[15] this Court had the occasion to explain the grave evil sought to be avoided by forum shopping, to wit:

> The grave 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, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case. To stamp out this abominable practice, which seriously impairs the efficient administration of justice, this Court promulgated Administrative Circulars No. 28-91 and No. 04-94, which are now embodied as Section 5, Rule 7 of the Rules of Court, which reads:
>
> > SEC. 5. *Certification against forum shopping*. The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action

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[13] *Heirs of Marcelo Sotto et al. v. Matilde S. Palicte*, G.R. No. 159691, February 17, 2014; citing *Chua v. Metropolitan Bank & Trust Company*, G.R. No. 182311, August 19, 2009, 596 SCRA 524, 535.

[14] *Id.*; citing *Executive Secretary v. Gordon*, G.R. No. 134171, November 18, 1998, 298 SCRA 736, 741.

[15] G.R. No. 171842, July 22, 2009.

> 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 a cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification of 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 a ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

The test for determining the existence of forum shopping is whether a final judgment in one case amounts to *res judicata* in another or whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.[16]

In the instant case, there is no doubt that all the elements of *litis pendentia* have already been established, as this was already settled with finality in CA-G.R. SP No. 126225. Yet, in his Comment, respondent repeatedly claimed that there was

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[16] *Id*.

no forum shopping and petitioners are misleading this Court, making it appear that forum shopping exists when there is none at all.

Respondent's position is without basis.

It should be noted that in his Decision in NLRC Case No. RAB III-09-18113-11, Labor Arbiter Abdon observed that there is an identity of parties between NLRC Case No. RAB III-09-18113-11 and NLRC Case No. RAB-III-11-16967-10 which is the complaint incipient in the present controversy. He pointed out that both complaints show that petitioners Chris Cheng and Man Choi are similarly impleaded in their capacities as officers of petitioner FDC and that there is also an identity of causes of action and reliefs prayed for by respondent.[17] To reiterate, Labor Arbiter Abdon's Decision was affirmed by the NLRC and the CA. In particular, in its Decision in CA-G.R. SP No. 126225 denying the petition for certiorari filed by respondent, the CA observed, thus:

> What is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.
>
> **In this case, it is undisputed that respondent filed two labor complaints: first, NLRC Case No. RAB III-11-16967-10-P entitled "*Sascha Vukasinovic v. Fontana Development Corporation, Dennis Pak, Pastor Isaac, Chris Cheng, Jesus Chua, Michael Feliciano, Alma Erediano, Leilani Valiente, Man Choi and Jaime Villareal*" for illegal dismissal, illegal suspension, regularization, non-payment of salaries, service incentive leave pay, 13th month pay, as well as actual, moral and exemplary damages and attorney's fees, with prayer for reinstatement and full back wages; and second, NLRC Case No. RAB III-09-18113-11 entitled "*Sascha Vukasinovic v. National Labor Relations Commission, Labor Arbiter Reynaldo B. Abdon, Jimei S. International, Ltd. (JSIL), Mr. Suk***

[17] *Rollo*, p. 76.

***Man Choi in his capacity as Group Financial Comptroller of JSIL, Chris Cheng in his capacity as Deputy Group Financial Comptroller of JSIL*", for constructive (illegal) dismissal, regularization, non-payment of salaries, premium pay for holiday and rest days, service incentive leave pay, 13th month pay, as well as damages and attorney's fees and other monetary claims including bonuses and travel expenses (repatriation expenses). It is also undisputed that the causes of action (illegal dismissal and constructive dismissal) in the respective complaints in the two (2) cases stemmed from the adverse decision in the administrative case filed against respondent that resulted to his dismissal from employment.**

In ***Jesse Yap v. Court of Appeals***, it was held:

x x x x x x x x x

> The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

All the elements of *litis pendencia* are present in this case.[18] (emphasis supplied)

Indeed, the existence of forum shopping has been duly proved in this case. As a result, petitioners hinge this present appeal on the error committed by the CA in not dismissing outright the appeal filed by respondent.

When there is forum shopping, all pending claims on the same claim must be dismissed

It is well-settled that once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court. This is so because twin dismissal is the punitive measure to those who trifle with the orderly administration of justice.[19]

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[18] *Id.* at 105-107.

[19] *Gloria S. Dy v. Mandy Commodities Co., Inc.*, *supra* note 15.

The rule originated from the 1986 case of *Buan v. Lopez, Jr.*[20] In the said case, petitioners therein instituted before the Court a special civil action for prohibition and, almost a month earlier, another special civil action for prohibition with preliminary injunction before the Regional Trial Court (RTC) Manila. Finding petitioners guilty of forum shopping since all the elements of *litis pendentia* were duly proved, the Court dismissed not only the action before it, but also the special civil action still pending before the RTC, viz:

> Indeed, the petitioners in both actions x x x have incurred not only the sanction of dismissal of their case before this Court in accordance with Rule 16 of the Rules of Court, but also **punitive measure of dismissal of both their actions, that in this Court and that in Regional Trial Court** as well.

The rule essentially penalizes the forum shopper by dismissing all pending actions on the same claim filed in any court. Because of the severity of the penalty of the rule, an examination must first be made on the purpose of the rule.[21] The purpose of the rule is to avoid multiplicity of suits and to prevent a party from instituting two or more actions or proceeding involving the same parties for the same cause of action, either *simultaneously or successively*, on the supposition that one or the other court would make a favorable disposition.[22]

What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues.[23] Willful and deliberate violation of the rule

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[20] G.R. No. 75349, October 13, 1986.

[21] *Ramon Ching and Po Wing Properties, Inc. v. Joseph Cheng, Jaime Cheng, Mercedes Igne and Lucina Santos*, G.R. No. 175507, October 8, 2014.

[22] *Jesse Yap v. Court of Appeals*, G.R. No. 186730, June 13, 2012.

[23] *Id.*; citing *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 748 (2003).

against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.[24]

Furthermore, Rule 7, Section 5 of the Rules of Court mandates that a willful and deliberate forum shopping shall be a ground for summary dismissal of a case with prejudice, thus:

> 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.** (emphasis supplied)

Consequently, the CA should have dismissed the case outright without rendering a decision on the merits of the case. Respondent should be penalized for willfully and deliberately trifling with court processes. The purpose of the law will be defeated if respondent will be granted the relief prayed for despite his act of deliberately committing forum shopping.

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[24] *Id*.; citing *Municipality of Taguig v. Court of Appeals*, 506 Phil. 567, 582 (2005).

Respondent, per Manifestation of his counsel, Atty. Erick Nolan G. Mosuela (Mosuela), died on July 19, 2016. Atty. Mosuela manifested that he has no information as to the heirs of respondent, hence, his inability to substitute them, if any, in the place of respondent.

The instant case involves an illegal dismissal which is an action that does not survive the death of the accused. The Court ruled in *Bonilla v. Barcena*,[25] to wit:

> The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental.

Since the property and property rights of the respondent are only incidental to his complaint for illegal dismissal, the same does not survive his death. Nonetheless, considering the foregoing disposition dismissing respondent's petition before the CA and ergo his complaint for illegal dismissal, the Court can proceed with the resolution of the petition even without the need for substitution of the heirs of respondent.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated April 28, 2015 in CA-G.R. SP No. 125945 of the Court of Appeals is hereby **REVERSED** and **SET ASIDE**. The petition for certiorari filed by respondent Sascha Vukasinovic with the CA is ordered **DISMISSED** on the ground of deliberate forum shopping.

SO ORDERED.

Peralta, Perez, Reyes, and *Jardeleza, JJ.,* concur.

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[25] G.R. No. L-41715, June 18, 1976.

THIRD DIVISION

[G.R. No. 224804. September 21, 2016]

EFREN R. LEYNES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 8550 (THE PHILIPPINE FISHERIES CODE OF 1998); CONVERSION OF MANGROVE FOREST; ELEMENTS.— For an offense of conversion of mangrove forest to exist, the following elements must concur: "1. The site of the fishpond is a mangrove forest; 2. There was a conversion of the mangrove area into a fishpond; and 3. The appellant made the conversion."

2. ID.; ID.; ID.; ACTS OF CUTTING MANGROVE TREES, CONSTRUCTING A DIKE, INSTALLING AN OUTLET, AND EXCAVATING IN THE MANGROVE FOREST CONSTITUTE CONVERSION, PUNISHABLE BY SECTION 94.— The relevant provision is Section 94, R.A. No. 8550 x x x. [T]he law punishes "conversion" of mangrove forest into fishponds or for any other purposes. x x x The elementary rule of statutory construction provides that in construing words and phrases used in a statute, and in the absence of legislative intent to the contrary, these words and phrases should be given their plain, ordinary, and common usage meaning. Thus, absent any intent to the contrary, we apply the aforesaid principle in the case at bar. As defined, conversion means "the act or process of changing from one form, state, etc., to another." In the case at bar, Efren's acts of cutting mangrove trees, constructing a dike, installing an outlet *(prinsa*), and excavating in the mangrove forest constitute conversion because it altered the natural structure and form of the mangrove forest. Even if we consider Efren's defense that when he inherited the mangrove forest area from his grandfather it was already fishpond, such does not absolve him from liability. His continued introduction of improvements and continued use of the mangrove forest area as a fishpond, despite knowledge of the same being a mangrove forest area, impose upon him criminal liability. In any case, what the law prohibits is not only the conversion of

the mangrove forest into fishponds, but its conversion into any other purpose. Indeed, Efren may not have caused the conversion of the mangrove forest into a fishpond, but his acts of cutting mangrove trees, constructing a dike, installing an outlet *(prinsa),* and excavating in the mangrove forest altered the natural structure and form of the mangrove forest—an act punishable by Sec. 94 of R.A. No. 8550. x x x [M]angrove forests do not consist of the typical mangrove trees only. As defined, mangroves are "a community of intertidal plants including all species of trees, shrubs, vines and herbs found on coasts, swamps, or border of swamps." "[T]he word 'mangroves' refers to a group of plants which may actually belong to several families (species that distinctly belong to their own evolutionary group)." By cutting a tree in the mangrove forest, regardless of its species, Efren caused conversion of the same.

3. ID.; ID.; BEING A SPECIAL LAW, FAILURE TO COMPLY THEREWITH IS *MALUM PROHIBITUM*, AND INTENT TO COMMIT IT OR GOOD FAITH IS IMMATERIAL.— Anent his claim of good faith, this Court, as already held in our past pronouncements, cannot give credence to such defense. R.A. No. 8550 is a special law. It punishes conversion of mangrove forests into fishponds and for other purposes. As a special law, failure to comply with the same being *malum prohibitum,* intent to commit it or good faith is immaterial.

4. POLITICAL LAW; STATUTES; PRESIDENTIAL DECREE NO. 705; TAX DECLARATION ON REAL PROPERTY; THE ISSUANCE OF A TAX DECLARATION OF A LAND NOT CLASSIFIED AS ALIENABLE AND DISPOSABLE IS A CRIMINAL ACT, AND THE TAX DECLARATION ISSUED CANNOT ACT AS A SHIELD FROM CRIMINAL LIABILITY.— As regards Efren's defense that the mangrove forest area is covered by a tax declaration, we reiterate the findings of the lower court that the issuance of a tax declaration does not justify Efren's continued possession and introduction of improvements. In fact, pursuant to Section 75 of P.D. No. 705, the issuance of a tax declaration of a land not classified as alienable and disposable is a criminal act. The tax declaration issued in his favor cannot act as a shield from criminal liability.

5. CRIMINAL LAW; REPUBLIC ACT NO. 8550 (THE PHILIPPINE FISHERIES CODE OF 1998); CONVERSION

OF MANGROVE FOREST; ABSENT ANY FISHPOND AGREEMENT, THE ISSUANCE OF A CERTIFICATE OF NON COVERAGE DOES NOT EXEMPT COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS.— Efren also cannot invoke the Certificate of Non Coverage issued in his name as a permit to introduce improvements in the mangrove forest. As correctly held by the RTC: (1) "the issuance thereof shall not exempt the grantee from compliance with applicable environmental laws, rules and regulations, including the permitting requirements of other government agencies, and (2) only the granting of fishpond lease agreement pursuant to Sec. 45 of R.A. 8550 could exempt accused [Efren] from prosecution of Sec. 94 of the same law." A perusal of the records reveals that Efren is bereft of any fishpond lease agreement. Absent any fishpond lease agreement, Efren, despite the issuance of a Certificate of Non Coverage in his name, is not exempted from compliance with applicable environmental laws, rules and regulations, such as Sec. 94 of R.A. No. 8550.

6. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; LEGALLY BINDING ON THE PARTY MAKING THE ADMISSIONS, AND TO CONTRADICT THE SAME HE MUST SHOW THAT THEY WERE MADE THROUGH PALPABLE MISTAKE OR THAT NO SUCH ADMISSIONS WERE MADE.— Efren is estopped from claiming that he did not convert the mangrove forest area. In his Letter of Appeal, Efren admitted that "he caused the cutting of number of trees inside the old fishpond", which is deemed as a judicial admission. A judicial admission, verbal or written, is made by a party in the course of the proceedings in the same case which does not require proof. To contradict one's own admission, the person who made the same must show that it was made through palpable mistake or that no such admission was made. Judicial admissions are legally binding on the party making the admissions. In the case at bar, no denial was made on the part of Efren that he cut a number of trees in the mangrove forest.

APPEARANCES OF COUNSEL

Espiritu and Saba Law Offices for petitioner.
Office of the Solicitor General for respondent.

RESOLUTION

PEREZ, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA) dated 3 December 2015 in CA-G.R. CR No. 36638, which sentenced petitioner Efren R. Leynes to suffer the penalty of six (6) years and one (1) day, as minimum, up to twelve (12) years, as maximum, and a fine of Eighty Thousand Pesos (₱80,000.00), for the offense of conversion of mangroves as punishable under Section 94 of Republic Act (R.A.) No. 8550, otherwise known as the "Philippine Fisheries Code of 1998."

Facts

An Information for violation of Section 94, R.A. No. 8550 otherwise known as the "Philippine Fisheries Code of 1998" was filed against petitioner Efren R. Leynes, Alan Leynes, and Javier Leynes (collectively hereinafter referred to as "defendants") for cutting mangrove trees and for excavating, constructing a dike, and installing an outlet (*prinsa*) in the mangrove forest without a fishpond lease agreement. The Information reads:

> That on or about the 9th day of July 2009 and [for] sometime[s] prior thereto, at Sitio Bigyan, [Barangay] Sibulan, Municipality of Polillo, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above named-accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully, and feloniously enter, occupy, possess, and make fishpond one half (½) hectare, more or less, of the mangrove forest area, causing damage to the mangroves found therein, without any authority under a license agreement, lease, license, or permit from the proper government authority, to the damage and prejudice of the government of the Philippines.
>
> Contrary to law.[2]

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[1] *Rollo*, pp. 51-66; penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Ramon A. Cruz and Pedro B. Corales, concurring.

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

During arraignment, petitioner Efren and Alan entered a plea of not guilty. While their co-accused, Javier, remained at large. After pre-trial, trial on the merits ensued.

The defendants denied the charge against them. The defendants contend that they cannot be convicted for improving and rehabilitating the mangrove forest because the act punishable under Section 94 of R.A. No. 8550 is "conversion." According to defendants, the construction of dikes and installation of an outlet (*prinsa*) do not amount to conversion, but a rehabilitation and improvement of the mangrove forest. Moreover, prior to Efren's introduction of improvements in the mangrove forest, it was already a fishpond since 1970. In fact, Efren was able to work in the aforesaid fishpond as a young man when it was still owned by his grandfather Emilio Leynes, who has a tax declaration issued in his name, showing ownership over the subject mangrove area. To support his claim of good faith, after his grandfather's death, Efren introduced improvements in the area by virtue of a Certificate of Non Coverage issued in his favor by the Department of Natural Resources.

On 25 April 2014, the Regional Trial Court (RTC) convicted petitioner Efren. However, the RTC dismissed the charge against Alan for failure of the prosecution to prove conspiracy between him and Efren and/or participation in the commission of the offense. On the other hand, the case against Javier was archived while he is still at large. The RTC resolved that the fact that Efren's grandfather was issued a tax declaration does not justify his continued possession and introduction of improvements. Besides, the issuance of a tax declaration of a land not classified as alienable and disposable is a criminal act under Section 75 of P.D. No. 705. As regards the Certificate of Non Coverage issued in favor of Efren, the RTC determined that: (1) "the issuance thereof shall not exempt the grantee from compliance with applicable environmental laws, rules and regulations, including the permitting requirements of other government agencies, and (2) only the granting of fishpond lease agreement pursuant to Sec. 45 of R.A. 8550 could exempt accused [Efren] from prosecution under Sec. 94 of the same law."

The pertinent portions of the RTC Decision read:

> IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered against accused Efren Leynes finding him guilty beyond reasonable doubt of the crime of violation of Sec. 94 of R.A. 8550 and applying the Indeterminate Sentence Law, this Court hereby imposes upon him the penalty of six (6) years and one (1) day, as minimum, up to twelve (12) years, as maximum, and to pay a fine of Eighty thousand pesos (Php80,000.00), to suffer all the accessory penalties and to pay the cost of the suit.
>
> With respect to accused Alan Leynes, the information for violation of Sec. 94 of R.A. 8550 filed against him is ordered DISMISSED.
>
> Likewise, the court is recommending for the prosecution of the concerned assessor's office/employee who may have issued a tax declaration over the area in question pursuant under Sec. 75 of P.D. 705, as amended.
>
> With respect to accused Javier Leynes, the fact that he (sic) having remained at large, accordingly, this case in so far as he is concerned is ordered consigned to the archive so as for it (sic) not to remain pending for an indefinite period of time and so as to unclog the docket of this court to be revived upon his apprehension.
>
> Issue alias warrant of arrest against him copy furnished all law enforcement agencies for their implementation.
>
> SO ORDERED.[3]

On appeal, the CA affirmed Efren's conviction. The CA considered Efren's Letter of Appeal, where he admitted to the destruction of the mangrove area, as a judicial admission. Absent any showing that the Letter of Appeal was made through palpable mistake, the same is conclusive against Efren.

Our Ruling

For an offense of conversion of mangrove forest to exist, the following elements must concur:

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[3] *Id*. at 81.

1. The site of the fishpond is a mangrove forest;
2. There was a conversion of the mangrove area into a fishpond; and
3. The appellant made the conversion.

The presence of the first and third elements, *i.e.,* the site of the fishpond is a mangrove forest and the appellant made the conversion, are undisputed. Now, the discussion of whether or not there was a conversion of the mangrove forest into a fishpond.

The relevant provision is Section 94, R.A. No. 8550, to wit:

> It shall be unlawful for any person to convert mangroves into fishponds or for any other purposes.
>
> Violation of the provision of this section shall be punished by imprisonment of six (6) years and one (1) day to twelve (12) years and/or a fine of Eighty thousand pesos (₱80,000.00): Provided, That if the area requires rehabilitation or restoration as determined by the court, the offender should also be required to restore or compensate for the restoration of the damage.

As stated, the law punishes "conversion" of mangrove forest into fishponds or for any other purposes. Efren argues that he cannot be convicted of the offense because his act of introducing improvements and rehabilitating the mangrove forest area do not amount to conversion. Also, when he improved and rehabilitated the same, it was already a fishpond.

Efren's contention must fail.

The elementary rule of statutory construction provides that in construing words and phrases used in a statute, and in the absence of legislative intent to the contrary, these words and phrases should be given their plain, ordinary, and common usage meaning.[4] Thus, absent any intent to the contrary, we apply the aforesaid principle in the case at bar. As defined, conversion means "the act or process of changing from one form, state,

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[4] *Secretary of Justice v. Koruga*, G.R. No. 166199, April 24, 2009, 586 SCRA 513, 523.

etc., to another."[5] In the case at bar, Efren's acts of cutting mangrove trees, constructing a dike, installing an outlet (*prinsa*), and excavating in the mangrove forest constitute conversion because it altered the natural structure and form of the mangrove forest. Even if we consider Efren's defense that when he inherited the mangrove forest area from his grandfather it was already fishpond, such does not absolve him from liability. His continued introduction of improvements and continued use of the mangrove forest area as a fishpond, despite knowledge of the same being a mangrove forest area, impose upon him criminal liability.

In any case, what the law prohibits is not only the conversion of the mangrove forest into fishponds, but its conversion into any other purpose. Indeed, Efren may not have caused the conversion of the mangrove forest into a fishpond, but his acts of cutting mangrove trees, constructing a dike, installing an outlet (*prinsa*), and excavating in the mangrove forest altered the natural structure and form of the mangrove forest—an act punishable by Sec. 94 of R.A. No. 8550.

Anent his claim of good faith, this Court, as already held in our past pronouncements, cannot give credence to such defense. R.A. No. 8550 is a special law. It punishes conversion of mangrove forests into fishponds and for other purposes. As a special law, failure to comply with the same being *malum prohibitum,* intent to commit it or good faith is immaterial.[6]

As regards Efren's defense that the mangrove forest area is covered by a tax declaration, we reiterate the findings of the lower court that the issuance of a tax declaration does not justify Efren's continued possession and introduction of improvements. In fact, pursuant to Section 75 of P.D. No. 705,[7]

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[5] Retrieved on 15 September 2016: www.merriam-webster.com/dictionary/**conversion**.

[6] *Mendoza v. People*, 640 Phil. 661, 666 (2010).

[7] **Section 75.** *Tax declaration on real property.* Imprisonment for a period of not less than two (2) nor more than four (4) years and perpetual disqualification from holding an elective or appointive office, shall be imposed

the issuance of a tax declaration of a land not classified as alienable and disposable is a criminal act. The tax declaration issued in his favor cannot act as a shield from criminal liability.

Efren also cannot invoke the Certificate of Non Coverage issued in his name as a permit to introduce improvements in the mangrove forest. As correctly held by the RTC: (1) "the issuance thereof shall not exempt the grantee from compliance with applicable environmental laws, rules and regulations, including the permitting requirements of other government agencies, and (2) only the granting of fishpond lease agreement pursuant to Sec. 45 of R.A. 8550 could exempt accused [Efren] from prosecution of Sec. 94 of the same law." A perusal of the records reveals that Efren is bereft of any fishpond lease agreement. Absent any fishpond lease agreement, Efren, despite the issuance of a Certificate of Non Coverage in his name, is not exempted from compliance with applicable environmental laws, rules and regulations, such as Sec. 94 of R.A. No. 8550.

In any case, as correctly held by the lower court, Efren is estopped from claiming that he did not convert the mangrove forest area. In his Letter of Appeal, Efren admitted that "he caused the cutting of number of trees inside the old fishpond", which is deemed as a judicial admission. A judicial admission, verbal or written, is made by a party in the course of the proceedings in the same case which does not require proof.[8] To contradict one's own admission, the person who made the same must show that it was made through palpable mistake or that no such admission was made. Judicial admissions are legally binding on the party making the admissions. In the case at bar, no denial was made on the part of Efren that he cut a number

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upon any public officer or employee who shall issue a tax declaration on real property without a certification from the Director of Forest Development and the Director of Lands or their duly designated representatives that the area declared for taxation is alienable and disposable lands, unless the property is titled or has been occupied and possessed by members of the national cultural minorities prior to July 4, 1955.

[8] Section 4, Rule 129, Rules of Evidence.

of trees in the mangrove forest.[9] As elucidated by this Court in *Alfelor v. Halasan*:[10]

> A party who judicially admits a fact cannot later challenge [the] fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.[11]

Thus, Efren's judicial admission, in addition to the aforementioned grounds, is a sufficient ground to sustain a conviction.

It is high time, therefore, and to avoid confusion, that mangrove forests do not consist of the typical mangrove trees only. As defined, mangroves are "a community of intertidal plants including all species of trees, shrubs, vines and herbs found on coasts, swamps, or border of swamps."[12] Contrary to Efren's belief, "the word 'mangroves' refers to a group of plants which may actually belong to several families (species that distinctly belong to their own evolutionary group)."[13] By cutting a tree

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[9] Efren admitted that he caused the "cutting of number of trees." the pertinent portion of the Letter of Appeal reads:

> Please understand that the undersigned have caused the cutting of number of trees inside the old fishpond as attested by the officers who inspected the area sometime last year. Likewise, they have observed that cutting was done selectively leaving the majority of the healthy trees to mature.

[10] 520 Phil. 982 (2006).

[11] *Id*. at 991.

[12] Section 4, paragraph 52, R.A. No. 8550.

[13] Retrieved on 15 September 2016: http://www.mangrovesgy.org/home/index.php/2014-04-27-16-39-08/types-of-mangroves.

in the mangrove forest, regardless of its species, Efren caused conversion of the same.

WHEREFORE, the Decision of the Honorable Court of Appeals dated 3 December 2015 in CA-G.R. CR No. 36638, which sentenced petitioner Efren R. Leynes to suffer the penalty of six (6) years and one (1) day, as minimum, up to twelve (12) years, as maximum, and a fine of Eighty Thousand Pesos (₱80,000.00), for the offense of conversion of mangroves as punishable under Section 94 of Republic Act No. 8550, otherwise known as the "Philippine Fisheries Code of 1998", is hereby **AFFIRMED** *in toto*.

SO ORDERED.

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

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recommendations of any investigating committee created to inquire into charges filed against him; he is entitled only to the administrative decision based on substantial evidence made of record, and a reasonable opportunity to meet the charges and the evidence presented against her during the hearings of the investigation committee. (Cordero *vs.* Board of Nursing, G.R. No. 188646, Sept. 21, 2016) p. 735

— In proceedings before quasi-judicial and administrative bodies, the general rule has always been liberality; strict compliance with the rules of procedure in administrative cases is not required by law; the allegation of improper venue and the fact that a complaint was not under oath are not sufficient grounds for the dismissal of a complaint. (*Id.*)

— The power to institute an administrative case *motu proprio,* as well as the conduct of the proceedings by the special prosecutors and hearing officers delegated by the PRC or the Board is provided for in the PRC Rules; it participates in the administrative proceedings in its capacity as adjudicating body and does not wield any amount of control or supervision relative to the prosecution of the case, and decides *motu proprio* cases based on the presence or absence of evidence and not in any way on the basis of the formal charge it initiated. (*Id.*)

— What is controlling is the allegation of the acts complained of, not the designation of the offense; so long as respondent was given the opportunity to confront the allegations against him, which in fact he did, there should be no issue in this regard. (GSIS *vs.* Manalo, G.R. No. 208979, Sept. 21, 2016) p. 832

Exhaustion of administrative remedies — Administrative decisions on matters within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law. (Alecha *vs.* Atienza Jr., G.R. No. 191537, Sept. 14, 2016) p. 126

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Section 3 (e) — Elements are as follows: (a) the offender must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused undue injury to any party, including the government or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. (Lim *vs.* Office of the Dep. Ombudsman for the Military and other Law Enforcement Offices (MOLEO), G.R. No. 201320, Sept. 14, 2016) p. 226

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. NO. 9208)

Application of — A successful prosecution for human trafficking, to a certain extent, relies greatly on the entrapment operation; in entrapment, ways and means are resorted to by the authorities for the purpose of capturing the perpetrator *in flagrante delicto.* (People *vs.* Villanueva *y* Manalili @ Bebang, G.R. No. 210798, Sept. 14, 2016) p. 349

— The elements of trafficking in persons, derived from the expanded definition found in Sec. 3(a) of R.A. No. 9208 as amended by R.A. No. 10364, are as follows: (1) The act of recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders; (2) The means used include 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; and (3) The purpose of trafficking includes 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; the recruitment, transportation, transfer,

be dissolved. (Marphil Export Corp. *vs.* Allied Banking Corp., G.R. No. 187922, Sept. 21, 2016) p. 703

— Is a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant. (*Id.*)

— Once issued, a writ of attachment may be dissolved or discharged on the following grounds: (a) the debtor has posted a counter-bond or has made the requisite cash deposit; (b) the attachment was improperly or irregularly issued as where there is no ground for attachment, or the affidavit and/or bond filed therefor are defective or insufficient; (c) the attachment is excessive, but the discharge shall be limited to the excess; (d) the property attachment is exempt from preliminary attachment; or (e) the judgment is rendered against the attaching creditor. (*Id.*)

ATTORNEYS

Code of Professional Responsibility (CPR) — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct; a lawyer's conduct is not confined to the performance of his professional duties; a lawyer may be disciplined for misconduct committed either in his professional or private capacity. (Camino *vs.* Atty. Pasagui, A.C. No. 11095(Formerly CBD Case No. 11-3140), Sept. 20, 2016) p. 501

— A lawyer, under his oath, pledges himself not to delay any man for money or malice and is bound to conduct himself with all good fidelity to his clients; he is obligated to report promptly the money of his client that has come into his possession. (*Id.*)

— CPR directs all members of the bar to conduct themselves with courtesy, fairness, and candor towards their fellow lawyers and avoid harassing tactics against opposing counsel; the Court has consistently reminded lawyers

a separate contract the consideration for which is the promise to pay the bank the value of the sight draft if it was dishonored for any reason. (*Id*.)

CERTIORARI

Petition for — A party aggrieved by the rulings of the Senate or House Electoral Tribunal invokes the jurisdiction of the Supreme Court through the vehicle of a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. (David *vs.* Senate Electoral Tribunal, G.R. No. 221538, Sept. 20, 2016) p. 529

— No grave abuse of discretion committed by the Senate Electoral Tribunal in resolving the legal question involved. (*Id*.)

— The special civil action of *certiorari* under Rule 65 of the Rules of Court is available to an aggrieved party only when there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. (Alecha *vs.* Atienza Jr., G.R. No. 191537, Sept. 14, 2016) p. 126

— To justify the grant of the extraordinary remedy of *certiorari*, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. (Felicilda *vs.* Uy, G.R. No. 221241, Sept. 14, 2016) p. 408

CHANGE OF NAME

Petition for — A change of name is a privilege and not a matter of right; a proper and reasonable cause must exist before a person may be authorized to change his name; in granting or denying petitions for change of name, the question of proper and reasonable cause is left to the sound discretion of the court. (Gan *vs.* Rep. of the Phils., G.R. No. 207147, Sept. 14, 2016) p. 326

CITIZENSHIP

Categories of — There are only two (2) categories of Filipino citizens: natural-born and naturalized; a natural-born citizen is defined in Art. IV, Sec. 2 as one who is a

first, taking the oath of allegiance to the Republic; this effects the retention or reacquisition of one's status as a natural-born Filipino; this also enables the enjoyment of full civil and political rights, subject to all attendant liabilities and responsibilities under existing laws, provided the solemnities recited in Sec. 5 of R.A. No. 9225 are satisfied; second, compliance with Art. V, Sec. 1 of the 1987 Constitution, R.A. No. 9189, otherwise known as the Overseas Absentee Voting Act of 2003, and other existing laws; this is to facilitate the exercise of the right of suffrage; that is, to allow for voting in elections; third, making a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath; this, along with satisfying the other qualification requirements under relevant laws, makes one eligible for elective public office. (David *vs.* Senate Electoral Tribunal, G.R. No. 221538, Sept. 20, 2016) p. 529

— R.A. No. 9225 may involve extended processes not limited to taking the Oath of Allegiance and requiring compliance with additional solemnities, but these are for facilitating the enjoyment of other incidents to citizenship, not for effecting the reacquisition of natural-born citizenship itself; it is markedly different from naturalization as there is no singular, extended process with which the former natural-born citizen must comply. (*Id*.)

— The requirement of being natural-born was introduced as a safeguard against foreign infiltration in the administration of national government. (*Id*.)

CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (R.A. NO. 6713)

Misconduct — A transgression of some established and definite rule of action, more particularly, it is the unlawful behavior of or gross negligence by the public officer; to warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling.

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody — The prosecution was able to establish with moral certainty and prove to the Court beyond reasonable doubt that there is an unbroken chain of custody over the confiscated illegal 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. (People *vs.* Sic-Open *y* Dimas, G.R. No. 211680, Sept. 21, 2016) p. 859

Illegal sale of dangerous drugs — For a successful prosecution of illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 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. (People *vs.* Sic-Open *y* Dimas, G.R. No. 211680, Sept. 21, 2016) p. 859

— The identities of the buyer, the seller, the prohibited drug and the marked money have all been proven beyond reasonable doubt by the testimonies of the prosecution witnesses and the supporting documents they presented and offered in evidence. (*Id.*)

Possession of illegal drugs — Under Sec. 11, Art. II of the same Act, elements are: (1) the accused is in possession of the object identified as a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. (People *vs*. Zacaria y Wagas, G.R. No. 214238, Sept. 14, 2016) p. 370

Sale of illegal drugs — Elements of Sec. 5, Art. II of R.A. No. 9165 or sale of illegal drugs: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it, are present. (People *vs*. Zacaria y Wagas, G.R. No. 214238, Sept. 14, 2016) p. 370

COURT OF TAX APPEALS

Jurisdiction — The CTA, being a court of special jurisdiction, has the judicial power to review the decisions of the Commissioner of Internal Revenue. (Harte-Hanks Phils., Inc. *vs.* Commissioner of Internal Revenue, G.R. No. 205721, Sept. 14, 2016) p. 303

CRIMINAL PROCEDURE

Probable cause — Exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof; in order to engender such well-founded belief that a crime has been committed and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. (Lim *vs.* Office of the Dep. Ombudsman for the Military and other Law Enforcement Offices (MOLEO), G.R. No. 201320, Sept. 14, 2016) p. 226

Prosecution of offenses — As a general rule, a public prosecutor's determination of probable cause that is, one made for the purpose of filing an Information in court is essentially an executive function and therefore, generally lies beyond the pale of judicial scrutiny; the exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. (Lim *vs.* Office of the Dep. Ombudsman for the Military and other Law Enforcement Offices (MOLEO), G.R. No. 201320, Sept. 14, 2016) p. 226

— Once the criminal action had already been instituted by the filing of the Information with the court, the court acquires jurisdiction and is given the authority to determine whether to dismiss the case or convict or acquit the accused; however, when the prosecution is convinced that the evidence is insufficient to establish the guilt of an accused, it may move for the withdrawal of the Information, which the court cannot simply ignore; but the court must judiciously evaluate the evidence in the

entrance into the private property is indefinite or permanent: (3) There is color of legal authority in the entry into the property; (4) The property is devoted to public use or purpose; and (5) The use of property for public use removed from the owner all beneficial enjoyment of the property. (*Id*.)

EMPLOYMENT, TERMINATION OF

Illegal dismissal — Normal consequences of an illegal dismissal are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement; where reinstatement is no longer viable as an option, separation pay equivalent to one month salary for every year of service should be awarded as an alternative. (Atty. Risonar, Jr. *vs.* Cor Jesu College, G.R. No. 198350, Sept. 14, 2016) p. 195

Loss of confidence — An employer to validly dismiss an employee on the ground of loss of trust and confidence, the following guidelines must be observed: (1) loss of confidence should not be simulated; (2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith. (Matis *vs.* Mla. Electric Co., G.R. No. 206629, Sept. 14, 2016) p. 311

— Loss of confidence applies to: (1) employees occupying positions of trust and confidence, the managerial employees; and (2) employees who are routinely charged with the care and custody of the employer's money or property which may include rank-and-file employees**,** *e.g.,* cashiers, auditors, property custodians, or those who, in the normal routine exercise of their functions, regularly handle significant amounts of money or property. (*Id*.)

— Proof beyond reasonable doubt is not needed to justify the loss of confidence as long as the employer has

termination served by the employer on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify the latter's termination. (*Id.*)

Valid causes — An employer has the right to dismiss its erring employees as a measure of self-protection against acts inimical to its interest. (Fallarme *vs.* San Juan De Dios Educational Foundation, Inc., G.R. Nos. 190015/ 190019, Sept. 14, 2016) p. 74

— For there to be a valid cause, two elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and pertinent to the duties that the employee has been engaged to discharge. (*Id.*)

EQUAL PROTECTION

Equal protection clause — All persons or things similarly situated must be treated alike, both in the privileges conferred and the obligations imposed; conversely, all persons or things differently situated should be treated differently. (Drugstores Association of the Phils., Inc. *vs.* Nat'l. Council on Disability Affairs, G.R. No. 194561, Sept. 14, 2016) p. 166

ESTAFA THROUGH FALSIFICATION OF A PUBLIC DOCUMENT

Commission of — The following requisites must concur: (1) the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (2) the false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud; (3) the false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; (4) that as a result thereof, the offended party suffered damage; (5) that the offender is a private

STATUTES

Interpretation of — All reasonable doubts should be resolved in favor of the constitutionality of a statute; the burden of proof is on him who claims that a statute is unconstitutional. (Drugstores Association of the Phils., Inc. *vs.* Nat'l. Council on Disability Affairs, G.R. No. 194561, Sept. 14, 2016) p. 166

— Procedural rules are tools designed to facilitate the adjudication of cases, thus, courts and litigants alike are enjoined to abide strictly by the rules; while the Court, in some instances, allows a relaxation in the application of the rules, it must be emphasized that the same was never intended to forge a bastion for erring litigants to violate the rules with impunity; the liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. (Lim *vs.* Office of the Dep. Ombudsman for the Military and other Law Enforcement Offices (MOLEO), G.R. No. 201320, Sept. 14, 2016) p. 226

— The Constitution should be appreciated and read as a singular, whole unit, *ut magis valeat quam pereat*; each provision must be understood and effected in a way that gives life to all that the Constitution contains, from its foundational principles to its finest fixings. (David *vs.* Senate Electoral Tribunal, G.R. No. 221538, Sept. 20, 2016) p. 529

— When laws or rules are clear, when the law is unambiguous and unequivocal, application not interpretation thereof is imperative; however, where the language of a statute is vague and ambiguous, an interpretation thereof is resorted to; a law is deemed ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses; the fact that a law admits of different interpretations is the best evidence that it is vague and ambiguous. (Drugstores Association of the Phils., Inc. *vs.* Nat'l. Council on Disability Affairs, G.R. No. 194561, Sept. 14, 2016) p. 166

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